

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

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



COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

WHATCOM COUNTY COUNCIL

**COMBINED
AGENDA PACKET FOR
JUNE 1, 2021**

**INCLUDES INFORMATION
FOR THE FOLLOWING MEETINGS:**

**9:30 A.M. – COMMITTEE OF THE WHOLE – EXECUTIVE SESSION
(ENDS NO LATER THAN 10 A.M.)**

**10:10 A.M. – NATURAL RESOURCES COMMITTEE
(ENDS NO LATER THAN 11:10 A.M.)**

**11:20 A.M. – FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
(ENDS NO LATER THAN 12:30 P.M.)**

**1:30 P.M. – PUBLIC WORKS AND HEALTH COMMITTEE
(ENDS NO LATER THAN 2 P.M.)**

**2:10 P.M. – COMMITTEE OF THE WHOLE
(ENDS NO LATER THAN 5 P.M.)**

6 P.M. - COUNCIL

PARTICIPATE IN VIRTUAL COUNCIL MEETINGS

THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY

**VIEW MEETING SCHEDULES, AGENDAS, MINUTES, VIDEOS, AND ARCHIVES AT
WWW.WHATCOM.LEGISTAR.COM**

**FOR INSTRUCTIONS ON HOW TO WATCH OR PARTICIPATE IN COMMITTEE AND
COUNCIL MEETINGS, PLEASE VISIT
WWW.WHATCOMCOUNTY.US/3415/PARTICIPATE-IN-VIRTUAL-COUNCIL-MEETINGS
OR CONTACT THE COUNCIL OFFICE AT 360.778.5010**

COMMITTEE AGENDAS

COUNCIL COMMITTEE OF THE WHOLE-EXECUTIVE SESSION
9:30 A.M. TUESDAY, June 1, 2021 (ENDS NO LATER THAN 10:00 A.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-788-5010 at least 96 hours in advance.

Committee Discussion

1. AB2021-311 Update on negotiations and planning strategy discussion regarding collective bargaining [discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.140(4)(a)]
Page 1

Items Added by Revision

Other Business

Adjournment

COUNCIL NATURAL RESOURCES COMMITTEE
10:10 A.M. TUESDAY, June 1, 2021 (ENDS NO LATER THAN 11:10 A.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

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Committee Discussion

1. AB2021-297 Discussion of proposed ordinance adopting amendments to the Purchase of Development Rights Program
Pages 2-245

Items Added by Revision

Other Business

Adjournment

COUNCIL FINANCE AND ADMINITRATIVE SERVICES COMMITTEE
11:20 A.M. TUESDAY, June 1, 2021 (MAY BEGIN EARLY, ENDS NO LATER THAN 12:30 P.M.)
Virtual Meeting

Call To Order

Roll Call

Annoucements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-788-5010 at least 96 hours in advance.

Committee Discussion and Recommendation to Council

1. AB2021-289 Ordinance amending the 2021 Whatcom County Budget, request No. 8, in the amount of \$1,250,000
 Pages 246 - 250
2. AB2021-291 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for logistical and administrative support services to Whatcom Unified Command, in the amount of \$60,000
 Pages 251 - 258
3. AB2021-292 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to support a single point of entry, to connect families and professionals concerned about a child's development to resources and services in the amount of \$9,081 for a total amended contract amount of \$89,230
 Pages 259 - 264
4. AB2021-298 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, in the estimated amount of \$94,000 for a total estimated contract amount of \$220,000
 Pages 265 - 269
5. AB2021-299 Request authorization for the County Executive to enter into a contract between Whatcom County and Pacific Security to provide COVID-related security services, in the amount of \$71,736
 Pages 270 - 290
6. AB2021-301 Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to provide funding for an outreach worker and consulting services to the Homeless Outreach Team, in the amount of \$120,776
 Pages 291 - 314
7. AB2021-302 Request authorization for the County Executive to enter into an agreement between Whatcom County and the County Road Administrative Board (CRAB) in order to receive Rural Arterial Preservation grant funding for the Birch Bay/Lynden Road Pavement Rehabilitation project in the amount of \$510,000
 Pages 315 - 320
8. AB2021-313 Request authorization for the County Executive to enter into a contract between Whatcom County and West Publishing for online database subscriptions in the amount of \$151,680.00
 Pages 321 - 327

9. AB2021-315 Request authorization for the County Executive to purchase a Conservation Easement from the City of Lynden for Glenning Park, in the amount of \$250,000
Pages 328 - 338
10. AB2021-316 Request authorization for the County Executive to purchase a Conservation and Public Access Easement from the Whatcom Land Trust for the Upper Skookum Creek property, in the amount of \$1,250,000_
Pages 339 - 348

Items Added by Revision

Other Business

Adjournment

COUNCIL PUBLIC WORKS & HEALTH COMMITTEE
1:30 P.M. TUESDAY, June 1, 2021 (ENDS NO LATER THAN 2:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Annoucements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-788-5010 at least 96 hours in advance.

Special Presenation

1. AB2021-293 Report from the Public Works Department
Page 349

Items Added by Revision

Other Business

Adjournment

COUNCIL COMMITTEE OF THE WHOLE
2:10 P.M. TUESDAY, June 1, 2021 (ENDS NO LATER THAN 5:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-788-5010 at least 96 hours in advance.

Special Presentation

1. AB2020-219 Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)
 Pages 350 - 351
2. AB2021-317 Presentation regarding efforts to gather input from local stakeholders on the possible opening of a refugee resettlement office in Whatcom County
 Page 352

Committee Discussion

1. AB2021-306 Discussion and update on the American Rescue Plan Act with Executive Sidhu
 Page 353

Committee Discussion and Recommendation to Council

1. AB2021-185 Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County
 Pages 354 - 365
2. AB2021-186 Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone to be known as the Dearborn No Shooting Zone
 Pages 366 - 373

Items Added by Revision

Other Business

Adjournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING
6:00 P.M. TUESDAY, June 1, 2021
Virtual Meeting

CALL TO ORDER

ROLL CALL

FLAG SALUTE

ANNOUNCEMENTS

The Council is currently holding all meetings remotely. View meeting schedules, agendas, minutes, videos, and archives at www.whatcom.legistar.com. For instructions on how to watch or participate in this meeting, please visit us at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010.

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-788-5010 at least 96 hours in advance.

The County is accepting applications from county residents to fill vacancies on several boards, commissions, and committee spanning a wide range of important local issues. For more information, visit the Boards and Commissions vacancies webpage on the County website at www.co.whatcom.wa.us, or call the County Council Office or County Executive's Office.

COUNTY EXECUTIVE'S REPORT

MINUTES CONSENT

- | | | | |
|----|------------------------------------|---|-------------------------------|
| 1. | <u>MIN2021-044</u> | Committee of the Whole Executive Session for May 18, 2021 | <u>Pages 374 - 377</u> |
| 2. | <u>MIN2021-045</u> | Committee of the Whole for May 18, 2021 | <u>Pages 378 - 381</u> |
| 3. | <u>MIN2021-046</u> | Regular County Council for May 18, 2021 | <u>Pages 382 - 393</u> |

PUBLIC HEARINGS

To participate, please see instructions at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010. All speakers should state their name for the record and optionally include city of residence. Speakers will be given three minutes to address the Council. Council staff will keep track of time limits and inform speakers when they have thirty seconds left to conclude their comments.

- | | | |
|----|-----------------------------------|--|
| 1. | <u>AB2021-261</u> | Ordinance granting Cellco Partnership d/b/a Verizon Wireless, a non-exclusive franchise for the provision of wireless telecommunications services
<u>Pages 394 - 419</u> |
| 2. | <u>AB2021-278</u> | Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Sections 5.40 and 5.41 to align signature requirements for citizen initiatives with Washington State norms
<u>Pages 420 - 425</u> |
| 3. | <u>AB2021-279</u> | Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Section 8.22 to align requirements for amending the Charter by citizen initiative with Washington State norms
<u>Pages 426 - 430</u> |

OPEN SESSION (20 MINUTES)

To participate, please see instructions at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010. All speakers should state their name for the record and optionally include city of residence. Speakers will be given three minutes to address the Council. Council staff will keep track of time limits and inform speakers when they have thirty seconds left to conclude their comments

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. AB2021-289 Ordinance amending the 2021 Whatcom County Budget, request No. 8, in the amount of \$1,250,000
Pages 246 - 250
2. AB2021-291 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for logistical and administrative support services to Whatcom Unified Command, in the amount of \$60,000
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Pages 328 - 338
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Pages 339 - 348

(From Council Committee of the Whole)

11. AB2021-185 Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County
Pages 354 - 365
12. AB2021-186 Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone to be known as the Dearborn No Shooting Zone
Pages 366 - 373

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2021-308 Request confirmation of the County Executive's appointment of Sandy Phillips and Jeannine Heidenreich to the Bicycle Pedestrian Advisory Committee
Pages 431 - 438
2. AB2021-309 Request confirmation of the County Executive's reappointment of Mark McDonald to the North Sound Behavioral Health Administrative Services Organization (ASO) Advisory Board
Pages 439 - 441

ITEMS ADDED BY REVISION

INTRODUCTION ITEMS

Council action will not be taken. The council may accept these items for introduction (no action) in a single motion. Changes, in terms of committee assignment for example, may be made at this time.

1. AB2021-307 Ordinance amending the 2021 Whatcom County Budget, request no. 9, in the amount of \$1,138,322
Pages 442 - 461
2. AB2021-310 Ordinance establishing the American Rescue Plan Act Fund and establishing a budget for the American Rescue Plan Act Fund
Pages 462 - 466
3. AB2021-296 Ordinance adopting amendments to the Purchase of Development Rights Program
Pages 467 - 690

COMMITTEE REPORTS

OTHER ITEMS

COUNCILMEMBER UPDATES

ADJOURN



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-311

File ID:	AB2021-311	Version:	1	Status:	Agenda Ready
File Created:	05/21/2021	Entered by:	MKeeley@co.whatcom.wa.us		
Department:	Human Resources Division	File Type:	Discussion		
Assigned to:	Council Committee of the Whole-Executive Session	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: mkeeley@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Update on negotiations and planning strategy discussion regarding collective bargaining [discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.140(4)(a)]

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Strategy planning discussion and positions to be taken during collective bargaining per RCW 42.30.140(4)(a)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-297

File ID:	AB2021-297	Version:	1	Status:	Agenda Ready
File Created:	05/13/2021	Entered by:	RSnijder@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Discussion		
Assigned to:	Council Natural Resources Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: rsnijder@whatcomcounty.us

TITLE FOR AGENDA ITEM:

Discussion of proposed ordinance adopting amendments to the Purchase of Development Rights Program

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo (6/1/2021), Proposed Ordinance (6/1/2021), Proposed Ordinance Exhibit A (6/1/2021), Proposed Ordinance Exhibit B- Changes (6/1/2021), Proposed Ordinance Exhibit B- Clean (6/1/2021), Presentation (6/1/2021)



Memorandum

TO: Honorable County Councilmembers
Honorable Executive Sidhu

THROUGH: Mark Personius, PDS Director *MP*

FROM: Becky Snijder van Wissenkerke, PDR Program Administrator *BLS*

DATE: May 11, 2021

SUBJECT: Request to amend Whatcom County Code 3.25A and the PDR Program Guidelines as recommended by the Purchase of Development Rights Oversight Committee

The Purchase of Development Rights Program messaging and outreach were evaluated in 2019. After such evaluation, the Purchase of Development Rights (PDR) Oversight Committee recommends changing the program's name to the Whatcom County Conservation Easement Program. This proposed name better represents the program's purpose: purchasing conservation easements that will protect important agricultural lands, forestland, and ecological areas in Whatcom County. Since the program's establishment, development rights have been removed by placing conservation easements on properties. These conservation easements also protect the land by placing other restrictions, such as limiting the amount of impervious surfaces and prohibiting any use not conducive to agriculture, forestry, or the protection of ecological areas.

In addition to this proposed program name change, the PDR Oversight Committee and PDR Program staff have reviewed Whatcom County Code 3.25A and the PDR Program Guidelines and have identified additional changes that will improve the program's administration. The major change is revising the program's site selection criteria to better identify properties with high conservation value. In 2018, the program expanded to include the protection of forestland and important ecological areas as secondary goals to the program's primary goal of farmland preservation. The current site selection criteria is designed to rank farmland and does not accurately evaluate valuable forestland or important ecological areas. The proposed program guidelines and scoring criteria, as presented in the attached documents, continue to prioritize the protection of agricultural applications while also identifying important forestland and ecological areas for protection.

The PDR Oversight Committee and PDR Program staff recommend this proposed name change and updated guidelines as detailed in the attached ordinance. We look forward to discussing these recommended changes with you.

Please call Becky Snijder van Wissenkerke, PDR Program Administrator, with any questions or concerns at (360)778-5956.

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

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

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

1 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that
2 Whatcom County Code 3.25A is hereby amended as outlined in Exhibit A to this ordinance.
3

4 **BE IT ALSO ORDAINED** by the Whatcom County Council that the PDR Program
5 Guidelines are also amended as outlined in Exhibit B to this ordinance.
6

7 **ADOPTED** this ____ day of _____, 2021.
8
9

10
11 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

12
13 _____
14 Dana Brown-Davis, Clerk of the Council
15

Barry Buchanan, Council Chair
16

17
18 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

19
20 Approved by email/C Quinn/B Snijder
21

22 Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____
25
26

Exhibit A

1 Chapter 3.25A
2 ~~AGRICULTURAL, FORESTRY, AND ECOLOGICAL PURCHASE OF DEVELOPMENT RIGHTS~~
3 ~~PROGRAM~~ WHATCOM COUNTY CONSERVATION EASEMENT PROGRAM
4
5 Sections:
6 **3.25A.010 Short title.**
7 **3.25A.020 Purpose.**
8 **3.25A.030 Applicability.**
9 **3.25A.040 Definitions.**
10 **3.25A.050 Designation of program administrator – Powers and duties.**
11 **3.25A.060 ~~Purchase of development rights~~ Conservation easement program oversight committee**
12 **established – Powers and duties.**
13 **3.25A.070 Eligibility criteria.**
14 **3.25A.080 Ranking system.**
15 **3.25A.090 Conservation easement terms and conditions.**
16 **3.25A.100 Application and evaluation procedure.**
17 **3.25A.110 Purchase of ~~development rights~~ conservation easements procedure.**
18 **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**
19 **3.25A.130 Authorization.**

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

20
21 **3.25A.010 Short title.**
22 This chapter shall be known and may be cited as the “~~Agricultural, Forestry, and Ecological Purchase of~~
23 ~~Development Rights Program~~ Whatcom County Conservation Easement Program.” For the purpose of
24 this chapter this program shall be known as the “PDRCEP” ~~program~~. (Ord. 2018-065 Exh. A; Ord. 2013-
25 015 Exh. A; Ord. 2002-054 § 1).
26

27 **3.25A.020 Purpose.**
28 To establish a voluntary agricultural, forestry, and ecological ~~purchase of development~~
29 ~~rights~~ conservation easement program for Whatcom County which will enhance the protection of the
30 county’s farmland, forestland, and important ecosystem areas, enhance the long-term viability of the
31 agricultural and forestry enterprises within the county and provide public benefit by retaining properties
32 in permanent resource use, in addition to the protection of ecosystem functions and values. (Ord. 2018-
33 065 Exh. A; Ord. 2002-054 § 1).
34

35 **3.25A.030 Applicability.**
36 The ~~PDR program~~ CEP shall be available for all qualifying lands, as identified in the ~~PDR program~~ CEP
37 guidelines, except those lands under the ownership or control of the United States of America, the state
38 of Washington or an agency or instrumentality thereof. Any conservation easement acquired pursuant
39 to this chapter shall be voluntarily offered by the owner. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).
40

41 **3.25A.040 Definitions.**
42 The following definitions shall apply in the interpretation and implementation of this chapter:
43

44 “Administrator” is that person placed in a managerial position over the daily operations of the ~~PDR~~
45 ~~program~~ CEP. The administrator shall serve as a direct liaison to the program.
46

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

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

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

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

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

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

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

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

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

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

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

97 | 7. Provide staff support to the county council, the PDR-CEP oversight committee, and the county's
98 | authorized appraiser.
99 |
100 | 8. For each conservation easement accepted into the program, establish baseline data, and assure
101 | that the terms and conditions of the easement are monitored and complied with by coordinating a
102 | monitoring program with each easement holder. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).
103 |
104 | **3.25A.060 ~~Purchase of development rights~~Conservation easement program oversight committee**
105 | **established – Powers and duties.**
106 | A. Establishment. The PDR-CEP oversight committee is hereby established, as follows:
107 |
108 | 1. The committee shall consist of seven members appointed by the county executive and confirmed by
109 | county council. Each member shall be a resident in and of Whatcom County. The committee shall be
110 | comprised of three farmers, one individual representing farm-supporting businesses, one individual
111 | possessing real estate experience, one citizen (nonfarmer) from the unincorporated county, and one
112 | citizen (nonfarmer) from an incorporated city. No members may have an ownership interest in any
113 | of the lands submitted for purchase pursuant to this chapter.
114 |
115 | 2. The members of the committee shall serve at the pleasure of the county council. ~~The initial terms of~~
116 | ~~the members shall be as follows: two members shall be for two years; three members shall be for~~
117 | ~~three years; and two members shall be for four years. Each term after the initial~~Each term shall be
118 | for four years.
119 |
120 | 3. The members of the committee shall serve without pay, but the county council may, at its
121 | discretion, reimburse members for actual and necessary expenses incurred in the performance of
122 | their duties.
123 |
124 | 4. The committee shall elect a chairperson, ~~and~~ vice-chairperson ~~and secretary~~ at its first meeting
125 | each calendar year. ~~The secretary need not be a member of the committee.~~
126 |
127 | 5. The administrator shall be an ex officio member of the committee.
128 |
129 | B. Purpose. To provide oversight and evaluation for the county ~~PDR program~~CEP. The PDR-CEP oversight
130 | committee's role is to advise the council in the selection of eligible lands offered for PDR-CEP
131 | acquisition.
132 |
133 | C. Powers and Duties. The PDR-CEP oversight committee shall have the powers and duties to:
134 |
135 | 1. Promote the program, in cooperation and under the guidance of the administrator, by providing
136 | educational materials to the public and conducting informational meetings.
137 |
138 | 2. Review and make recommendations to the administrator and the county council as to which
139 | conservation easements should be purchased.
140 |
141 | 3. Annually review the ~~PDR program~~CEP guidelines and recommend to the county council any changes
142 | needed to maintain the program's consistency with the comprehensive plan, or to improve the
143 | administration, implementation and effectiveness of the program.
144 |

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

Comment [BSvW3]: Staff provide secretary duties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

243 |
244 | B. Acceptance. ~~An offer to sell development rights~~Requests to purchase conservation easements shall be
245 | ~~forwarded made~~ to the county council for acceptance.

246 |
247 | C. Conservation Easement Established. A conservation easement shall be established when the owner
248 | and an authorized representative of the holder of the easement have each signed the deed of
249 | easement. The deed shall be recorded in the Whatcom County auditor's office.

250 |
251 | ~~D. Offers Not Made – Offers Not Accepted – Invitation to Other Owners. If an owner invited to sell elects~~
252 | ~~not to do so, then the county administrator may send an invitation to sell to the owner(s) of the next~~
253 | ~~highest prioritized parcel(s) remaining on the list of parcels.~~

254 |
255 | E. Costs. If the county council ~~accepts an offer to sell development rights~~approves the purchase of a
256 | conservation easement, the county may pay all other costs including environmental site assessments,
257 | surveys, recording costs, if any, and other charges associated with closing. However, the county shall not
258 | pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or
259 | other advice, or expenses or fees in connection with the release and subordination of liens to the
260 | easement purchased by the county. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

261 |
262 | **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**

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

272 |
273 | **3.25A.130 Authorization.**

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

278 |
279 | B. If the owner so elects, the county is authorized to pay the purchase price in a lump-sum single
280 | payment at time of closing, or to enter into contract for installment payments against the purchase
281 | price. When installment purchases are made, the county is authorized to pay interest on the declining
282 | unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the
283 | time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

284 |
285 | ~~C. After county acquisition of development rights, the county may purchase the remaining agricultural,~~
286 | ~~forestry, or ecosystem rights or other property interests in such land only when requested by the owner~~
287 | ~~and when such acquisition is necessary to maintain agricultural, forestry, or ecosystem uses of the~~
288 | ~~property. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).~~

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

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

Exhibit B

Changes

Whatcom County

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

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

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PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

I. INTRODUCTION

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

The Guidelines serve two functions:

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

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

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

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

Comment [BSvW1]: Update if approved.

A. Objective

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

B. Principles

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

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

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

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

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

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

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

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

2. Offer Effective Program Design

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

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

3. Leverage Program Impact and Efficiency

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

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

III. ELIGIBILITY CRITERIA

A. Priority Consideration

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

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

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

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

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

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B. ~~PDR Program~~CEP Eligibility

Two factors will be important in determining eligibility:

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

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

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

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

2. At least 1 acre in size.

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

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

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

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IV. SITE SELECTION CRITERIA

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

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

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

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

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A. Agricultural Site Selection Criteria

1. General Site Evaluation

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

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

1a. 0 – 409.99	0 points
2b. 10 – 19.99 20	15 points
3e. 20 – 49.99	30 points
4d. 50 – 79.99	70 points
5e. ≥ 80	100 points

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

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

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

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

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

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- ~~d4.~~ < ~~0.25~~^{1/4} mile.....-75 points
~~e5.~~ Adjacent.....-100 points

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

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

~~e.c. Number of legal lots of record~~

- ~~1a.~~ 0-2.....-20 points
~~2b.~~ 3.....-40 points
~~e3.~~ 4.....-60 points
~~4d.~~ 5.....-80 points
~~5e.~~ ≥ ~~7~~⁶.....-100 points

~~d. Removal of all remaining unused development rights?~~

- ~~1. Unused development rights remaining0 points~~
~~2. All removed.....100- points~~
~~2. Development rights remaining0 pts~~

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

- ~~1a. In priority area0.....100 points~~
~~2b. Not in a priority area1.....-50 points~~
~~3. 2-3.....100 points~~

~~f.a. Legal water availability documentation~~

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

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

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

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

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

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

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

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

2. Development Pressure

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

- | | |
|----------------------|-------------------|
| <u>1a. 1-2.....</u> | <u>20 points</u> |
| <u>2b. 3.....</u> | <u>40 points</u> |
| <u>3e. 4.....</u> | <u>60 points</u> |
| <u>4d. 5.....</u> | <u>80 points</u> |
| <u>5e. ≥/≧6.....</u> | <u>100 points</u> |

b. Proximity to major roads or road intersections

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

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

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

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

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

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2.3. Land Soil Evaluation

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

Below is a table detailing the soil point system:

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

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

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

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

4. Agriculture Evaluation

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

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

b. Legal water availability documentation

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

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

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

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3. Ecological Evaluation

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

- ~~a. Protection (Overall importance to Water flow processes)~~
- | | |
|---|--------------------|
| a. Highest protection | 100 pts |
| b. Protection | 75 pts |
| c. Protection/Restoration | 50 pts |
| d. e. Conservation (no change) | 25 pts |

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

- | | |
|------------------------|-------------------|
| a. Yes | 50 pts |
| b. Maybe/No | 0 pts |

~~c. a. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)~~

- | | |
|-------------------|-------------------|
| a. Yes | 50 pts |
| b. No | 0 pts |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for ~~Ecological-Agriculture~~ Evaluation section has been 0.1~~50~~, but is subject to ongoing review by the Committee).

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4.5. Special Considerations

a. Site contains heritage/historical significance, i.e. Heritage Barn Registry

- | | |
|---------------------|------------------------|
| 1. 4- No | 0 points |
| Yes | 1050 points |
| 2. 2- No | 0 pts |

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

~~b. Protection (Overall importance to Water flow processes):~~

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

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

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

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

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

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

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

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

B. Forestry Site Selection Criteria

1. General Site Evaluation

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

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

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

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

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c. Number of legal lots of record

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

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d. Removal of all unused development rights?

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

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e. Number of priority areas parcel is located in

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

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

2. Development Pressure

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

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

b. Proximity to major roads or road intersections

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

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

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

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

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

3. Forestry Evaluation

a. Site index soil score, spatially weighted

1. 5.....	20 points
2. 4.....	40 points
3. 3.....	60 points
4. 2.....	80 points
5. 1.....	100 points

b. Property is identified as priority forestland based on State Forest Action Plan?

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

c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?

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

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d. Proximity to existing and contiguous blocks of forestland

1. >0.5 mile..... 0 points
2. 0.26 – 0.5 mile..... 50 points
3. 0.11 – 0.25 mile 75 points
4. ≤0.1 mile..... 100 points

e. Property is located at access to other working forestland?

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

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

4. Special Considerations

a. Site contains existing or proposed trails

3. No..... 0 points
4. Yes..... 100 points

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

5. Conservation (no change)..... 25 points
6. Protection/Restoration..... 50 points
7. Protection..... 75 points
8. Highest protection..... 100 points

c. Is property owner willing to implement forest management practices beyond the minimum required practices?

1. Maybe/No..... 0 points
2. Yes..... 100 points

d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)

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

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

5. Matching Funds or Bargain Sale

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

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

C. Ecological Site Selection Criteria

1. General Site Evaluation

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

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

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

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

c. Number of legal lots of record

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

d. Removal of all unused development rights?

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

e. Number of priority areas parcel is located in

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

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

2. Development Pressure

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

1. 1-2.....	20 points
2. 3.....	40 points
3. 4.....	60 points
4. 5.....	80 points

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5. >6..... 100 points

b. Proximity to major roads or road intersections

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

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

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

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

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

3. Ecological Evaluation

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

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

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

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

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

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

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

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

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

4. Special Considerations

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

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

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

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

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

5. Matching Funds or Bargain Sale

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

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

6. Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-140). The higher the score, the more closely the property meets the

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

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

A. Outreach and Publicity

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

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

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

B. Application and Ranking

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

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

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

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

Comment [BSvW11]: Payment due at submittal of application

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

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

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

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

Revised version adopted, ~~November 20, 2018~~[DATE]

Page 10

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

| Revised version adopted, ~~November 20, 2018~~[DATE]

Page 11

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

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

C. Title

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

D. Pricing Estimate and Appraisal

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

Comment [BSvW14]: No longer applicable

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

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

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

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

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

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

|

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Revised version adopted, ~~November 20, 2018~~[DATE]

Page 13

E. Offer to Purchase Easement and Agreement

- Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.
- Step 16: Within 30 days, the property owner accepts, rejects or makes a counter ~~offer~~. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.
- Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

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

G. Approval

- Step 19: Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.
- Step 20: Review materials are sent to other participating entities for partially or ~~wholly~~ funded conservation easements several days prior to any deadline.

I. Settlement

- Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.
- Step 23: Checks are ~~requested~~ from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

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

VI. CONSERVATION EASEMENTS

A. Description

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

B. ~~PDR Program~~ Conservation Easements

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

1. Conservation Easement Requirements

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

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

2. Filing

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

C. Conservation Easement Conveyance

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

1. Conservation Easement Donation

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

2. Conservation Easement Sale

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

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

A. Outreach and Publicity

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

B. Application and Ranking

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

Comment [BSvW16]: Not needed with initial application

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

C. Appraisal

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

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

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

Comment [BSvW19]: Critical areas restrictions captured here.

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

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

D. Title and Survey Issues

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

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

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

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

E. Development Rights Value and Purchase Price

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

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

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

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

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

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

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

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

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

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

regularly scheduled public meeting.

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

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VIII. CONSERVATION FUTURES FUND

A. Intent

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

B. Fund Sources

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

C. Fund Source Accounts

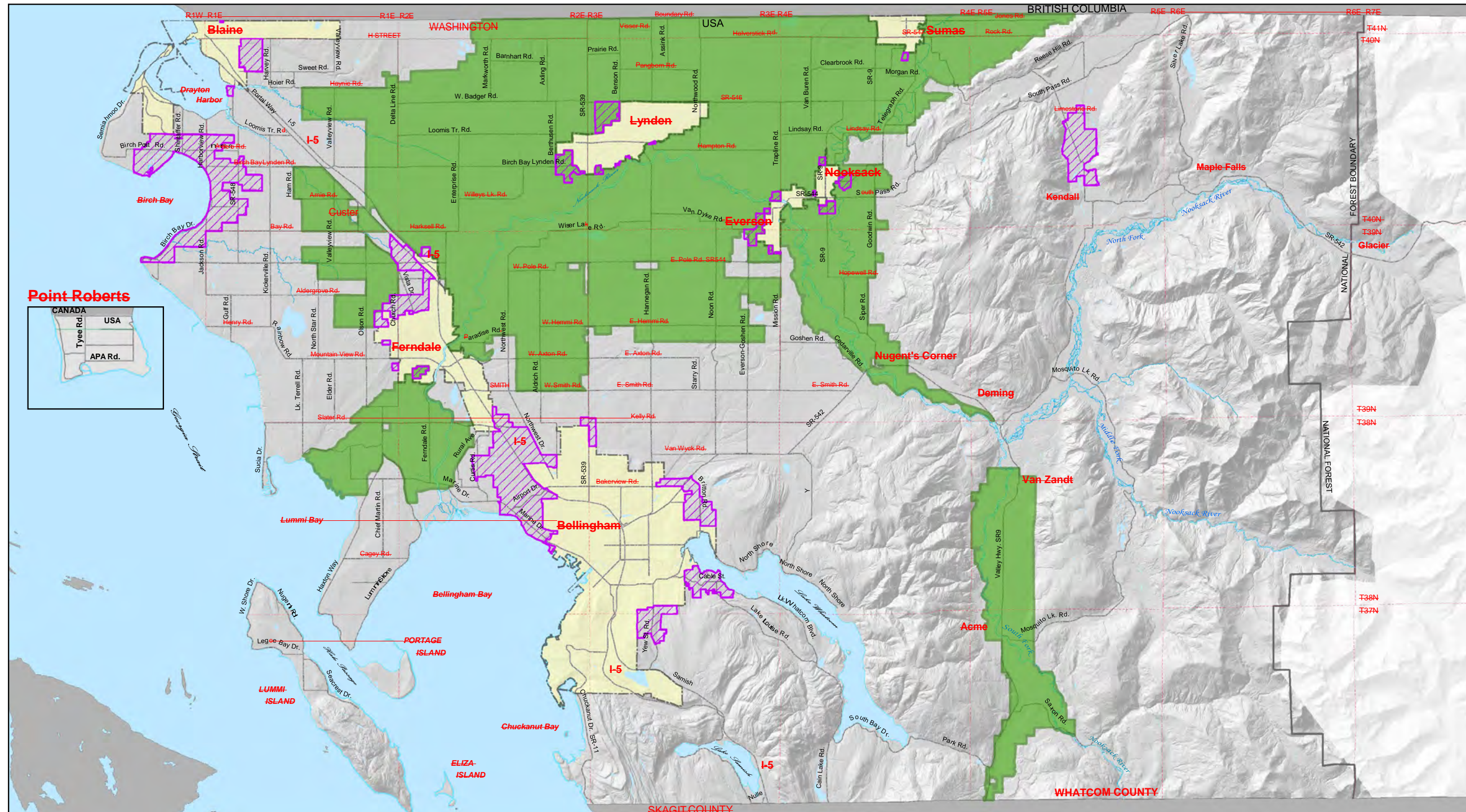
Council shall annually consider an allocation of Conservation Futures Fund to be placed in a ~~Purchase of Development Rights~~Conservation Easement Program Account.

D. Installment Payment Fund

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

E. Public Expenditures

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



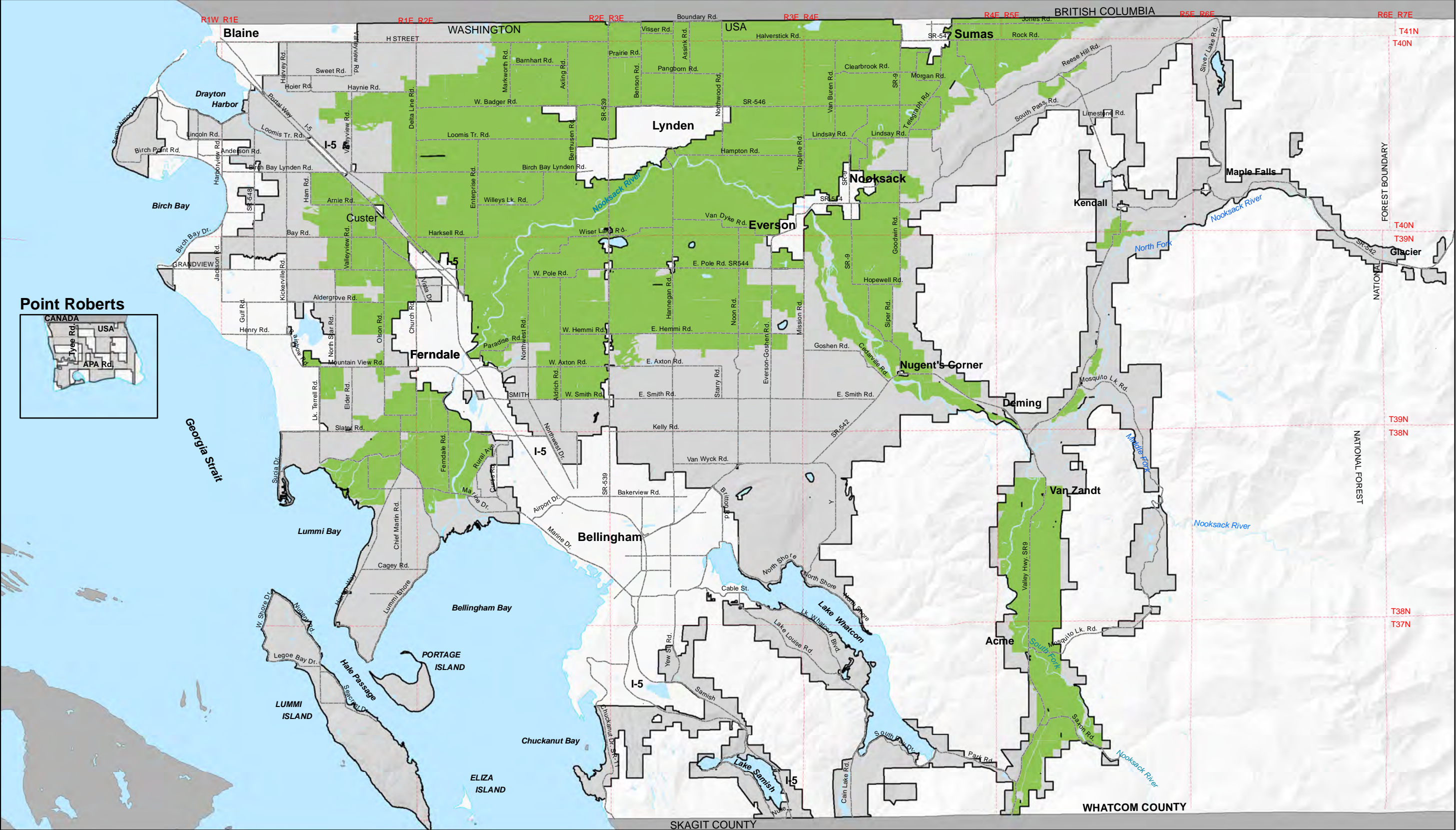
Whatcom County Agricultural Priority Areas **Agriculture Zone, Rural Study Areas,** **Initial PDR-Target Areas, and Watershed-** **Improvement Districts**

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

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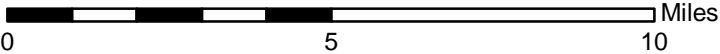


Whatcom County Agricultural Priority Areas

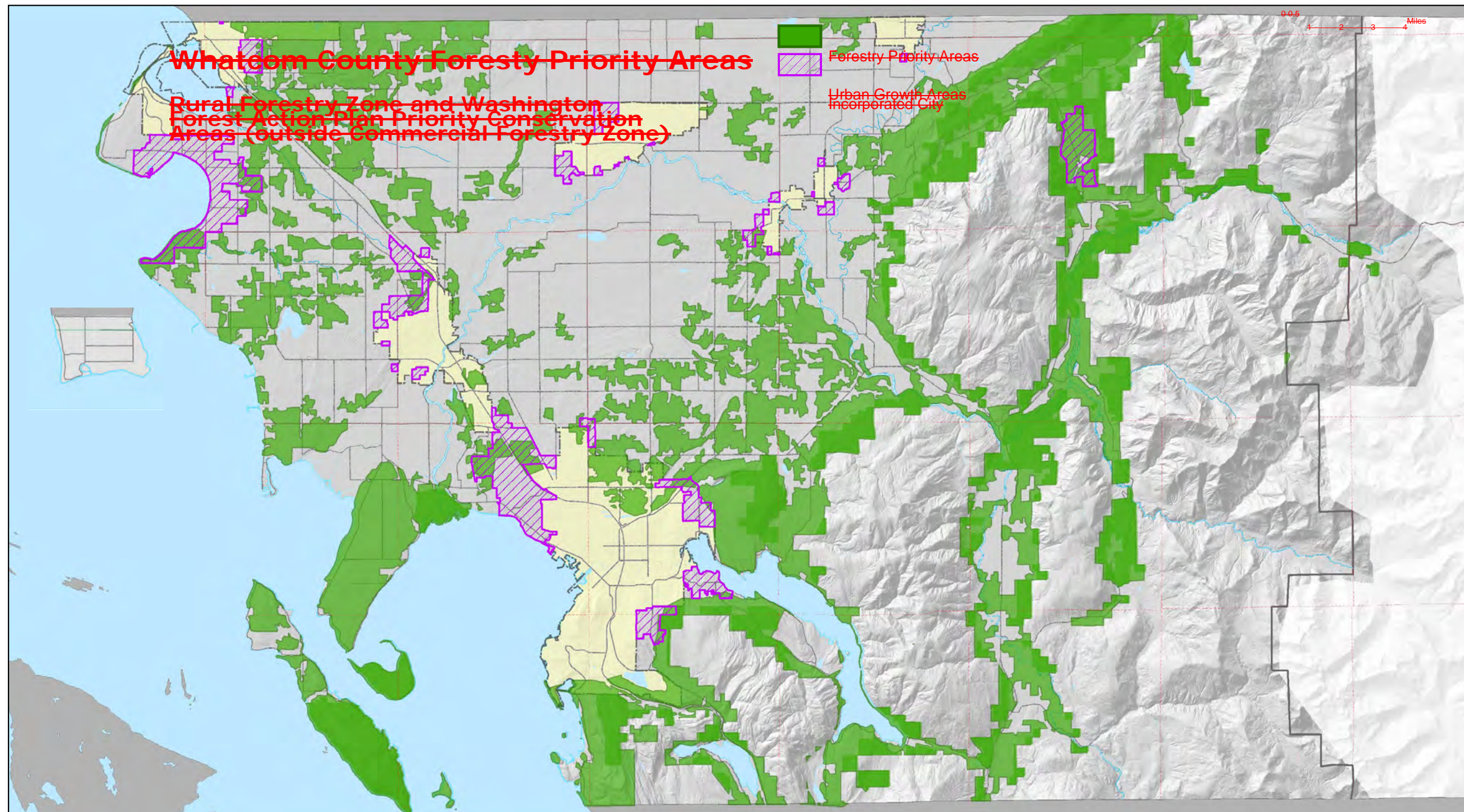
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

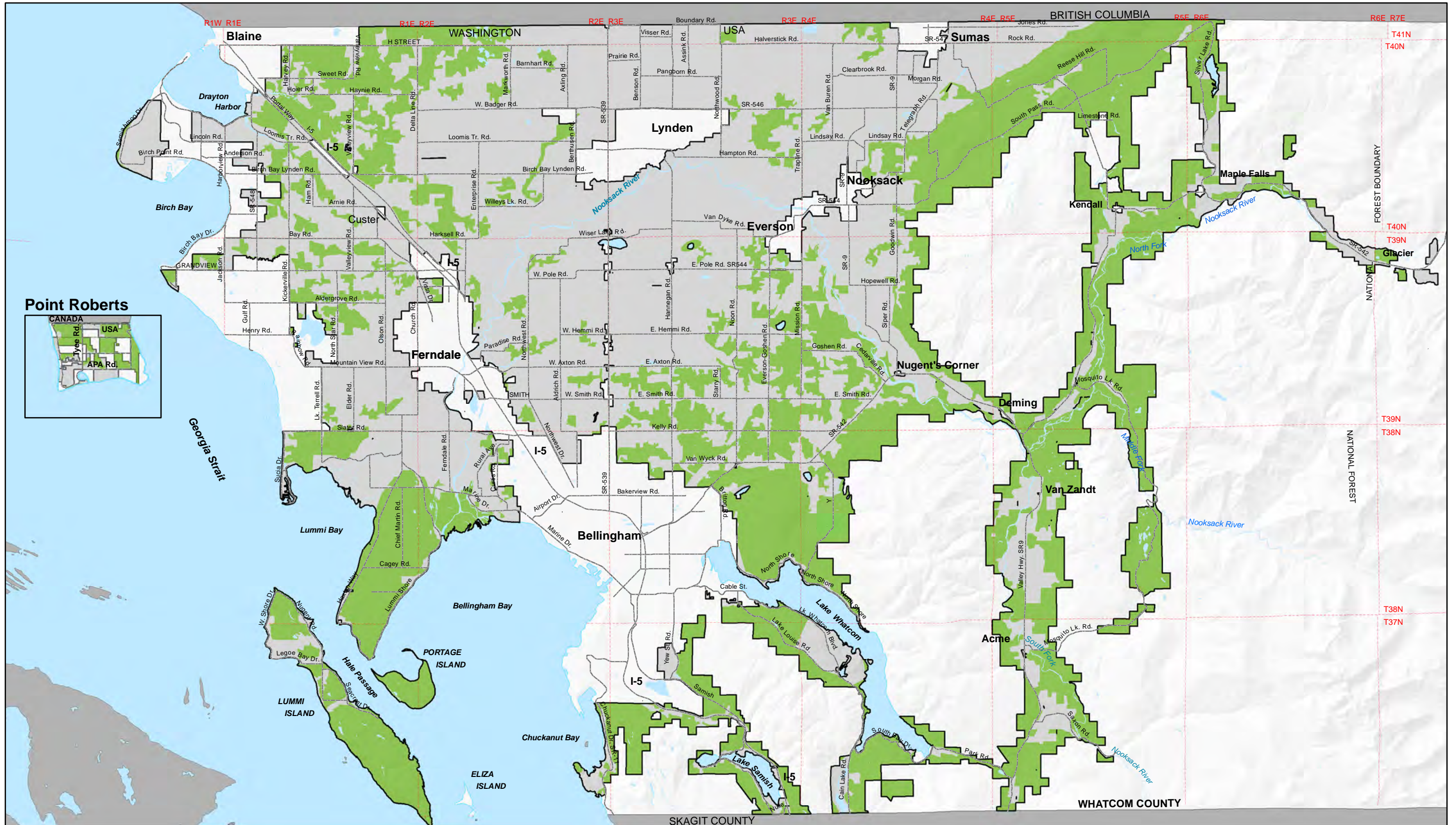


Agricultural Priority Area
Conservation Easement Program Area
(Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)





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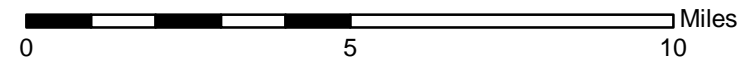




Whatcom County Forestry Priority Areas

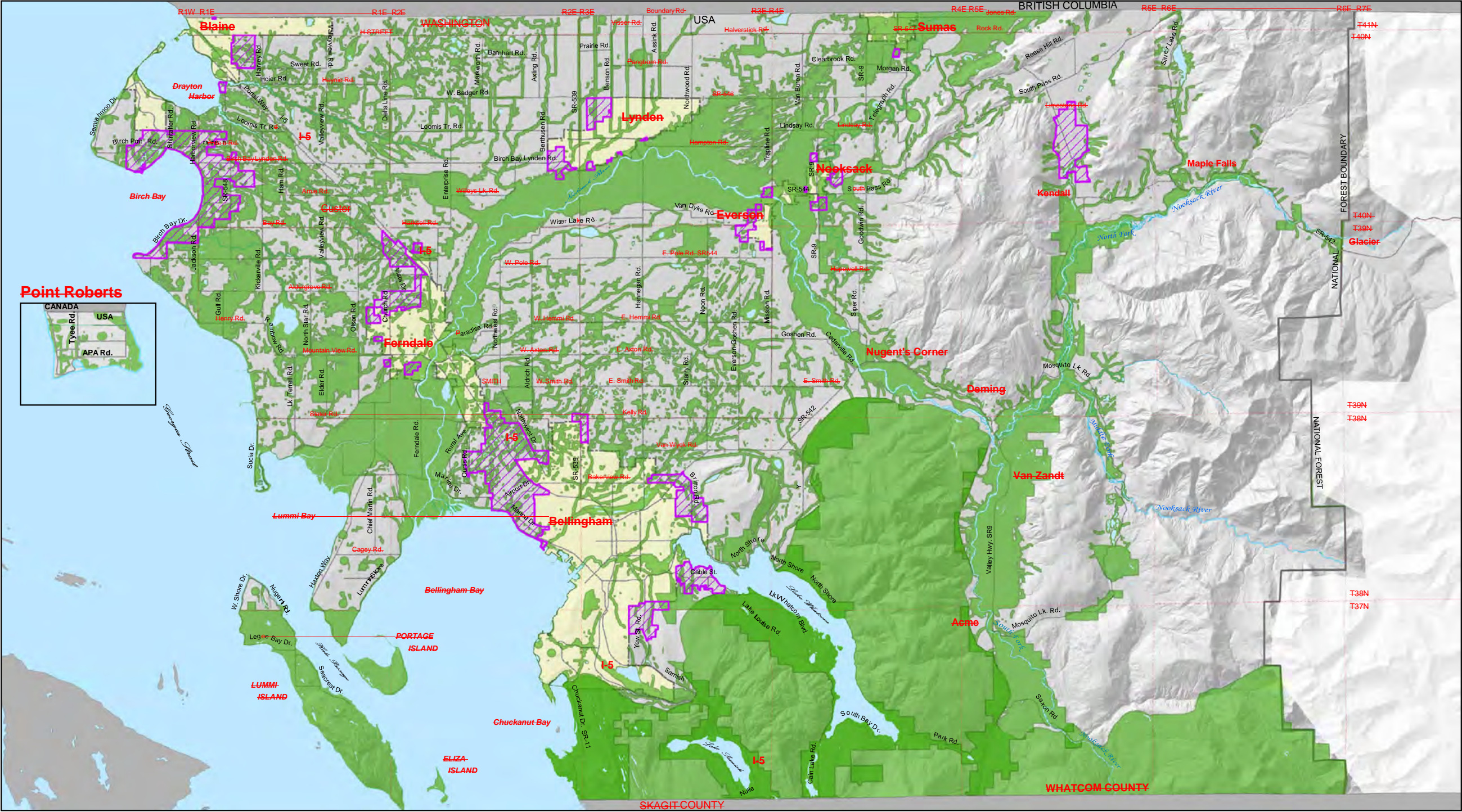
Rural Forestry Zone and WA Forest Action Plan Priority Areas

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



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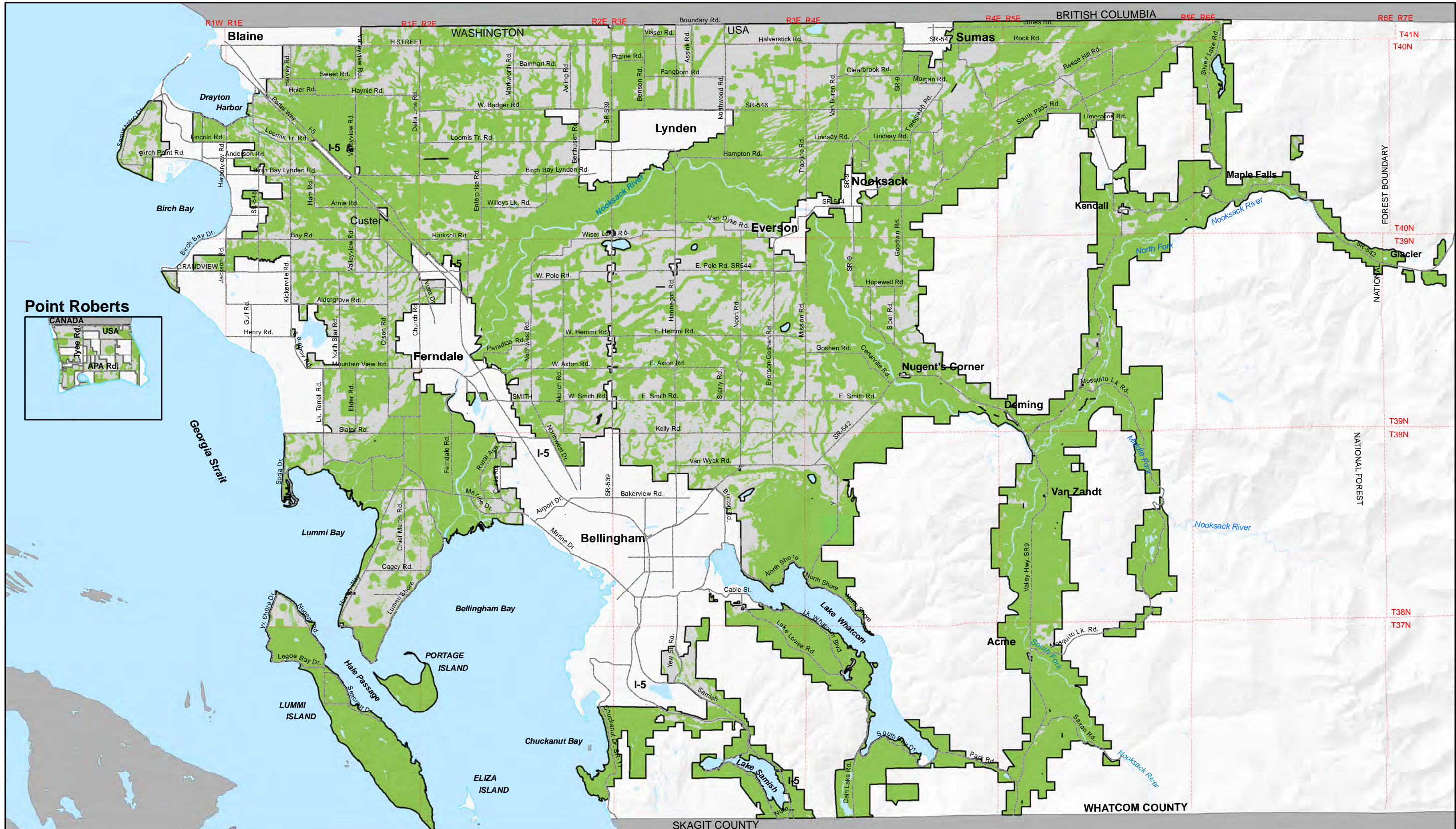


Whatcom County Ecological Priority Areas
Habitat Conservation Areas and FEMA Floodplain
(outside of Commercial Forestry Zone)

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



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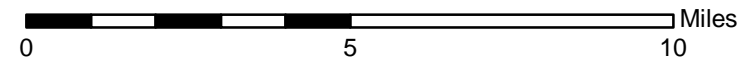
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Whatcom County Ecological Priority Areas

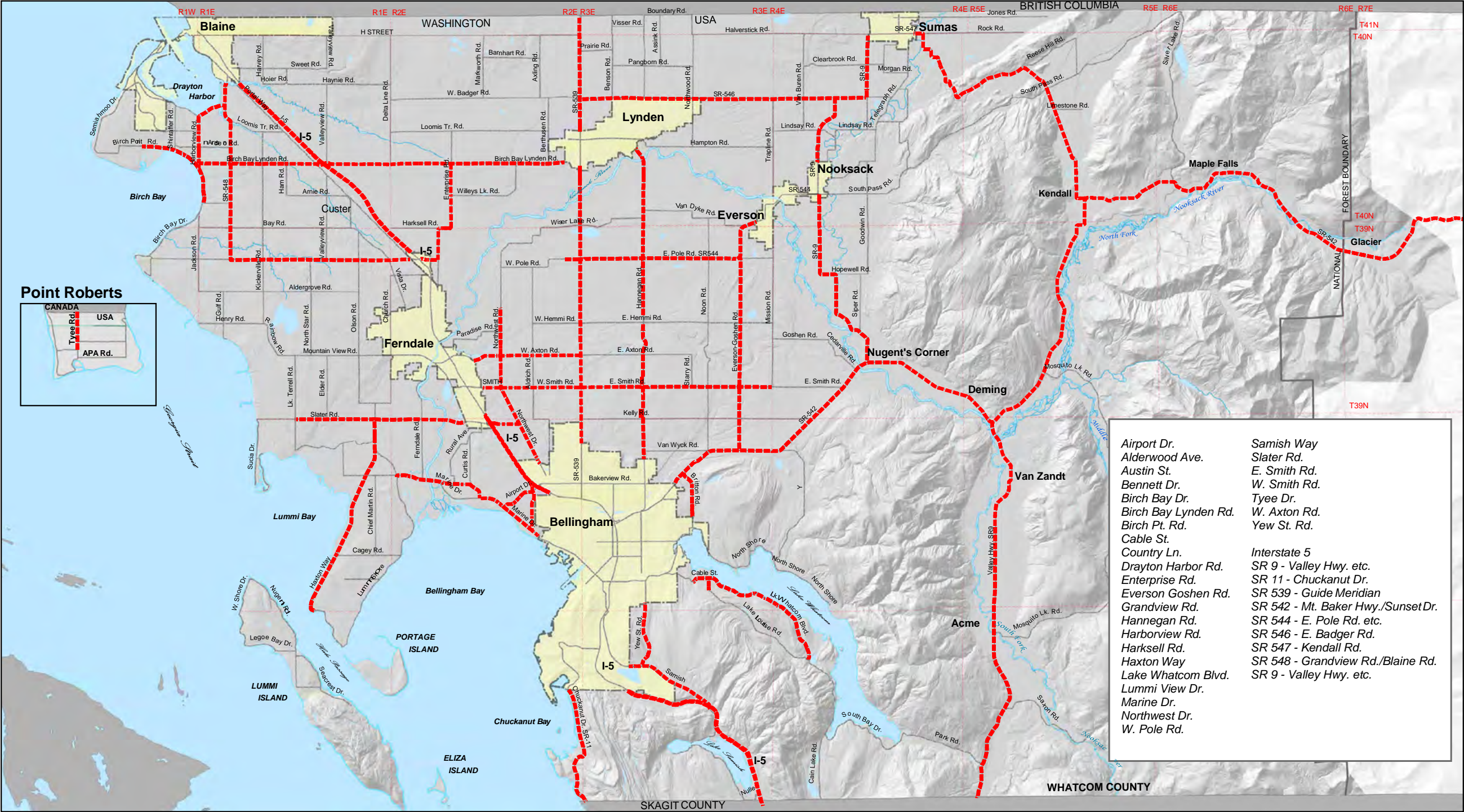
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

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



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Whatcom County

Major Roads - >3,000 Average Daily Trips

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

Whatcom County disclaims 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, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

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APPENDIX E

Soils List

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

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41	DIOBSUD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0			Formatted: Centered
42	EDFRO VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0			Formatted: Centered
43	EDFRO VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0			Formatted: Centered

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

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

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

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APPENDIX F

Model Conservation Easement Deed

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

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225-4082

DOCUMENT TITLE: AGRICULTURAL CONSERVATION EASEMENT

GRANTOR: OWNERS

GRANTEES: WHATCOM LAND TRUST AND WHATCOM COUNTY

ABBR. LEGAL DESCRIPTION: Parcel # XXXXXXXXXXXX 0000

AGRICULTURAL CONSERVATION EASEMENT DEED

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

RECITALS:

The following recitals are a material part of this Easement:

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

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

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

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

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

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

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

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

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

~~CONVEYANCE AND CONSIDERATION.~~

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

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

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

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

_____ PURPOSE.

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

_____ RELATIONSHIP OF PARTIES.

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

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

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

~~RIGHT OF ENFORCEMENT.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~PROHIBITED USES AND ACTIVITIES.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~WATER RIGHTS:~~

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

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

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

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

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

~~CONSERVATION PLAN:~~

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

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

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

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

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

_____ **RIGHTS CONVEYED TO GRANTEES.**

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

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

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

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

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

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

_____ **NO PUBLIC ACCESS.**

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

_____ **BASELINE DATA.**

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

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

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

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

~~INFORMAL DISPUTE RESOLUTION.~~

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

~~GRANTEES' REMEDIES.~~

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

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

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

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

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

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

~~RESPONSIBILITY FOR COST AND LIABILITIES.~~

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

~~EXTINGUISHMENT AND TRANSFER.~~

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

~~Grantor agrees to:~~

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

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

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

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

~~AMENDMENT:~~

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

~~SUBORDINATION:~~

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

~~GENERAL PROVISIONS~~

~~Notices:~~

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

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

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

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

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

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

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

~~Controlling Law:~~

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

~~Liberal Construction:~~

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

~~Severability:~~

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

~~Entire Agreement.~~

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

~~No Forfeiture.~~

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

~~Warranty of Good Title.~~

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

~~Grantor Grantees.~~

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

~~Successors and Assigns.~~

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

~~Federal Enforcement.~~

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

General Indemnification

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

Environmental Warranty

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

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

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

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

~~Merger~~

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

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

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

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

~~SCHEDULE OF EXHIBITS.~~

~~Minimum Terms for Agricultural Land Easements~~

~~Legal Description of Property Subject to Easement~~

~~Site Map~~

~~Ordinance # 2002-054~~

~~Baseline Data~~

~~Water Rights~~

~~Subordination Agreement example~~

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

~~TO HAVE AND TO HOLD unto Grantees and the United States of America, and their successors, and assigns forever.~~

~~PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW~~

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this

day of __, 20____.

Grantor _____

Grantor _____

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that __, husband and wife, are the persons who
appeared before me, and said persons acknowledged that they signed this instrument, on oath stated
that they were authorized to execute the instrument and acknowledged it as the

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

Dated: _

Notary Public _____
Print Name _____ My commission expires _____

(Use this space for notarial stamp/seal)

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

Dated: ____

By _____

Its _____

STATE OF WASHINGTON _____)

) ss.

COUNTY OF WHATCOM _____)

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

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

Dated: ____

Notary Public
Print Name _____

(Use this space for notarial stamp/seal)

My commission expires _____

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

 _____ Dated: __

 _____ By _____

 _____ Its _____

 _____ STATE OF WASHINGTON _____)
 _____) ss:
 _____ COUNTY OF THURSTON _____)

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

 _____ Dated: __

 _____ Notary Public
 _____ Print Name _____ My commission expires _____

 _____ (Use this space for notarial stamp/seal)

~~EXHIBIT A~~

~~MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS~~

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

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

~~SECTION I. MINIMUM CONSERVATION DEED RESTRICTIONS~~

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

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

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

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

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

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

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

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

~~*Subdivision*~~

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

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

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

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

~~_____~~
~~_____~~ purposes of this Easement;
~~_____~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~**SECTION II. PROTECTION OF THE UNITED STATES' INTERESTS**~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

_____ 1	Exhibit C – Site Map
_____ 2	

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 10 day of September, 2002.

ATTEST:



Dana Brown-Davis,
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



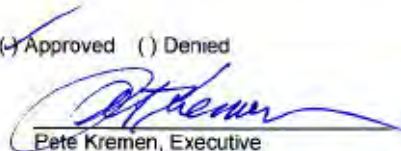
Ward Nelson, Council Chair

APPROVED as to form

☒ Approved ☐ Denied



Karen N. Frakes, Civil Deputy Prosecutor



Pete Kremen, Executive

~~EXHIBIT E Baseline Documentation~~

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

D-1

1	EXHIBIT F Water Rights Documentation
2	
3	

~~EXHIBIT G – Subordination Agreement~~

~~When recorded return to:~~

~~Grantor; Grantee: _____~~

~~Legal Description~~

~~Abbreviated form: _____ Additional legal at Exhibit A.~~

~~Assessor's Tax Parcel Number: _____~~

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

~~SUBORDINATION AGREEMENT~~

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

~~The undersigned subordinator agrees as follows:~~

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

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

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

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

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

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

Executed this ____ day of __, 20__.

SUBORDINATOR _____ SUBORDINATOR

(Name) (Name)

STATE OF WASHINGTON _____)

) ss.

COUNTY OF _____)

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

Dated: __

~~EXHIBIT H~~

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

~~GENERAL~~

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

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

~~RCO PROHIBITED USES~~

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

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

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

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

~~RCO THIRD PARTY RIGHT OF ENFORCEMENT~~

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

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

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

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

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

~~SUBSEQUENT TRANSFER OR EXTINGUISHMENT~~

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

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

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

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

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

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

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

~~AMENDMENT.~~

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

~~ASSIGNMENT~~

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

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

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

~~**NO MERGER.**~~

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

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

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

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PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

After Recording Return To:

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

DOCUMENT TITLE: **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: _____

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

ABBR. LEGAL DESCRIPTION:

Full Legal Description in Exhibit A

TAX PARCEL # _____

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this _____ day of _____ 20____, by _____ ("Grantor"), the WHATCOM LAND TRUST

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

1. RECITALS

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

2. CONVEYANCE AND CONSIDERATION

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

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

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

3. PURPOSE

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

4. RELATIONSHIP OF PARTIES

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

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

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

5. RIGHT OF ENFORCEMENT

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

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

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

6. PERMITTED USES AND ACTIVITIES

Grantor may:

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

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

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

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

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

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

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

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

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

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

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

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

8. WATER RIGHTS

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

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

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

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

9. CONSERVATION PLAN

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

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

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

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

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

10. RIGHTS CONVEYED TO GRANTEES

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

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

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

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

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

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

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

11. NO PUBLIC ACCESS

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

12. BASELINE DOCUMENTATION

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

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

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

13. INFORMAL DISPUTE RESOLUTION

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

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

14. GRANTEES' REMEDIES

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

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

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

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

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

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

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

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

15. RESPONSIBILITY FOR COST AND LIABILITIES

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

16. EXTINGUISHMENT AND TRANSFER

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

16.2. Grantor agrees to:

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

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

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

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

17. AMENDMENT

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

18. SUBORDINATION

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

19. GENERAL PROVISIONS

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

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

Grantor:

Grantee, Trust:

Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227

Grantee, County:

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

Third Party Grantee, NRCS: USDA-NRCS

Attn: Easement Programs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. RCPP MINIMUM DEED TERMS

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

21. SCHEDULE OF EXHIBITS

21.1. Exhibit A. Legal Description

21.2. Exhibit B. Site Map

21.3. Exhibit C. Ordinance

21.4. Exhibit D. Baseline Documentation

21.5. Exhibit E. Subordination Agreement Example

21.6. Exhibit F. RCPP Minimum Deed Terms

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

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this _____ day of _____, 20____.

Grantor

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

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

Dated: _____

Notary Public
Print Name
My commission expires

(Use this space for notarial stamp/seal)

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

Dated: _____
_____ Grantee

By _____
Satpal Sidhu, County Executive

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

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

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

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name
My commission expires _____

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

Dated: _____

_____ By _____

Its _____

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

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

Dated: _____



Notary Public
Print Name
My commission expires _____

(Use this space for notarial stamp/seal)

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

Dated: _____

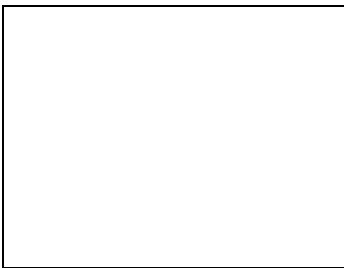
By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

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

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name
My commission expires _____

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2	
3	<u>EXHIBIT A</u>
4	<u>Legal Description</u>
5	
6	<u>APN/Parcel ID:</u>

Exhibit B
Site Map

B-1

EXHIBIT C
Ordinance

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

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

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

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

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

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

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

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

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

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

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

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

- 1 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this
2 ordinance shall not affect or impair the validity of the ordinance as a whole or any
3 part thereof other than the part so declared to be invalid.
4

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7
8 ADOPTED this 10 day of September, 2002.
9

10
11 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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23

Dana Brown-Davis,
Clerk of the Council

Ward Nelson, Council Chair

APPROVED as to form

(☒) Approved () Denied

Karen N. Frakes, Civil Deputy Prosecutor

Pete Kremen, Executive

Date: _____

EXHIBIT D
Baseline Documentation

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

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EXHIBIT E
Subordination Agreement Example

When recorded return to:

Grantor: _____

Grantee: _____

Legal Description

Abbreviated form: _____

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: _____

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

Reference(s) to document(s) appears on page(s) _____

SUBORDINATION AGREEMENT

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

The undersigned subordinator agrees as follows:

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

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

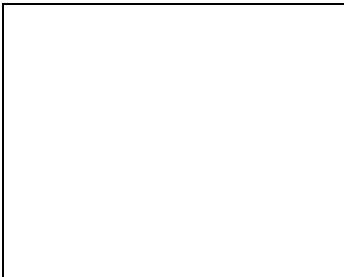
STATE OF WASHINGTON)

) ss.

COUNTY OF)

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

Dated: _____



Notary Public

Print Name

My commission expires

(Use this space for notarial stamp/seal)

EXHIBIT F
RCPP Minimum Deed Terms

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

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

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

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SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Surface and Subsurface Mineral Exploration and Extraction –

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

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

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of impacts to the Conservation Values.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

3. Allowed Uses. The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) Agricultural Production – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) On-Farm Energy Production – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

4. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

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SECTION II – PROTECTION OF THE UNITED STATES' INTERESTS AND EASEMENT ENFORCEMENT

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1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

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

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

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

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Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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

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

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▲ **3. Extinguishment, Termination, and Condemnation.** The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

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

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

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

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

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5. United States Right of Enforcement. In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

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

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The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

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the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.

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Exhibit B

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Whatcom County Conservation Easement Program Guidelines

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



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I. INTRODUCTION

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County Conservation Easement Program (CEP).

The Guidelines serve two functions:

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

II. CEP OBJECTIVE AND PRINCIPLES

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

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

A. Objective

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

B. Principles

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

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

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

The primary CEP emphasis will be:

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

The secondary CEP emphases will be:

- a. Reduce conversion of land to non-forestry uses within the Forestry

- Districts;
- b. Provide a buffer to encroachment of the Forestry Districts;
- c. Consolidate and protect areas of forestry land;
- d. Address commercially significant forestry lands outside the Forestry Districts that are under pressure of development.
- e. Protect areas of ecological importance and support and enhance ecosystem functions within agricultural and forestry lands;
- h. Improve and support habitat connectivity and protection of critical habitat corridors.

2. Offer Effective Program Design

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

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

3. Leverage Program Impact and Efficiency

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

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

III. ELIGIBILITY CRITERIA

A. Priority Consideration

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

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

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

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

B. CEP Eligibility

Two factors will be important in determining eligibility:

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

All applicant properties for CEP participation must be:

- 1. Completely or partially within an Agriculture, Rural, Rural Residential, or Rural Forestry zoning designations. Properties located in Urban Growth Areas are ineligible to participate in the program, unless coordination with cities is a component of an application.**
- 2. At least 1 acre in size.**
- 3. Removing all development rights if the parcel is smaller than 10 acres.**

IV. SITE SELECTION CRITERIA

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

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

Rating instructions: An application will be scored under one of three types of conservation easement selection criteria: 1) Agricultural, 2) Forestry, or 3) Ecological. The agricultural selection criteria allow for a score of up to 110, while the forestry and ecological selection criteria allow for a score of up to 100. This ensures that agricultural protection is the primary emphasis of the program. There are five to six criteria sections and each criteria section is rated and assigned a point value based on a 100 point scale. Then each section is assigned a weight factor. The six agricultural weight factors add up to 1.1 and the five forestry and ecological weight factors each add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the CEP Oversight Committee.

A. Agricultural Site Selection Criteria

1. General Site Evaluation

- a. Total size of parcel(s) (nominal acres)
 1. 0 – 9.99.....0 points
 2. 10 – 19.9915 points
 3. 20 – 49.99.....30 points
 4. 50 – 79.99.....70 points
 5. ≥80.....100 points
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
 1. ≥1 mile.....0 points
 2. 0.50 to 0.99 mile.....25 points
 3. 0.25 to 0.49 mile.....50 points
 4. < 0.25 mile.....75 points
 5. Adjacent.....100 points
- c. Number of legal lots of record
 1. 0-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥ 6.....100 points

- d. Removal of all unused development rights?
 1. Unused development rights remaining0 points
 2. All removed.....100 points
- e. Number of priority areas parcel is located in
 1. 0.....0 points
 2. 1.....50 points
 3. 2-3.....100 points

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

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2..... 20 points
 2. 3..... 40 points
 3. 4..... 60 points
 4. 5..... 80 points
 5. ≥6..... 100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)
 1. Property is within 2,500 feet of a major road..... 25 points
 2. Property fronts on a major road..... 50 points
 3. Property is within 1,500 feet of the intersection
 of two major roads..... 75 points
 4. Property is at an intersection of major roads..... 100 points
- c. Threat of Conversion/Parcelization
 Total Number of Parcels in surrounding ¼ mile
 1. < 20 parcels..... 50 points
 2. 20 – 50 parcels..... 100 points
 3. 51 – 100 parcels..... 50 points
 4. > 100 parcels..... 0 points

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

3. Soil Evaluation

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

Below is a table detailing the soil point system:

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

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

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

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

4. Agriculture Evaluation

- a. Percent of property actively farmed
 - 1. 0-25% 25 points
 - 2. 26-50% 50 points
 - 3. 51-75% 75 points
 - 4. >75% 100 points
- b. Legal water availability documentation
 - 1. No Water documentation or legal water access..... 0 points
 - 2. Water Claim 50 points
 - 3. Certified Water Right/Access to public water..... 100 points
- c. Parcel is located in Agriculture District and is less than 40 acres or parcel is located in a Rural Study Area?
 - 1. No..... 0 points
 - 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Agriculture Evaluation section has been 0.15, but is subject to ongoing review by the Committee).

5. Special Considerations

- a. Site contains heritage/historical significance, i.e. Heritage Barn Registry
 - 1. No..... 0 points
 - 2. Yes..... 100 points
- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
 - 1. Conservation (no change)..... 25 points
 - 2. Protection/Restoration..... 50 points
 - 3. Protection..... 75 points
 - 4. Highest protection..... 100 points
- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
 - 1. Maybe/No..... 0 points
 - 2. Yes..... 100 points
- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
 - 1. No..... 0 points
 - 2. Yes..... 100 points

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

6. Matching Funds or Bargain Sale

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

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

B. Forestry Site Selection Criteria

1. General Site Evaluation

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

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

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2..... 20 points
 2. 3..... 40 points
 3. 4..... 60 points
 4. 5..... 80 points
 5. ≥6..... 100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)
 5. Property is within 2,500 feet of a major road..... 25 points
 6. Property fronts on a major road..... 50 points
 7. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
 8. Property is at an intersection of major roads..... 100 points
- c. Threat of Conversion/Parcelization
Total Number of Parcels in surrounding ¼ mile
 1. < 20 parcels..... 50 points
 2. 20 – 50 parcels..... 100 points
 3. 51 – 100 parcels..... 50 points
 4. > 100 parcels..... 0 points

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

3. Forestry Evaluation

- a. Site index soil score, spatially weighted
 1. 5 20 points
 2. 4 40 points
 3. 3 60 points
 4. 2 80 points
 5. 1..... 100 points
- b. Property is identified as priority forestland based on State Forest Action Plan?
 1. No 0 points
 2. Yes..... 100 points
- c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?
 1. No..... 0 points
 2. Yes..... 100 points
- d. Proximity to existing and contiguous blocks of forestland
 1. >0.5 mile..... 0 points
 2. 0.26 – 0.5 mile..... 50 points
 3. 0.11 – 0.25 mile 75 points

4. ≤ 0.1 mile..... 100 points

e. Property is located at access to other working forestland?

1. No..... 0 points

2. Yes..... 100 points

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

4. Special Considerations

a. Site contains existing or proposed trails

3. No..... 0 points

4. Yes..... 100 points

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

5. Conservation (no change)..... 25 points

6. Protection/Restoration..... 50 points

7. Protection..... 75 points

8. Highest protection..... 100 points

c. Is property owner willing to implement forest management practices beyond the minimum required practices?

1. Maybe/No..... 0 points

2. Yes..... 100 points

d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)

1. No.....0 points

2. Yes..... 100 points

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

5. Matching Funds or Bargain Sale

1. 0% secured..... 0 points

2. 25% secured..... 25 points

3. 50% secured..... 50 points

4. 75% secured..... 75 points

5. 100% secured..... 100 points

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

C. Ecological Site Selection Criteria

1. General Site Evaluation

- a. Total size of parcel(s) (nominal acres)
 1. 0 – 9.99.....0 points
 2. 10 – 19.9915 points
 3. 20 – 49.99.....30 points
 4. 50 – 79.99.....70 points
 5. ≥80.....100 points
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
 1. ≥1 mile.....0 points
 2. 0.50 to 0.99 mile.....25 points
 3. 0.25 to 0.49 mile.....50 points
 4. < 0.25 mile.....75 points
 5. Adjacent.....100 points
- c. Number of legal lots of record
 1. 0-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥6.....100 points
- d. Removal of all unused development rights?
 1. Unused development rights remaining0 points
 2. All removed.....100 points
- e. Number of priority areas parcel is located in
 1. 0.....0 points
 2. 1.....50 points
 3. 2-3.....100 points

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

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥6.....100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic

volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

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

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

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

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

3. Ecological Evaluation

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

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

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

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

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

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

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

d. Additional ecologically important areas not included in landscape analysis score?

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

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

4. Special Considerations

- a. Site contains existing or proposed trails
 - 1. No..... 0 points
 - 2. Yes..... 100 points
- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
 - 1. Conservation (no change)..... 25 points
 - 2. Protection/Restoration..... 50 points
 - 3. Protection..... 75 points
 - 4. Highest protection..... 100 points
- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
 - 2. Maybe/No..... 0 points
 - 2. Yes..... 100 points

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

5. Matching Funds or Bargain Sale

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

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

Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-110). The higher the score, the more closely the property meets the goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation. The CEP Oversight Committee retains the ability to add or subtract up to 5 points on any application. A write-up of committee opinion will be included in all council proceedings.

V. OVERVIEW OF CEP PROCEDURES

A. Outreach and Publicity

Step 1: The County shall develop and distribute outreach materials for the CEP. Outreach shall include the properties eligible to participate, the application process and applicable timeframes and extensions.

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

B. Application and Ranking

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

Step 3: Application. An owner of land eligible for CEP participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County.

Step 4: Lot of Record/Density Determination. An owner of land eligible for CEP participation submits a Lot of Record application. This application determines legal status of lots being considered and determines that number of development rights remaining on said lots. The Lot of Record determination must be completed before an appraisal can occur.

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

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

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

C. Title

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

D. Pricing Estimate and Appraisal

- Step 10: The Administrator or designee provides preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s).
- Step 10: The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).
- Step 11: Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the value of placing a conservation easement on the land that removes development rights. The conservation easement value is the difference between the market value of full ownership of the land, and the agricultural or forestry value.
- Step 12: The appraiser submits the completed appraisal (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.
- Step 13: The Administrator or designee meets with the property owner to review the appraisal (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner's questions.
- Step 14: If the property owner believes that the land has not been adequately appraised or valued, the owner may, within the time allowed in the schedule, commission an appraisal at the owner's expense.

E. Offer to Purchase Easement and Agreement

- Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.
- Step 16: Within 30 days, the property owner accepts, rejects or makes a counter offer. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.
- Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

- Step 18: Neighboring property owners are notified that adjacent land is in the process of

being preserved.

G. Approval

- Step 19: Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.
- Step 20: Review materials are sent to other participating entities for partially or wholly funded conservation easements several days prior to any deadline.

I. Settlement

- Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.
- Step 23: Checks are requested from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

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

VI. CONSERVATION EASEMENTS

A. Description

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

B. Conservation Easements

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

1. Conservation Easement Requirements

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

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

2. Filing

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

C. Conservation Easement Conveyance

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

1. Conservation Easement Donation

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

2. Conservation Easement Sale

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

VII. OPERATIONAL PROCEDURES FOR ACQUIRING CONSERVATION EASEMENTS

A. Outreach and Publicity

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

B. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County. The application must be submitted to the County on the form provided by the CEP, and according to the relevant public notice. Applicants are to include at a minimum:
 - a. Name(s) and address(es) of the property owner(s) of the site;
 - b. Legal description and parcel number(s);
 - c. Copy of the property deed and title;
 - d. Total acreage of farmland to be included in the CEP;
 - e. Current land use and soils;
 - f. Number of dwelling units;
 - g. Description of the farming operation;
 - h. Other information necessary to evaluate property eligibility;
 - i. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.
2. The Administrator shall review each application to determine completeness and eligibility.
3. Applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)
4. The CEP Oversight Committee shall provide the County Council with information and scoring of properties recommended for conservation easement acquisition by the committee. County Council shall approve or deny pursuit of conservation easement acquisitions on the parcels.
5. The Administrator shall then arrange appraisals (or alternate determination of value) of eligible applicant properties as determined by the County Council.
6. The CEP Oversight Committee and Administrator shall provide updates to the County Council discussing recommended purchases, possible program changes,

and anticipated budget needs.

C. Appraisal

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

committee consideration. If a review appraisal is completed, the appraisal will be reviewed by the County's Appraiser. The County's Appraiser in consultation with the Program Administrator and the CEP Oversight Committee will accept, modify or reject the review appraisal. The determination of the County's Appraiser is final.

- i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

D. Title and Survey Issues

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

E. Development Rights Value and Purchase Price

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

F. Recommendation of Conservation Easement Purchases by the CEP Oversight Committee

1. The CEP Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
 - a. Evaluation according to the site selection criteria
 - b. Consistency with County Comprehensive Plan
 - c. Cost relative to total allocations and appropriations
 - d. Proximity to other land subject to protection easements
2. Upon receiving the recommendations of the CEP Oversight Committee and the Administrator, the County Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.
3. If a property is approved for conservation easement purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County's offer. A written offer will be provided to the property owner. Written notice shall also be provided to land not approved for conservation easement purchase.
4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
 - a. Accept the offer.
 - b. Reject the offer.
 1. Reject offer outright
 - a. no further action
 - b. participate in future review
 2. Submit a counter offer within 90 days of written notice of offer by the County.
 - c. Failure to notify the County within 30 days shall constitute rejection of the offer.
5. If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
 - a. Lump Sum
 - b. Installment Purchase Agreement (IPA)
 - c. Like-Kind Exchange
 - d. Or a combination of the above

6. For conservation easement purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.
7. All Agreements of Sale and Conservation Easements require the County Council's approval.

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

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

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

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

H. Conservation Easement Purchase Recommendations/Submission Requirements

1. County Council: Each recommendation for conservation easement purchases with County funds, State funds, Federal funds, private donor funds or a combination of funds shall be presented to the County Council at a regularly scheduled public meeting.
2. Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.

VIII. CONSERVATION FUTURES FUND

A. Intent

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

B. Fund Sources

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

C. Fund Source Accounts

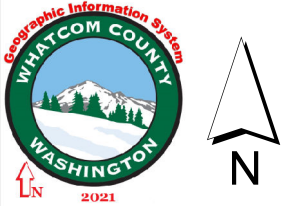
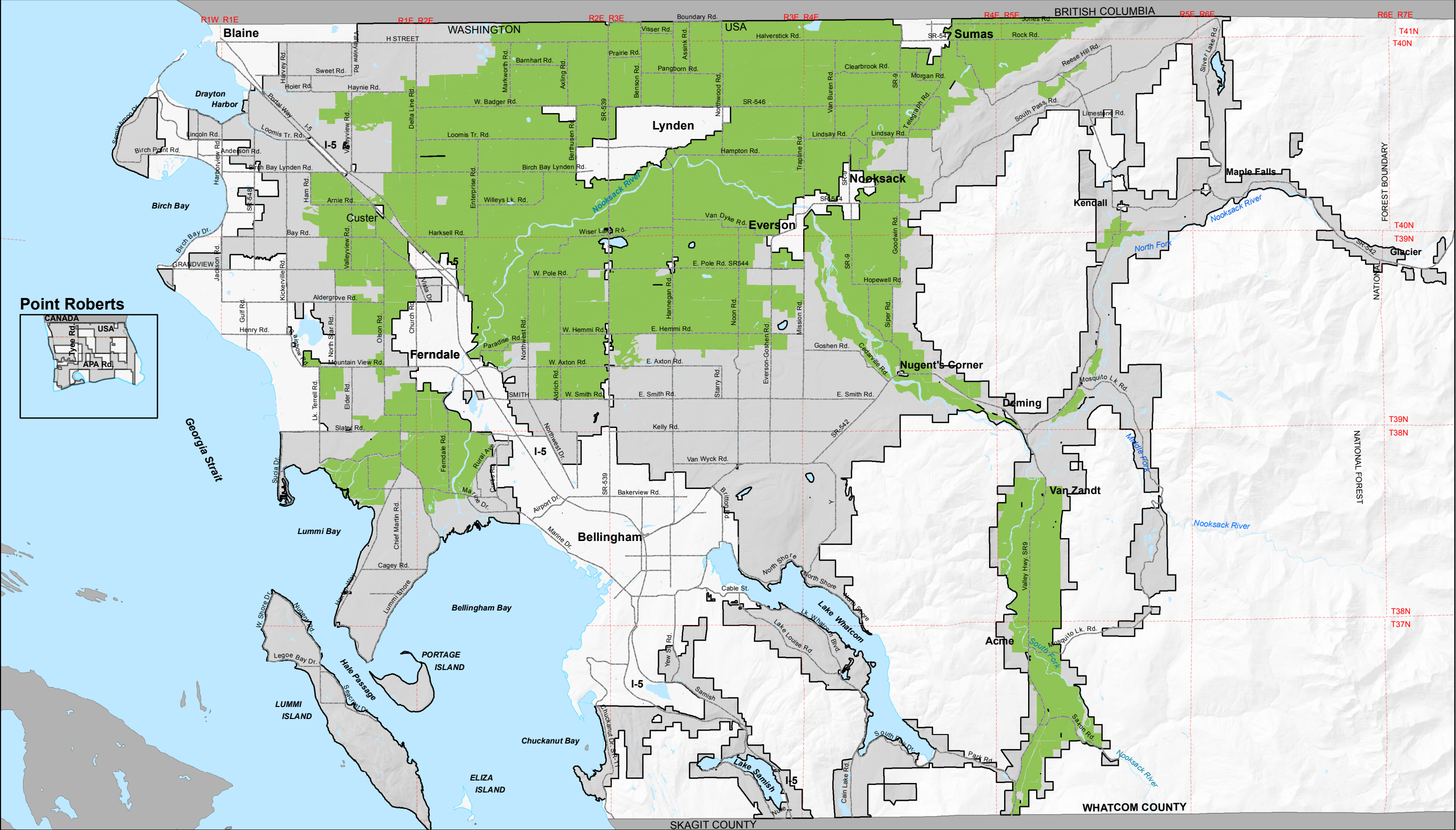
Council shall annually consider an allocation of Conservation Futures Fund to be placed in a Conservation Easement Program Account.

D. Installment Payment Fund

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



E. Public Expenditures

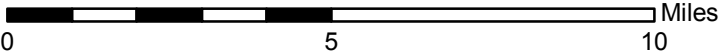
1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the CEP Account shall be limited to interests in qualified agricultural, forestry, and/or ecological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



Whatcom County Agricultural Priority Areas

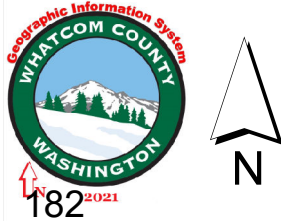
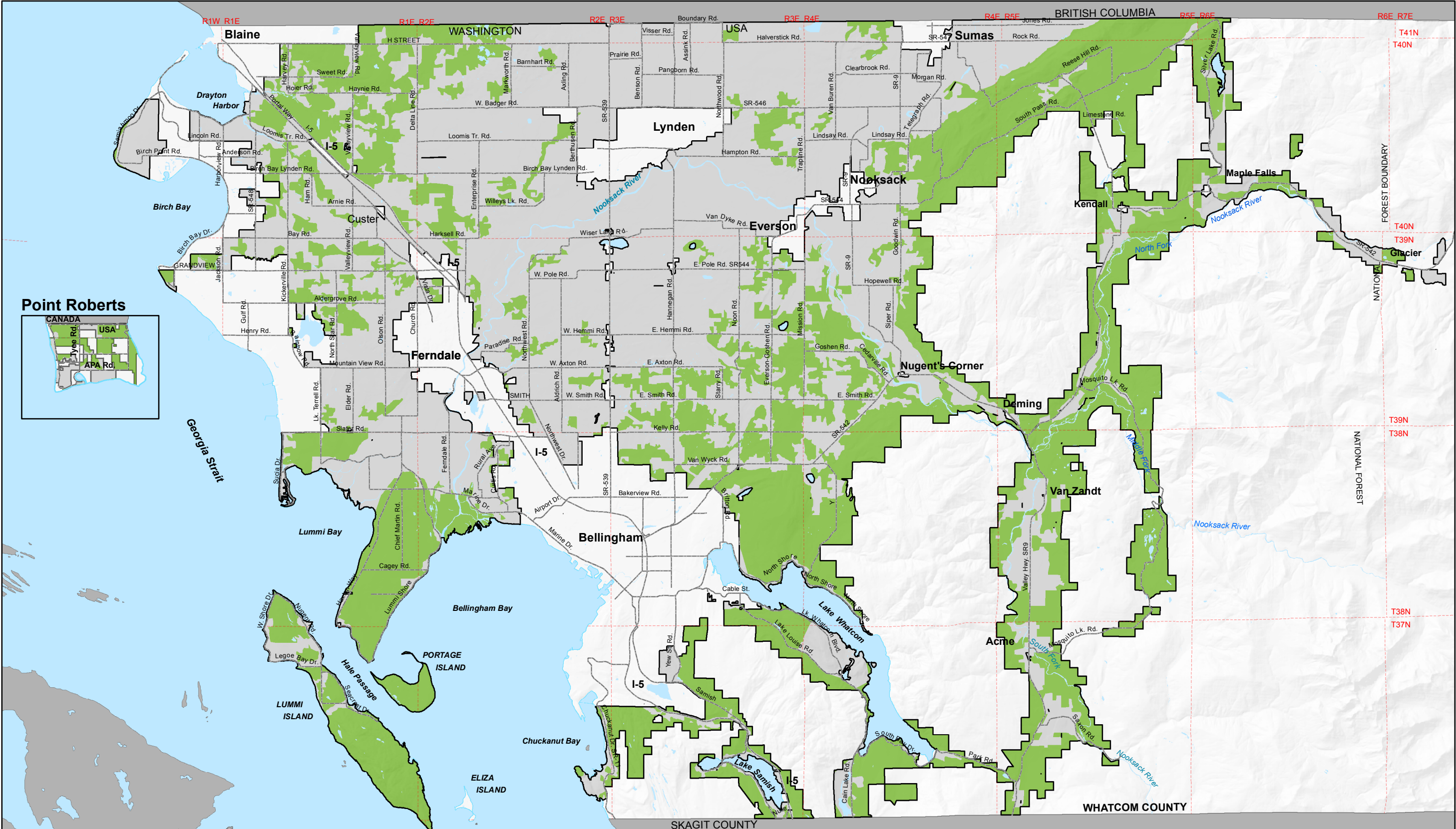
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

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



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

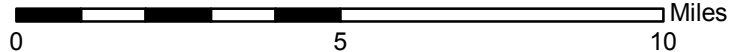
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Whatcom County Forestry Priority Areas

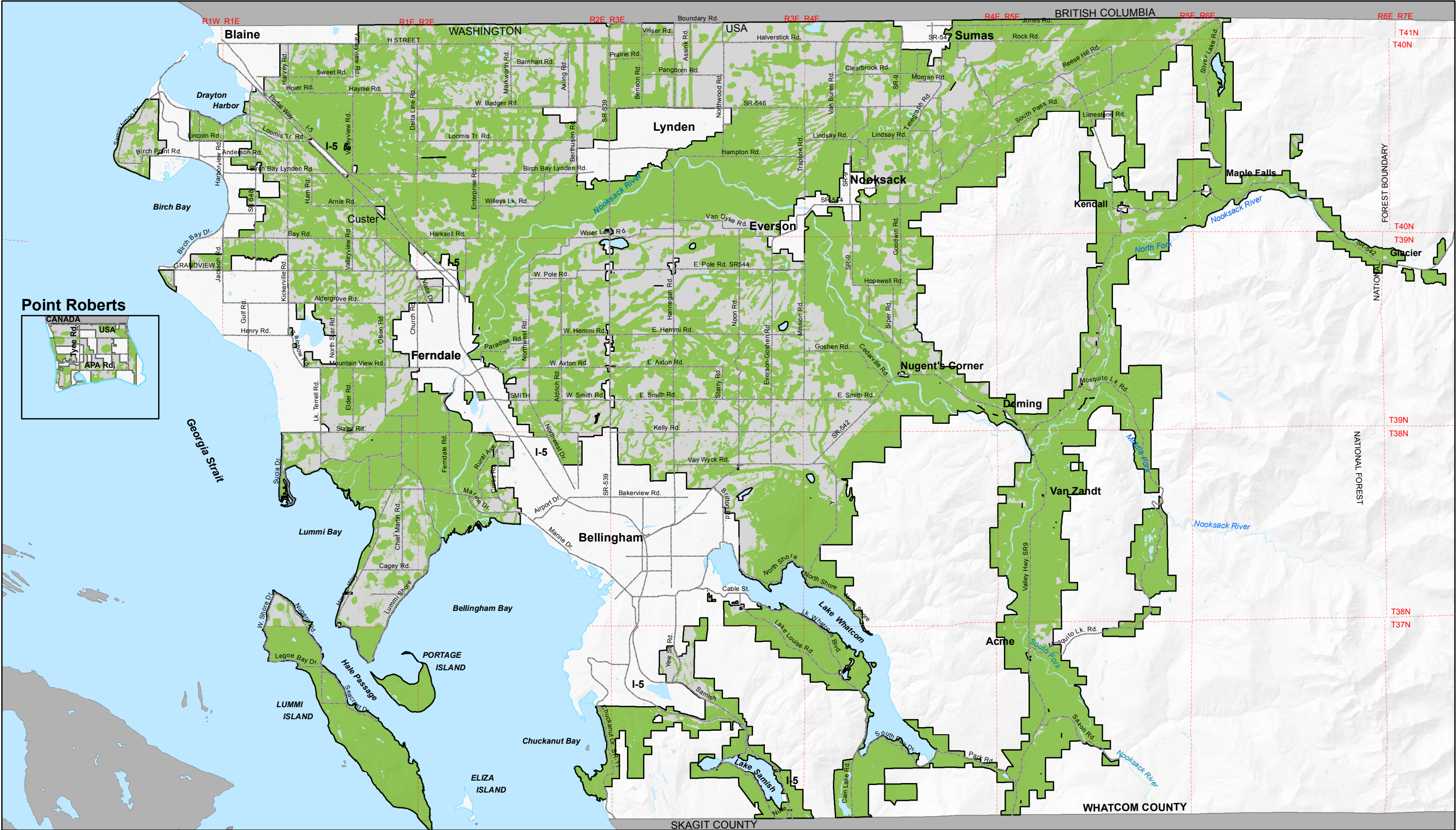
Rural Forestry Zone and WA Forest Action Plan
Priority Areas

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





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

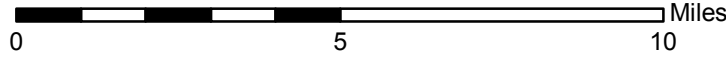
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Whatcom County Ecological Priority Areas

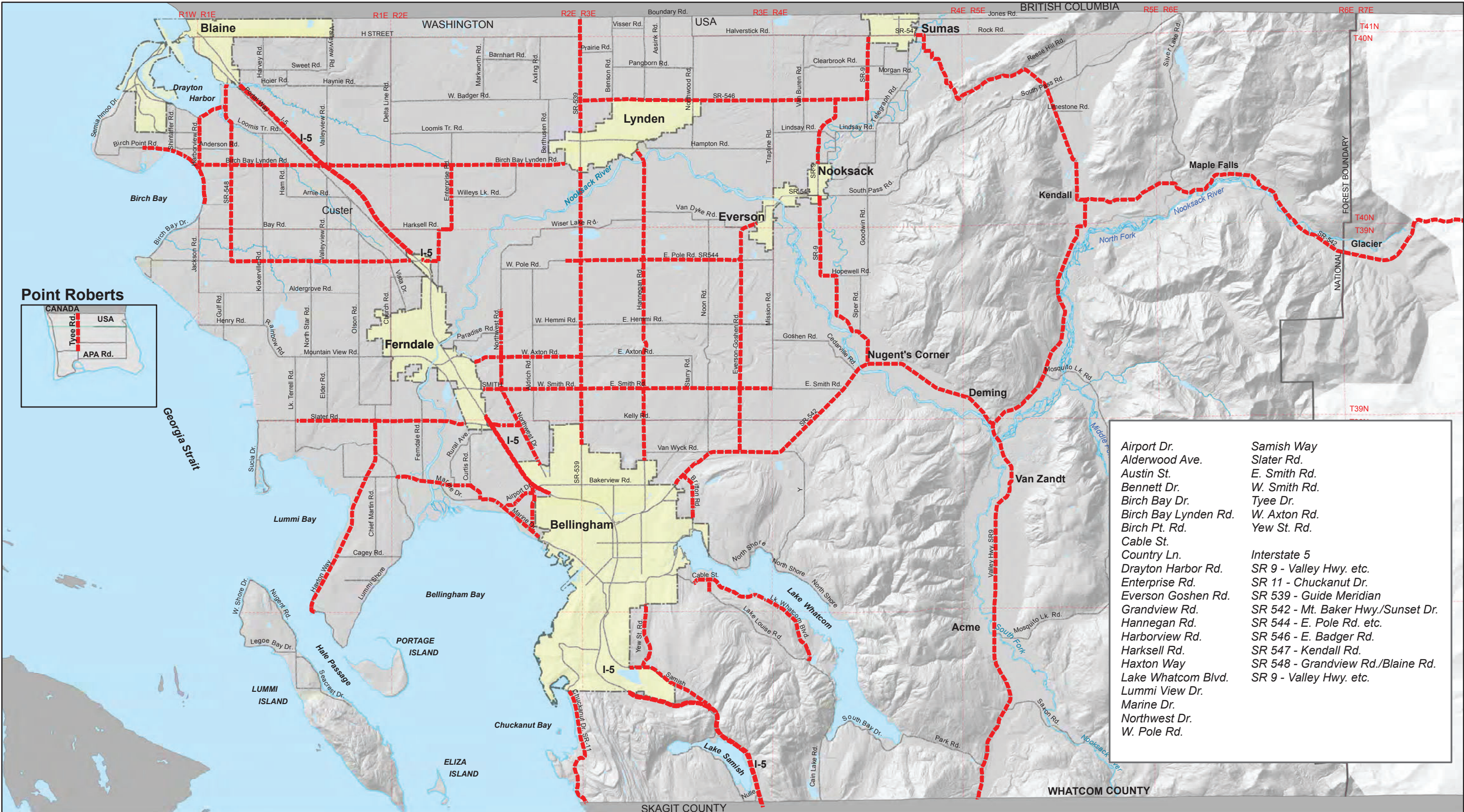
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

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



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Whatcom County

Major Roads - >3,000 Average Daily Trips

APPENDIX E

Soils List

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

44	EDFRO VERY STONY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
45	EDMONDS-WOODLYN LOAMS - DRAINED - 0 TO 2% SLOPES	Y	0	0		
46	ELIZA SILT LOAM - DRAINED - 0 TO 1% SLOPES	N	0	5		
47	ELIZA-TACOMA SILT LOAMS - 0 TO 1% SLOPES	N	0	5		
48	EVERETT GRAVELLY SANDY LOAM-HARD SUBSTRATUM - 2 TO 8% SLOPES	N	0	4		3
49	EVERETT VERY GRAVELLY SANDY LOAM - 8 TO 15% SLOPES	N	0	4		3
50	EVERETT VERY GRAVELLY SANDY LOAM - 15 TO 35% SLOPES	N	0	0	yes	3
51	EVERETT COMPLEX - 2 TO 8% SLOPES	N	0	4		3
52	EVERETT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	N	0	0		3
53	EVERSON SILT LOAM-DRAINED - 0 TO 2% SLOPES	N	2	2		
54	FISHTRAP MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		
55	GALLUP SILT LOAM - 30 TO 60% SLOPES	N	0	0		
56	GALLUP SILT LOAM - 60 TO 80%	N	0	0		
57	GALLUP SILT LOAM-COLD - 30 TO 60% SLOPES	N	0	0		
58	GALLUP SILT LOAM-COLD - 60 TO 80% SLOPES	N	0	0		
59	GETCHELL LOAM - 3 TO 30% SLOPES	N	0	0		
60	GETCHELL LOAM - 30 TO 60% SLOPES	N	0	0		
61	HALE SILT LOAM - 0 TO 2% SLOPES	N	0	2		4
62	HALE SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	2	2		4
63	HALLENTON SILT LOAM-DRAINED - 0 TO 1% SLOPES	N	0	2		
64	HANNEGAN VERY GRAVELLY LOAM - 15 TO 40% SLOPES	N	0	0		
65	HARTNIT SILT LOAM-COLD - 5 TO 30% SLOPES	N	0	0		
66	HARTNIT SILT LOAM-COLD - 30 TO 60% SLOPES	N	0	0		
67	HARTNIT-GALLUP-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	N	0	0		
68	HEISLER VERY GRAVELLY SILT LOAM - 8 TO 30%	N	0	0	yes	2
69	HEISLER VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
70	HINKER VERY CHANNERY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
71	HINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
72	HISTOSOLS-PONDED - 0 TO 1% SLOPES	N	0	2		
73	HOVDE SILT LOAM - 0 TO 2% SLOPES	N	0	0	yes	
74	HOZOMEEN GRAVELLY LOAM - 20 TO 45% SLOPES	N	0	0		
75	HYDRAQUENTS-TITAL - 0 TO 1% SLOPES	N	0	0		
76	JACKMAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
77	JORGENSEN GRAVELLY SILT LOAM - 3 TO 15% SLOPES	N	0	0		
78	JUG VERY GRAVELLY LOAM - 3 TO 15% SLOPES	N	0	0	yes	2
79	KICKERVILLE SILT LOAM - 0 TO 3% SLOPES	Y	1	1		2
80	KICKERVILLE SILT LOAM -3 TO 8% SLOPES	Y	1	1		2
81	KICKERVILLE SILT LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
82	KICKERVILLE-URBAN LAND COMPLEX - 0 TO 3% SLOPES	N	0	0		2
83	KINDY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		4
84	KINDY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		4
85	KINDY-OSO COMPLEX - 5 TO 40% SLOPES	N	0	0		
86	KLAWATTI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
87	KLAWATTI V. GRAVELLY SANDY LOAM-SERPENTINE-10 TO 30% SLOPES	N	0	0		
88	KLAWATTI V. GRAVELLY SANDY LOAM-SERPENTINE-10 TO 30% SLOPES	N	0	0		
89	KLAWATTI-ROCK OUTCROP COMPLEX - 60 TO 80% SLOPES	N	0	0		
90	KLINE GRAVELLY SANDY LOAM - 2 TO 8% SLOPES	N	0	4		3
91	KULSHAN LOAM - 5 TO 30% SLOPES	N	0	0		
92	KILSHAN LOAM - 30 TO 60% SLOPES	N	0	0		
93	LABOUNTY SILT LOAM - 0 TO 2% SLOPES	N	4	2		

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

144	SHALCAR AND FISHTRAP SOILS - 0 TO 2% SLOPES	N	0	2		
145	SHUKSAN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
146	SHUKSAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0	yes	
147	SHUKSAN-KULSHAN-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	N	0	0		
148	SKIPOPA SILT LOAM - 0 TO 8% SLOPES	Y	0	2		3
149	SKIPOPA-BLAINEGATE COMPLEX - 0 TO 8% SLOPES	N	0	2	yes	3
150	SKYKOMISH VERY GRAVELLY LOAM - 3 TO 30% SLOPES	N	0	0		3
151	SNOHOMISH SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
152	SNOQUALMIE GRAVELLY LOAMY SAND - 0 TO 3% SLOPES	N	0	4	yes	3
153	SORENSEN VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0	yes	2
154	SORENSEN VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
155	SPRINGSTEEN VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
156	SQUALICUM GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
157	SQUALICUM GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
158	SQUALICUM GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
159	SQUALICUM-URBAN LAND COMPLEX - 5 ATO 20% SLOPES	N	0	0		2
160	SQUIRES VERY CHANNERY LOAM - 5 TO 30% SLOPES	N	0	0		2
161	SQUIRES VERY CHANNERY LOAM - 30 TO 60% SLOPES	N	0	0		2
162	SUMAS SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
163	TACOMA SILT LOAM - 0 TO 1% SLOPES	N	0	5		
164	TACOMA SILT LOAM-DRAINED - 0 TO 1% SLOPES	N	0	5		
165	TROMP LOAM - 0 TO 2% SLOPES	Y	1	1		3
166	TWINSI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
167	TWINSI VERY STONY LOAM - 30 TO 60% SLOPES	N	0	0		
168	TYPIC CRYORTHODS - 60 TO 90% SLOPES	N	0	0		
169	TYPIC CRYORTHODS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		
170	TYPIC PSAMMAQUENTS-TIDAL - 0 TO 1% SLOPES	N	0	0	yes	
171	URBAN LAND	N	0	0		
172	URBAN LAND-WHATCOM-LABOUNTY COMPLEX - 0 TO 8% SLOPES	N	0	0	yes	2
173	VANZANDT VERY GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0		2
174	VANZANDT VERY GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
175	VANZANDT VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
176	WELCOME LOAM - 5 TO 30% SLOPES	N	0	0	yes	3
177	WELCOME LOAM - 30 TO 60% SLOPES	N	0	0		3
178	WHATCOM SILT LOAM - 0 TO 3% SLOPES	Y	2	1		2
179	WHATCOM SILT LOAM - 3 TO 8% SLOPES	Y	4	1		2
180	WHATCOM SILT LOAM - 8 TO 15% SLOPES	N	0	0		2
181	WHATCOM SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
182	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 8% SLOPES	N	4	2		2
183	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 15% SLOPES	N	0	2	yes	2
184	WHITEHORN WILT LOAM - 0 TO 2% SLOPES	Y	3	2		
185	WICKERSHAM CHANNERY SILT LOAM - 0 TO 8% SLOPES	N	4	1		2
186	WINSTON SILT LOAM - 0 TO 3% SLOPES	Y	0	1		2
187	WINSTON LOAM - 3 TO 15% SLOPES	N	0	0		2
188	WINSTON LOAM - 15 TO 40% SLOPES	N	0	0		2
189	WISEMAN VERY CHANNERY SAND LOAM - 0 TO 8% SLOPES	N	0	4		3
190	WOLLARD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
191	YELM LOAM - 3 TO 8% SLOPES	Y	1	1	yes	2
192	YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES	N	0	0		2

APPENDIX F

Model Conservation Easement Deed

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

After Recording Return To:

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

DOCUMENT TITLE: _____ **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: _____

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

ABBR. LEGAL DESCRIPTION:

Full Legal Description in Exhibit A

TAX PARCEL # _____

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this ____ day of _____ 20__, by _____ ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("collectively, Grantees"), and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

1. RECITALS

- 1.1. Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.

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

2. CONVEYANCE AND CONSIDERATION

- 2.1. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$_____ by the Whatcom County and the NRCS to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.
- 2.2. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.3. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor’s, successors and assigns in perpetuity.

3. PURPOSE

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

4. RELATIONSHIP OF PARTIES

- 4.1. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.
- 4.2. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section 3. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.
- 4.3. The above Section 4.1. does not pertain to monitoring and enforcement of a conservation farm plan, the responsibility for which rests with NRCS and Whatcom County as described in Section 9.

5. RIGHT OF ENFORCEMENT

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

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

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

6. PERMITTED USES AND ACTIVITIES

Grantor may:

- 6.1. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section 7 below.
- 6.2. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.
- 6.3. Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section 12 of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section 7.4. Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.4. Remove, Maintain, Expand, or Replace temporary hoop houses and temporary greenhouses with no foundation outside of the Farmstead area so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.5. On the "Farmstead", as defined in Section 12 of this Easement, and shown in Exhibit B, engage in any uses or activities, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section 7 below.
- 6.6. Plant or maintain trees on the Agricultural Land, as defined in Section 12 of this Easement only as follows:

- 6.6.1. Maintain a woodlot for the production of firewood to be used on the Protected Property.
- 6.6.2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.
- 6.6.3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.
- 6.6.4. Plant and maintain trees to provide shading for grazing livestock.
- 6.6.5. Plant and maintain trees used in fruit or nut production.
- 6.7. Install a small-scale wind and solar power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind and solar power generator prior to installation.
- 6.8. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

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

- 7.1. Use or activities inconsistent with the purpose of this Easement.
- 7.2. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over

two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement.

- 7.3. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.
- 7.4. Cover more than two percent (2%) of the area (approximately _____ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.
- 7.5. Construct non-agricultural structures or facilities.
- 7.6. Conduct any use or activity that removes or damages the long-term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.
- 7.7. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section 8, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.
- 7.8. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres.
- 7.9. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.
- 7.10. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.
- 7.11. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.
- 7.12. The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.

8. WATER RIGHTS

- 8.1. The Parties agree that any Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.
- 8.2. Trust will include reference, in Baseline Documentation (Exhibit D), to any water rights associated with the Protected Property. In its monitoring visits, Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Trust believe that Grantor is not sufficiently informed about protecting Grantor's water rights, Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.
- 8.3. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section 4 RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections 13 and 14 of this Easement or may itself take appropriate action to protect the water rights.
- 8.4. If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.

9. CONSERVATION PLAN

- 9.1. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the Whatcom Conservation District and approved by NRCS. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.
- 9.2. In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to

correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

- 9.3. If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.
- 9.4. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

10. RIGHTS CONVEYED TO GRANTEES

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

- 10.1. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.
- 10.2. To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement.
- 10.3. To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.
- 10.4. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, the Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.
- 10.5. Forbearance by the Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

11. NO PUBLIC ACCESS

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

12. BASELINE DOCUMENTATION

- 12.1. To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare Baseline Documentation sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The Baseline Documentation may consist of reports, maps, photographs, and other documentation. Grantor and Grantees will execute a statement verifying that the Baseline Documentation accurately represents the condition of the Protected Property as of this time. Baseline Documentation is contained in Exhibit D. The Baseline Documentation will delineate the Farmstead and Agricultural Land as defined below.
- 12.2. The Baseline Documentation will specifically establish the area and extent of the Farmstead, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, as well as that portion used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.
- 12.3. The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas, such as woodlands, as well as cropland or grazing land.

13. INFORMAL DISPUTE RESOLUTION

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

14. GRANTEES' REMEDIES

- 14.1. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.
- 14.2. Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity if Grantor:

- 14.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees;
 - 14.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
 - 14.2.3. Fails to continue diligently to cure such violation until finally cured.
- 14.3. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.
- 14.4. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in Section 14.1.
- 14.5. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

15. RESPONSIBILITY FOR COST AND LIABILITIES

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

16. EXTINGUISHMENT AND TRANSFER

- 16.1. The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement

impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.

16.2. Grantor agrees to:

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

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

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

17. AMENDMENT

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

18. SUBORDINATION

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

19. GENERAL PROVISIONS

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

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

Grantor:

Grantee, Trust:

Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227

Grantee, County:

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

Third Party Grantee, NRCS: USDA-NRCS

Attn: Easement Programs
11707 E. Sprague Ave, Suite 301
Spokane Valley, WA 99206

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

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

19.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be

ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

- 19.5. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.
- 19.6. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.
- 19.7. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.
- 19.8. Warranty of Good Title. Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.
- 19.9. Grantor-Grantees. The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.
- 19.10. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- 19.11. Federal Enforcement. In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.
- 19.12. General Indemnification. Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to,

Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

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

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

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

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

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

19.15. No Merger. In the event that Grantees acquire all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge

the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantees, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantees covenant to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party.

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

20. RCPP MINIMUM DEED TERMS

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

21. SCHEDULE OF EXHIBITS

- 21.1. Exhibit A. Legal Description
- 21.2. Exhibit B. Site Map
- 21.3. Exhibit C. Ordinance
- 21.4. Exhibit D. Baseline Documentation
- 21.5. Exhibit E. Subordination Agreement Example
- 21.6. Exhibit F. RCPP Minimum Deed Terms

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

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day of _____, 20__.

Grantor _____

[illegible]

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

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

Its _____

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

Notary Public
Print Name _____
My commission expires _____

Dated: _____

By _____

Its _____

[illegible]

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

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

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EXHIBIT A
Legal Description

APN/Parcel ID: _____

Exhibit B
Site Map

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EXHIBIT C
Ordinance

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

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

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

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

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

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

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

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

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

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

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

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

- 1 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this
2 ordinance shall not affect or impair the validity of the ordinance as a whole or any
3 part thereof other than the part so declared to be invalid.
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8 ADOPTED this 10 day of September, 2002.
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10
11 **ATTEST:**

12
13 

14 Dana Brown-Davis,
15 Clerk of the Council

16 **WHATCOM COUNTY COUNCIL**
17 **WHATCOM COUNTY, WASHINGTON**

18 
19 Ward Nelson, Council Chair

20 **APPROVED** as to form

21 ☒ Approved ☐ Denied

22 
23 Karen N. Frakes, Civil Deputy Prosecutor


Pete Kremen, Executive

Date: _____

EXHIBIT D
Baseline Documentation

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

EXHIBIT E
Subordination Agreement Example

When recorded return to:

Grantor: _____

Grantee: _____

Legal Description

Abbreviated form: _____

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: _____

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

Reference(s) to document(s) appears on page(s) _____

SUBORDINATION AGREEMENT

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

The undersigned subordinator agrees as follows:

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

3. _____, [*husband and wife,*] [("*Owner*") **or** ("*Owners*")] [*is the owner or are the owners*] of all the real property described in the conservation easement identified above in Paragraph 2.
4. In consideration of benefits to Subordinator from [("*Owner*") **or** ("*Owners*")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.
5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.
6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this _____ day of _____, 20__.

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

STATE OF WASHINGTON)
) ss.

COUNTY OF _____)

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

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT F

RCP Minimum Deed Terms

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

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

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

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;
- (ii) Erosion and sediment control pursuant to a plan approved by the Grantee;
- (iii) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purposes of the Conservation Easement; and
- (iv) Agricultural activities and related conservation activities conducted in accordance with this Conservation Easement and the RCPP Easement Plan as described in Section I, paragraph 4.

(F) Surface and Subsurface Mineral Exploration and Extraction –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Paragraph (F).

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

of impacts to the Conservation Values.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

3. Allowed Uses. The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

4. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

SECTION II – PROTECTION OF THE UNITED STATES’ INTERESTS AND EASEMENT ENFORCEMENT

1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

2. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

3. Extinguishment, Termination, and Condemnation. The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

4. Amendment. This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

5. United States Right of Enforcement. In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms **of this Conservation Easement, as determined in the sole discretion of the Secretary.**

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Conservation Easement.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.

2021 Purchase of Development Rights (PDR) Program- Proposed Ordinance

Whatcom County Council
Natural Resources Committee
June 1, 2021

Presentation Agenda

- ▶ Overview of Proposed Program Changes
- ▶ Review WCC 3.25A Amendments
- ▶ Review Program Guideline Amendments



Proposed Program Changes



Change name from:

Agricultural, Forestry, and Ecological
Purchase of Development Rights Program

To:

Whatcom County Conservation Easement
Program

Why?

CONSERVATION EASEMENT

73.31 ACRES

APN 390431 343/125 0000

Course	Bearing	Distance
L1	S 89°28'36" W	108.44'
L2	S 74°19'17" W	79.06'
L3	S 03°19'57" W	277.35'
L4	S 54°07'49" W	277.21'
L5	S 06°29'17" W	97.97'

Permitted Uses

Prohibited Uses

SOUTH QUARTER CORNER:
FOUND BRASS MONUMENT



Proposed Program Changes

#2

Change scoring from:

Suitable Scoring for Farmland

To:

Three Sets of Scoring Criteria-
Suitable Scoring for Farmland, Forestland,
and Ecological Areas

Why?

Applications

Current
Scoring

Proposed
Scoring

Type	Applicant	Ac.	DR	Zone	Current Scoring	Proposed Scoring
Ag.	Lakeland	323	9	AG	76.47	76.69
Ag.	Rethlefsen	49	7	R5	54.40	59.55
Eco.	Taylor	15	1	R5	54.13	59
Eco.	Kiera-Duffy 2	57	4	R10	40.24	55.2
For.	Moors	36	7	R5	38.95	55.27
For.	Kiera-Duffy 1	56	2	RF	32.87	57.3

Proposed Program Changes

#3

Miscellaneous Improvements for Program Administration:

- ▶ Referencing **Conservation Easements** instead of **Development Rights**
- ▶ Updates to accurately reflect how program **currently operates**
- ▶ Updates to guideline **appendices**

Proposed WCC 3.25A Amendments

Section	Proposed Change
Multiple	Program Name
Multiple	Reference Conservation Easements
3.25A.060.A	Committee Member Term Length and Officers
3.25A.070	Eligibility Criteria in Guidelines Only
3.25A.090	Add Forestry and Ecological to Terms
3.25A.100.A	Application Procedure for Rolling Basis
3.25A.100.C	Appraisals Based on Funding & Grant Timelines
3.25A.110	Sale on Rolling Basis/ Conservation Easement Value
3.25A.130.C	Conservation Easement Value

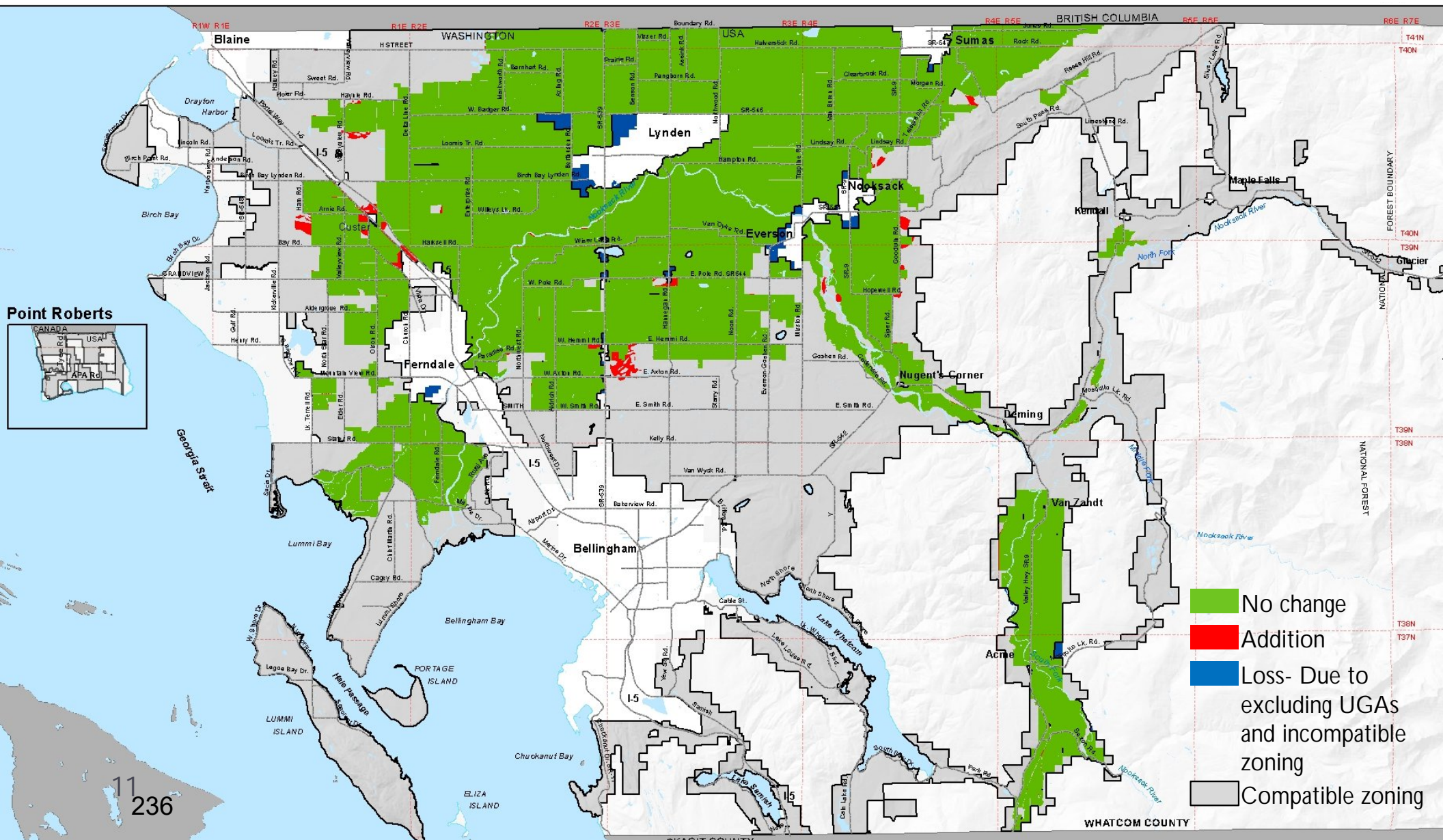


Questions About WCC 3.25A?

Proposed Guideline Amendments

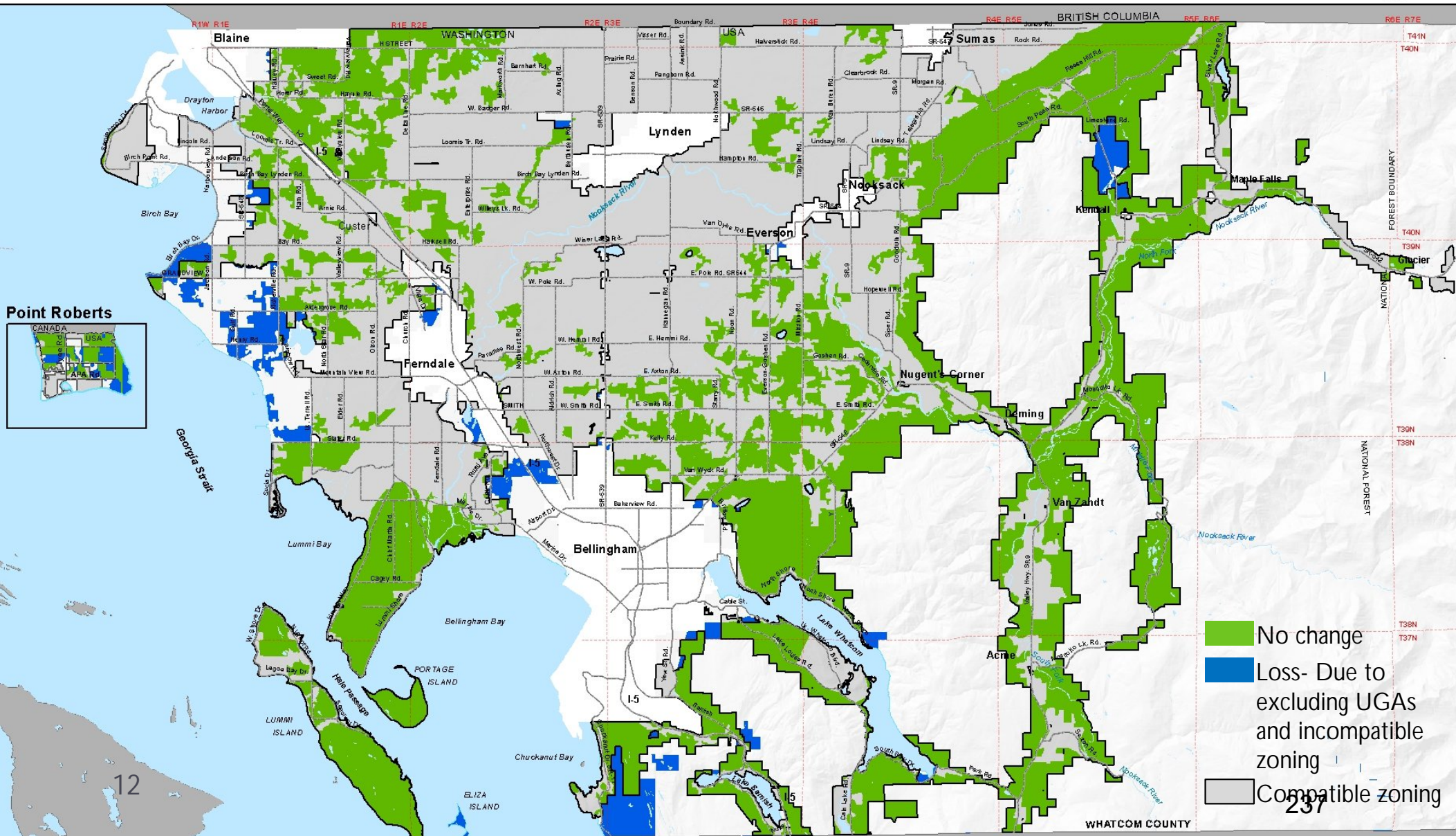
Section	Proposed Change
Multiple	Program Name
III	Priority Areas Include 2019 Landscape Analysis
III	1-Acre Size Requirement
IV	Site Selection Criteria
V.A	No Annual Notice
V.B,VII.B	Timeline of LOR Requirement
V.B,VII.C	Appraisals Based off Timeline of Grant Funding
V.B	Removed Dispute Ranking
V.D,VII.C	Reference Conservation Easements
VII.D	Administrator Initiates Title Insurance
Appendices	Update Priority Maps, Soils List, and Easement Template

Proposed Guideline Amendments Agricultural Priority Areas

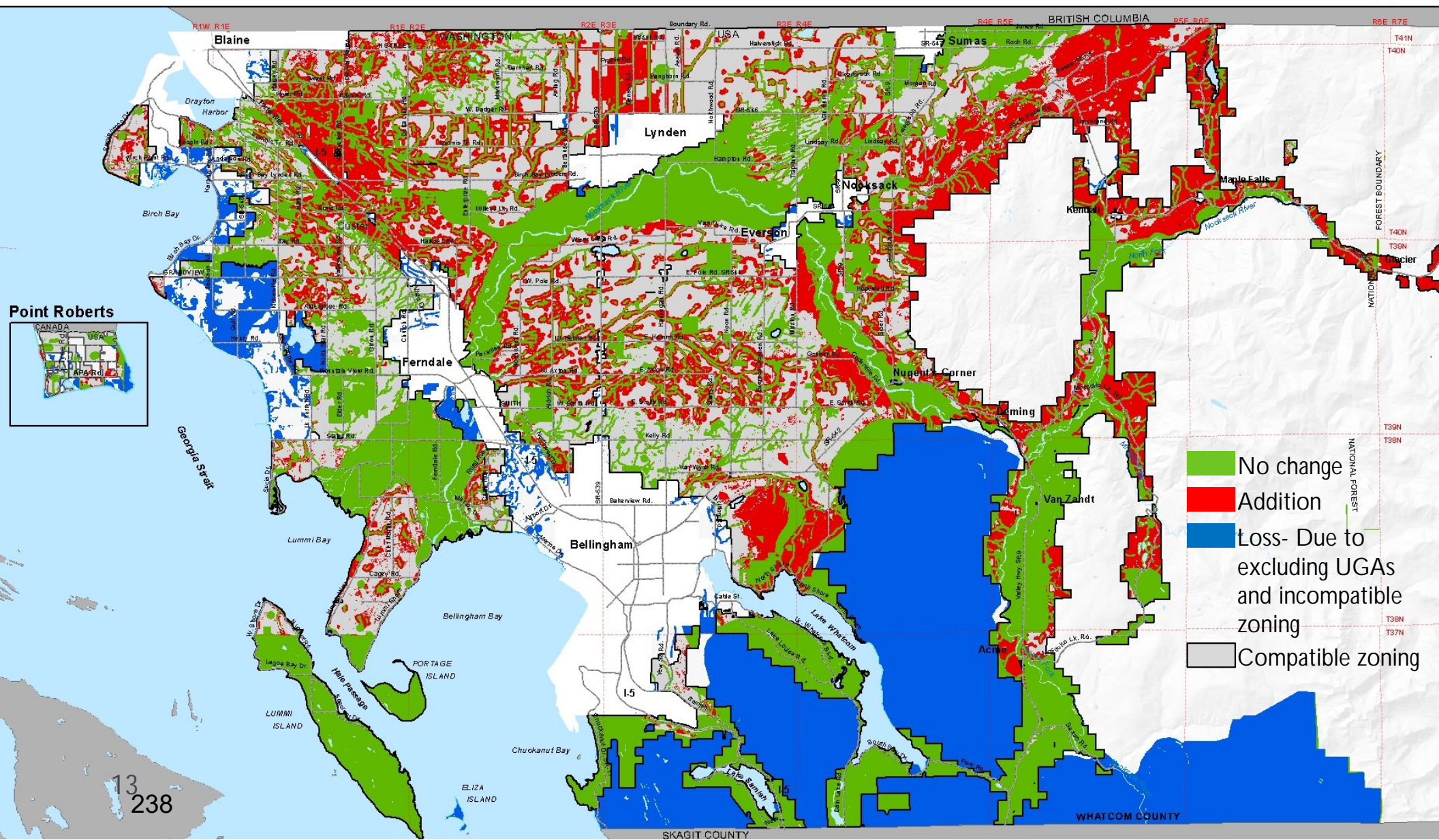


Proposed Guideline Amendments

Forestry Priority Areas



Proposed Guideline Amendments Ecological Priority Areas



Proposed Guideline Amendments

Site Selection Criteria

Common

- ▶ General Site Evaluation
- ▶ Development Pressure
- ▶ Matching Funds or Bargain Sale

Difference

- ▶ [CE Type] Evaluation
- ▶ Special Considerations



Proposed Guideline Amendments

Site Selection Criteria- Agricultural (10 Extra Pts)

Soil Evaluation

Agricultural Evaluation

- ▶ Percent Actively Farmed
- ▶ Legal Water Availability
- ▶ Rural Study Area or Ag District <40 ac.

Special Considerations

- ▶ Heritage Significance
- ▶ Water Flow Processes
- ▶ Restore Ecosystem Processes
- ▶ Conservation Values



Proposed Guideline Amendments

Site Selection Criteria- Forestry

Forestry Evaluation

- ▶ Site Index Soil Score
- ▶ State Forest Action Plan
- ▶ Rural Forestry or Designated Forest Land
- ▶ Proximity to Forestland Blocks
- ▶ Access to Working Forestland

Special Considerations

- ▶ Existing or Proposed Trails
- ▶ Water Flow Processes
- ▶ Forest Management Practices
- ▶ Conservation Values



Proposed Guideline Amendments

Site Selection Criteria- Ecological

Ecological Evaluation

- ▶ Water Quality & Quantity Landscape Analysis
- ▶ Aquatic Areas Landscape Analysis
- ▶ Terrestrial Areas Landscape Analysis
- ▶ Additional Ecological Areas

Special Considerations

- ▶ Existing or Proposed Trails
- ▶ Water Flow Processes
- ▶ Restore Ecosystem Processes





Questions About Program Guidelines?

Request

AB2021-296

- ▶ Amend WCC 3.25A and Program Guidelines as Proposed

Thank you!



Whatcom County Purchase of Development Rights Program



Purchase of Development Rights Oversight Committee

Chair: Paul Schissler

Vice-Chair: Sean D'Agnolo

Committee Members: Jagjivan Brar, Jen Glyzinski, Heather MacKay-Brown,
Burr Neely

PDR Program Administrator: Becky Snijder van Wissenkerke



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-289

File ID:	AB2021-289	Version:	1	Status:	Introduced
File Created:	05/06/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request No. 8, in the amount of \$1,250,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #8 requests funding from the Conservation Futures Fund:

1. To appropriate \$1,250,000 to fund match for Whatcom Land Trust Skookum Creek forest acquisition.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/18/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Ordinance, Budget Supplemental, Skookum Creek Request

**ORDINANCE NO.
AMENDMENT NO. 8 OF THE 2021 BUDGET**

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,
WHEREAS, changing circumstances require modifications to the approved 2021-2022 budget;
and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the
Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2021-2022
Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the following additional
amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
Conservation Future Fund	<u>1,250,000</u>	<u>-</u>	<u>1,250,000</u>
Total Supplemental	<u>1,250,000</u>	<u>-</u>	<u>1,250,000</u>

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

() Approved () Denied

Approved by email/C Quinn/M Caldwell
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 8				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
Conservation Future Fund	To fund match for Whatcom Land Trust Skookum Creek forest acquisition.	1,250,000	-	1,250,000
Total Supplemental		1,250,000	-	1,250,000

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3159

Fund 175

Cost Center 17500

Originator: T. Schroeder

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Skookum Creek Forest acquisition

X

Department Head Signature (Required on Hard Copy Submission)

5/6/21
Date

Costs:	Object	Object Description	Amount Requested
	6610	Contractual Services	\$1,250,000
	Request Total		\$1,250,000

1a. Description of request:

The County will cost share with the Whatcom Land Trust (WLT) which has 1.75 million dollars to purchase 1,000 acres of riparian forest land known as Skookum II. A portion of the Land Trust's funding was secured through a \$875,000 WWRP grant from the state for this land acquisition. The property is currently under contract for the appraised price of 3 million dollars. WLT is seeking matching funds through the Conservation Future Fund to help support this acquisition.

The Whatcom Land Trust will own and manage the property and the County will hold a conservation and public access agreement on the property. The property consists of riparian forest land running nearly 2.5 miles on both sides of Skookum Creek, the major tributary supplying cold, clear water to the Nooksack's South Fork.

The Nature Conservancy (TNC) wrote: "This purchase is one of the largest near-term conservation opportunities for the South Fork Nooksack and has outsized significance to the water quality, quantity and habitat benefits to all the living communities that rely on the South Fork Nooksack." The support of this project through Conservation Futures Fund will benefit the public by creating exceptional recreation opportunities and by helping ensure cold, clear water essential to salmonoid species at the Lummi Hatchery and in the South Fork of the Nooksack.

Whatcom County has committed \$1,250,000 from the Conservation Futures Fund as the final contribution towards purchase of the property.

1b. Primary customers:

Whatcom County residents

2. Problem to be solved:

Protecting Skookum Creek's upstream riparian forest will help ensure a continued vital supply of cold, clear water to the Lummi Hatchery and South Fork of the Nooksack and preserve old growth forest which maintains and grows the carbon stocks we have in these forests. These benefits align with the purpose and intention of the Conservation Futures Fund in protecting and preserving natural lands.

3a. Options / Advantages:

WLT has requested a matching 1.25 million to acquire the property. The County will hold a conservation and public access agreement on the property. The Conservation Futures Fund will have a projected fund balance of \$3.75 million when we include the cost of the Skookum II purchase.

3b. Cost savings:

Preserving pristine forestland is an investment we can make now for today and the future.

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3159

Fund 175

Cost Center 17500

Originator: T. Schroeder

4a. Outcomes:

1000 acres of riparian forest land will be acquired for the benefit of all.

4b. Measures:

Acquired property will be protected and preserved. When combined with Skookum I, Skookum II will provide in a beautiful natural setting 5.3 miles of non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing. The trail will terminate at Arlecho Creek with stunning views of the Twin Sisters Range. It will also enable public access to remote DNR state forestland northeast of Skookum II.

5a. Other Departments/Agencies:

Parks Department

5b. Name the person in charge of implementation and what they are responsible for:

Michael McFarlane, Parks Director

6. Funding Source:

Conservation Futures Fund



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-291

File ID:	AB2021-291	Version:	1	Status:	Agenda Ready
File Created:	05/11/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: KRoy@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for logistical and administrative support services to Whatcom Unified Command, in the amount of \$60,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Agreement



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: City of Bellingham – Whatcom Unified Command COVID-19 Support Interlocal Agreement

DATE: May 20, 2021

Attached is an Interlocal Agreement between Whatcom County and City of Bellingham for your review and signature.

- **Background and Purpose**

City of Bellingham staff have provided logistical and administrative support services to Whatcom County Unified Command (WUC) during the COVID-19 pandemic. This contract provides reimbursement of salaries for the WUC Logistics Section Chief and a WUC Situation Unit staff member from January 1, 2021 through June 30, 2021.

- **Funding Amount and Source**

Funding for this agreement may not exceed \$60,000. Funds under this agreement are made available by grants awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Title V and VI of the CARES Act, passed through the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019). These funds are included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Kathleen Roy, Assistant Director at 360-778-6007 (kroy@co.whatcom.wa.us) if you have any questions or concerns regarding this request.



WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8510 Administration / 851000 Administration		
Contract or Grant Administrator:			Kathleen Roy		
Contractor's / Agency Name:			City of Bellingham		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)			
Is this a grant agreement?		If yes, grantor agency contract number(s):		CFDA#:	21.019
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		201801023	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		Contract Cost Center:		660430	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):			
Is this agreement excluded from E-Verify?		No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:			
\$	60,000	1. Exercising an option contained in a contract previously approved by the council.			
This Amendment Amount:		2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.			
\$		3. Bid or award is for supplies.			
Total Amended Amount:		4. Equipment is included in Exhibit "B" of the Budget Ordinance			
\$		5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.			
Summary of Scope: This agreement provides reimbursement of salaries for the Whatcom Unified Command Logistics Section Chief and Situation Unit staff member.					
Term of Contract:		6 Months		Expiration Date: 06/30/2021	
Contract Routing:		1. Prepared by: JT		Date:	04/16/2021
		2. Health Budget Approval: KR/JG		Date:	05/04/2021
		3. Attorney signoff: RB		Date:	05/20/2021
		4. AS Finance reviewed: M Caldwell		Date:	5/11/2021
		5. IT reviewed (if IT related):		Date:	
		6. Contractor approved:		Date:	
		7. Submitted to Exec.:		Date:	
		8. Council approved (if necessary): AB2021-291		Date:	
		9. Executive signed:		Date:	
		10. Original to Council:		Date:	

**INTERLOCAL AGREEMENT
BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM
REGARDING WUC COVID-19 SUPPORT SERVICES**

This Interlocal Agreement (the "Agreement") is made and entered into this day by and between Whatcom County (the "County") and the City of Bellingham (the "City"), collectively referred to as the "Parties".

1. **PURPOSE.** The purpose of this Agreement is to set forth terms and conditions upon which the County will provide CARES Act funding to the City for the provision of logistical and administrative support personnel to Whatcom Unified Command ("WUC") during the COVID-19 pandemic.
2. **SERVICES.** The duties to be performed by City personnel under this Agreement, and County reimbursement therefor, are outlined in **Exhibit A – Scope of Work** and **Exhibit B – Compensation**, which are attached hereto and incorporated herein, which may be amended by either party with mutual, written consent signed by the parties.
3. **TERM OF AGREEMENT.** The start date of this Agreement is January 1, 2021 and shall be in effect through June 30, 2021.
4. **EXTENSION.** The duration of this Agreement may be extended by written amendment signed by both parties.
5. **ADMINISTRATION.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for the administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party:

County's representatives shall be:

Kathleen Roy, Assistant Director
Whatcom County Health Department
509 Girard Street
Bellingham, WA 9225
360-778-6007
kroy@co.whatcom.wa.us

City's representative shall be:

Bill Hewett, Fire Chief
Bellingham Fire Department
1800 Broadway
Bellingham, WA 98225
360-778-8416
bchewett@cob.org

6. **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
7. **INDEMNIFICATION.** Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agree to save, indemnify, defend, and hold harmless the other party harmless from any such liability. It is further provided that no liability shall attach to either party by reason of entering into this Agreement except as expressly provided herein.

8. **TERMINATION.** Any party hereto may terminate this Agreement upon (30) days notice in writing either personally delivered or mailed to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9. **CHANGES, MODIFICATIONS, AMENDMENTS, OR WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

10. **SEVERABILITY:** In the event of any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

11. **OTHER PROVISIONS.** Both parties will comply with all applicable Federal and State requirements that govern this Agreement.

12. **PUBLIC RECORDS ACT.** All records received by any Party, pursuant to this Agreement shall be a public record and therefore subject to the Public Records Act.

13. **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

EXECUTED THIS _____ day of _____, 2021.

CITY OF BELLINGHAM

Seth Fleetwood
Mayor

Attest:

Finance Director Date

Approved as to Department:

Bill Hewett, Fire Chief

Approved as to form:

Office of the City Attorney Date

EXECUTED THIS _____ day of _____, 2021.

WHATCOM COUNTY

Satpal Sidhu
County Executive

APPROVED AS TO FORM:

Royce Buckingham, Prosecuting Attorney Date

APPROVED AS TO DEPARTMENT:

Erika Lautenbach, Director Date

Exhibit "A"
(Scope of Work)

I. Statement of Work

The City currently staffs the following two WUC positions: (1) WUC Logistics Section Chief; and (2) WUC Situation Unit Staff Member. Duties to be performed, and reimbursed under, this Agreement are as follows:

A. Duties of the WUC Logistics Section Chief under this Agreement include:

1. Supervise the volunteer branch and warehouse staff.
2. Serve as Logistics Committee Co-Chair for the Community Vaccination Clinic (CVC).
 - i. Place orders for resources needed to operate the CVC.
 - ii. Create signage and maps for use at the CVC.
 - iii. Coordinate with BTC staff for site clinic parking and space needs or changes.
3. Distribute non-operational PPE to care facilities and government departments.
4. Monitor and order ongoing PPE needs for COVID response.
5. Place orders to the State Emergency Operations Center for resources and personnel, related to the COVID response.
6. Pick up orders and make deliveries of orders to WUC operational areas.

B. Duties of the WUC Situation Unit Staff Member under this Agreement include:

1. Demobilization Unit Leader duties.
2. Documentation Unit Leader duties.
 - i. Record meeting minutes for CVC Steering Committee meetings.
3. Situation Unit duties.
 - i. Monitor Situation Unit email inbox and reply to inquiries.
 - ii. Manage and monitor local and regional COVID data.
 - iii. Develop and update graphs and charts of daily COVID stats.
 - iv. Develop and distribute daily Whatcom COVID Situation Report.
4. Monitor COVID-Health email inbox and reply to inquiries.
5. Maintenance of Medical Surge Plan.
 - i. Develop and distribute a bi-weekly Medical Surge Status Report.
6. Produce and distribute WUC Operational Period Status Report at the start of each Operational Period.
7. Collaborate with partners in North Region Counties to gather COVID vaccination data.
 - i. Develop and submit weekly COVID Vaccination Regional Situation Report.

Exhibit “B”
(COMPENSATION)

- I. **Budget and Source of Funding:** Funding for this Agreement may not exceed \$60,000. Funds under this contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Title V and VI of the CARES Act. This project was supported by a grant awarded by the US Department of the Treasury. Grant funds are administered by the Washington State Department of Health Emergency Preparedness Response COVID-19 Local CARES Grant (CFDA 21.019). The budget for this Agreement is as follows:

Item	Documents Required with Invoice	Budget
Justin Shields – WUC Logistics Section Chief (salary @ \$37.64/hour + benefits)	GL Detail	\$60,000
Liv Sund – WUC Situation Unit Staff Member (salary @ 21.09/hour + benefits)		
TOTAL		\$60,000

II. **Invoicing:**

1. **Final invoices must be submitted by July 10, 2021.** City shall submit invoices to the County at HL-BusinessOffice@co.whatcom.wa.us. Invoices shall reference this Agreement #.
2. Invoices submitted for payment must include the items identified in the table above.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor.
4. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. **Duplication of Billed Costs or Payments for Service:** City shall not bill the County for services performed or provided under this contract, and the County shall not pay the City, if the City has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The City is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-292

File ID:	AB2021-292	Version:	1	Status:	Agenda Ready
File Created:	05/12/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: ADeacon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to support a single point of entry, to connect families and professionals concerned about a child's development to resources and services, in the amount of \$9,081, for a total amended contract amount of \$89,230

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Amendment



MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Opportunity Council – Single Entry Access to Services Contract Amendment #2
DATE: May 12, 2021

Attached is a contract amendment between Whatcom County and Opportunity Council for your review and signature.

▪ **Background and Purpose**

Developmental disabilities (DD) are conditions which result in physical, learning, language, or behavioral impairment and occur before the age of 18. The Single Entry Access to Services (SEAS) line provides an effective, single point of entry to connect families and professionals concerned about a child's development, to resources and services. Care navigation ensures coordination and follow-through with families and referral sources to ensure that timely connection to services are made. SEAS assisted 803 children and families in 2020. The Opportunity Council and Whatcom Center for Early Learning are the two local providers of 0 – 3 services and by mutual agreement, the Opportunity Council acts as a single point of entry for users of these services. The agencies split annual program costs that exceed funding provided by other sources. The purpose of this amendment is to increase the County's contribution to the program, in the amount of \$9,081, using state funds and reduce the financial contribution of provider agencies, impacted by revenue loss from under enrollment due to COVID-19.

▪ **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$89,230 during this contract period (07/01/2020 – 06/30/2021) and \$169,379 for the entire contract period (07/01/2019 – 06/30/2021), is provided by local DD millage and state funds. These funds are included in the 2021 budget. Council approval is required as additional funding will exceed 10% of the approved budget.

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us) if you have any questions or concerns regarding this request.



**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
201906014 – 2

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855050 Developmental Disabilities	
Contract or Grant Administrator:		Jessica Lee	
Contractor's / Agency Name:		Opportunity Council	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		201906014
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Contract Cost Center:		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, RFP and Bid number(s): 19-23	127200	
Is this agreement excluded from E-Verify?	No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input checked="" type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for: all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 	
\$ 160,298			
This Amendment Amount:			
\$ 9,081			
Total Amended Amount:			
\$ 169,379			
Summary of Scope: This contract funds the Single Entry Access to Services (SEAS) line for families and professionals seeking resources for children and youth age 0 – 18 with suspected developmental disabilities and delays.			
Term of Contract:	1 Year	Expiration Date:	06/30/2021
Contract Routing:	1. Prepared by:	JL	Date: 03/08/2021
	2. Health Budget Approval	KR/JG	Date: 05/04/2021
	3. Attorney signoff:	RB	Date: 05/04/2021
	4. AS Finance reviewed:	M Caldwell	Date: 5/11/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):	AB2021-292	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

WHATCOM COUNTY CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:
Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225

CONTRACT PERIODS:

Original: 07/01/2019 – 06/30/2020
Amendment #1: 07/01/2020 – 06/30/2021
Amendment #2: 01/01/2021 – 06/30/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Amend exhibit B "Compensation" to increase funding by \$9,081 for the FTE and funding for Care Navigator 1, from .25 FTE to .42 FTE and from \$11,260 to \$19,368 (with a subsequent increase in indirect administration costs - \$973); revised Exhibit B is attached.
2. Replace Sections 35.1 and 35.2 in the General Terms and Conditions (page 8 of the original contract), per Whatcom County Ordinance 2021-016, with the following:

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

3. Funding for this contract period (07/01/2020 – 06/30/2021) is not to exceed \$89,230.
4. Funding for the total contract period (07/01/2019 – 06/30/2021) is not to exceed \$169,378.
5. All other terms and conditions remain unchanged.
6. The effective start date of the amendment is 01/01/2021.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.

APPROVAL AS TO PROGRAM: _____
Anne Deacon, Human Services Manager Date

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

Greg Winter, Executive Director		
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

CONTRACTOR INFORMATION:

Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225
(360) 734-5121
greg_winter@oppco.org

EXHIBIT "B" – Amendment #2
(COMPENSATION)

- I. **Budget and Source of Funding:** The source of funding for this contract, in an amount not to exceed \$89,230, is local DD Millage and DSHS/DDA funds. The budget for this cost reimbursement contract is as follows:

*Item	Invoice Documentation	Budget
Care Navigator 1 (.42 FTE)	General Ledger Detail	\$19,368
Care Navigator 2 (1.0 FTE)		\$48,975
Supervisor (.15 FTE)		\$10,577
Translation/Interpreters		\$750
Subtotal		\$79,670
**Indirect Administration @ 12%		\$9,560
TOTAL BUDGET		\$89,230

*Funding may be transferred between line items, with written County authorization.

**In no instance will the indirect cost rate exceed the current federally approved rate.

II. **Invoicing**

1. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include documentation listed in the budget table above.
2. The Contractor shall submit invoices via email to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. Duplication of Billed Costs or Payments for Services: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-298

File ID:	AB2021-298	Version:	1	Status:	Agenda Ready
File Created:	05/17/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: CHollins@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, in the estimated amount of \$94,000 for a total estimated contract amount of \$220,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Amendment



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Northwest Workforce Council – Disaster Relief Employment Contract Amendment #2

DATE: May 17, 2021

Attached is a contract amendment between Whatcom County and Northwest Workforce Council for your review and signature.

- **Background and Purpose**

Northwest Workforce Council (NWC) provides disaster relief and humanitarian assistance employment to minimize the employment and economic impact of the COVID-19 pandemic. NWC certifies eligibility for services under the Workforce Innovation and Opportunity Act COVID-19 Disaster Recovery Subsidized Employment Program and the Health Department temporarily employs eligible participants for various COVID-related positions including Nurses, Case/Contact Investigators, and testing site support staff. The purpose of this amendment is to extend the term of the contract through December 31, 2021, increase the number of allowable participants, rate per participant, and the total not-to-exceed amount.

- **Funding Amount and Source**

NWC will reimburse Whatcom County for the total cost of wages and fringe benefits for up to eleven participants, at a rate of \$20,000 per participant, for a total contract amount not to exceed \$220,000. These funds are included in the 2021 budget. Council approval is required as additional funding exceeds 10% of the approved budget.

Please contact Cindy Hollinsworth, Communicable Disease & Epidemiology Manager at 360-778-6160 (CHollins@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us) if you have any questions regarding this agreement.



**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
202010119 – 2

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8560 Communicable Disease / 856010 Communicable Disease Admin	
Contract or Grant Administrator:		Cindy Hollinsworth	
Contractor's / Agency Name:		Northwest Workforce Council	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		202010119
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		
Yes <input type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Contract Cost Center:		627500
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:	
Varies depending on number of participants. Not to exceed \$220,000.		<ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 	
Summary of Scope: This contract provides reimbursement for employment of eligible disaster relief and humanitarian assistance program participants certified by the Northwest Workforce Council.			
Term of Contract:	14 Months	Expiration Date:	12/31/2021
Contract Routing:	1. Prepared by:	JT	Date: 05/03/2021
	2. Health Budget Approval	KR/JG	Date: 05/14/2021
	3. Attorney signoff:	RB	Date: 05/12/2021
	4. AS Finance reviewed:	M Caldwell	Date: 5/17/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):	AB2021-298	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

WHATCOM COUNTY CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:
Northwest Workforce Council
PO Box 2009
Bellingham, WA 98227

CONTRACT PERIODS:

Original: 10/28/2020 – 06/30/2021
Amendment #1: 10/28/2020 – 06/30/2021
Amendment #2: 10/28/2020 – 12/31/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Extend the term of the contract through 12/31/2021.
2. Revise Terms and Conditions – Reimbursement/Pay Schedule, as follows:
 - a. The NWC agrees to reimburse the Employer the total cost of each Participant's wage and fringe benefit during the contract performance period for eleven participants in the amount of \$220,000.
 - b. The parties have agreed that the total compensation payable to the Employer, for satisfactorily accomplishing the work set forth in the related Whatcom County job descriptions, will not exceed \$20,000.
3. Funding for the total contract period (10/28/2020 – 12/31/2021) is not to exceed \$220,000.
4. All other terms and conditions remain unchanged.
5. The effective start date of the amendment is 10/28/2020.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.

APPROVAL AS TO PROGRAM: _____
Cindy Hollinsworth, Communicable Disease & Epidemiology Manager Date

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

Alex Kosmides, Deputy Director		
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

CONTRACTOR INFORMATION:

Northwest Workforce Council
Alex Kosmides, Deputy Director
360-676-3207
Akosmides@workforcenorthwest.org



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-299

File ID:	AB2021-299	Version:	1	Status:	Agenda Ready
File Created:	05/17/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: ADeacon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Pacific Security to provide COVID-related security services, in the amount of \$71,736

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Parker Corporate Services, Inc. dba Pacific Security – COVID-19 Related Security Services Contract

DATE: May 18, 2021

Attached is a contract between Whatcom County and Pacific Security for your review and signature.

- **Background and Purpose**

This contract provides funding for 24/7 security services to temporary guests of the COVID-19 Temporary Housing Facility located at 3701 Byron Avenue in Bellingham as well as weekly security services at Whatcom County's large-scale community COVID-19 vaccine clinics.

- **Funding Amount and Source**

Funding for this contract may not exceed \$71,736. Funds under the contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and Title V and VI of the CARES Act, passed through the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and Epidemiology and Laboratory Capacity Grants (CFDA 21.019 & 93.323). These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

- **Differences between Previous Contracts**

This is a new contract awarded as a result of RFQ 21-17; however, funding for these services has been provided through previous contracts since April, 2020. This contract includes no significant changes to the scope of work but does include a reduction in hourly rates from the contracts currently in place (WC Contract #202004010 and #202103003).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.



WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No.	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8510 Administration / 851000 Administration		
Contract or Grant Administrator:			Anne Deacon		
Contractor's / Agency Name:			Parker Corporate Services, Inc. dba Pacific Security		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)			
Is this a grant agreement?		If yes, grantor agency contract number(s):		CFDA#:	21.019 / 93.323
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		201801023	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	660430 / 660480
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	21-17			
Is this agreement excluded from E-Verify?		No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input checked="" type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:			
\$	71,736	1. Exercising an option contained in a contract previously approved by the council.			
This Amendment Amount:		2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.			
\$		3. Bid or award is for supplies.			
Total Amended Amount:		4. Equipment is included in Exhibit "B" of the Budget Ordinance			
\$		5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.			
Summary of Scope: This contract provides funding for security services at the COVID-19 temporary housing facility and large-scale community vaccination clinics.					
Term of Contract:		4 Months		Expiration Date: 09/30/2021	
Contract Routing:		1. Prepared by: JT		Date:	05/10/2021
		2. Health Budget Approval: KR/JG		Date:	05/14/2021
		3. Attorney signoff: RB		Date:	05/17/2021
		4. AS Finance reviewed: M Caldwell		Date:	5/17/21
		5. IT reviewed (if IT related):		Date:	
		6. Contractor approved:		Date:	
		7. Submitted to Exec.:		Date:	
		8. Council approved (if necessary): AB2021-299		Date:	
		9. Executive signed:		Date:	
		10. Original to Council:		Date:	

**CONTRACT FOR SERVICES
Between Whatcom County and Pacific Security**

Pacific Security, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 13,
Exhibit A (Scope of Work), pp. 14 to 15,
Exhibit B (Compensation), pp. 16 to 17,
Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of June, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 2021.

The general purpose or objective of this Agreement is to **provide COVID-related security services**, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$71,736. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Pacific Security
2009 Iron Street
Bellingham, WA 98225

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

Johnathan McBride, Operations Manager

Recommended for Approval:

Date _____

Date _____

Approved as to form:

Date _____

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Pacific Security
2009 Iron Street
Bellingham, WA 98225
Johnathan McBride, Operations Manager
john@pacsecurity.com

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder

and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Insurance – Commercial General Liability and Business Auto Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Business Automobile Liability

\$1,000,000.00 Minimum, per occurrence
\$2,000,000.00 Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier.

Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.

- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the

property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this

Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Anne Deacon, Human Services Manager

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Anne Deacon, Human Services Manager
509 Girard Street
Bellingham, WA 98225
360-778-6054
ADeacon@co.whatcom.wa.us

Pacific Security
Johnathan McBride, Operations Manager
2009 Iron Street
Bellingham, WA 98225
360-305-7256
john@pacsecurity.com

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person

to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

- 37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If applicable, Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

If applicable, the Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. If applicable, Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a

commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having

jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

I. Background

To provide adequate response to the COVID-19 pandemic, Whatcom County operates a COVID-19 Temporary Housing Facility (THF) and Community Vaccine Clinics (CVC). Services are needed to provide security for temporary guests of the THF and staff and recipients of vaccines at the CVC.

II. Statement of Work

A. Temporary Housing Facility (THF):

The Contractor will provide 24/7 services. Law enforcement will provide instruction on security responsibilities. Upon request, Contractor will provide additional staff or adjust duties. The Contractor will:

1. Follow law enforcement instructions.
2. Be responsible for access control:
 - a. Contractor will issue ID to each adult guest of the facility to verify access into the facility;
 - b. Each additional on-site Contractor, Whatcom County, or Unified Command will also carry ID to access each facility.
 - c. Ensure that no visitors of facility guests are allowed to enter the premises at any time, unless pre-approved by Whatcom County Health Department.
 - d. Assist with access and egress for guests who are receiving temporary shelter services at the facility and who are not housed in isolation or quarantine status.
3. Provide a visible deterrent to criminal behavior by providing routine security patrols around the exterior of the grounds on an hourly basis.
4. Observe and report suspected criminal activity to WhatComm Dispatch:
 - a. Law enforcement will exercise their discretion as to whether or not to send officers to the facility based on the nature of the report.
 - b. Contractor will compile reports of incidents or significant events to be provided to law enforcement, Unified Command, or Whatcom County, upon request.
 - c. The on-duty site Security Officer should contact WhatComm Dispatch at the beginning of each shift and provide their name and contact number as the responsible party for that rotation.
5. Perform the duties in a courteous and professional manner.
6. Report all incidents to the on-site Manager.

B. Community Vaccine Clinics (CVC):

The Contractor will provide up to two guards who will provide on-site security services during the clinics. The service schedule at the CVC will be subject to availability of vaccine supply; number of guards, dates, times and locations may vary. The Contractor will:

1. Follow law enforcement instructions.
 2. Provide a visible deterrent to criminal behavior by providing a presence in the parking lot during the clinics and monitoring access to the clinics in the event that people try to gain access without an appointment.
 3. Observe and report suspected criminal activity to WhatComm Dispatch:
 - a. Law enforcement will exercise their discretion as to whether or not to send officers to the premises based on the nature of the report.
 - b. Contractor will compile reports of incidents or significant events to be provided to law enforcement, Whatcom Unified Command or Whatcom County, upon request.
 4. Perform duties in a courteous and professional manner.
 5. Report all incidents to the on-site manager determined by the Health Department.
- C.** The Contractor is responsible for providing uniforms, N95 masks, gloves, eye protection, and supervising all security personnel in the proper performance of their duties.
- D.** Security officers assigned to perform work under this contract shall wear uniforms at all times. These uniforms must clearly identify the name of the security officer. This identification may be accomplished through the use of shoulder patches, silk screening, or stitched company emblems, insignias, or logos.
- E.** Security officers employed by the contractor under this contract, shall:
1. Be able to communicate effectively in both written and oral English.
 2. Possess a cell phone and have such on their person while on duty.
 3. Be a legal resident of the United States of America.
 4. Be physically and emotionally capable of performing the assigned tasks.
 5. Have no criminal record.

The County retains the right to run background checks for each of the contractor's employees. The County is not required to provide any reason for requested removal of specified contracted personnel.

EXHIBIT "B"
(COMPENSATION)

- I. **Budget and Source of Funding:** Funding for this contract may not exceed \$71,736. Funds under the contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and Title V and VI of the CARES Act, passed through the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and Epidemiology & Laboratory Capacity Grants (CFDA 21.019 & 93.323).

The contractor shall bill the County at a rate of \$21.35/hour for individual security officers and \$32.03/hour on Federal Holidays for individual security officers. Federal holidays observed include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Temporary Housing Facility (THF) – the budget for services provided at the THF is as follows:

Month	Regular Days	Total \$21.35/hour per 24 hours	Holidays	Total \$32.03/hour per 24 hours	Month Total
June	30	\$15,372	0		\$15,372
July	30	\$15,372	1	\$768.72	\$16,141
August	31	\$15,884.40	0		\$15,884
September	29	\$14,859.60	1	\$768.72	\$15,628
TOTAL					\$63,025

Community Vaccine Clinics (CVC) – Number of guards, dates and times of services provided at the CHC may vary. The estimated budget for services provided at the CVC is as follows:

Month	Estimated (non-Holiday) Clinic Days	Total \$21.35/hour per estimated 8 hours/week
June	13	\$2,220.40
July	12	\$2,049.60
August	13	\$2,220.40
September	13	\$2,220.40
ESTIMATED TOTAL		\$8,711

II. **Invoicing**

1. The Contractor shall submit invoices to (include contract/PO #) HL-BusinessOffice@co.whatcom.wa.us.
2. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. **However, final invoices for services provided through June 30th, must be submitted by July 10, 2021.** Invoices submitted for payment must include the items identified in the table above.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

4. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-301

File ID:	AB2021-301	Version:	1	Status:	Agenda Ready
File Created:	05/18/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: JMitchel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to provide funding for an outreach worker and consulting services to the Homeless Outreach Team, in the amount of \$120,776

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Opportunity Council – Behavioral Health Outreach Contract

DATE: May 18, 2021

Attached is a contract between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**

This contract provides funding for an Outreach worker and consulting services to the Opportunity Council's Homeless Outreach Team to engage people with opiate and substance use disorders who are experiencing homelessness with the goal of connecting them to appropriate treatment and other community services.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$120,776, is provided by the Federal Substance Abuse Block Grant (CFDA 93.959) passed through the North Sound Behavioral Health Administrative Services Organization and the Behavioral Health Program Fund. These funds are included in the 2021-2022 budgets. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract; however, funding for these services has been provided through similar contracts between Whatcom County and Opportunity Council since 2017. This contract includes no significant changes from the contract that is currently in place (WC Contract #201706013).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us) with any questions or concerns regarding this request.



WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855020 Mental Health		
Contract or Grant Administrator:			Jackie Mitchell		
Contractor's / Agency Name:			Opportunity Council		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)			
Is this a grant agreement?		If yes, grantor agency contract number(s):		CFDA#:	93.959
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		201904004	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		Sole Source		Contract Cost Center:	675500 / 124100
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.			
\$	120,776				
This Amendment Amount:					
\$					
Total Amended Amount:					
\$					
Summary of Scope: This contract provides partial funding for a substance use disorder (SUD) professional and consulting services to the Opportunity Council's Homeless Outreach Team to engage people with opiate and/or substance use disorders who are experiencing homelessness and connect them to treatment and other community services.					
Term of Contract:		1 Year		Expiration Date: 06/30/2022	
Contract Routing:		1. Prepared by: JT		Date:	03/10/2021
		2. Health Budget Approval: KR/JG		Date:	05/17/2021
		3. Attorney signoff: RB		Date:	05/17/2021
		4. AS Finance reviewed: M Caldwell		Date:	5/17/21
		5. IT reviewed (if IT related):		Date:	
		6. Contractor approved:		Date:	
		7. Submitted to Exec.:		Date:	
		8. Council approved (if necessary): AB2021-301		Date:	
		9. Executive signed:		Date:	
		10. Original to Council:		Date:	

CONTRACT FOR SERVICES
Between Whatcom County and Opportunity Council

Opportunity Council, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 12,
Exhibit A (Scope of Work), pp. 13 to 16,
Exhibit B (Compensation), pp. 17 to 18,
Exhibit C (Certificate of Insurance), p. 19,
Exhibit D (Whatcom County Flex Fund Guidelines).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of July, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2022.

The general purpose or objective of this Agreement is to provide funding for an Outreach worker and consulting services to the Homeless Outreach Team to support connection to services for people with opiate and/or substance use disorders, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is estimated at \$120,776. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

Greg Winter, Executive Director

WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager Date

Erika Lautenbach, Director
Date

Approved as to form:

Royce Buckingham, Prosecuting Attorney	Date
--	------

Approved:

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Opportunity Council

1111 Cornwall Avenue
Bellingham, WA 98225
360-734-5121
Greg_winter@oppco.org

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days

worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract

to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
- B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Business Automobile Liability

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies

by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.

- c. **Primary and Non-contributory Insurance.** Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. **Waiver of Subrogation.** The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. **Review of and Revision of Policy Provisions.** Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. **Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.** The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not

objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.

- I. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Jackie Mitchell, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Jackie Mitchell, Program Specialist
509 Girard Street
Bellingham, WA 98225
360-778-6048
JMitchel@co.whatcom.wa.us

Opportunity Council
Greg Winter, Executive Director
1111 Cornwall Avenue
Bellingham, WA 98225
360-734-5121
greg_winter@oppco.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If applicable, Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

If applicable, the Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. If applicable, Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for

any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs,

attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

I. Background

Whatcom County homeless and housing programs lack specific behavioral health services for participants in their programs. This contract will provide resources to the Opportunity Council's Homeless Outreach Team (HOT) to include consulting, training, and support services for HOT staff as well as for the Opportunity Council's (OC) housing programs.

HOT O/SUD (Opiate/Substance Use Disorder) Outreach services will improve access to SUD treatment and medication assisted treatment (MAT) services for homeless individuals who use illicit substances or have symptoms of problematic substance use. Consulting services and training will improve OC staff behavioral health knowledge and skills.

The long-term goal of these behavioral health services is to reduce negative impacts on the individual's health and the health of the community as a whole.

II. Definitions

North Sound Behavioral Health Administrative Services Office (BH-ASO)— This is the local entity which has contractual and programmatic oversight of the crisis services system in the North Sound Region. In addition, the BH-ASO has been assigned other responsibilities such as distribution of the Substance Abuse Block Grant (SABG) which fund part of this contract.

Housing and Recovery through Peer Services (HARPS)— This is a program which provides a combination of services with the goal of securing permanent supportive housing for people with SUD/mental illness. The program is intended primarily for people coming out of inpatient psychiatric care or SUD facilities.

Homeless Outreach Team (HOT) Opiate/Substance Use Disorder Services— Services described under this contract whereby a professional skilled in opiate/substance use disorder engagement and outreach is embedded on the Homeless Outreach Team (HOT).

Medication Assisted Treatment (MAT)— Psychosocial treatment which includes prescription medications which have been shown by research to be effective in helping treat substance use disorders or withdrawal from drugs or alcohol.

Motivational Interviewing (MI)— A set of techniques or skills for working with individuals which can be used in many practice settings. Professionals using these skills to engage a participant's intrinsic motivation towards self-defined goals, and then helps facilitate action towards those goals by exploring and resolving ambivalence.

Opiate Use Disorder (OUD)— A disorder defined by the *Diagnostics and Statistics Manual 5 (DSM5)*, in which a person has symptoms of problematic opiate use from a morphine-like substance or derivative, such as heroin, oxycodone, oxymorphone, etc. Many opiates are available as prescription pills for treatment of medical conditions, including pain, but are used to sustain OUDs and often increase the severity of the OUD.

Substance Abuse Block Grant (SABG)— A federal grant program, endowed with specific requirements which is passed through the states to BH-ASOs for the provision of substance use disorder services.

Substance Use Disorder (SUD)— A term defined by the DSM5 which describes symptoms of problematic use of a psychoactive substance along a continuum from mild to severe.

Substance Use Disorder Professional or Trainee (SUDP or SUDPT)— This is the acronym for State licensure as a Substance Use Disorder Professional or Trainee.

III. Statement of Work

The Contractor will hire a behavioral health (BH) consultant, an independently licensed clinician, to act as a consultant to HOT staff and for staff at the OC's housing units. The housing units covered include 22 North, Dorothy Place and the OC's scattered site housing, as well as other homeless housing programs. The consultant will provide a combination of direct service and consulting work for approximately 4 hours each week. The Consultant may provide training to OC staff, as well as mental health support services to housing participants.

In addition, the Contractor will provide one Full Time Equivalency (1 FTE) professional (herein referred to as "Professional") to act as a member on the Homeless Outreach Team (HOT). The Contractor will ensure that the Professional brings substance use disorder knowledge and skills to the Team. The Professional will accept referrals from First Responders, Team staff, and key referents via the current HOT referral system.

The Professional under this contract will conduct outreach with Team Staff at:

1. Homeless encampments, the street, parks;
2. Syringe Services Program at the Whatcom County Health Department;
3. Other places not intended for habitation;
4. Places where people who are homeless frequent; and
5. Motels/Hotels to provide financial or other assistance as needed during the COVID-19 crisis.

The Professional will engage individuals who experience homelessness and who have O/SUD, using motivational interviewing and other effective skills. The Professional will act as the care coordinator for individuals who are ready to engage in treatment, while providing supports to people with O/SUD who require a lengthier engagement process.

While the primary focus of this contract is outreach to people experiencing homelessness with OUD, any person with a possible SUD may be served. Outreach services are intended to promote the following goals for people who are experiencing homelessness:

1. Ensure the health and safety of people who inject illicit drugs and people with OUDs.
2. Facilitate access to housing and support services.

The Professional's duties under this contract will consist of the following services:

1. Motivational interviewing skills or other appropriate methods to engage participants in working towards self-defined goals related to healthier living.
2. Screening of O/SUD for individuals who are experiencing homelessness.
3. Care coordination and case management services to assist with accessing O/SUD assessment through detox or outpatient providers.
4. Engagement of individuals through the Health Department's Syringe Services Program, during hours of operation.
5. "Warm hand-offs" to MAT/SUD treatment, mental health treatment, medical and other services as necessary.
6. Conducting intakes and vulnerability assessments for the housing pool.
7. Referral and engagement to community support services (e.g. applications for Medicaid, intensive case management programs, etc.).
8. Facilitation of access to housing, transportation, and clothing or other basic needs.
9. Coordination of care for individuals requiring housing who are eligible for rental assistance funds.
10. Coordination of services with existing outreach programs such as through detox and the jail.

11. Attendance at meetings to coordinate care whenever necessary.

IV. Program Requirements & Restrictions

The Contractor shall provide one (FTE) professional who has a Bachelor's degree with case management experience. The Professional should have experience working with people with SUDs. The Professional shall have experience with coordinating and working within the SUD and MAT treatment service system. In addition, the Professional should have experience with using motivational interviewing skills. Specific requirements may be waived with approval from the Contract Administrator.

This contract includes funding to ensure that the Professional and her/his supervisor have access to O/SUD specific programming and training, to include working towards the requirements of becoming an SUDP. Additional funding may be used to provide training to other members of HOT Staff in order to increase their knowledge base in the SUD field.

SABG Funds cannot be used for the following:

1. Services and programs that are covered under the capitation rate for Medicaid-covered services to Medicaid enrollees.
2. Inpatient mental health services.
3. Mental health services.
4. Construction and/or renovation.
5. Capital assets or the accumulation of operating reserve accounts.
6. Equipment costs over \$5,000.
7. Cash payments to Individuals.
8. Purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or other facility; or purchase major medical equipment.
9. Satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.
10. Provide financial assistance to any entity other than a public or nonprofit private entity.
11. Make payments to intended recipients of health services.
12. Provide Individuals with hypodermic needles or syringes.
13. Provide treatment services in penal or correctional institutions of the State.

Contractor must comply with all applicable North Sound Behavioral Health Administrative Services Organization Terms and Conditions of the contract identified in the link below per Section 2.2.7, including but not limited to, the Supplemental Service Provider Guide (also linked below), and terms relating to licensure, insurance, and billing of individuals for service: https://nsbhaso.org/for-providers/contracts/NORTH_SOUND_ASO-WHATCOM_COUNTY-ICN-19_.pdf and https://nsbhaso.org/for-providers/supplemental-provider-service-guide/North%20Sound%20BH-ASO%20Supplemental%20Provider%20Service%20Guide_11142019.pdf

Any updates to these documents will be communicated by the County via email with a link to the current document.

V. Reporting Requirements

When fully staffed, the Contractor is expected to achieve the following minimum performance targets under this contract:

1. Provide 100 outreach hours per month
2. Provide services to 20 individuals per month

The County will provide a Monthly Report Form within 10 working days of the contract startup. The Contractor will submit the report by the 10th working day of each month, to include the following numbers of:

1. Outreach hours provided
2. Number of individuals served
3. Of the total, the number of unduplicated people served by category in the following areas:
 - a. People who are pregnant
 - b. People who are parenting
 - c. People who are pregnant or parenting that use drugs intravenously
 - d. Other people who use drugs intravenously
4. Number of people who completed an SUD assessment
5. Number of people admitted to SUD treatment this month
6. Number of people who initiated MAT treatment this month
7. Number of people with non-treatment identified needs who were provided access to services (e.g. syringe exchange, medical, food, clothing, etc.).

VI. Flex Funding

Flexible funding provided in this contract fluctuates based on availability and is provided by the Behavioral Health Program Fund. Flex funds must follow the Guidelines established by the County and be reported on the spreadsheet provided by the County (Exhibit D) and signed by an authorized agency signatory. In addition, all Flex Funds must be accompanied by receipts.

EXHIBIT "B"
(COMPENSATION)

I. Budget and Source of Funding: Funding for this contract is not to exceed \$120,776. Funding is provided by the North Sound Behavioral Health Administrative Services Organization Substance Abuse Block Grant, CFDA # 93.959 and the Behavioral Health Program Fund. Subcontractor shall protect, defend, indemnify, and hold harmless North Sound BH-ASO its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that North Sound BH-ASO is a third-party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph. The budget for this work is as follows:

Cost Description*	Documents Required Each Invoice	Budget
Personnel – 1 Outreach Worker (O/SUD)	Expanded GL report for the period	\$47,480
Direct Supervision		\$10,500
Benefits (50%)**		\$29,170
Travel/Training	Ground transportation, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. Mileage log to include name of traveler, dates, start and end point, and purpose. Reimbursement will be at the federal rate (www.gsa.gov). Reimbursement requests for professional development, training, and allowable travel must include name of staff member, dates of travel, travel starting point and destination, and a brief description of purpose. Receipts for registration fees or other documentation of professional training expenses. Lodging and meal costs for training are not to exceed the U.S. General Services Administration Domestic Per Diem Rates (www.gsa.gov), specific to location. Receipts for meals are not required.	\$5,440
Direct Program Space Costs	GL Detail	\$3,376
Communications		\$360
Other Costs & Supplies		\$400
Consultant (\$71.00/hour)	Expanded GL Report for the period (BH)	\$7,000
Flex Funds	Flex Fund spreadsheet plus copies of receipts (BH)	\$750
Subtotal		\$107,836
**Indirect Costs @ 12%		\$12,940
TOTAL		\$120,776

*The Contractor may transfer funds between budget line items in an amount up to 10% of the total budget.

**In no instance will the indirect cost rate or the benefits rate exceed the current federally approved rate.

II. Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include the items identified in the table above.

2. The Contractor shall submit invoices to (include contract/PO #) HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

EXHIBIT "D"
WHATCOM COUNTY FLEX FUNDS GUIDELINES

"Flex funds" are funds that may be used at the discretion of the Contractor, following the policies described below, to purchase goods or services directly related to the service needs of the Contractor's clients, when no other funding source is available. **Such goods or services must be reasonable and necessary to meet a client's emergent service needs or contribute to the stabilization or self-sufficiency of the client.**

Allowable Costs: Allowable uses of client-specific expenditures of flex funds include the following:

- Clothing
- Food
- Housing/rental assistance
- Bus passes or taxi fare
- Car repairs
- Driver's license or ID card fees
- Educational or training program registration fees
- Household supplies, including furniture
- Medications
- Health care
- Other, as approved by Whatcom County

Limitations: Flex fund expenditures must be within the allowable criteria established by the County, as identified above, must be based upon the service needs as documented in the client's individual service plan, and must have no other funding available from any other source. Flex funds distributed to any one client cannot exceed \$500 per year, except with written authorization from the County. No flex fund disbursements are to be made directly to the client but rather will be made on behalf of a client.

Documentation: Requests for reimbursement of flex funds must include the attached form including the following:

1. The person or organization funds were paid to.
2. Date of transaction.
3. A list of the goods and/or services purchased.
4. The cost of the goods and/or services purchased.
5. The initials of the client and/or unique identifying number of the client for whom the goods and/or services were purchased.
6. The total amount of flex funds distributed to the client during the year.
7. The service need addressed by the expenditure.
8. Accompanying invoices and/or receipts.
9. Evidence of administrative review of expenditures

See Attached Form

Contractor:			Contract:			Period:		
Whatcom County Health Department Flex Fund Documentation								
Paid To *	Date	Cost	Goods/Services Purchased	Client ID	Total \$ To Client this Year	Service Need	No Other Funding Available	Administrative Review

*ATTACH RECEIPTS FOR EACH PURCHASE



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-302

File ID:	AB2021-302	Version:	1	Status:	Agenda Ready
File Created:	05/18/2021	Entered by:	SMock@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an agreement between Whatcom County and the County Road Administrative Board (CRAB) in order to receive Rural Arterial Preservation grant funding for the Birch Bay/Lynden Road Pavement Rehabilitation project in the amount of \$510,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attached Memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Agreement

Jon Hutchings
Director



James P. Karcher, P. E.
County Engineer
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

MEMORANDUM

To: The Honorable Satpal Singh Sidhu, Whatcom County Executive, and
Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director *JH*

From: James P. Karcher, P.E., County Engineer *gpk*
Doug Burghart, Interim Engineering Manager *DB*

Date: May 17, 2021

Re: Birch Bay Lynden Road Pavement Rehabilitation;
CRP No. 919018
Rural Arterial Program (RAP) Funding Contracts-Amendment No. 1
RAP No. 3719-02

Enclosed for your review and signature are three (3) originals of a contract between the County Road Administration Board (CRAB) and Whatcom County.

Requested Action

Public Works respectfully requests that the County Council authorize the County Executive to enter into Amendment Number 1 with CRAB in order to receive additional RAP grant funding for the Birch Bay Lynden Road Pavement Rehabilitation project.

Please return **all three (3)** originals of the Amendment Number 1-RAP Agreements to our office for further processing. We will return one (1) fully executed original to you once they are signed by CRAB.

Project Background

This agreement allows Rural Arterial Trust Account (RATA) funds to be used for the design and construction of the Birch Bay Lynden Road Pavement Rehabilitation project (from Enterprise Road to Rathbone Road).

Funding Amount and Source

Whatcom County has been awarded an additional **\$510,000** in RATA funds for a total of **\$675,000** for this project. Total anticipated project costs (design and construction) will be approximately **\$1,150,000** resulting in a local contribution of approximately \$475,000 coming from the Road Fund. This project is listed No. 5 on the 2021 Annual Construction Program. It is anticipated for construction in 2021.

Please contact Cody Swan at extension 6265 if you have any questions or concerns regarding the terms of this agreement.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Public Works - Engineering
Division/Program: (i.e. Dept. Division and Program)	905900 / Construction
Contract or Grant Administrator:	Doug Burghart, Interim Engineering Manager
Contractor's / Agency Name:	County Road Administration Board (CRAB)
<p>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p>Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: <u>201905010</u></p>	
<p>Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p>	
<p>Is this a grant agreement?</p> <p>Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): <u>RAP No 3719-02</u> CFDA#: _____</p>	
<p>Is this contract grant funded?</p> <p>Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____</p>	
<p>Is this contract the result of a RFP or Bid process?</p> <p>Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: <u>CRP No's 919018</u></p>	
<p>Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.</p>	
<p>If YES, indicate exclusion(s) below:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Professional services agreement for certified/licensed professional. </div> <div style="width: 50%;"> <input type="checkbox"/> Contract work is for less than \$100,000. </div> <div style="width: 50%;"> <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). </div> <div style="width: 50%;"> <input type="checkbox"/> Contract work is for less than 120 days. </div> <div style="width: 50%;"> <input type="checkbox"/> Work related subcontract less than \$25,000. </div> <div style="width: 50%;"> <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). </div> <div style="width: 50%;"> <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. </div> </div>	
<p>Contract Amount:(sum of original contract amount and any prior amendments):</p> <p>\$ <u>165,000</u></p> <p>This Amendment Amount:</p> <p>\$ <u>510,000</u></p> <p>Total Amended Amount:</p> <p>\$ <u>675,000</u></p>	<p>Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
<p>Summary of Scope:</p>	
<p>Whatcom County has been awarded an additional \$510,000 for a total of \$675,000 in Rural Arterial Trust Account (RATA) Funds by the Washington State County Road Administration Board through an amendment to a grant from the Rural Arterial Program. Whatcom County will utilize these funds for the pavement rehabilitation of Birch Bay Lynden Road between Enterprise Road and Rathbone Road, a distance of approximately 2.1 miles in length.</p>	
Term of Contract: <u>N/A</u>	Expiration Date: <u>Upon Project Completion</u>

Contract Routing:	1. Prepared by: <u>C. Swan</u>	Date: <u>2021-05-17</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>5/17/2021</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>5/17/21</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

STATE OF WASHINGTON - COUNTY ROAD ADMINISTRATION BOARD
RURAL ARTERIAL PROGRAM
PROJECT AGREEMENT FOR CONSTRUCTION PROPOSAL

AMENDMENT NO. 1

Submitting County: Whatcom

Project Number: 3719-02

Date Approved: 04/25/2019

Road Number(s)	Road Name(s)	BMP(s)	EMP(s)	Segment #
21580	Birch Bay Lynden Road	7.920	9.950	1

This is Amendment No. 1 to the above described Project Agreement, between the County of Whatcom, hereinafter the "County" and the State of Washington County Road Administration Board, hereinafter the "CRABoard."

WHEREAS, the COUNTY and CRABoard desire to amend the original Project Agreement to allow an increase to authorized RATA funds under the conditions described in WAC 136-161-070.

NOW, THEREFORE, pursuant to chapter 36.79 RCW and in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. The following new language is added as section 15 to the Project Agreement:

Authorized RATA funding is increased to \$675,000 per CRABoard approval dated April 29, 2021.

2. All other terms and conditions of the original Project Agreement shall remain in full force and effect except as modified by this Amendment No. 1.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AMENDMENT No. 1 as of the PARTY's date last signed below.

COUNTY ROAD ADMINISTRATION BOARD:

Whatcom COUNTY:


By: _____

By: _____


Date: _____

Date: _____


The following security features exceed state mandates.

 Security Features	Document Appearance if Altered
Hidden Pantograph	<ul style="list-style-type: none"> The word "COPY" appears when copied.
Coin Reactive Ink	<ul style="list-style-type: none"> Ink changes color when rubbed with a coin.
Artificial Watermark	<ul style="list-style-type: none"> Special paper containing "watermarking".
Uniform Background Color: OFF WHITE	<ul style="list-style-type: none"> If someone tries to erase or copy, the consistent background color will look altered and will show the color of the underlying paper.
Microprinting	<ul style="list-style-type: none"> Frame around features list box is composed of type "SECURITYGUARDPLUSMICROPRINTINGFEATURE" and can be viewed with a magnifier.
Features List	<ul style="list-style-type: none"> Complete list of security features on the paper for compliance purposes.
Erasure Protection	<ul style="list-style-type: none"> Erase any of the signatures and the background will look altered.


The following security features exceed state mandates.

 Security Features	Document Appearance if Altered
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Erasure Protection	<ul style="list-style-type: none"> Erase any of the signatures and the background will look altered.

Birch Bay Lynden Rd, Enterprise Rd. to Rathbone Rd. Pavement Rehabilitation CRP # 919018

Construction Funding Year(s): 2021

Project Narrative:

This Birch Bay Lynden Road project is located between Enterprise Road and Rathbone Road in Sections 27 & 28 of T40N, R2E. The work will involve the pavement rehabilitation of approximately 2 miles of roadway. This project is listed as #R5 on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: This project received Rural Arterial Preservation Program (RAPP) grant funds of \$675,000. Design work has begun, with construction planned for 2021.

Total Estimated Project Cost: \$1,150,000

Expenditures to Date: \$14,400

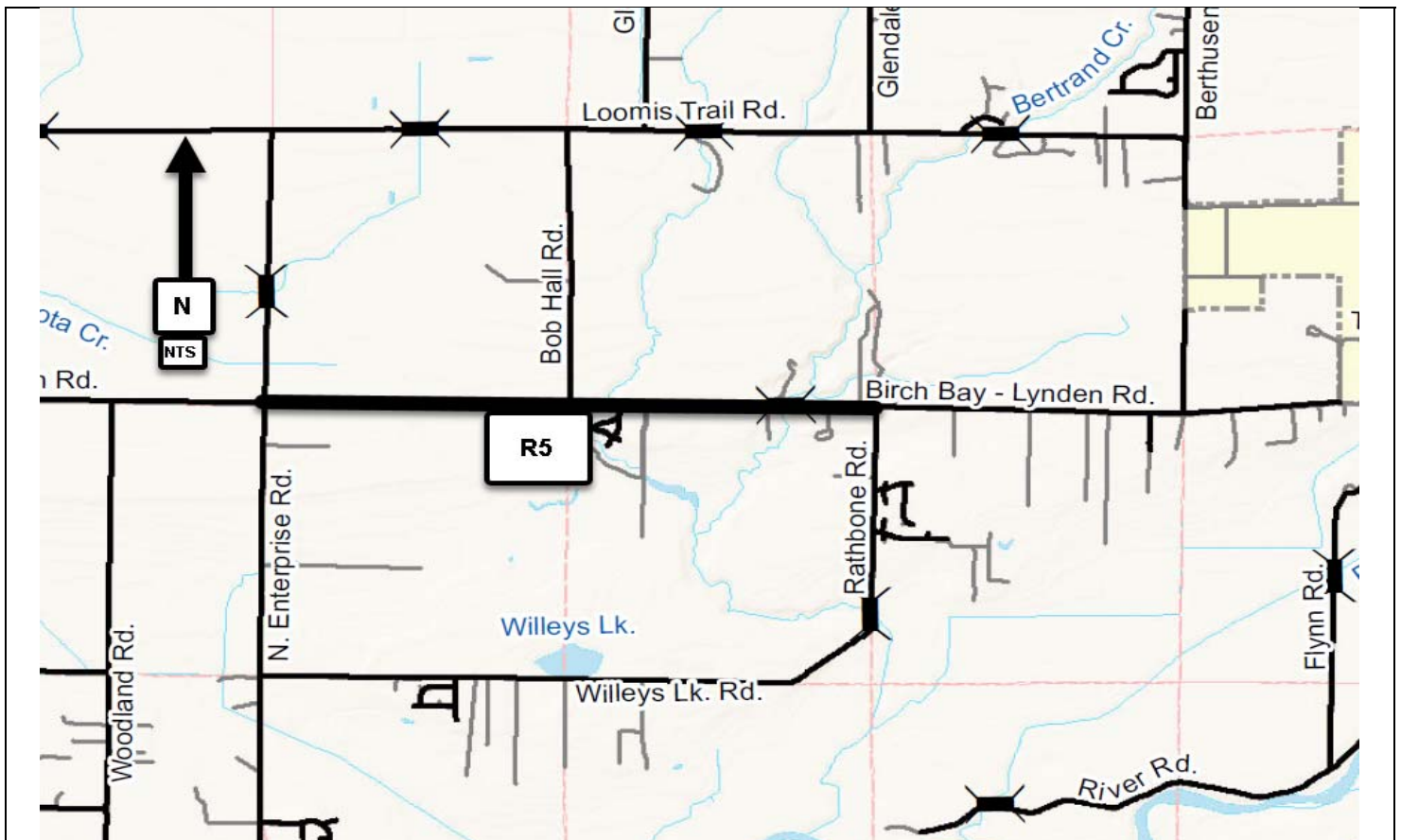
Funding Sources:

Federal	\$0
State	\$675,000 RATA funds
Local	\$475,000

Environmental Permitting SEPA

Right-of-Way Acquisition (Estimate) N/A

County Forces (Estimate) N/A





Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-313

File ID:	AB2021-313	Version:	1	Status:	Agenda Ready
File Created:	05/21/2021	Entered by:	ldevries@co.whatcom.wa.us		
Department:	Prosecuting Attorney's Office	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: vmartin@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and West Publishing for online database subscriptions in the amount of \$151,680.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The contract takes effect 9/30/2020, regardless of the signature date

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
<hr/>			

Attachments: Staff Memo, Proposed Contract

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

CRIMINAL DEPUTIES

David Graham
Melissa Stone
Kellen Kooistra
Benjamin Pratt
Gordon Jenkins
Kacie Emerick
Christina Garcia
Jesse Corkern
Evan Sterk
Nicole Meyer
Julia Monroe
Maggie Peach
Andrew Bogle

Eric J. Richey

Whatcom County Courthouse
311 Grand Avenue Suite 201
Bellingham, WA 98225-4079
(360) 778-5710 /Main Office FAX (360) 778-5711

CHIEF CIVIL DEPUTY

Karen Frakes

CIVIL DEPUTIES

Royce Buckingham
Christopher Quinn
George Roche
Brandon Waldron

CIVIL SUPPORT

ENFORCEMENT DEPUTIES

Janelle Wilson/Lead
Dionne Clasen

APPELLATE DEPUTIES

Kimberly Thulin
Hilary Thomas

ADMINISTRATOR

Vanessa Martin

MEMO TO: Satpal Sidhu, Executive

FROM: Vanessa Martin, Administrative Manager

DATE: May 21, 2021

RE: West subscription contract for the Prosecuting Attorney's Office.

Enclosed is the new contract between the Whatcom County Prosecutor's Office and West Publishing for your review and approval.

Background and Purpose

This is a 3-year sole source subscription contract with West Publications for online database subscriptions. This contract is based on approved budget allowances from the 2021 budget for Prosecuting Attorney's Office. The contract expires September 30, 2023.

Funding Amount and Source

The funding amount is \$4130 per month, with a 2 percent increase cap in year 2 and in year 3. The source of funding is generated by the Prosecuting Attorney's Office. This contract is now a 3-year agreement and expires on September 30, 2023.

Should you have any questions, please feel free to contact me.

Thank you kindly.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Whatcom County Prosecuting Attorney's Office								
Division/Program: <i>(i.e. Dept. Division and Program)</i>	6510 Prosecuting Attorney Admin								
Contract or Grant Administrator:	Vanessa Martin								
Contractor's / Agency Name:	West Publishing								
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>									
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____									
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____									
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)									
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____									
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____									
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 2600									
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.									
If YES, indicate exclusion(s) below: <table style="width:100%; border:none;"> <tr> <td><input type="checkbox"/> Professional services agreement for certified/licensed professional.</td> <td><input type="checkbox"/> Goods and services provided due to an emergency</td> </tr> <tr> <td><input checked="" type="checkbox"/> Contract work is for less than \$100,000.</td> <td><input checked="" type="checkbox"/> Contract for Commercial off the shelf items (COTS).</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than 120 days.</td> <td><input type="checkbox"/> Work related subcontract less than \$25,000.</td> </tr> <tr> <td><input type="checkbox"/> Interlocal Agreement (between Governments).</td> <td><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</td> </tr> </table>		<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency	<input checked="" type="checkbox"/> Contract work is for less than \$100,000.	<input checked="" type="checkbox"/> Contract for Commercial off the shelf items (COTS).	<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.	<input type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
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<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.								
<input type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.								
Contract Amount:(sum of original contract amount and any prior amendments): \$ 151,680.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 								
Summary of Scope: _____									
This is a 3-year sole source subscription contract with West Publications for online database subscriptions.									
Term of Contract: 3 Years	Expiration Date: 09/30/2023								

Contract Routing:	1. Prepared by: LD _____	Date: 05/19/21
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____



THOMSON REUTERS™

Order Form**Order ID: Q-00885830**

Contact your representative cody.miller@thomsonreuters.com with any questions. Thank you.

Account Address

Account #: 1000815803
WHATCOM COUNTY PROSECUTOR
COURTHOUSE
311 GRAND AVE STE 201
BELLINGHAM WA 98225-4038 US

Shipping Address

Account #: 1000815803
WHATCOM COUNTY PROSECUTOR
COURTHOUSE
311 GRAND AVE STE 201
BELLINGHAM WA 98225-4038 US

Billing Address

Account #: 1000815803
WHATCOM COUNTY PROSECUTOR
COURTHOUSE
311 GRAND AVE STE 201
BELLINGHAM, WA 98225-4038 US

This Order Form is a legal document between West Publishing Corporation and Subscriber. West Publishing Corporation also means "West", "we" or "our" and Subscriber means "you", or "I". Subscription terms, if any, follow the ordering grids below.

ProFlex Products

See Attachment for details

Service Material	Product	Monthly Charges	Minimum Term (Months)	Year Over Year Increase During Minimum Term
40757482	WEST PROFLEX	\$4,130.35	36	2%

ProFlex Bridge

Service Material	Product	Bridge Monthly Charges	Bridge Term (Months)
40757482	WEST PROFLEX	\$3,754.88	1

Bridge Terms

Bridge Monthly Charges begin on the date we process your order and will be prorated for the number of days remaining in the calendar month, if any. The Bridge Monthly charges will continue for the number of complete calendar months listed in the Bridge Term column above. At the end of the Bridge Term, your Monthly Charges and the Minimum Term will be as described in the Product grid above. All other terms and conditions of the Order Form remain unchanged.

Minimum Terms

Online/ Practice Solution/Software/ProFlex Products : Monthly Charges begin on the date we process your order and will be prorated for the number of days remaining in that calendar month, if any. Your Monthly Charges will continue for the number of complete calendar months listed in the Minimum Term column above. The percent increases for multi-year orders appear in the Term Increases column above. Subscriber ("you" or "I") is also responsible for all Excluded Charges. Excluded Charges are for accessing Westlaw data or a Practice Solutions service that is not included in your subscription. Excluded Charges may change after at least 30 days written or online notice.

For Window Products: Monthly Charges begin on the date we process your order and will continue for the number of complete calendar months in the Minimum Term column above. The percent increases for multi-year orders appear in the Term Increases column above. Monthly Charges are due regardless of the level of your usage. Transactional usage charges that exceed the Monthly Charges are waived up to the Monthly Window amount stated above. In addition to the Monthly Charges you are responsible for transactional usage charges in excess of the Monthly Window. Transactional charges are calculated based upon our then-current Schedule A rates. You are also responsible for all Excluded Charges. Excluded Charges are charges for accessing a service that is not included in your subscription. Excluded Charges may change after at least 30 days written or online notice.

To apply Window charges to a specific month, the request must be submitted at least five (5) business days prior to the end of the month.

Post Minimum Terms

For Online/Practice Solutions/Software /ProFlex Products: At the end of the Minimum Term your Monthly Charges will increase by 7%. Thereafter, the Monthly Charges will increase every 12 months unless we notify you of a different rate at least 90 days before the annual increase. You are also responsible for all Excluded Charges. Excluded Charges may change after at least 30 days written or online notice. Either of us may cancel the Post-Minimum Term subscription by sending at least 60 days written notice. Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan, MN 55123-1803.

Automatic Renewal Term for Window Products. At the end of the Minimum Term your Monthly Charges will be billed at up to our then-current rate. Thereafter, we may modify the Monthly Charges if we notify you of a different rate with at least 90 days notice. The Monthly Window will remain unchanged. You are also responsible for all Excluded Charges. Excluded Charges may change after 30 days written or online notice. Either of us may cancel the Post-Minimum Term subscription by sending at least 60 days written notice. Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan MN 55123-1803.

To apply Window charges to a specific month, the request must be submitted at least five (5) business days prior to the end of the month.

Federal Government Subscribers Optional Minimum Term. Federal government subscribers that chose a multi-year Minimum Term, those additional months will be implemented at your option pursuant to federal law.

Miscellaneous

Charges, Payments & Taxes. You agree to pay all charges in full within 30 days of the date of invoice. You are responsible for any applicable sales, use, value added tax (VAT), etc. unless you are tax exempt. If you are a non-government subscriber and fail to pay your invoiced charges, you are responsible for collection costs including attorneys' fees.

eBilling Contact. All invoices for this account will be emailed to your e-Billing Contact(s) unless you have notified us that you would like to be exempt from e-Billing.

Credit Verification. If you are applying for credit as an individual, we may request a consumer credit report to determine your creditworthiness. If we obtain a consumer credit report, you may request the name, address and telephone number of the agency that supplied the credit report. If you are applying for credit on behalf of a business, we may request a current business financial statement from you to consider your request.

Returns and Refunds. You may return a print product to us within 45 days of the original shipment date if you are not completely satisfied. Assured Print Pricing, Library Savings Plan, West Complete, Library Maintenance Agreements, ePack, WestPack, Westlaw, CLEAR, Monitor Suite, ProView eBook, Software, West LegalEdcenter, Practice Solutions, TREWS, Peer Monitor and Data Privacy Advisor charges are not refundable. Please see <http://static.legalsolutions.thomsonreuters.com/static/returns-refunds.pdf> or contact Customer Service at 1-800-328-4880 for additional details regarding our policies on returns and refunds.

Applicable Law. If you are a state or local governmental entity, your state's law will apply and any claim may be brought in the state or federal courts located in your state. This Order Form will be interpreted under Minnesota state law and any claim by one of us may be brought in the state or federal courts in Minnesota. If you are a United States Federal Government subscriber, United States federal law will apply and any claim may be brought in any federal court.

Banded Product Subscriptions You certify the total number of attorneys (partners, shareholders, associates, contract or staff attorneys, of counsel, and the like), corporate users, personnel or full-time-equivalent students is indicated in the applicable Quantity column. Our pricing for banded products is made in reliance upon your certification. If we learn that the actual number is greater or increases at any time during the Term, we reserve the right to increase your charges as applicable.

Excluded Charges. If you access services that are not included in your subscription you will be charged our then-current rate ("Excluded Charges"). Excluded Charges will be invoiced and due with your next payment. For your reference, the current Excluded Charges schedules are located at the links below. Excluded Charges may change after at least 30 days written or online notice.

<http://static.legalsolutions.thomsonreuters.com/static/agreement/plan-2-pro-govt-agencies.pdf>

<https://static.legalsolutions.thomsonreuters.com/static/agreement/schedule-a-concourse-firm-central-caselogistix.pdf>

Renewal Order Governing Agreement. Access to any new or renewal products set forth in this Order Form is governed by the same terms and conditions as your previous order form that contained the product(s) you are renewing.

Thomson Reuters General Terms and Conditions, apply to all products ordered, except print and is located at <https://static.legalsolutions.thomsonreuters.com/static/ThomsonReuters-General-Terms-Conditions.pdf>. In the event that there is a conflict of terms between the General Terms and Conditions and this Order Form, the terms of this Order Form control. This Order Form is subject to our approval.

Thomson Reuters General Terms and Conditions for Federal Subscribers is located at <https://static.legalsolutions.thomsonreuters.com/static/Federal-ThomsonReuters-General-Terms-Conditions.pdf>. In the event that there is a conflict of terms between the General Terms and Conditions and this Order Form, the terms of this Order Form control. This Order Form is subject to our approval.

Product Specific Terms. The following products have specific terms which are incorporated by reference and made part of this Order Form if they apply to your order. They can be found at <https://static.legalsolutions.thomsonreuters.com/static/ThomsonReuters-General-Terms-Conditions-PST.pdf>. If the product is not part of your order, the product specific terms do not apply. If there is a conflict between product specific terms and the Order Form, the product specific terms control.

- Campus Research
- Contract Express
- Hosted Practice Solutions
- ProView eBooks
- Time and Billing
- West km Software
- West LegalEdcenter
- Westlaw
- Westlaw Doc & Form Builder
- Westlaw Paralegal
- Westlaw Patron Access
- Westlaw Public Records

Additional Order Form Terms and Conditions

Government Non Availability of Funds for Online, Practice Solutions or Software Products

You may cancel a product or service with at least 60 days written notice if you do not receive sufficient appropriation of funds. Your notice must include an official document, (e.g., executive order, an officially printed budget or other official government communication) certifying the non-availability of funds. You will be invoiced for all charges incurred up to the effective date of the cancellation.

Acknowledgement: Order ID: Q-00885830

Signature of Authorized Representative for order

Title

Printed Name

Date

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This Order Form will expire and will not be accepted after 10/27/2020.



THOMSON REUTERS™

Attachment**Order ID: Q-00885830**Contact your representative cody.miller@thomsonreuters.com with any questions. Thank you.**Payment, Shipping, and Contact Information****Payment Method:**

Payment Method: Bill to Account

Account Number: 1000815803

Order Confirmation Contact (#28)

Contact Name: Martin, Vanessa

Email: vmartin@co.whatcom.wa.us

Shipping Information:

Shipping Method: Ground Shipping - U.S. Only

ProFlex Multiple Location Details			
Account Number	Account Name	Account Address	Action
1000815803	WHATCOM COUNTY PROSECUTOR	311 GRAND AVE STE 201 BELLINGHAM WA 98225-4038 US	New

ProFlex Product Details			
Quantity	Unit	Service Material #	Description
25	Attorneys	42077755	Gvt - Analytical Plus for Government
25	Attorneys	42086514	Gvt - PeopleMap Reports for Government on Westlaw
25	Attorneys	41988413	Gvt - West LegalEdcenter For Government (Westlaw PRO™)
25	Attorneys	41974282	Gvt Drafting Assistant For Government (Westlaw PRO™)
25	Attorneys	42510228	Gvt - Westlaw Edge™ National Primary

Account Contacts			
Account Contact First Name	Account Contact Last Name	Account Contact Email Address	Account Contact Customer Type Description
Vanessa	Martin	vmartin@co.whatcom.wa.us	EML PSWD CONTACT

Lapsed Products	
Sub Material	Active Subscription to be Lapsed
40757481	West Proflex



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-315

File ID:	AB2021-315	Version:	1	Status:	Agenda Ready
File Created:	05/21/2021	Entered by:	SBatdorf@co.whatcom.wa.us		
Department:	Parks and Recreation Department	File Type:	Agreement		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: sbatdorf@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to purchase a Conservation Easement from the City of Lynden for Glenning Park, in the amount of \$250,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This Conservation Easement will assist the City in their acquisition of the Glenning Park property and ensure the continued use of this site for public park and recreation purposes.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Memorandum, Conservation Easement

WHATCOM COUNTY

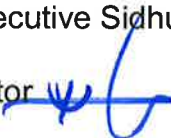
Parks & Recreation

3373 Mount Baker Highway
Bellingham, WA 98226-9097



Michael G. McFarlane, Director
Christ Thomsen, Operations Manager

MEMORANDUM

TO: Council Members and Executive Sidhu
FROM: Michael McFarlane, Director 
DATE: May 21st, 2021
RE: Glenning Park Conservation Easement

I am requesting approval of and authorization for the County Executive to purchase a Conservation Easement from the City of Lynden for Glenning Park in the amount of \$250,000.

The easement will assist the City in completing the transaction for the acquisition of this property and ensure the continued use of this site for public park and recreation purposes.

Funding for this transaction from the Conservation Futures Fund was approved by County Council on February 23, 2021 ORD 2021-008.

Thank you

When Recorded Return to:
Director
City of Lynden Parks Dept.
8770 Bender Rd.
Lynden WA 98264
Phone: (360) 354-6717

DOCUMENT TITLE: GLENNING PARK (CITY OF LYNDEN) CONSERVATION EASEMENT

GRANTOR: THE CITY OF LYNDEN

GRANTEE: WHATCOM COUNTY

ABBREVIATED LEGAL DESCRIPTION:

**Lots 1-10, Block 32, & Lots 1-10, Block 33, Plat of City of Lynden
(Ptn SE ¼ NW ¼ S20 T40N R03E and SW ¼ NW ¼ S20 T40N R03E)**

ASSESSOR'S TAX PARCEL NUMBERS: 400320 142393 0000

GLENNING PARK (CITY OF LYNDEN) CONSERVATION EASEMENT

- 1. Parties/Instrument.** The CITY OF LYNDEN ("Grantor") and WHATCOM COUNTY ("Grantee") as the parties to a Conservation Easement ("Easement"). The City and County hereinafter collectively referred to as the "Parties."
- 2. Facts and Objectives/Recitals.**
 - 2.1. The Grantor is owner of that certain real property situated in Whatcom County, Washington, known as Glenning Park ("Protected Property"), the legal description of which is attached as Exhibit A and incorporated herein by this reference.
 - 2.2. The Grantor and Grantee are both political subdivisions of the State of Washington.

- 2.3. The Protected Property is a 4-acre parcel of land located in the Lynden city limits. The Protected Property is centrally located and situated within an established residential neighborhood. The Protected Property includes two existing basketball courts and four baseball fields and otherwise remains mostly undeveloped. Its continued availability as a public park is of great value to City and County residents and would enhance current recreational activities in the area.
- 2.4. Based on the Protected Property's value to the public, the Grantee has identified the Protected Property as public land within Whatcom County that is properly preserved under RCW 84.34.240 (Acquisition of open space-Conservation futures fund) and Chapter 3.25 (Conservation Futures Property Tax Levy and Fund) of the Whatcom County Code.
- 2.5. RCW 39.33.010 authorizes political subdivisions of the State of Washington to sell, transfer, exchange or otherwise dispose of property or property rights to other State political subdivisions, on such terms and decisions as may be mutually agreed upon.
- 2.6. To preserve and maintain the nature of the Protected Property, the Grantee seeks to purchase a non-possessory property interest in the Protected Property from the Grantor.
- 2.7. The Parties' intent and purpose ("Purpose") of this transaction is to maintain the Protected Property in perpetuity as open space and to require that it be preserved, maintained and protected as such in perpetuity.
- 2.8. For purposes of this Easement the term "open space" or "open space land" shall mean: any land area, the preservation of which in its present use does enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or does enhance recreational activities.

3. Purpose

It is the purpose of this Conservation Easement to assure that the Protected Property will be preserved forever as open space for public use and access, and public recreational activities, and to prevent any use of the Protected Property that will significantly impair or interfere with its value as public open space and for recreation. Grantor intends that this Conservation Easement will confine the use of and activity on the Protected Property to such uses and activities that are consistent with the purpose described above herein.

4. Conveyance and Consideration

- 4.1 For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Conservation Easement Deed, and in consideration of payment of \$250,000.00 from Grantee to Grantor, the receipt of

which is acknowledged, Grantor hereby grants, conveys and warrants to Grantee a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Conservation Easement Deed, subject only to the restrictions contained in this Conservation Easement Deed.

- 4.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Conservation Easement Deed and to title matters of record as of the date of this Conservation Easement Deed.
- 4.3 Grantor expressly intends that this Conservation Easement run with the land and that this Conservation Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

5. Prohibited Uses and Activities

- 5.1 General: Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Conservation Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Conservation Easement and shall be prohibited;
- 5.2 Subdivision and Development Rights: The legal or de facto division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited.
- 5.3 Construction: The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except those necessary and consistent with the use for public park and recreation purposes such as, but not limited to, restrooms, picnic shelters, playfields, grounds and sports courts, play structures and gardens.
- 5.4 Recreation: The following forms of recreation are prohibited on the Protected Property: golf courses; commercial use of motorized or mechanized recreational vehicles such as motorcycles, snowmobiles, and dune buggies; and commercial overnight camping. Other commercial public recreation uses may be allowed only pursuant to a commercial use permit approved by the City.
- 5.5 Erosion or Water Pollution: Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited, including the use of manure lagoons or disposal of wastewater in manners inconsistent with the terms of this Conservation Easement Deed.

- 5.6 Waste Disposal: Except as expressly permitted in Section V, the disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property is prohibited.
- 5.7 Commercial Signs: The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited; except to state the access conditions to and use of the Protected Property or in sponsorship of park or recreational activities.

6. Grant in Perpetuity.

- 6.1 This Easement shall run with the property in perpetuity and shall bind the Parties and their respective successors and assigns forever.
- 6.2 Subsequent Transfers. Grantor agrees to:
 - 6.2.1 Incorporate the terms of this Conservation Easement Deed by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest; and
 - 6.2.2 Describe this Conservation Easement Deed in and append it to any executory contract for the transfer of any interest in the Protected Property; and
 - 6.2.3 Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Conservation Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property; and
 - 6.2.4 Give written notice to Local Grantee of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Local Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.
- 6.3 The failure of Grantor to perform any act required by sub-section 6.2 herein shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way.

7. Rights of Grantee.

- 7.1. Should the Grantor, its successors or assigns, undertake any activity in violation of this Easement, the Grantee shall have the right to compel the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of restoration shall be borne by the Grantor or those of its successors or assigns against whom judgement is entered.
- 7.2 Any forbearance by the Grantee to exercise any rights under this agreement in the event of breach shall not be deemed to be a waiver of the Grantee's rights under this Easement.

8. Miscellaneous.

- 8.1. The terms "Grantor" and "Grantee," wherever used in this Easement, shall include the above-named City of Lynden and its successors and assigns, and the above-named Whatcom County and its successors and assigns.
- 8.2. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 8.3. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor to abate, correct, or restore any condition on the Protected Property resulting from activities and actions of prior owners of the Protected Property or from causes beyond the Grantor's control, including, without limitation, natural disasters such as fire, flood, storm, pest infestation or earth movement, or for acts of the public or of trespassers, or for any change resulting from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Party resulting from such causes.
- 8.4. This instrument sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between the Parties relating to this Easement and the Protected Party, all of which are merged herein.
- 8.5. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future by a court of competent jurisdiction, all remaining provisions shall remain in effect.
- 8.6. Notice to the Grantee shall be to the registered agent of the County, who until further notice shall be:

STATE OF WASHINGTON)

)ss.

COUNTY OF WHATCOM)

On this _____ day of _____, 2021, before me personally appeared Satpal Sidhu to me known to be the County Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington residing at _____.

My commission expires _____



Michael McFarlane, Director

APPROVED AS TO LEGAL FORM

Brandon Waloron APPROVED BY EMAIL
Senior Deputy Prosecuting Attorney 3.21.21

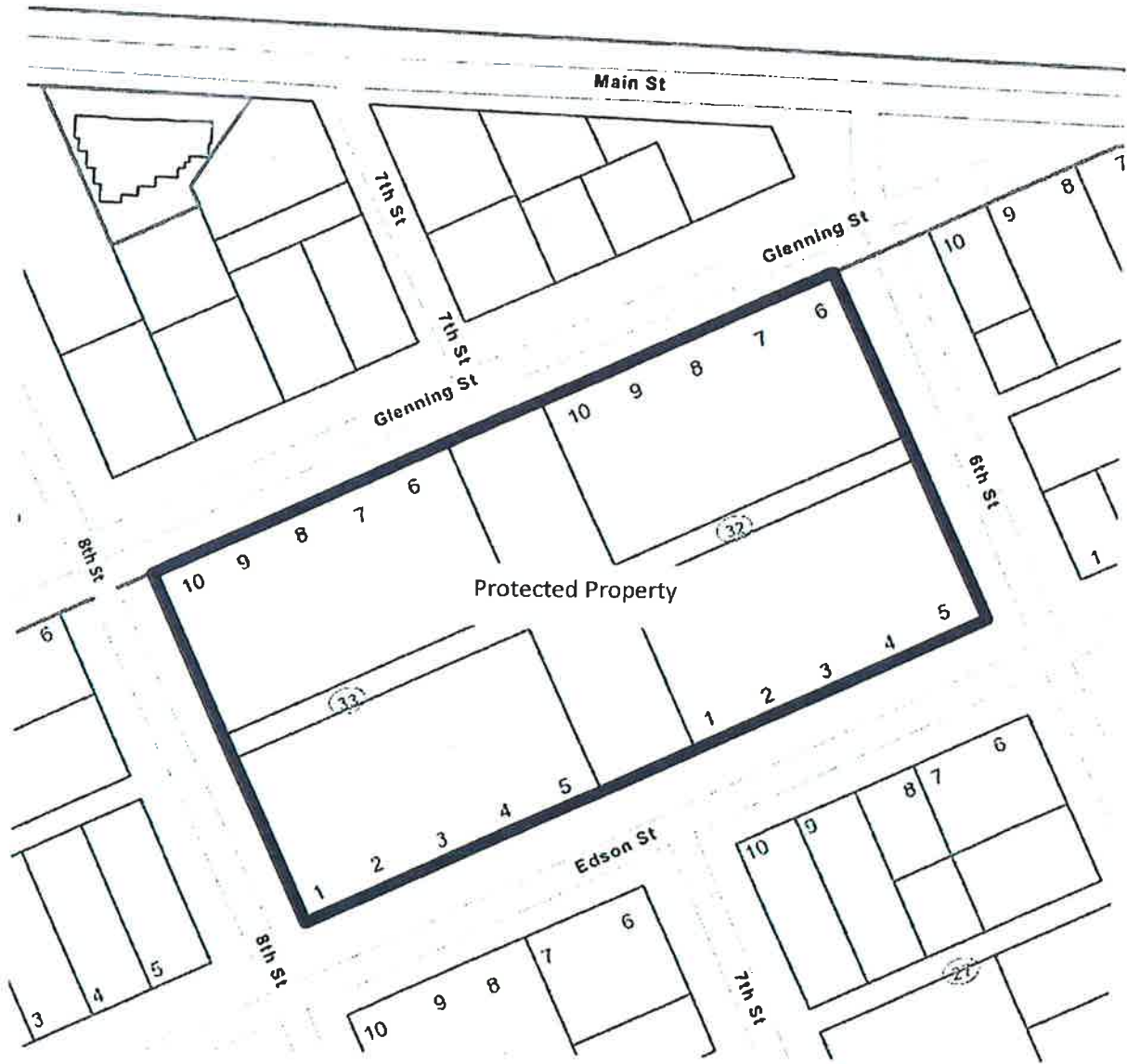
Exhibit A
Legal Description

LOTS 1 THROUGH 10, BLOCK 32, AND LOTS 1 THROUGH 10, BLOCK 33,
SUPPLEMENTAL AND CORRECTED PLAT OF LYNDEN, ACCORDING TO THE PLAT
THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 48, RECORDS OF WHATCOM
COUNTY, WASHINGTON.

TOGETHER WITH THOSE PORTIONS OF SEVENTH STREET, AND OF ALLEYS
WITHIN SAID BLOCKS AS VACATED UNDER TOWN OF LYNDEN ORDINANCE NO.
208, RECORDED AUGUST 3, 1925 UNDER AUDITOR'S FILE NO. 295877.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Exhibit B
Map of Protected Property





Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-316

File ID:	AB2021-316	Version:	1	Status:	Agenda Ready
File Created:	05/21/2021	Entered by:	SBatdorf@co.whatcom.wa.us		
Department:	Parks and Recreation Department	File Type:	Agreement		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: sbatdorf@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to purchase a Conservation and Public Access Easement from the Whatcom Land Trust for the Upper Skookum Creek property, in the amount of \$1,250,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This Conservation and Public Access Easement will assist the Land Trust in completing the acquisition of the Upper Skookum Creek property for conservation purposes.


HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Memorandum, Conservation Easement



MEMORANDUM

TO: Council Members and Executive Sidhu
FROM: Michael McFarlane, Director 
DATE: May 21st, 2021
RE: Upper Skookum Creek Conservation and Public Access Easement

I am requesting approval of and authorization for the County Executive to purchase a Conservation and Public Access Easement from the Whatcom Land Trust in the amount of \$1,250,000.

The easement will assist the Land Trust in completing the transaction for the acquisition of the 1,000-acre Upper Skookum Creek property for conservation purposes. Public access is included in the agreement.

Funding for this transaction will be from the Conservation Futures Fund and is pending Council approval of a companion budget supplement.

Thank you

When Recorded Return to:
Whatcom Land Trust
P.O. Box 6131
Bellingham, WA 98227

DOCUMENT TITLE: UPPER SKOOKUM CREEK CONSERVATION AND PUBLIC ACCESS EASEMENT

GRANTOR: WHATCOM LAND TRUST

GRANTEE: WHATCOM COUNTY

ABBREVIATED LEGAL DESCRIPTION: Ptn S1/2 Sec 17, Ptn S1/2 Sec 18, SW1/4 NW1/4, all in T37N, R6E, W.M.

ASSESSOR'S TAX PARCEL NUMBERS: ADD AFTER BLA IS FINISHED

UPPER SKOOKUM CREEK CONSERVATION AND PUBLIC ACCESS EASEMENT

- 1. Parties/Instrument.** The Grantor of this Conservation and Public Access Easement ("Easement") is WHATCOM LAND TRUST ("WLT") and the Grantee is WHATCOM COUNTY ("County"). WLT and the County are hereinafter collectively referred to as the "Parties."
- 2. Facts and Objectives/Recitals.**
 - 2.1. The WLT is owner of that certain real property situated in Whatcom County, Washington, known as Upper Skookum Creek ("Protected Property"), the legal description of which is attached as Exhibit A and incorporated herein by this reference.
 - 2.2. The Protected Property is a 1000-acre parcel of land located in Whatcom County. The property abuts 2.5 miles of Skookum Creek, a vital cold-water tributary to the South Fork Nooksack River, and, in combination with an earlier WLT acquisition, creates a 5-mile protected corridor along Skookum Creek from the confluence of the South Fork Nooksack River to the Arlecho Creek Old Growth Preserve. The public benefits associated with this property include addressing temperature and flow impairments in the South Fork Nooksack River, contributing to habitat improvements for Salmonids, protecting terrestrial wildlife habitat and migration corridor, sequestering carbon, and in a beautiful natural setting, providing 5.3 miles of non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing.

- 2.3. This Easement is created pursuant to RCW 64.04.130 and 84.34.210. This Easement is also created pursuant to the Internal Revenue Code of 1986, as amended at 26 U.S.C. sections 170(h) 2055, and 2522.
- 2.4. To preserve and maintain the nature of the Protected Property and provide non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing, the County seeks to purchase a non-possessory property interest in the Protected Property from WLT.

3. Purpose

The purpose of this Easement is to assure that the Protected Property will be preserved in perpetuity as open space to enhance and protect aquatic and terrestrial wildlife habitat, conserve the site's natural and scenic resources, protect water quality, sequester carbon, provide non-motorized public access along an existing forest roadway for hiking, biking, horseback riding, snowshoeing, and cross-country skiing and prevent any use of the Protected Property that will significantly impair or interfere with its value as undeveloped open space. WLT intends that this Easement will confine the use of and activity on the Protected Property to such uses and activities that are consistent with the purpose described above.

4. Conveyance and Consideration

- 4.1 For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$1,250,000.00 to WLT by the County, the receipt of which is acknowledged, WLT hereby grants to the County this Easement in perpetuity over the Protected Property.
- 4.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

5. Prohibited Uses and Activities

- 5.1 General: Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited.
- 5.2 Subdivision and Development Rights: The legal or de facto division, subdivision, platting, partitioning or planned unit development of the Protected Property is prohibited.

- 5.3 Construction: The placement or construction of any buildings, structures, or other improvements of any kind is prohibited, except those consistent with and that serve the purpose of this Easement as described in Section 3 above.
- 5.4 Recreation: All forms of recreation are prohibited, except non-motorized public access along an existing forest roadway and adjacent trails for hiking, biking, horseback riding, snowshoeing, and cross-country skiing.
- 5.5 Commercial Use: Any commercial use, including commercial signage, is prohibited, provided that activity to restore and enhance the health of the forest on the Protected Property that incidentally generates revenue used for stewardship of the Protected Property is not prohibited.

6. Grant in Perpetuity.

- 6.1 This Easement shall run with the property in perpetuity and shall bind the Parties and their respective successors and assigns forever.
- 6.2 Subsequent Transfers. WLT agrees to:
 - 6.2.1 Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest; and
 - 6.2.2 Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and
 - 6.2.3. Obtain a certificate from the purchaser, leaseholder or other party gaining an interest in all or part of the Protected Property and any financier, acknowledging their awareness of this Easement and their intent to comply with it. Such certificate shall be appended to and recorded with any deed or other legal instrument by which WLT divests itself of any interest in all or a portion of the Protected Property; and
 - 6.2.4. Give written notice to the County of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to the County shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.
- 6.3 The failure of WLT to perform any act required by sub-section 6.2 herein shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way.

7. Rights of the County.

- 7.1. Should WLT, its successors or assigns, undertake any activity in violation of this Easement, the County shall have the right to compel the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of restoration shall be borne by WLT or those of its successors or assigns against whom judgement is entered.
- 7.2 Any forbearance by the County to exercise any rights under this agreement in the event of breach shall not be deemed to be a waiver of the County's rights under this Easement.

8. Miscellaneous.

- 8.1. The terms "WLT" and "County," wherever used in this Easement, shall include the above-named Whatcom Land Trust and its successors and assigns, and the above-named Whatcom County and its successors and assigns.
- 8.2. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 8.3. Nothing contained in this Easement shall be construed to entitle the County to bring any action against WLT to abate, correct, or restore any condition on the Protected Property resulting from activities and actions of prior owners of the Protected Property or from causes beyond WLT's control, including, without limitation, natural disasters such as fire, flood, storm, pest infestation or earth movement, or for acts of the public or of trespassers, or for any change resulting from any prudent action taken by WLT under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Party resulting from such causes.
- 8.4. This Easement sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between the Parties relating to this Easement and the Protected Party, all of which are merged herein.
- 8.5. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future by a court of competent jurisdiction, all remaining provisions shall remain in effect.

- Director
Whatcom County Parks & Recreation Department
3373 Mount Baker Highway
Bellingham WA 98226
Phone: (360) 778-5850

- Stewardship Director
Whatcom Land Trust
P.O. Box 6131
Bellingham, WA 98227

Satpal Sidhu, County Executive

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 2021, before me personally appeared Satpal Sidhu to me known to be the County Executive of Whatcom County and who executed the above Easement and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington residing at _____.

My commission expires _____



Michael McFarlane, Director

APPROVED AS TO LEGAL FORM

Approved BY EMAIL BRANDON WALDRON

Senior Deputy Prosecuting Attorney *5-21-21*

Exhibit A
Legal Description

Exhibit B
Map of Property



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-293

File ID:	AB2021-293	Version:	1	Status:	Agenda Ready
File Created:	05/12/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Public Works & Health Committee			Final Action:	
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: jhutchin@co.whatcom.wa.us <mailto:jhutchin@co.whatcom.wa.us>

TITLE FOR AGENDA ITEM:

Report from the Public Works Department

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Quarterly report from the Public Works Department

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
<hr/>			
<hr/>			

Attachments:



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-219

File ID:	AB2020-219	Version:	1	Status:	Agenda Ready
File Created:	05/13/2020	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/19/2020	Council	DISCUSSED	
06/02/2020	Council	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/23/2020	Council Special Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
07/07/2020	Council Committee of the Whole	DISCUSSED	
07/21/2020	Council Committee of the Whole	DISCUSSED	
08/05/2020	Council Committee of the Whole	DISCUSSED	
09/15/2020	Council Committee of the Whole	DISCUSSED	
09/29/2020	Council Committee of the Whole	DISCUSSED	
10/13/2020	Council Committee of the Whole	DISCUSSED	
10/27/2020	Council Committee of the Whole	DISCUSSED	
11/10/2020	Council Committee of the Whole	DISCUSSED	
11/24/2020	Council Committee of the Whole	DISCUSSED	

12/08/2020	Council Committee of the Whole	DISCUSSED
01/12/2021	Council Committee of the Whole	DISCUSSED
01/26/2021	Council Committee of the Whole	DISCUSSED
02/09/2021	Council Committee of the Whole	DISCUSSED
02/23/2021	Council Committee of the Whole	DISCUSSED
03/09/2021	Council Committee of the Whole	DISCUSSED
03/23/2021	Council Committee of the Whole	DISCUSSED
04/06/2021	Council Committee of the Whole	DISCUSSED
04/20/2021	Council Committee of the Whole	DISCUSSED
05/04/2021	Council Committee of the Whole	DISCUSSED
05/18/2021	Council Committee of the Whole	DISCUSSED

Attachments:



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-317

File ID:	AB2021-317	Version:	1	Status:	Agenda Ready
File Created:	05/25/2021	Entered by:	MRouse@co.whatcom.wa.us		
Department:	Council Office	File Type:	Presentation		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Presentation regarding efforts to gather input from local stakeholders on the possible opening of a refugee resettlement office in Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments:



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-306

File ID:	AB2021-306	Version:	1	Status:	Agenda Ready
File Created:	05/20/2021	Entered by:	AHaines@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole	Final Action:			
Agenda Date:	06/01/2021	Enactment #:			

Primary Contact Email: tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion and update on the American Rescue Plan Act with Executive Sidhu

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

N/A

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments:



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-185

File ID:	AB2021-185	Version:	1	Status:	Held in Council (public testimony already received)
File Created:	03/16/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

At the request of the City of Blaine, this ordinance would establish a no shooting zone in the Drayton Harbor area of Whatcom County. The boundaries of the proposed zone are as follows: That portion of Sections 7 and 18, Township 40 North, Range 1 East and Sections 1, 2, 11, 12, and 13, Township 40 North, Range 1 West, W.M., Whatcom County, Washington described as follows: Beginning along Drayton Harbor Road (Co. Rd. No. 37) at the intersection of the ordinary high water mark of Drayton Harbor with the limits of the city of Blaine, Whatcom County, Washington; thence easterly along said ordinary high water mark to the intersection with the northerly face of an existing bridge over California Creek; thence easterly along said northerly bridge face to the intersection with said ordinary high water mark; thence northerly along said ordinary high water mark to the intersection with said city limits; thence along said city limits westerly, northerly and southerly to the point of beginning.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
--------------	---------------------	----------------	-----------------

05/04/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
05/18/2021	Council	HELD IN COUNCIL	Council

Attachments: Proposed Ordinance, Letter from Mayor of Blaine 4.14.2021, Drayton NSZ Department Comments, WDFW Drayton Harbor

ORDINANCE NO. _____

**AMENDING WHATCOM COUNTY CODE 9.32, UNLAWFUL DISCHARGE
OF FIREARMS, TO ESTABLISH A NO SHOOTING ZONE IN THE
DRAYTON HARBOR AREA OF WHATCOM COUNTY**

WHEREAS, pursuant to Whatcom County Code 9.32.050 the County Council may, upon its own initiative, pass a resolution declaring its intent to form a no shooting zone; and

WHEREAS, on July 23, 2019, the Council approved Resolution 2019-035, declaring its intent to conduct a public hearing to consider creating a no shooting zone in the Drayton Harbor area of Whatcom County, as proposed by the City of Blaine; and

WHEREAS, pursuant to Whatcom County Code 9.32.020 and RCW 36.32.120 the County Council has the authority and power to establish no shooting zones; and

WHEREAS, a "no shooting zone" is an area designated by the County Council in which the discharge of firearms is prohibited; and

WHEREAS, RCW 9.41.300 (2) specifically states that counties may enact laws and ordinances restricting the discharge of firearms in any portion of their respective jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; and

WHEREAS, according to the proposal submitted by the City of Blaine (see City of Blaine Resolution No. 1765-19, attached as Exhibit A to this resolution):

- It is difficult for members of the public to distinguish between incorporated and unincorporated areas, particularly on open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal;
- Citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents;
- Unincorporated portions of Drayton Harbor aquatic area, tidelands, and shoreline are within and adjacent to urban growth areas;
- Population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and in areas of unincorporated Whatcom County; and

WHEREAS, twenty-three other no shooting zones have been established throughout Whatcom County as a means to protect the public.

NOW THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new section of Whatcom County Code 9.32 shall be added to create a no-shooting zone in the Drayton Harbor area as outlined in Exhibit B to this ordinance.

BE IT FINALLY ORDAINED that Tribal members exercising treaty rights to hunt on traditional hunting grounds that are open and unclaimed are not subject to this ordinance.

ADOPTED this _____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Exhibit A
(Drayton Harbor No Shooting Zone – City of Blaine Resolution)

RESOLUTION NO. 1765-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON,
TO SEEK DESIGNATION OF ALL UNINCORPORATED PORTIONS OF DRAYTON
HARBOR AQUATIC AREA, TIDELANDS AND SHORELINE AS A NO SHOOTING
ZONE PURSUANT TO WHATCOM COUNTY CODE 9.32 .**

Whereas, portions of the Drayton Harbor aquatic area, tidelands and shoreline are within the city limits, and

Whereas, portions of Drayton Harbor aquatic area, tidelands and shoreline are within Whatcom County jurisdiction, and

Whereas, hunting and the discharge of firearms is prohibited in the city limits, and

Whereas, it is difficult for members of the public to distinguish between incorporated and unincorporated areas particularly on the open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal, and

Whereas, our citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents, and

Whereas, unincorporated portion of Drayton Harbor aquatic area, tidelands and shoreline are within and adjacent to urban growth areas, and

Whereas, population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and an areas or unincorporated Whatcom County,

Whereas, the Revised Code of Washington (RCW 36.32.120) provides Whatcom County authority to designate no shooting zones, and

Whereas, Whatcom County Code Section 9.32 "Unlawful Discharge of Firearms" designates twenty-two no shooting zones, most lying within and adjacent to cities, urban growth areas and other locations of higher density development,

Now therefore, the City Council of the City of Blaine hereby resolves to seek designation of all the aquatic areas and tidelands within Drayton Harbor located within Whatcom County as a no shooting zone pursuant to Whatcom County Code Section 9.32.

PASSED BY THE CITY COUNCIL OF BLAINE, WASHINGTON, on the 8th day of July, 2019, and approved by the Mayor on the same day.

CITY OF BLAINE, WASHINGTON



Bonnie Onyon, Mayor

ATTEST/AUTHENTICATE:



Samuel Crawford, City Clerk

Resolution 1765-19

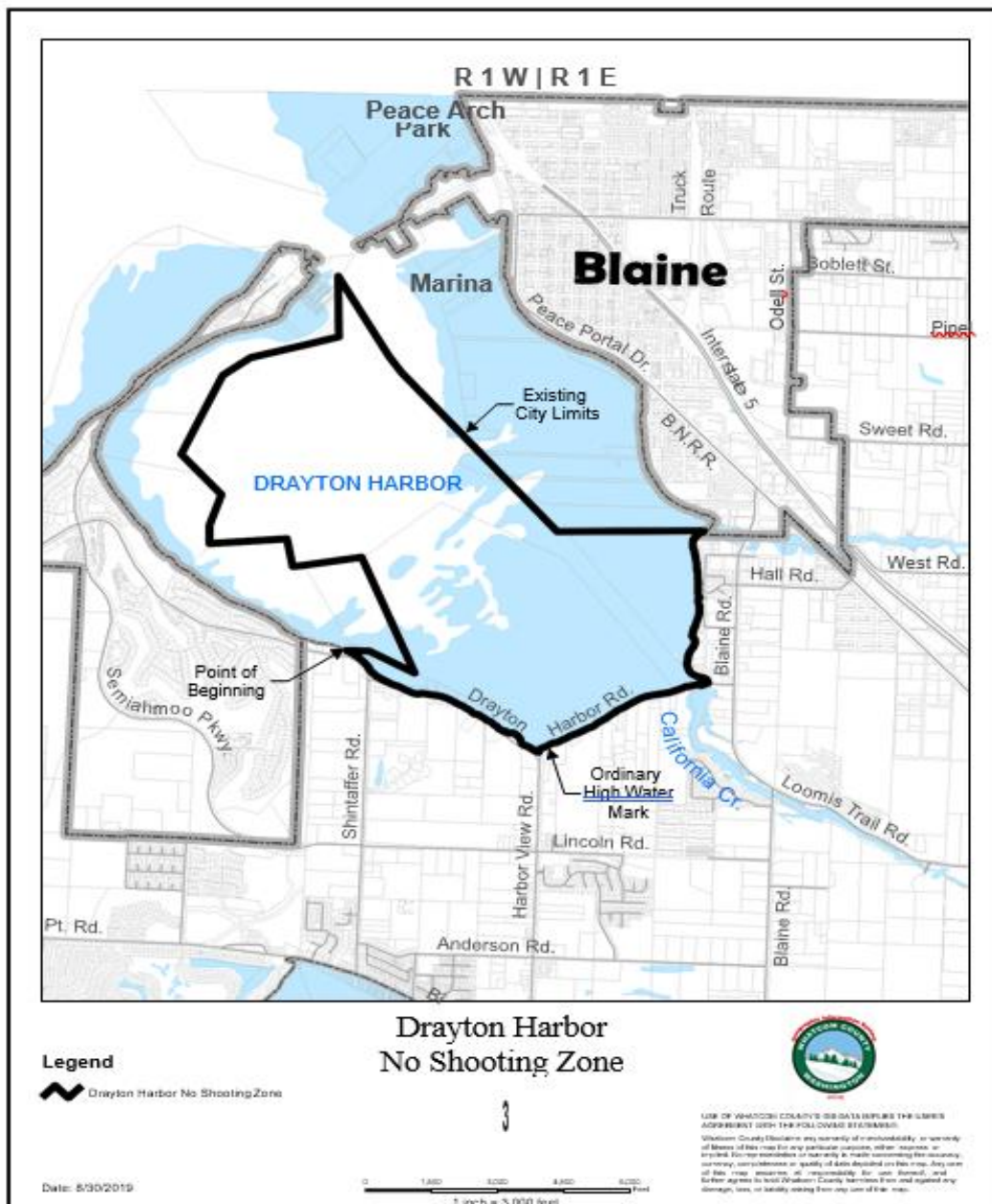
Page 1 of 1

Exhibit B
(Drayton Harbor No Shooting Zone)

9.32.350 No shooting zone number 24 established.

- A. No shooting zone number 24 is also known as the Drayton Harbor area.
- B. The boundaries are described as follows:

That portion of Sections 7 and 18, Township 40 North, Range 1 East and Sections 1, 2, 11, 12 and 13, Township 40 North, Range 1 West, W.M., Whatcom County, Washington described as follows: Beginning along Drayton Harbor Road (Co. Rd. No. 37) at the intersection of the ordinary high water mark of Drayton Harbor with the limits of the city of Blaine, Whatcom County, Washington; thence easterly along said ordinary high water mark to the intersection with the northerly face of an existing bridge over California Creek; thence easterly along said northerly bridge face to the intersection with said ordinary high water mark; thence northerly along said ordinary high water mark to the intersection with said city limits; thence along said city limits westerly, northerly and southerly to the point of beginning.





CITY OF BLAINE

CITY COUNCIL

435 MARTIN STREET, STE. 3000 • BLAINE, WA • 98230

PHONE: (360) 332-8311 • FAX: (360) 543-9978 • WEBSITE: www.cityofblaine.com

April 14, 2021

Subject: Proposed Drayton Harbor No Shooting Zone

Honorable Councilmembers:

This letter is submitted in support of the City of Blaine's request to establish a no shooting zone on the unincorporated areas of Drayton Harbor. On July 8, 2019 the Blaine City Council voted unanimously to adopt Resolution 1765-19 requesting the Whatcom County Council to establish a no shooting zone pursuant to Whatcom County Code 9.32.

The City has 5700 residents, many of whom live in the neighborhoods that ring the harbor. The Semiahmoo Uplands, the Semiahmoo Spit resort area, Downtown Blaine, the Salishan neighborhood and the Montfort Park neighborhood contain hundreds of homes and many businesses in close proximity to the harbor. The water and shores are the focus of much activity. With two marinas, several launch points for kayaks, canoes, and paddleboards, public beaches, parks and trails, the shoreline and harbor attract many visitors. Blaine is not a sparsely populated rural area, but is an active urban environment - and Drayton Harbor sits in the middle.

The Whatcom County Comprehensive Plan and the City of Blaine Comprehensive Plan identify Blaine as one of the fastest growing urban areas (UGA) for the 2016-2036 planning period. This planned growth is welcomed by the City, and we know that it will increase recreational pressure on the shoreline and water of Drayton Harbor. Due to past urban growth area planning decisions, portions of the harbor are in the City and portions are in the unincorporated County, with the unincorporated areas generally lying within and bounded by the areas within the city limits. The attached map illustrates the jurisdictional geography of the harbor.

This is an issue of public safety as there are many people who live on the shoreline, who recreate on the shore, and who recreate on the water. As the area becomes more urban, there is more pressure on the area for recreation. Kayakers and canoers do in fact use the harbor in the winter when the water is calm. Bird watchers frequent the area. Residents and visitors enjoy the beaches at all times of year. As the area becomes more urban, the interaction between the population and those who are shooting inevitably increases.

It is not just an issue of actual public safety, but also of perceived safety, or mental wellbeing. If people are concerned and fear for themselves and for their children, this has an adverse impact on their welfare. While some may have testified that this is a noise issue, let us assure you for us it is not. It is a real and perceived public safety issue.

This organization is an Equal Opportunity Provider

There are 22 other no shooting zones in the County, including Wiser Lake. Wiser Lake is an interesting example because there are similarities to Blaine's situation. There are homes surrounding the lake but at lower density and fewer people than we have living around Drayton Harbor. If the shooting restriction is good for Wiser Lake, why isn't it good for Drayton Harbor with an urban area surrounding it?

Over the years, the City has received numerous requests by citizens to stop the shooting on the harbor. These come in the form of direct contact to individual City councilmembers, letters to the editor, comment at Council meetings, calls to staff, and occasional calls for service to the Police Department. The city staff and the Council have only been able to reply that shooting is legal only in the county portion of the harbor (which is a surprise to most that the county has any jurisdiction at all), and that this is out of our hands. It is, however, in your hands, as county elected representatives for the citizens of Blaine. Another facet that makes this dual-jurisdiction area problematic is that, on the water, how can the hunters know where the 'boundary' line is?

There is also a matter of self-determination. In the past the City did not act to annex the entire harbor, and due to decisions made by the County to shrink the Blaine UGA, the City cannot take proactive steps to resolve the issue on our own. We require your help.

We are hoping you will understand the importance of this situation to our community and will agree that the time has come to establish a no shooting zone on Drayton Harbor. We would also ask for the same consideration for the Dearborn Avenue area, which is immediately adjacent to our city limits, is part of our UGA, and considered very much a part of the Blaine community.

Respectfully,



Bonnie Onyon,
Mayor

Attachments:
City of Blaine Resolution 1765-19
Map of Harbor

RESOLUTION NO. 1765-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON, TO SEEK DESIGNATION OF ALL UNINCORPORATED PORTIONS OF DRAYTON HARBOR AQUATIC AREA, TIDELANDS AND SHORELINE AS A NO SHOOTING ZONE PURSUANT TO WHATCOM COUNTY CODE 9.32 .

Whereas, portions of the Drayton Harbor aquatic area, tidelands and shoreline are within the city limits, and

Whereas, portions of Drayton Harbor aquatic area, tidelands and shoreline are within Whatcom County jurisdiction, and

Whereas, hunting and the discharge of firearms is prohibited in the city limits, and

Whereas, it is difficult for members of the public to distinguish between incorporated and unincorporated areas particularly on the open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal, and

Whereas, our citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents, and

Whereas, unincorporated portion of Drayton Harbor aquatic area, tidelands and shoreline are within and adjacent to urban growth areas, and

Whereas, population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and an areas or unincorporated Whatcom County,

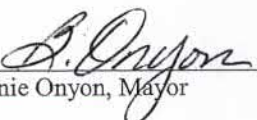
Whereas, the Revised Code of Washington (RCW 36.32.120) provides Whatcom County authority to designate no shooting zones, and

Whereas, Whatcom County Code Section 9.32 "Unlawful Discharge of Firearms" designates twenty-two no shooting zones, most lying within and adjacent to cities, urban growth areas and other locations of higher density development,

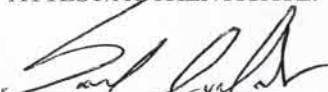
Now therefore, the City Council of the City of Blaine hereby resolves to seek designation of all the aquatic areas and tidelands within Drayton Harbor located within Whatcom County as a no shooting zone pursuant to Whatcom County Code Section 9.32.

PASSED BY THE CITY COUNCIL OF BLAINE, WASHINGTON, on the 8th day of July, 2019, and approved by the Mayor on the same day.

CITY OF BLAINE, WASHINGTON


Bonnie Onyon, Mayor

ATTEST/AUTHENTICATE:


Samuel Crawford, City Clerk



PROPOSED DRAYTON HARBOR NO SHOOTING ZONE ORDINANCE (CITY OF BLAINE PROPOSAL) - COMMENTS FROM WHATCOM COUNTY DEPARTMENTS

Per Whatcom County Code 9.32.060(B), the proposed ordinance to establish a no shooting zone in Drayton Harbor (City of Blaine proposal) was routed to the following County departments for comment: Prosecuting Attorney, Sheriff, Executive, Planning and Development Services, and Public Work.

As of today, May 10, 2021, the following comments have been received:

Public Works (Administration and Engineering): “We reviewed the ordinance. We have no objections, it is good to proceed from our end.”

Planning and Development Services: “PDS has no comments.”

Sheriff’s Department: “We have received few complaints about hunting/shooting over the years in the Drayton Harbor area.”



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

North Puget Sound • Region 4 • 16018 Mill Creek Blvd., Mill Creek, WA 98012-1296
Telephone: (425) 775-1311 • Fax: (425) 338-1066

May 5, 2021

Dear Whatcom County Council,

The Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on the proposed Non-Shooting Zone for Drayton and Dearborn Harbor. These areas are important recreational areas to the citizens of Washington and are co-managed by the Point Elliott Treaty Tribes and the WDFW.

WDFW regulates hunting and prioritizes public safety in establishment of hunting regulations throughout the State. The current hunting season in Drayton and Dearborn Harbors is very restricted for firearms and season length. The hunting seasons in these two areas run approximately October towards end of December for big game and towards end of January for waterfowl. WDFW Enforcement officers are the primary responders to hunting and public safety issues in these areas during the hunting seasons. Enforcement reports indicate little to no public safety issues.

According to the Revised Code of Washington 9A.41.030 (2)(a): (2) *Cities, towns, counties, and other municipalities may enact laws and ordinances: (a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized*; and according to the Whatcom County Code 9.32 Unlawful Discharge of Firearms: *the Council may initiate the creation of a non shooting zone if it would be in the best interest of public health, safety, and welfare* WDFW has not documented or responded to any incidents that fall into the above categories and would like to respectfully request any documented examples related to above examples collected by the following county departments: prosecutors office, sheriff's office, planning department, public works department and any other applicable departments. This data will allow state, Tribal, and local law enforcement officers to have a more robust discussion and brainstorm solutions.

WDFW is willing to work with local city and county departments to find solutions including education related to legal shooting hours, hunting boundaries, and other concerns from the community. WDFW looks forward to working with Whatcom County and the City of Blaine to continuing to provide recreational opportunities to the citizens of Washington and responding to public safety issues when they arise.

Please let me know if you have any questions or would like to discuss further,

Fenner Yarborough

Fenner Yarborough
Washington Department of Fish and Wildlife
Wildlife Regional Program Manager



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-186

File ID:	AB2021-186	Version:	1	Status:	Held in Council (public testimony already received)
File Created:	03/16/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: [Click here to enter text.](#)

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone to be known as the Dearborn No Shooting Zone

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

As requested through citizen petition, this ordinance would establish a no shooting zone in Whatcom County to be known as the Dearborn No Shooting Zone. The boundaries of the proposed zone are as follows: That portion of Section 7, Township 40 North, Range 1 East, W.M., Whatcom County, Washington described as beginning at the intersection of the south line of the Plat of Harbor Shores, as per the map thereof, recorded under Whatcom County Auditor's File No. 994985 with the west right of way margin of Blaine Road (Aka Sr 548); thence westerly along said south line of Harbor Shores to the intersection with the ordinary high water mark of Drayton Harbor; thence northerly along said ordinary high water mark to the intersection with the limits of the City Of Blaine, Whatcom County, Washington; thence easterly along said city limits to the intersection with said westerly right of way margin; thence southerly along said right of way margin to the point of beginning.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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05/04/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
05/18/2021	Council	HELD IN COUNCIL	Council

Attachments: Proposed Ordinance, Dearborn NSZ Department Comments, WDFW Drayton Harbor

ORDINANCE NO. _____

**AMENDING WHATCOM COUNTY CODE 9.32, UNLAWFUL DISCHARGE OF FIREARMS, TO
ESTABLISH A NO SHOOTING ZONE TO BE KNOWN AS THE
DEARBORN NO SHOOTING ZONE**

WHEREAS, a citizen has petitioned the Whatcom County Council for the formation of a no shooting zone to be known as the Dearborn No Shooting Zone; and

WHEREAS, as required by Whatcom County Code 9.32, the citizen submitted the following to the Council: Signatures of at least sixty percent of persons owning property within the proposed boundaries of the zone; a legal description of the proposed boundaries of the no shooting zone; a map showing the proposed boundaries; cover letter explaining the reasons petitioner would like the zone to be formed; a history of shooting violations in the area; and the name, address, and phone number(s) of a person who will act as liaison with the county council concerning the proposed zone; and

WHEREAS, on November 6, 2019, the Council approved Resolution 2019-054, acknowledging receipt of the citizen petition and declaring its intent to conduct a public hearing to consider establishing a no shooting zone to be known as the Dearborn No Shooting Zone; and

WHEREAS, pursuant to Whatcom County Code 9.32.020 and RCW 36.32.120 the County Council has the authority and power to establish no shooting zones; and

WHEREAS, a “no shooting zone” is an area designated by the County Council in which the discharge of firearms is prohibited; and

WHEREAS, RCW 9.41.300 (2) specifically states that counties may enact laws and ordinances restricting the discharge of firearms in any portion of their respective jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; and

WHEREAS, twenty three other “no shooting” zones have been established throughout Whatcom County as a means to protect the public.

NOW THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new section of Whatcom County Code 9.32 shall be added to create a no-shooting zone to be known as the Dearborn No Shooting Zone, as outlined in Exhibit A to this ordinance.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

EXHIBIT A

DEARBORN - NO SHOOTING ZONE DESCRIPTION

THAT PORTION OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., WHATCOM COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE PLAT OF HARBOR SHORES, AS PER THE MAP THEREOF, RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 994985 WITH THE WEST RIGHT OF WAY MARGIN OF BLAINE ROAD (AKA SR 548); THENCE WESTERLY ALONG SAID SOUTH LINE OF HARBOR SHORES TO THE INTERSECTION WITH THE ORDINARY HIGH WATER MARK OF DRAYTON HARBOR; THENCE NORTHERLY ALONG SAID ORDINARY HIGH WATER MARK TO THE INTERSECTION WITH THE LIMITS OF THE CITY OF BLAINE, WHATCOM COUNTY, WASHINGTON; THENCE EASTERLY ALONG SAID CITY LIMITS TO THE INTERSECTION WITH SAID WESTERLY RIGHT OF WAY MARGIN; THENCE SOUTHERLY ALONG SAID RIGHT OF WAY MARGIN TO THE POINT OF BEGINNING.



PROPOSED DEARBORN NO SHOOTING ZONE ORDINANCE (CITIZEN PROPOSED) - COMMENTS FROM WHATCOM COUNTY DEPARTMENTS

Per Whatcom County Code 9.32.060(B), the proposed ordinance to establish a no shooting zone to be known as the Dearborn No Shooting Zone (citizen proposed) was routed to the following County departments for comment: Prosecuting Attorney, Sheriff, Executive, Planning and Development Services, and Public Work.

As of today, May 10, 2021, the following comments have been received:

Public Works (Administration and Engineering): "We reviewed the ordinance. We have no objections, it is good to proceed from our end."

Planning and Development Services: "PDS has no comments."

Sheriff's Department: "We have received few complaints about hunting/shooting over the years in the Drayton Harbor area."



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

North Puget Sound • Region 4 • 16018 Mill Creek Blvd., Mill Creek, WA 98012-1296
Telephone: (425) 775-1311 • Fax: (425) 338-1066

May 5, 2021

Dear Whatcom County Council,

The Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on the proposed Non-Shooting Zone for Drayton and Dearborn Harbor. These areas are important recreational areas to the citizens of Washington and are co-managed by the Point Elliott Treaty Tribes and the WDFW.

WDFW regulates hunting and prioritizes public safety in establishment of hunting regulations throughout the State. The current hunting season in Drayton and Dearborn Harbors is very restricted for firearms and season length. The hunting seasons in these two areas run approximately October towards end of December for big game and towards end of January for waterfowl. WDFW Enforcement officers are the primary responders to hunting and public safety issues in these areas during the hunting seasons. Enforcement reports indicate little to no public safety issues.

According to the Revised Code of Washington 9A.41.030 (2)(a): (2) *Cities, towns, counties, and other municipalities may enact laws and ordinances: (a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized*; and according to the Whatcom County Code 9.32 Unlawful Discharge of Firearms: *the Council may initiate the creation of a non shooting zone if it would be in the best interest of public health, safety, and welfare* WDFW has not documented or responded to any incidents that fall into the above categories and would like to respectfully request any documented examples related to above examples collected by the following county departments: prosecutors office, sheriff's office, planning department, public works department and any other applicable departments. This data will allow state, Tribal, and local law enforcement officers to have a more robust discussion and brainstorm solutions.

WDFW is willing to work with local city and county departments to find solutions including education related to legal shooting hours, hunting boundaries, and other concerns from the community. WDFW looks forward to working with Whatcom County and the City of Blaine to continuing to provide recreational opportunities to the citizens of Washington and responding to public safety issues when they arise.

Please let me know if you have any questions or would like to discuss further,

Fenner Yarborough

Fenner Yarborough
Washington Department of Fish and Wildlife
Wildlife Regional Program Manager



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2021-044

File ID:	MIN2021-044	Version:	1	Status:	Agenda Ready
File Created:	05/19/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: kfelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Committee of the Whole Executive Session for May 18, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Committee of the Whole Exec May 18 2021

Whatcom County Council Committee of the Whole-Executive Session

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Committee Minutes - Draft Minutes

**VIRTUAL MEETING - ENDS BY 10 A.M. (TO PARTICIPATE, SEE
INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL
360.778.5010); AGENDA REVISED 5.13.2021
Tuesday, May 18, 2021
9:30 AM**

COUNCILMEMBERS

Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 9:32 a.m. in a virtual meeting.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Committee Discussion

Attorneys Present: George Roche and Karen Frakes.

Buchanan stated that discussion of agenda item one and two may take place in executive session pursuant to RCW 42.30.110(1)(i) and RCW 42.30.110 (1)(c). Executive session will conclude no later than 10 a.m. If the meeting extends beyond the stated conclusion time, Council staff will make a public announcement.

Byrd moved to go into executive session until no later than 10 a.m. to discuss the agenda items pursuant to the RCW citations as announced by the Council Chair. The motion was seconded by Browne.

The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

1. [AB2021-275](#) Discussion of pending litigation with Civil Deputy Prosecutor, George Roche, re: Geneva Langworthy v. Anthony Parise, David Freeman, and Jeffrey Lustick, Skagit County Superior Court Cause No. 21-2-00236-29 [discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)]

This agenda item was DISCUSSED.

Items Added by Revision

1. [AB2021-295](#) Discussion regarding a potential property acquisition (land) [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110 (1)(c)]

This agenda item was DISCUSSED.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 10:04 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2021-045

File ID:	MIN2021-045	Version:	1	Status:	Agenda Ready
File Created:	05/21/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: kfelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Committee of the Whole for May 18, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Committee of the Whole May 18 2021

Whatcom County Council Committee of the Whole

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Committee Minutes - Draft Minutes

**VIRTUAL MEETING - MAY BEGIN EARLIER/LATER THAN 3:50 P.M.;
ENDS BY 5 P.M. (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)
Tuesday, May 18, 2021
3:50 PM**

COUNCILMEMBERS

Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 3:50 p.m. in a virtual meeting.

Rollcall

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Committee Discussion

1. [AB2020-219](#) Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

John Wolpers, Health Department, briefed the Councilmembers on COVID-19 metrics for Whatcom County, vaccination status, and the roadmap to recovery.

He answered questions about access to vaccination for those who live in areas outside of Bellingham such as the Mt. Baker School District area and Kendall, and how the County is reaching out to them to make it easier.

This agenda item was DISCUSSED.

2. [AB2021-282](#) Discussion of ordinance granting Cellco Partnership d/b/a Verizon Wireless a non-exclusive franchise for the provision of wireless telecommunication services
Andrew Hester, Public Works Department, briefed the Councilmembers.

He and the following people answered questions:

- Christopher Quinn, Prosecuting Attorney's Office
- Colleen DeShazer, Verizon Wireless

They answered questions about the definition of a small wireless facility, how many there will be, and the schedule for this item going forward.

This agenda item was DISCUSSED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 4:11.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2021-046

File ID:	MIN2021-046	Version:	1	Status:	Agenda Ready
File Created:	05/24/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: kfelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Regular County Council for May 18, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Council May 18 2021

Whatcom County Council

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Minutes - Draft Minutes

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)**

**Tuesday, May 18, 2021
6 PM**

COUNCILMEMBERS

Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

COUNTY COUNCIL

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6 p.m. in a virtual meeting.

ROLL CALL

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, and Kathy Kershner

Absent: None

FLAG SALUTE

ANNOUNCEMENTS

COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, reported on the COVID-19 vaccine.

MINUTES CONSENT

Frazey moved to accept the minutes consent items. The motion was seconded by Byrd (see votes on individual items below).

1. [MIN2021-041](#) Committee of the Whole Executive Session for May 4, 2021

Frazey moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

2. [MIN2021-042](#) Committee of the Whole for May 4, 2021

Frazey moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [MIN2021-043](#) Regular County Council for May 4, 2021

Frazey moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

PUBLIC HEARINGS

Council staff played a short instructional video about how to speak at the meeting.

1. [AB2021-258](#) Ordinance amending the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities (2021-2026)

Rob Ney, Administrative Services Department, stated he was available for questions.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Donovan moved and Kershner seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: ORD 2021-028

2. [AB2021-227](#) Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

Buchanan opened the Public Hearing and the following people spoke:

- Brent Jones
- Lance Calloway
- Christopher Watrobka
- Trevor Smith
- Barney Smith

Hearing no one else, Buchanan closed the Public Hearing.

Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the item.

Donovan's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Donovan, and Frazey

Nay: 2 - Elenbaas, and Kershner

Absent: 0

Enactment No: ORD 2021-029

3. [AB2021-185](#) Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County

Doug Chadwick, Undersheriff, stated he was available for questions.

Buchanan opened the Public Hearing and the following people spoke:

- Mary Lou Steward
- Bonnie Onyon
- Cliff Langley
- Lyle Galloway
- Tino Villaluz
- Frank Bob
- Andrew Scoular
- Tyler Bahrenburg
- Ryan Valentine
- Bob Harriman

Hearing no one else, Buchanan closed the Public Hearing.

Karen Frakes, Prosecuting Attorney's Office, answered a question about the most current ordinance.

Frazey moved and Browne seconded that the Ordinance be ADOPTED.

Councilmembers discussed the Ordinance and Frakes also spoke.

Byrd moved and Browne seconded that the Ordinance Requiring a Public Hearing be HELD IN COUNCIL until the next meeting to give an opportunity for the groups to come back and accept a thousand-foot buffer.

Councilmembers discussed the motion and the following people also spoke:

- Satpal Sidhu, County Executive
- Michael Jones, City of Blaine
- Bonnie Onyon, City of Blaine

Byrd's motion that the Ordinance Requiring a Public Hearing be HELD IN COUNCIL carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Elenbaas, and Kershner

Nay: 2 - Donovan, and Frazey

Absent: 0

4. [AB2021-186](#) Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone to be known as the Dearborn No Shooting Zone

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be HELD IN COUNCIL.

Dana Brown-Davis, Clerk of the Council, asked about holding the public hearing first.

Donovan withdrew his motion.

Buchanan opened the Public Hearing and the following people spoke:

- Frank Bob
- Andrew Scoular
- Tino Villaluz
- Bob Harriman
- Tyler Bahrenburg

Hearing no one else, Buchanan closed the Public Hearing.

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be HELD IN COUNCIL. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Elenbaas, and Kershner

Nay: 1 - Frazey

Absent: 0

OPEN SESSION (20 MINUTES)

The following people spoke:

- Doug Gustafson

- Markis Dee Stidham
- Misty Flowers
- Kevin Bates
- Gail Adderley
- Jack (last name not given)
- Desiree Espericueta
- Mary Stidham
- Frank Bob
- Jeff (last name not given)
- Cliff Langley
- Natalie Chavez
- Shannon Mejia
- Melissa Wisener
- Dan Johnson
- Eve Smason-Marcus
- Heather Katahdin

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Browne reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items one through four. Councilmembers voted on those items (see votes on individual items below).

1. [AB2021-277](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and State of Washington, Secretary of State, for publication and distribution of a combined local voters' pamphlet, in the amount of \$15,000 (average annual costs vary depending on size of election)

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

2. [AB2021-280](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and South Fork Community Association for operation of the Van Zandt Community Hall located at Josh VanderYacht Memorial Park, in the amount of \$1,000

Browne reported for the Finance and Administrative Services Committee and moved that the Agreement be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

3. [AB2021-285](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Snohomish County to utilize State Homeland Security Program (SHSP) funding to sustain and enhance Division of Emergency Management programs, in the amount of \$82,781

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

4. [AB2021-288](#) Request approval for the County Executive to award Bid #21-25 Rental Rates for Maintenance and Construction Equipment Without Operator to all bidders with the award for each vendor not to exceed \$100,000.00

Browne reported for the Finance and Administrative Services Committee and moved that the Bid Award be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. [AB2021-264](#) Ordinance amending the Whatcom County Budget, request no. 7, in the amount of \$5,156,985

Browne reported for the Finance and Administrative Services Committee and ***moved*** that the Ordinance be ADOPTED

Councilmembers discussed the request to fund an offsite buffer mitigation program feasibility study.

Tyler Schroeder, Executive's Office, answered questions about the request to fund staffing for vaccination support activities from DOH vaccination/immunization grant proceeds and the request to fund additional Emergency Solution Grant program activities.

Councilmembers continued to discuss the ordinance and the approval process.

Browne's motion that the Ordinance be ADOPTED carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

Enactment No: ORD 2021-030

2. [AB2021-286](#) Joint Resolution of the County Council of Whatcom County, Washington, the City Council of the City of Bellingham, Washington, and the Board of the Whatcom County Transportation Authority regarding the creation of a Whatcom Public Radio System

Browne reported for the Finance and Administrative Services Committee and ***moved*** that the Resolution be APPROVED.

Councilmembers discussed the resolution and the following person spoke:

- Satpal Sidhu, County Executive

Browne's motion that the Resolution be APPROVED carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-019

(From Council Public Works and Health Committee)

3. [AB2021-209](#) Resolution regarding permanent affordability of childcare in Whatcom County
- Frazey** reported for the Public Works and Health Committee and ***moved*** that this item be held in Committee, that it be passed along to the Child and Family Well-being Task Force for a recommendation for permanent solutions for childcare, and that the feedback be presented to the Council by

September 30, 2021.

Councilmembers discussed the motion.

Dana Brown-Davis, Clerk of the Council, read the motion as approved by Committee and Councilmembers continued to discuss it.

Frazey's motion that this item be held in Committee, that it be passed along to the Child and Family Well-being Task Force for a recommendation for permanent solutions for childcare, and that the feedback be presented to the Council by September 30, 2021 carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

(From Council Planning and Development Committee)

4. [AB2021-252](#) Resolution approving recommendations on eight applications for Open Space Current Use Assessment

Elenbaas reported for the Planning and Development Committee.

Dana Brown-Davis, Clerk of the Council, clarified the process for approving the resolution with the amendment that was recommended in committee.

Donovan moved and Elenbaas seconded that the Resolution be APPROVED.

Donovan moved and Buchanan seconded that the Resolution be amended as follows:

NOW, THEREFORE, BE IT RESOLVED BY THE WHATCOM COUNTY COUNCIL: 1. The recommendations on the applications for open space current use assessment listed below are hereby approved, with the exceptions of OSP2019-00002, OSP2019-00003, and OSP2019-00006:

The motion to amend carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Donovan moved and Buchanan seconded that the Resolution be APPROVED AS AMENDED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-020

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. [AB2021-273](#) Request Council to change Solid Waste Advisory Committee Member Rodd Pemble's representation from Business/Industry to Waste Collection Industry

Kershner moved and Byrd seconded to reappoint Rodd Pemble to a new position on the Solid Waste Advisory Committee. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

ITEMS ADDED BY REVISION

There were no agenda items added by revision.

INTRODUCTION ITEMS

1. [AB2021-289](#) Ordinance amending the 2021 Whatcom County Budget, request No. 8, in the amount of \$1,250,000

Donovan moved and Browne seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Browne read the following motion from Committee of the Whole Executive Session:

The County Council met in executive session concerning the lawsuit Geneva Langworthy, Plaintiff, v. Anthony Parise, David Freeman, and Jeffrey Lustick, Defendants, Skagit County Superior Court Cause No. 21-2-00236-29.

Pursuant to Whatcom County Code 2.56, the Council hereby finds the following:

- A. Anthony Parise, David Freeman, and Jeffrey Lustick were acting in a matter in which the county had an interest;
- B. Anthony Parise, David Freeman, and Jeffrey Lustick were acting in the discharge of a duty imposed or authorized by law;
- C. Anthony Parise, David Freeman, and Jeffrey Lustick acted in good faith.

The officers, officials, agents or employees will therefore be defended and indemnified pursuant to and consistent with the provisions in WCC Chapter 2.56.

The motion was seconded by Donovan.

The motion carried by the following vote:

Aye: 7 - Elenbaas, Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan
Nay: 0

Councilmembers continued committee reports and they and Satpal Sidhu, County Executive, spoke about other topics including homelessness, a comment made about people with COVID-19 receiving no treatment at the hospital, vaccinations, and the plans for meeting in person.

ADJOURN

The meeting adjourned at 10:04 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-261

File ID:	AB2021-261	Version:	1	Status:	Introduced for Public Hearing
File Created:	04/20/2021	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: Sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance granting Cellco Partnership d/b/a Verizon Wireless, a non-exclusive franchise for the provision of wireless telecommunications services

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for the use and presence in County Rights-of-Way to allow for the provision of wireless telecommunications services

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/04/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Staff Memo, Proposed Ordinance, Franchise Application

JON HUTCHINGS
DIRECTOR



MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, County Executive,
Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director *JH*

FROM: Andrew Hester, Public Works Real Estate Coordinator *AH*

RE: Franchise for Cellco Partnership d/b/a Verizon Wireless

DATE: April 20, 2021

▪ **Requested Action**

Adopt an ordinance that grants a franchise to Cellco Partnership d/b/a Verizon Wireless, allowing it to use and be present in County Rights of Way for the installation, maintenance, operation, repair, modification, replacement, and/or removal of such small wireless facilities for the provision of wireless telecommunications services per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

▪ **Background and Purpose**

Cellco Partnership d/b/a Verizon Wireless, has applied for a new franchise agreement for the purposes of utilizing County rights of way to provide wireless telecommunications services. This ordinance was previously approved by the Whatcom County Council. However, final payment of the administrative costs and acceptance of the franchise was delayed and due to the terms of the franchise the franchise was terminated automatically.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

SPONSORED BY: _____
PROPOSED BY: Executive
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**GRANTING CELLCO PARTNERSHIP d/b/a Verizon Wireless, A NON-EXCLUSIVE FRANCHISE FOR
THE PROVISION OF WIRELESS TELECOMMUNICATIONS SERVICES**

WHEREAS, Cellco Partnership d/b/a Verizon Wireless ("Grantee") has applied to Whatcom County ("County") for a non-exclusive franchise for the right of entry, use, and occupation of the public Rights-of-Way within the County for the installation, maintenance, operation, repair, modification, replacement, and/or removal of such Small Wireless Facilities for the provision of telecommunications services; and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ____ day of _____, 2021, and notice of this hearing has been duly published on the ____ day of _____, 2021, and the ____ day of _____, 2021, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of the County and its inhabitants that a franchise be granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-exclusive franchise set forth in the language herein below, Sections 1 through 24, is hereby granted to Cellco Partnership d/b/a Verizon Wireless for a period of 10 years

Section 1. Grant of Franchise Right to Use Franchise Area.

A. Subject to the terms and conditions stated herein, County hereby grants to Grantee a franchise as set forth in this Ordinance (this "Franchise"), including permission to enter, use, and occupy all Rights-of-Way within unincorporated Whatcom County as now or hereafter constituted (the "Franchise Area") for purposes of deploying Small Cell Facilities (as defined below) for the purpose of providing wireless telecommunications services, in, under, on, across, over, through, along or below the public Rights-of-Way within the County.

B. The County hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, repair, install, operate, maintain, restore, replace, acquire, sell, lease its Small Cell Facilities within the Rights-of-Way of the County.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Grantee Services as provided herein, and it extends no right or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, on private property within County.

D. This Franchise does not grant Grantee the right to install and operate wires and facilities to provide wireline broadband transmission services, whether provided by a third-party provider, Grantee, or a corporate affiliate of Grantee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use Whatcom County rights of way outside this Franchise. Further, this Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

D. This Franchise is non-exclusive and does not prohibit County from entering into other agreements, including other franchises, impacting the Franchise Area, provided such agreements do not interfere with Grantee's rights set forth herein.

E. Except as explicitly set forth herein, this Franchise does not waive any rights that County has or may hereafter acquire with respect to the Franchise Area or any other County roads, Rights-of-Way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, Grantee acknowledges its use of the Franchise Area shall have no value.

F. County reserves the right to change, regrade, relocate, abandon, or vacate any Right-of-Way within the Franchise Area, subject to the terms hereunder with regard to relocation of Grantee Facilities. If, at any time during the term of this Franchise, County abandons or vacates any portion of the Franchise Area containing Grantee Facilities, County shall reserve an easement for public utilities within that vacated portion within which Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. Grantee agrees that its use of Franchise Area shall at all times be subordinate and subject to County's and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 2. Notices.

A. Written notices to the parties shall be personally delivered, sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, to the following addresses, unless a different address shall be designated in writing and delivered to the other party. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

County: County Executive
Whatcom County Courthouse
311 Grand Ave., Suite 108
Bellingham, WA 98225

Grantee: Cellco Partnership
d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a copy to:
Cellco Partnership
d/b/a Verizon Wireless
Attn: West Area General Counsel
15505 Sand Canyon Ave.
Irvine, CA 92618

B. Any changes to the Grantee's information shall be sent to County's Public Works Director referencing the title of this agreement.

C. The Grantee's voice number, 1-800-264-6620, shall be staffed 24 hours a day, 7 days a week.

Section 3. Term of Franchise.

A. This Franchise shall run for a period of 10 years from the date of execution specified in Section 5.

B. If the parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the obligations and privileges of this Franchise shall nonetheless continue in full force and effect until renewed or otherwise terminated by either party through written notice to that effect.

Section 4. Definitions.

For the purpose of this Franchise:

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communication Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under federal law.

“Antenna Equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when collocated on a structure, is mounted or installed at the same time as such Antenna.

“Emergency” means a condition of imminent danger to the health, safety and welfare of persons or property located within County including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

“Existing Utility Poles” means any pole(s) that is installed before the Effective Date and is owned and/or leased by the County or a third party.

“Laws” means any and all applicable statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the County or other governmental or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.

“Maintenance” or “Maintain” means examining, testing, inspecting, repairing, maintaining, upgrading, removing and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.

“Network” means the telecommunication network installed and managed by the Grantee to serve wireless carrier customers.

“Person” means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and includes any natural person.

“Personal Wireless Service Facility” means an Antenna facility, Antenna Equipment, or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

“Relocation” means permanent movement of Grantee Facilities required by County, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request. Any Relocation shall be governed by Section 11 of this Franchise.

“Right-of-Way” (pluralized as “Rights-of-Way”) means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public properties and areas now or hereafter held by, or over which, the County exercises any rights of management control, but only to the extent of County’s right, title, interest or authority to grant a license or franchise to occupy and the same for Small Wireless Facilities. Rights of Way for the purpose of this Franchise do not include buildings, other County-owned physical facilities, parks, conduits, fixtures, real property or property rights owned by County, or similar facilities or property owned by or leased to County.

“Small Wireless Facilities” or “Small Cell Facilities” or “Grantee Facilities” as used herein shall mean Personal Wireless Service Facilities (as defined above) that meet each of the following conditions:

(1) The facilities -

(i) Are mounted on structures 50 feet or less in height including their Antennas as defined in § 1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;

- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under federal law;
- (5) The facilities are not located on Tribal lands, as defined under federal law; and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 Code of Federal Regulations § 1.1307(b);

“State” means the State of Washington.

Section 5. Acceptance of Franchise.

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the “Franchise Acceptance”). The date that the Franchise Acceptance is filed with the County Council shall be the effective date of this Franchise.

B. Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the effective date of this ordinance, then the County shall have the right by ordinance to declare Grantee’s forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter. The County shall retain this right to terminate the Franchise until such time as Grantee files the Franchise Acceptance pursuant to the terms herein.

Section 6. Construction, Permits, Restoration, Maintenance, and Installation.

A. Prior to doing any work within the Right-of-Way, including initial installation of Facilities under this Franchise Agreement, the Grantee must apply for, and obtain, all appropriate permits from the appropriate jurisdiction(s), including County. Grantee shall submit plans to the County showing the proposed Facilities and existing utilities, including full drawings. Subsequent to installation, Grantee shall submit time and date stamped photographs of the installed Facilities including but not limited to all appliances, utility cabinets, and/or other devices.

B. If the County Engineer reasonably determines that any work done by Grantee is not in compliance with applicable law or then-current installation standards, then County shall provide Grantee thirty (30) days’ notice to cure any such deficiency. If, after such thirty (30) day period, Grantee fails to cure the deficiency, then County reserves the right to remove

and/or repair any work done by Grantee or its contractors and the reasonable cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee.

C. Within ninety (90) days following the surrender or termination of this Agreement, Grantee agrees to remove its Facilities from County's Rights of Way and leave the same in as good of condition as it existed prior to installation of the Facilities. Any Facilities left in the Rights-of-way more than ninety (90) days following such surrender or termination of this Agreement shall be deemed abandoned by Franchisee. The County reserves the right, after providing at least thirty (30) days' prior written notice to Grantee, to remove Equipment abandoned by Grantee or its contractors following such surrender or termination and do whatever work is necessary to return the location to such required surrender condition (and which work has not been completed by or on behalf of Franchisee upon the expiration of such 30-day notice period). The reasonable cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee.

D. The County shall have the authority at all times to control by appropriately-exercised police powers through ordinance or regulation, including that provided for under the Whatcom County Code, as now exist or hereinafter amended, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7) and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Grantee, and Grantee shall promptly conform with all such requirements, unless compliance would cause Grantee to violate other requirements of law. This Franchise does not prohibit County from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.

E. Upon prior written approval of County and in accordance with County ordinances, Grantee shall have the authority, but not the obligation, to reasonably trim trees upon and overhanging streets, Rights-of-Way and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, County may, at its sole discretion, remove such debris and charge Grantee for the cost thereof. This section does not in any instance grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land clearing permit.

F. Consistent with the Whatcom County Code, in case of any disturbance of any road, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface, promptly and in as good condition as before said work was commenced and in accordance with standards for such work set by the County and the County Code. If Grantee fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

G. Grantee shall maintain all aboveground improvements that it places on County Rights-of-Way pursuant to this Franchise. In order to avoid interference with the County's ability to maintain its roads and associated Rights-of-Way, Grantee shall provide a clear zone of five feet on all sides of such improvements. For these purposes, "clear zone" means an area that is mowed or otherwise maintained so that the Facilities are readily visible to County maintenance operations. If Grantee fails to comply with this provision, and by its failure property is damaged, then Grantee shall be responsible for all damages caused thereby.

H. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from County water facilities and ten (10) feet from above-ground County water facilities; provided, that for development of new areas, County, together with Grantee and other utility purveyors or authorized users of Rights-of-Way, will develop and follow the Public Works Director's determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Franchise.

I. Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer's Office.

Section 7. Repair and Emergency Work.

In the event of an Emergency, Grantee may commence such repair and Emergency response work as required under the circumstances, provided that Grantee shall notify the County Public Works Director in writing as promptly as possible, before such repair or Emergency work commences, or as soon thereafter as possible, if advance notice is not practical. County may act, at any time, without prior written notice in the case of Emergency, but shall notify Grantee in writing as promptly as possible under the circumstances.

Section 8. Damages to County and Third-Party Property.

Grantee agrees that should any of its actions under this Franchise materially impair or damage any County property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed to the reasonable satisfaction of the County Engineer.

Section 9. Location Preference.

Any structure, equipment, appurtenance or tangible property of a utility, other than Grantee's, which was installed, constructed, completed or in place prior in time to Grantee's application for a permit to construct Grantee Facilities under this Franchise shall have preference as to positioning and location with respect to Grantee Facilities. However, to the extent that Grantee Facilities are completed and installed prior to another utility's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any County road or Right-of-Way. A relocating utility shall not necessitate the Relocation of another utility that otherwise would not require Relocation. This Section shall not apply to any County facilities or utilities that may in the future require the Relocation of Grantee Facilities. Such Relocations shall be governed by Section 11.

Section 10. Grantee Information.

A. Grantee agrees to supply, at no cost to County, any information reasonably requested by the Director of Public Works to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under State law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within County. Said information may be requested either in hard copy and/or electronic format, if reasonably possible in a format compatible with County's database system, as now or hereinafter existing, including County's Geographic Information Service (GIS) data base. Grantee shall use its commercially reasonable efforts to keep the Public Works Director informed of its long-range plans for coordination with County's long-range plans, to the extent that Grantee has knowledge of any long-range plans that have been finalized.

B. The parties understand that Washington law limits the ability of County to shield from public disclosure any information given to County. Accordingly, the County will endeavor in good faith to provide Grantee reasonable notice of any request for public disclosure of information of Grantee to allow Grantee to take such actions as Grantee may determine and at Grantee's sole cost and expense to prevent or limit such disclosure. Grantee shall indemnify and hold harmless County for any loss or liability for costs and for attorneys' fees because of non-disclosures requested by Grantee under Washington's open public records law, provided reasonable notice and opportunity to defend was given to Grantee or Grantee is made aware of a pending request or claim.

Section 11. Relocation of Grantee Facilities.

A. The County shall have the right to require Grantee to alter, adjust, Relocate, re-attach, secure, or protect in place its Facilities within the public right-of-way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, but are not limited to: public rights-of-way construction; public rights-of-way repair (including resurfacing or widening); change of public rights-of-way grade; construction, installation of or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; public rights-of-way vacation, and the construction of any public improvement or structure by any government agency acting in a governmental capacity. In the event the County requires Grantee to Relocate its Facilities, the County shall provide Grantee with written notice requesting such Relocation, along with plans for the public improvement that are sufficiently complete to for the initial evaluation, coordination, and the development of a Relocation plan. The County and Grantee shall meet at a time and location determined by the County to discuss the project requirements including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent Relocation plan details. The County shall notify Grantee as soon as practicable of the need for Relocation and shall specify the date by which the Relocation shall be committed. Except in case of emergency such notice shall be no less than 90-days.

B. To ensure timely execution of Relocation requirements, Grantee shall upon written requests from the County, provide at Grantee's expense, base maps, current as-built information, detailed relocation plan (including detailed schedule of Relocation activities, identification of critical path, identification of Facilities, and Relocation procedures), and other design, technical or operational requirements within the time frame specified by the County.

C. Grantee may, after receipt of written notice requesting a Relocation of its Facilities, submit to the County written alternatives to such Relocation within the time specified by the County, but no shorter than 30-days. Such alternatives shall include the use and operation of temporary Facilities in adjacent rights-of-way. The County shall evaluate such alternatives and advise Grantee in writing if one of more of the alternatives are suitable to accommodate the work, which would otherwise necessitate Relocation of the Facilities. If requested by the County, Grantee shall submit additional information to assist the County in making such evaluation. The County shall give each alternative proposed by Grantee full and fair consideration. In the event the County, in its sole discretion, decides not to accept the alternatives suggested by Grantee, Grantee shall Relocate its Facilities as otherwise specified in Section 11.

D. Upon final approval of the Relocation plan by the County, Grantee shall, at its own expense, unless otherwise prohibited by statute, and at the time frame specified by the County, which in no event shall be less 30 days from receipt of final approval from the County,

temporarily or permanently remove, Relocate, place underground, change or alter the position of any Facilities or structures within the right-of-way whenever the County has determined that such removal, Relocation, undergrounding, change or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any public improvement in or upon the rights-of-way. In the event Relocation is required by reason of construction by a third party, non-governmental entity, then Grantee's Relocation costs shall be borne by the third party.

E. If during construction, repair, or maintenance of the County's public improvement project an unexpected conflict occurs from Grantee's Facilities, Grantee shall, upon notification from the County, respond within 24 hours to resolve the conflict.

F. Grantee acknowledges and understands that any delay by Grantee in performing the work to alter, adjust, Relocate, or protect in place its Facilities within the public rights-of-way may delay, hinder, or interfere with the work performed by the County and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the public rights-of-way, and result in damage to the County, including but not limited to, delay claims. Grantee shall cooperate with the County and its contractors and subcontractors to coordinate such relocation work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project. Should Grantee fail to alter, adjust, protect in place or Relocate any Facilities ordered by the County to be altered, adjusted, protected in place, or Relocated, within the time prescribed by the County, which in no event shall be less than 30 days from the receipt of final approval from the County, given the nature and extent of the work, or if it is not done to the County's reasonable satisfaction, the County may, to the extent the County may lawfully do so, cause such work to be done and bill the reasonable cost of the work to Grantee, including all reasonable costs and expenses incurred by the County due to Grantee's delay. In such event, the County shall not be liable for any damage to any portion of Grantee's system. In addition to any other indemnity set forth in this Franchise, Grantee will indemnify, hold harmless, and pay the costs of defending the County from and against any and all claims, suits, actions, damages, or liabilities for delays on public improvement construction projects caused by or arising out of the failure of Grantee to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Grantee shall not be responsible for damages due to delays caused by the County.

Section 12. Abandonment and or Removal of Grantee Facilities.

A. Within one hundred and eighty (180) days of Grantee's permanent cessation of use of Grantee Facilities, or any portion thereof, Grantee shall, at County's discretion, either abandon in place or remove the affected Facilities.

B. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

Section 13. Undergrounding.

A. The parties agree that this Franchise does not limit County's authority under federal law, State law, or local ordinance, to require the undergrounding of Facilities, provided however, this requirement shall not apply to the Facilities that are required to remain above ground in order to be functional.

B. Whenever County requires the undergrounding of Grantee's Facilities in the Franchise Area, Grantee shall underground Grantee Facilities in the manner specified by the County Engineer, with payment therefor consistent with the provisions of RCW 36.88.410 et al. Where other utilities or franchise grantees are present and involved in the undergrounding project, Grantee shall be required to pay only its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility or facility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

C. Grantee and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities. Thus, before commencing any work within the Franchise Area, Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

D. Design locate marks will be placed in the same three (3) day time frame as construction locate marks.

Section 14. Indemnification.

A. Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the County, its officers, officials, employees and agents from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For the alleged or actual negligent acts or omissions of Grantee, its agents, servants, officers or employees;

2. By virtue of Grantee's exercise of the rights granted by this Franchise;

3. By virtue of the County's permitting Grantee's use of the County's Public Way or other public property;

4. Based upon the County's inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on

the Facilities or property over which the County has control, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;

B. Grantee's indemnification obligations pursuant to Section 14.A shall include indemnifying the County for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this indemnification for actions brought by the aforementioned employees is limited solely to claims against the County arising by virtue of Grantee's exercise of the rights set forth in this Franchise. The obligations of Grantee under this Section 14.B have been mutually negotiated by the parties hereto, and Grantee acknowledges that the County would not enter into this Franchise without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

C. Except to the extent that damage or injury arises from the negligence or willful misconduct of the County, its officers, officials and employees, the obligations of Grantee under the indemnification provisions of this Section 14 and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the County, its officers, officials and employees and the Grantee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. This waiver has been mutually negotiated by the parties.

D. Inspection or acceptance by the County of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the County of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The County has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, provided that Grantee shall not be liable for such settlement or other compromise unless it has consented thereto.

E. The County shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the County. Grantee may choose counsel to defend the County subject to this Section 14E. County's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have

been a wrongful refusal on the part of Grantee, Grantee shall pay all of the County's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the County and the counsel selected by Grantee to represent the County, then upon the prior written approval and consent of Grantee, which shall not be unreasonably withheld, the County shall have the right to employ separate counsel, as approved by Grantee, which approval will not be unreasonably withheld, delayed, or conditioned, in any action or proceeding and to participate in the investigation and defense thereof, and Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the County for the County to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The County's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the County but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the County by Grantee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

F. In the event that Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having competent jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, then if Grantee does not promptly accept the tender of defense, Grantee shall pay all of the County's reasonable costs for defense of the action, including, if incurred, all reasonable expert witness fees, and reasonable attorneys' fees, and the reasonable costs of the County, and reasonable attorneys' fees of recovering under this Subsection.

G. Notwithstanding any other provisions of this Section, Grantee assumes the risk of damage to its Facilities located in the Right of Way and upon County-owned property from activities conducted by the County, its officers, officials, agents, employees, volunteers, and contractors, except to the extent any such damage or destruction is caused by or arises from any willful misconduct or criminal actions on the part of the County, officers, elected officials, and employees. In no event shall either party be liable to the other for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Grantee releases and waives any and all such claims against the County, its officers, officials, agents, employees, volunteers, and contractors. Grantee further agrees to indemnify, hold harmless and defend the County against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities caused by or arising

out of activities conducted by the County, its officers, officials, employees, and agents except to the extent any such damage or destruction is caused by or arises from the negligence or any willful misconduct, or criminal actions on the part of the County, its officers, officials, employees and agents.

H. The provisions of this Section 14 shall survive the expiration, revocation, or termination of this Franchise.

Section 15. Insurance.

A. Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Grantee, or its employees. Grantee shall provide an insurance certificate including the County, its officers, elected officials, and employees, as additional insureds as their interest may appear under this Franchise, to the County at the time of execution of this agreement, and such insurance certificate shall evidence:

1. Commercial Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$3,000,000 each accident.

2. Commercial General Liability insurance with limits of \$3,000,000 per occurrence for bodily injury and property damage and \$3,000,000 general aggregate including premises-operations, independent contractors, personal and advertising injury, contractual liability and \$3,000,000 products-completed operations aggregate limit. County shall be included as an additional insured as their interest may appear under this Franchise under Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit.

4. Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate.

5. Excess Umbrella liability policy with limits of \$5,000,000 per occurrence and in the aggregate.

B. The liability insurance policies required by this Section shall be maintained by Grantee throughout the term of this Franchise, and such other period of time during which Grantee is operating without a franchise or is engaged in the removal of its Facilities. Payment

of deductibles or self-insured retentions shall be the sole responsibility of Grantee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Grantee's insurance shall be primary insurance with respect to the County, its officers, elected officials, and employees. Any insurance, self-insurance, or insurance pool coverage maintained by the County, its officers, elected officials, and employees shall be in excess of Grantee's insurance and shall not contribute with it.

C. Grantee's contractors and subcontractors performing Work in the Public Rights - of -Way shall comply with such bond, indemnity, and insurance requirements as may be required by County code or regulations, or other applicable Law. Any contractors or subcontractors performing Work within the Public Rights -of -Way on behalf of Grantee shall be subject to the same restrictions, limitations, and conditions as if the Work were performed by Grantee. Grantee shall ensure that all such Work performed by Grantee's contractors and subcontractors is in compliance with this Franchise Agreement. It is Grantee's responsibility to ensure that contractors, subcontractors, or other Persons performing Work on Grantee's behalf are familiar with the requirements of this Franchise Agreement and other applicable Laws governing the Work performed by them.

D. Grantee shall furnish County with certificates of the foregoing insurance coverage and blanket additional insured endorsements.

E. As of the Effective Date of this Franchise, Grantee is not self-insured. Should Grantee wish to become self-insured at the levels outlined in this Franchise at a later date, Grantee must provide the County with thirty (30) days advanced written notice of its intent to self-insure. Grantee shall comply with the following: (i) provide the County, upon request, a copy of Grantee's or its parent company's most recent audited financial statements; (ii) Grantee is responsible for all payments within the self-insured retention; and (iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance.

Section 16. Performance Security.

Grantee shall provide County with one surety bond in the amount of Fifty Thousand Dollars (\$50,000) for all of Facilities in the County's rights-of-way running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to County. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from the principal and any surety of such surety bond any damages suffered by County as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or

abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute damage to County in the monetary amount set forth therein. Such a financial guarantee shall not be construed to limit Grantee's liability to the guarantee amount, or otherwise limit County's recourse to any remedy to which County is otherwise entitled at law or in equity.

Section 17. Successors and Assignees.

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent contractors of Grantee, and all rights and privileges, as well as all obligations and liabilities of Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever Grantee is mentioned.

B. This Franchise shall not be leased, assigned or otherwise alienated, except to an Affiliate of Grantee, without the express consent of County by ordinance, which approval shall not be unreasonably withheld. Approval shall not be required for mortgaging purposes or if a transfer of interest is from Grantee to another person or entity controlling, controlled by, or under common control with Grantee, or in the event of a transfer of all or a majority of all of Grantee's assets in the market defined by the Federal Communications System in which the Facilities are located.

C. For assignments needing County's approval, Grantee and any proposed assignee or transferee shall provide and certify the following to County not less than thirty (30) days prior to the proposed date of transfer: (a) complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) all information required by County of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) an application fee which shall be set by County, plus any other costs actually and reasonably incurred by County in processing and investigating the proposed assignment or transfer.

D. Prior to County's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed assignee or transferee shall file with County a written promise to unconditionally accept all terms of this Franchise, effective upon such transfer or assignment of this Franchise. After the date of such written promise, Grantee shall have no further obligation under this Franchise. County is under no obligation to undertake any investigation of the transferor's state of compliance and failure of County to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

Section 18. Dispute Resolution.

A. In the event of a dispute between County and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by County and Grantee to have oversight over the administration of this Franchise. The officers or representatives shall meet within thirty (30) calendar days of either party's

request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the Laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the parties specifically understand and agree that venue shall be exclusively in Whatcom County, Washington.

Section 19. Enforcement and Remedies.

A. If Grantee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, County shall provide Grantee with written notice specifying with reasonable particularity of the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If County reasonably determines the breach cannot be cured within (30) thirty days, County may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, County may, at its discretion, either (1) revoke this Franchise with no further notification, or (2) claim damages of Five Hundred Dollars (\$500.00) or actual damages if demonstrably greater, against the financial guarantee set forth in Section 16.

B. Should County determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Grantee Services, County reserves the right to cancel this Franchise and require Grantee to apply for, obtain, and comply with all applicable County permits, franchises, or other County permissions for such actions, and if Grantee's actions are not allowed under applicable federal and state or County Laws, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations.

A. Grantee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Grantee, and Grantee shall promptly conform with all such regulations, unless acknowledges that following the approval of this Franchise, the County may modify its Codes to address small

wireless deployment and such Code modifications shall apply to Grantee's Facilities, except to the extent of a vested right pertaining to an existing Facility. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the County's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 21. Consideration.

A. As consideration for this Franchise, Grantee commits to pay County an annual usage fee equal to Two Hundred Seventy and 00/100 Dollars (\$270.00) for each Small Wireless Facility located within the Right of Way. Ancillary facilities or services that are not defined herein as Small Wireless Facilities shall not be covered by this usage fee and are subject to independent usage or franchise fees.

B. Grantee's franchise fee payments shall be due the first of the month following the commencement of construction of a particular Facility ("Commencement Date"), and shall be due on each January 1 thereafter for as long as the Facility is in place. For any partial year beginning from the Commencement Date until the following January 1, the annual franchise fee will be prorated. County shall provide Grantee a completed, current Internal Revenue Service Form W-9 and state and local withholding forms, if required. Grantee shall include with payment a complete written inventory of all Small Cell Facilities situated in County's Rights-of-Way as of two weeks prior to the payment due date. Payments shall be made to the Whatcom County Treasurer, Whatcom County Courthouse, Suite 104, 311 Grand Avenue, Bellingham, WA 98225, unless otherwise specified by the County in writing.

C. In the event any payment is not received within forty-five (45) days from the due date, Grantee shall pay, in addition to the payment or sum due, interest on the amount due at the maximum allowed rate as provided under State law from the date the payment was due until the date the County receives the payment.

Section 22. Consequential Damages Limitation.

Notwithstanding any other provision of this Franchise, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 23. Severability.

If any portion of this Franchise is deemed invalid, the remainder portions shall remain in effect.

Section 24. Titles.

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

ADOPTED this _____ day of _____ 2021.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 4/14/2021)

Satpal Singh Sidhu, County Executive
()Approved ()Denied

Date Signed: _____

Todd Walton
Site Acquisition Manager

 **CENTERLINE SOLUTIONS**
8218 154th Ave, NE Suite 120, Redmond WA 98052
Phone: 425.828.1008
Mobile: 206-334-4116
Web: www.centerlinesolutions.com

RECEIVED

MAR 13 2017
WHATCOM COUNTY
COUNCIL

3-8-2017

Whatcom County Council
311 Grand Avenue
Suite 105
Bellingham, WA 98225
Directions

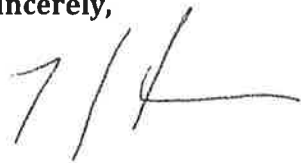
Phone: 360-778-5010
Fax: 360-778-5011

Council Office Email:
council@co.whatcom.wa.us

Dear County Council:

On behalf of SEATTLE SMSA LIMITED PARTNERSHIP, d/b/a as Verizon Wireless, Centerline Solutions would like to submit an Application for Franchise for wireless facilities located in Whatcom County Rights of Way.

Sincerely,



Todd Walton

APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

COMES NOW, SEATTLE SMSA LIMITED PARTNERSHIP
d/b/a VERIZON WIRELESS.

who respectfully petitions the Whatcom County Council for a twenty-five (25) year franchise to lay, construct, maintain, and repair

WIRELESS FACILITIES

and all necessary appurtenances along, over, and across the following roads situated in Whatcom County, Washington:

CURRENTLY CHUCKANUT, BUT ALL OTHERS IN
FUTURE.

The petitioner further requests that the Whatcom County Council fix a time and place for a public hearing on the granting of this continuation of franchise, and that public notice be given, at the expense of the petitioner, as provided by law; and that, at said hearing, petitioner be granted the franchise continuation herein requested.

DATED: 3-2-2017

CENTERLINE SOLUTIONS

Company Name

8218 154th AVE. NE STE. 120

Mailing Address

Redmond WA 98133

City

State Zip

206 334 4116

Phone Number

[Signature]
Signature of authorized agent/owner

TODD WALTON
Print or type name



TREASURER'S RECEIPT

WHATCOM COUNTY

Treasurer's Office

676-6774

PREPARED BY

Maria

PHONE #

ext. *5019*

DATE PREPARED

3-14-17

ATTACHMENTS

☐

Yes

☒

No

Received FROM

*Centerline Solutions
Franchise application fee \$500
wireless facilities*

AB 2017-103

Deposit TO

*Council franchise
Revenue*

ACCOUNT DISTRIBUTION

ACCOUNT NUMBER

AMOUNT

TENDER TYPE

1100.4369.9001

500

-

CASH

U.S. CHECKS

✓

CANADIAN CHECKS

OTHER

Not valid until acknowledged by
Treasurer's Office

TOTAL

500

-

Form No. TRS01.01 10/08

RECEIPT
Whatcom County

200379

DEPARTMENT Council DATE 3/13/2017
 RECEIVED FROM Centerline Solutions
 ADDRESS 8218 154th Ave, NE Suite 120 Redmond, WA 98052
 IN PAYMENT OF Franchise Application
 FUND _____ AMOUNT PAID \$500.00
 REVENUE CODE _____

OLD BAL.		
PAID		
BAL. DUE		

CASH		
CHECK	103860	
MONEY ORD.		

SIGNATURE Krista Teubinger

NOTE - All three copies of all voided receipts must be retained
in department's numerical file.

Date: 3/14/2017 Time: 9:38 AM
 Receipt Date: 3/14/2017

Steven N. Oliver
 Whatcom County Treasurer
 311 Grand Ave, Suite 104
 Bellingham, WA 98225
 360.778.5160

Receipt #: 2482401
 Received From: CENTERLINE SOLUTIONS
 Payment Code: Full Payment

NON-PROPERTY ITEMS
 TREAS RCPT #: 310876 500.00

Base: 0.00
 P&I: 0.00
 Total: 500.00

TENDERS
 Check 500.00



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-278

File ID:	AB2021-278	Version:	1	Status:	Introduced for Public Hearing
File Created:	05/04/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: RBrowne@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Sections 5.40 and 5.41 to align signature requirements for citizen initiatives with Washington State norms

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance provides for submission to the qualified voters of Whatcom County (at the November 2021 General Election) a charter amendment to allow that persons proposing an initiative must “collect the signatures of the registered voters in the county equal in number to not less than eight (8) percent of the vote cast in the county in the last regular county executive election,” and the requirement for a mini-initiative be “the signatures of qualified voters equal in number to not less than three (3) percent of the number of votes cast in the county in the last county executive election.” The changes would amend Section 5.40 and Section 5.41 of the County Charter.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/04/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: PROPOSED ORDINANCE, AGENDA REVISION NOTICE FOR 5.4.2021

ORDINANCE NO. _____

**SUBMITTING TO THE QUALIFIED VOTERS OF WHATCOM COUNTY A PROPOSAL TO
AMEND WHATCOM COUNTY CHARTER SECTIONS 5.40 AND 5.41 TO ALIGN
SIGNATURE REQUIREMENTS FOR CITIZEN INITIATIVES WITH WASHINGTON
STATE NORMS**

WHEREAS, Washington State secures the right of citizens to make and remake their laws, to petition to place laws directly on the ballot for other voters; and

WHEREAS, RCW 29A.72.160 states that persons proposing any initiative measure must obtain signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election; and

WHEREAS, the Whatcom County Charter Section 5.40, Initiatives – Procedure, states that “Any legal voter or organization of legal voters of Whatcom County may file an initiative proposal with the County Auditor ... The petitioner then has one hundred and twenty (120) days to collect the signatures of the registered voters in the county equal in number to not less than eight (8) percent of the vote cast in the county in the last regular gubernatorial election”; and

WHEREAS, the Whatcom County Charter Section 5.41, Mini-Initiative, states that “Any ordinance or amendment to an existing ordinance may be proposed to the County Council by registering with the Auditor initiative petitions bearing the signatures of qualified voters equal in number to not less than three (3) percent of the number of votes cast in the county in the last gubernatorial election”; and

WHEREAS, the norm in Washington State is to use the percentage of votes cast for the highest executive office of the entity to which the initiative petition is addressed. For statewide initiatives that means the latest gubernatorial race, for county initiatives the latest county executive race, for city initiatives, the latest mayoral race; and

WHEREAS, all First-Class Cities in Washington State (including Bellingham) use the percentage of votes cast in the most recent mayoral race, as do all other cities where initiatives are permitted; and

WHEREAS, of the four counties with county executive-council charters the largest two (King and Pierce) use percentage of votes cast in the most recent county executive race, leaving Snohomish as the only other county using the gubernatorial vote; and

WHEREAS, gubernatorial and county elections are held in different years, with far higher turnout in gubernatorial elections (137,935 votes cast for governor in 2020, vs. 80,734 votes cast for county executive in 2019), making gubernatorial turnout a vastly disproportionate standard for county initiatives; and

WHEREAS, the Whatcom County Charter sets a higher bar than other local governments in Washington State; and

WHEREAS, the Whatcom County Council supports the right of citizens to make and remake their laws and to petition to place initiatives directly on the ballot for other voters to consider; and

WHEREAS, the Whatcom County Council does not wish to unduly burden citizens who wish to exercise their rights to propose initiatives.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the County Auditor place on the November 2021 general election ballot a charter amendment that persons proposing an initiative must "collect the signatures of the registered voters in the county equal in number to not less than eight (8) percent of the vote cast in the county in the last regular county executive election," and the requirement for a mini-initiative be "the signatures of qualified voters equal in number to not less than three (3) percent of the number of votes cast in the county in the last county executive election." The changes would amend Section 5.40 and Section 5.41 of the County Charter as shown in Exhibit A.

ADOPTED this _____ day of _____ 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date: _____

EXHIBIT A

Section 5.40 Initiative – Procedures.

Any legal voter or organization of legal voters of Whatcom County may file an initiative proposal with the County Auditor, who within five (5) days, excluding Saturday, Sunday and holidays, shall confer with the petitioner to review the proposal as to form and style. The Auditor shall give the proposed initiative a number, which shall thereafter be the identifying number for the measure. The Auditor shall then transmit a copy of the proposal to the Prosecuting Attorney, who within ten (10) days after receipt thereof, in consultation with the petitioner shall formulate the ballot title which shall consist of: (a) a statement of the subject of the measure; (b) a concise description of the measure; and (c) a question: “Shall this be enacted into law?” The statement of the subject of the measure must be proposed as a positive statement, be sufficiently broad to reflect the subject, and be sufficiently precise to give notice of the measure’s subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure’s essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure. Such concise statement will be the ballot title. The petitioner then has one hundred and twenty (120) days to collect the signatures of the registered voters in the county equal in number to not less than eight (8) percent of the vote cast in the county in the last regular ~~gubernatorial~~ county executive election. The one hundred and twenty (120) day period shall begin upon receipt of official notification to petitioner(s) by the Prosecuting Attorney’s Office either by certified mail or messenger. If the last day for collecting signatures falls on a weekend or legal holiday, then the one hundred and twenty (120) day period shall extend to the end of the next business day.

Each petition shall contain the full text of the proposed measure, ordinance or amendment to an ordinance and the ballot title. The Auditor shall verify the sufficiency of the signatures on the petition and, if it is validated, submit the proposal to the people at the next general election that is not less than one hundred and twenty (120) days after the registering of the petition, unless the County Council enacts the proposal without change or amendment. If the County Council does not adopt the proposed measure and adopts a substitute measure concerning the same subject matter, the substitute proposal shall be placed on the same ballot with the initiative proposal; and the voters shall be given the choice of accepting either or rejecting both and shall then be given the choice of accepting one and rejecting the other. If a majority of those voting on the first issue is for accepting either, then the measure receiving the majority of the votes cast on the second issue shall be deemed approved. If a majority of those voting on the first issue is for rejecting both, then neither measure shall be approved regardless of the vote on the second issue. (Amended by referendum 1986; Amended by Ord. 93-046 (part); Amended by referendum 1995; Amended by referendum 2015).

Section 5.41 Mini-Initiative.

Any ordinance or amendment to an existing ordinance may be proposed to the County Council by registering with the Auditor initiative petitions bearing the signatures of qualified voters equal in number to not less than three (3) percent of the number of votes cast in the county in the last ~~gubernatorial~~ county executive election. Upon verifying the sufficiency of the signatures, the Auditor shall transmit the initiative petition to the Council which shall hold a public hearing on the proposed ordinance and enact or reject the ordinance within sixty (60) days.

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.



COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010

WHATCOM COUNTY COUNCIL AGENDA REVISION NOTICE FOR MAY 4, 2021

**VIRTUAL MEETING
AGENDA REVISED 5.4.2021
(TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil
OR CALL 360.778.5010)**

THE FOLLOWING ITEMS HAVE BEEN ADDED TO COUNCIL:

ITEMS ADDED BY REVISION

1. [AB2021-278](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Sections 5.40 and 5.41 to align signature requirements for citizen initiatives with Washington State norms **(FOR INTRODUCTION)**

ITEM ADDED 5.4.2021
2. [AB2021-279](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Section 8.22 to align requirements for amending the Charter by citizen initiative with Washington State norms **(FOR INTRODUCTION)**

ITEM ADDED 5.4.2021



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-279

File ID:	AB2021-279	Version:	1	Status:	Introduced for Public Hearing
File Created:	05/04/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: RBrowne@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Section 8.22 to align requirements for amending the Charter by citizen initiative with Washington State norms

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance provides for submission to the qualified voters of Whatcom County (at the November 2021 General Election) a charter amendment specifying that “The public may propose amendments to the Charter by registering with the Auditor an initiative petition bearing the signatures of registered voters of the county equal in number to, but not less than, fifteen (15) percent of the number of votes cast in the county in the last county executive election.” The changes would amend Section 8.22 of the County Charter

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/04/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: PROPOSED ORDINANCE, AGENDA REVISION NOTICE FOR 5.4.2021

ORDINANCE NO. _____

**SUBMITTING TO THE QUALIFIED VOTERS OF WHATCOM COUNTY A PROPOSAL TO
AMEND WHATCOM COUNTY CHARTER SECTION 8.22 TO ALIGN REQUIREMENTS
FOR AMENDING THE CHARTER BY CITIZEN INITIATIVE WITH WASHINGTON STATE
NORMS**

WHEREAS, Washington State secures the right of citizens to make and remake their laws, to petition to place laws directly on the ballot for other voters; and

WHEREAS, RCW 29A.72.160 states that persons proposing any initiative measure must obtain signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election; and

WHEREAS, the Whatcom County Charter Section 8.22, Amendments by the Public, states that "The public may propose amendments to the Charter by registering with the Auditor an initiative petition bearing the signatures of registered voters of the county equal in number to, but not less than, fifteen (15) percent of the number of votes cast in the county in the last gubernatorial election"; and

WHEREAS, the norm in Washington State is to use the percentage of votes cast for the highest executive office of the entity to which the initiative petition for charter amendment is addressed. For statewide initiatives that means the latest gubernatorial race, for county initiatives the latest county executive race, for city initiatives, the latest mayoral race; and

WHEREAS, five of the six First-Class Cities in Washington State use the percentage of votes cast in the most recent mayoral race, as do all other cities where citizen-initiated charter amendments are permitted; and

WHEREAS, of the four counties with county executive-council charters, Snohomish is the only other county using the gubernatorial vote; and

WHEREAS, gubernatorial and county elections are held in different years, with far higher turnout in gubernatorial elections (137,935 votes cast for governor in 2020, vs. 80,734 votes cast for county executive in 2019), making gubernatorial turnout a vastly disproportionate standard for county initiatives; and

WHEREAS, the Whatcom County Charter sets a higher bar than other local governments in Washington State; and

WHEREAS, the Whatcom County Council supports the right of citizens to make and remake their laws and to petition to place charter amendments directly on the ballot for other voters to consider; and

WHEREAS, the Whatcom County Council does not wish to unduly burden citizens who wish to exercise their rights to propose amendments to their charter.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the County Auditor place on the November 2021 general election ballot a charter amendment specifying that "The public may propose amendments to the Charter by registering with the Auditor an initiative petition bearing the signatures of registered voters of the county equal in number to, but not less than, fifteen (15) percent of the number of votes cast in the county in the last county executive election." The changes would amend Section 8.22 of the County Charter as shown in Exhibit A.

ADOPTED this _____ day of _____ 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date:_____

EXHIBIT A

Section 8.22 Amendments by the Public.

The public may propose amendments to the Charter by registering with the Auditor an initiative petition bearing the signatures of registered voters of the county equal in number to, but not less than, fifteen (15) percent of the number of votes cast in the county in the last gubernatorial County Executive election. Signatures shall be registered not more than one hundred twenty (120) days following filing of the petition with the Auditor, who shall submit the amendments to the voters. The one hundred and twenty (120) day period shall begin upon receipt of official notification to petitioner(s) by the Prosecuting Attorney's Office either by certified mail or messenger. If the last day for collecting signatures falls on a weekend or legal holiday, then the one hundred and twenty (120) day period shall extend to the end of the next business day.

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010



COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
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WHATCOM COUNTY COUNCIL AGENDA REVISION NOTICE FOR MAY 4, 2021

**VIRTUAL MEETING
AGENDA REVISED 5.4.2021
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THE FOLLOWING ITEMS HAVE BEEN ADDED TO COUNCIL:

ITEMS ADDED BY REVISION

1. [AB2021-278](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Sections 5.40 and 5.41 to align signature requirements for citizen initiatives with Washington State norms **(FOR INTRODUCTION)**

ITEM ADDED 5.4.2021
2. [AB2021-279](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Section 8.22 to align requirements for amending the Charter by citizen initiative with Washington State norms **(FOR INTRODUCTION)**

ITEM ADDED 5.4.2021



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-308

File ID:	AB2021-308	Version:	1	Status:	Agenda Ready
File Created:	05/20/2021	Entered by:	SMildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Executive Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: smildner@co.whatcom.wa.us <<mailto:smildner@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's appointment of Sandy Phillips and Jeannine Heidenreich to the Bicycle Pedestrian Advisory Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached applications

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Phillips Application, Heidenreich Application



Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Title	Mr.
First Name	J G Sandy
Last Name	Phillips
Today's Date	1/4/2021
Street Address	2461 Lyn Court
City	Custer
Zip	98240
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	3603664369
Secondary Telephone	3602235881
Email Address	blanketbill@comcast.net
1. Name of Board or Committee	Bicycle/Pedestrian Advisory Committee
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 4
4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	No
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<i>Field not completed.</i>
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Retired Military and warehouse manager. Tai Ji and Qigong Instructor, and bicyclist I was a member of the the WTA 5 year planning commission
10. Please describe why you're interested in serving on this board or commission	I ride a good many places in North County and am concerned with bicycle safety and also with promoting travel by bike and bike and bus.
References (please include daytime telephone number):	<i>Field not completed.</i>
Signature of applicant:	J G SANDY PHILLIPS
Place Signed / Submitted	Custer, WA



Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Title	Ms.
First Name	Jeannine
Last Name	Heidenreich
Today's Date	1/5/2021
Street Address	809 w north st
City	BELLINGHAM
Zip	98225
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	5034678255
Secondary Telephone	Field not completed.
Email Address	jae.heidenreich@gmail.com
1. Name of Board or Committee	Bicycle/Pedestrian Advisory Committee
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 2
4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	No
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<u>Resume2021.pdf</u> - attached
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Qualifications include extensive work in Community Outreach, Economic Development, Land-use planning with regard to Human-powered infrastructure (spearheaded Oregon's Cascade Rivers Scenic Bikeway, cross-jurisdictional effort), and Communications/media expertise.
10. Please describe why you're interested in serving on this board or commission	As a Whatcom County community member, I'm personally invested in the intersection of good government, outdoor spaces and public health. I am also driven by a lifelong interest in equity and access.
References (please include daytime telephone number):	Lisa Citron (323.702.9682) Elizabeth Joffrion (360.920.9396) Kate Fonte (941.350.7461)
Signature of applicant:	Jeannine Heidenreich
Place Signed / Submitted	Bellingham, WA

Summary:

Over eight years of increasing responsibility in tourism partnership training and coaching, culminating in management of diverse tourism marketing grants and small business education. Experienced in operationalization of strategic vision, personnel and administrative management, project cost forecasting, evaluative data analysis, proposal development, writing, new media strategy and implementation. Advising, assisting and supporting Executive Director. Based in Portland OR from 2008-2016.

Experience

Communications Consultant, Nursing Quality Care Assurance - Olympia, Washington

05/20 - 12/20

Subject Matter Expert leading Internal and External Stakeholder Outreach, and Business Requirement Analysis for website redesign.

Transcriber - Western Washington University, Bellingham, Washington

10/17 - 04/19

Provided real-time transcription services to deaf or hard of hearing students using a sophisticated software program. Exceeded service quality goals.

Destination Development Manager - Oregon City, Oregon.

03/12 - 12/15

Research and explore new and existing tourism products and opportunities to enhance their economic impact on the region. Evaluated effectiveness of PR programs within and without the county government. Seek collaborative partnerships to leverage opportunities, facilitate access to marketing resources, implement strategies to create awareness of tourism-related assets, workshop and training session development. Implement and evaluate results annually. Resolve concerns via phone, email and in person. Electronic visitor information kiosks throughout the county. Manage \$200,000 grant fund, including grant review, awardee coaching and project benchmark reports. Liaise with State Parks, ODOT, National Forest Service and County Parks to develop projects to enhance visitor experience. Managed contracts for Arts and Culture/Heritage and professionals.

Public Relations Officer - Oregon City, Oregon.

10/08 - 03/12

Responsible for digital communications ecosystem, content strategy and social media channels. Developed and implemented a comprehensive social media program strategy including social media playbook, governance model, managed response protocol, created PR training resources, identified new platforms. Led social media activities, including graphic design and publication, website maintenance across multiple platforms (Facebook, Twitter, Webpages). Managed social media content calendar ensuring plans aligned with brand.

Public Relations Officer - Oregon City, Oregon. (con't) Partnered and trained stakeholders through education and storytelling. Created and tracked benchmarks. Explored new media opportunities. Worked across departments to maintain a clear voice and approach. Content creator and editor. Collaborated with partners to develop short and long term PR and advertising strategies. Led workgroups to formulate PR communications for Board approval. Advised stakeholders and provided event logistical support.

Director-Product Development, MWT Tours & Events - Portland, Oregon.

5/08 - 10/08

Contracted to develop the inbound leisure Mexico market. Regional industry outreach, itinerary creation, contract negotiation, product research and pricing, defining and implementation of marketing strategy. Closed sales and exceeded contact goals.

Media Marketing Manager, Eugene, Cascades & Coast - Eugene, Oregon.

11/05 - 05/08

Implemented successful visitor promotions for the non-profit Destination Marketing Organization (DMO) of Lane County, Oregon through collaborative domestic and international "business to business" sales missions. Tracked economic impact of results. Created media updates, facilitated research tours for press and travel trade decision-makers, communicated with stakeholders through all stages of outreach. Responsible for timely follow-up and cultivation of ongoing relationships with writers and tour operators. Designed web pages and unique sample itineraries.

Director of Marketing & Tour Design, Custom Group Tours Inc. - Eugene, Oregon.

03/98 - 11/01

Effectuated International Contract Negotiations for detailed upper-end, multi-week group travel arrangements. Position required daily and extensive client contact, including direct sales and problem resolution. Developed Content of Promotional Literature and coordinated its distribution to Direct-mail Base of 8,500. Escorted Groups Abroad, Developed and Maintained Web Site, Established Tour Budgets.

Accomplishments & Affiliations

- ◆ Chaired Bellingham political action group candidate endorsement committee, coached participants through PMI tool "Slack."
- ◆ Facilitated and Presented at numerous Agritourism, Heritage, Rural Tourism and New Media Summits and Workshops (2010-2105),
- ◆ Facilitated Sustainability panel for Eugene '08 Olympic Track and Field Trials
- ◆ Spearheaded state-wide AAA frontline staff in-office training and incentive program
- ◆ Oregon Tour & Travel Association Board Member, Education Chair (2013-2016)
- ◆ Ski Oregon Board (2014-2016)
- ◆ Responsible for trade show representation of my region at dozens of national/international events (2006 - 2016).
- ◆ Freelance Writer and *Mata Morrow Mystery Series* author; pen name Lula Flann (11/15-Present)

Education & Accreditation

2019 **Narrative Project - 9 Month Storytelling Skills Course - Seattle, WA**
2013 **Certificate of Completion - Clackamas County, OR - Mediation Training, 40-Hours**
2012 **Pacific NW Economic Development Certification**
 Graduate Regents College; Albany, NY - B.S. Degree in International Marketing
Add'l Undergraduate Work:
 University of Arkansas - Marketing major, Fashion Merchandising
 University of Colorado - French language Studies
 DLI; Monterey, CA - Russian language, 47 Hours - Honors graduate

References

Available Upon Request



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-309

File ID:	AB2021-309	Version:	1	Status:	Agenda Ready
File Created:	05/20/2021	Entered by:	SMildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Executive Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: smildner@co.whatcom.wa.us <<mailto:smildner@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's reappointment of Mark McDonald to the North Sound Behavioral Health Administrative Services Organization (ASO) Advisory Board

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See staff recommendation and application

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff memo, McDonald Application



RECEIVED

MAY 20 2021

WHATCOM COUNTY
EXECUTIVE'S OFFICE

Memorandum

TO: Satpal Sidhu, County Executive

FROM: Jackie Mitchell, Program Specialist

DATE: MAY 18, 2021

RE: NOMINATION TO THE NORTH SOUND BEHAVIORAL HEALTH
ADMINISTRATIVE SERVICES ADVISORY BOARD

I am pleased to nominate Mark McDonald to the North Sound Behavioral Health Administrative Services Organization (NS BH-ASO) Advisory Board.

Mr. McDonald represented Whatcom County on North Sound's previous Behavioral Health Organization Advisory Board for many years. He has a wealth of experience through his longevity on several of our boards and his presence provides overall consistency and helps new board members feel more comfortable in their new roles. In addition, Mr. McDonald has "lived experience" and brings a fresh perspective of the current issues facing people with behavioral health issues in our community.

Thank you.





APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Mark McDonald Date: 12/18/17
Street Address: 1101 McKenzie Ave. #305
City: Bellingham Zip Code: 98225
Mailing Address (if different from street address): _____
Day Telephone: 360-920-9445 Evening Telephone: _____ Cell Phone: _____
E-mail address: N/A

1. Name of board or committee—**please see reverse**: North Sound Mental Health Administration
2. **You must specify which position you are applying for. Please refer to vacancy list.** Mental Health Advocate
3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?
(If applicable, please refer to vacancy list.) _____ (x) yes () no
4. Which Council district do you live in? _____ (x) One () Two () Three () Four () Five
5. Are you a US citizen? _____ (x) yes () no
6. Are you registered to vote in Whatcom County? _____ () yes () no
7. Have you ever been a member of this Board/Commission? _____ (x) yes () no
If yes, dates: 3/26/13 — Present
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? _____ () yes (x) no
If yes, please explain: _____
9. Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? _____ () yes (x) no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

Current member of NS MHA Advisory Board

11. Please describe why you're interested in serving on this board or commission: _____

To advocate for mental health consumers

References (please include daytime telephone number): _____

Jackie Mitchell · 360·778·6048

Signature of applicant: Mark McDonald

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-307

File ID:	AB2021-307	Version:	1	Status:	Agenda Ready
File Created:	05/20/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 9, in the amount of \$1,138,322

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #9 requests funding from the General Fund:

1. To appropriate \$23,936 in Non Departmental to fund transfer in support of public safety radio tower leases.
2. To appropriate \$76,335 in Assessor to fund reinstatement of two “frozen” positions from American Rescue Plan (ARP) funding.
3. To appropriate \$32,722 in Auditor to fund reinstatement of one “frozen” position from ARP funding.
4. To appropriate \$153,980 in Planning & Development to fund reinstatement of three “frozen” positions from ARP funding.
5. To appropriate \$67,476 in Sheriff to fund reinstatement of two “frozen” positions from ARP funding.
6. To appropriate \$53,321 in County Clerk to fund reinstatement of 1.5 FTE “frozen” positions from ARP funding.

From the Road Fund:

7. To appropriate \$31,786 in Public Works Administration to fund reinstatement of one “frozen” position from ARP funding.

From the Whatcom County Jail Fund:

8. To appropriate \$237,214 in the Sheriff’s Corrections Bureau to fund reinstatement of five

“frozen” deputy positions from ARP funding.

From the Behavioral Health Programs Fund:

9. To appropriate \$44,711 to fund reinstatement of one “frozen” Mental Health Court position from ARP funding.
10. To appropriate \$50,000 to fund GRACE program from PeaceHealth donation.
11. To appropriate \$140,000 to fund GRACE program from additional City of Bellingham funding.

From the Countywide Emergency Medical Services Fund:

12. To appropriate \$60,000 to fund EMS records management system software maintenance contract amendments.

From the Whatcom County Emergency Management Fund:

13. To appropriate \$23,936 to fund public safety radio tower leases from general fund transfer.

From the Administrative Services Fund:

14. To appropriate \$142,905 to fund reinstatement of three “frozen” positions from ARP funding.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments:	Proposed Ordinance, Summary - Budget Supplemental #9-2021, Requests - Budget Supplemental #9-2021
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**ORDINANCE NO.
AMENDMENT NO. 9 OF THE 2021 BUDGET**

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,
WHEREAS, changing circumstances require modifications to the approved 2021-2022 budget;
and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the
Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2021-2022
Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the following additional
amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Non Departmental	23,936	-	23,936
Assessor	76,335	(76,335)	-
Auditor	32,722	(32,722)	-
Planning & Development	153,980	(153,980)	-
Sheriff	67,476	(67,476)	-
County Clerk	53,321	(53,321)	-
Total General Fund	407,770	(383,834)	23,936
Road Fund	31,786	(31,786)	-
Whatcom County Jail Fund	237,214	(237,214)	-
Behavioral Health Fund	234,711	(234,711)	-
Countywide Emergency Medical Services Fund	60,000	-	60,000
Whatcom County Emergency Management Fund	23,936	(23,936)	-
Administrative Services Fund	142,905	(142,905)	-
Total Supplemental	1,138,322	(1,054,386)	83,936

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

() Approved () Denied

Approved by email/C Quinn/M Caldwell
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 9				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Non Departmental	To fund transfer in support of public safety radio tower leases.	23,936	-	23,936
Assessor	To fund reinstatement of "frozen" positions from ARP funding.	76,335	(76,335)	-
Auditor	To fund reinstatement of "frozen" position from ARP funding.	32,722	(32,722)	-
Planning & Development	To fund reinstatement of "frozen" positions from ARP funding.	153,980	(153,980)	-
Sheriff	To fund reinstatement of "frozen" positions from ARP funding.	67,476	(67,476)	-
County Clerk	To fund reinstatement of "frozen" positions from ARP funding.	<u>53,321</u>	<u>(53,321)</u>	<u>-</u>
Total General Fund		407,770	(383,834)	23,936
Road Fund	To fund reinstatement of "frozen" position from ARP funding.	31,786	(31,786)	-
Whatcom County Jail Fund	To fund reinstatement of "frozen" positions from ARP funding.	237,214	(237,214)	-
Behavioral Health Fund				
Health	To fund reinstatement of "frozen" position from ARP funding.	44,711	(44,711)	-
Health	To fund GRACE program from PeaceHealth donation.	50,000	(50,000)	-
Health	To fund GRACE program from additional City of Bellingham funding.	<u>140,000</u>	<u>(140,000)</u>	<u>-</u>
Total Behavioral Health Fund		234,711	(234,711)	-
Countywide Emergency Medical Services Fund	To fund EMS records management system software maintenance contract amendments.	60,000	-	60,000
Whatcom County Emergency Management Fund	To fund public safety radio tower leases from general fund transfer.	23,936	(23,936)	-
Administrative Services Fund	To fund reinstatement of "frozen" positions from ARP funding.	<u>142,905</u>	<u>(142,905)</u>	<u>-</u>
Total Supplemental		<u>1,138,322</u>	<u>(1,054,386)</u>	<u>83,936</u>

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3219

Fund 1

Cost Center 4530

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Trf to support public safety radio leases

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$23,936
	Request Total		\$23,936

1a. Description of request:

Companion supplemental to fund Emergency Management supplemental #3215 in support of public safety radio tower leases.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3205

Fund 1

Cost Center 300

Originator: M Caldwell

Year 1

2021

Add'l FTE ☐

Priority

1

Name of Request: Reinstate Assessor "Frozen" Positions

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$49,682
	6210	Retirement	\$5,092
	6230	Social Security	\$3,801
	6245	Medical Insurance	\$15,629
	6255	Other H&W Benefits	\$1,482
	6259	Worker's Comp-Interfund	\$520
	6269	Unemployment-Interfund	\$129
	8301	Operating Transfer In	(\$76,335)
	Request Total		\$0

1a. Description of request:

Reinstate the following Assessor's "frozen" positions:

Clerk V

Drafter/GIS Tech II

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan Funding

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3210

Fund 1

Cost Center 560

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate Auditor "Frozen" Position

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$20,245
	6210	Retirement	\$2,075
	6230	Social Security	\$1,549
	6245	Medical Insurance	\$7,814
	6255	Other H&W Benefits	\$726
	6259	Worker's Comp-Interfund	\$260
	6269	Unemployment-Interfund	\$53
	8301	Operating Transfer In	(\$32,722)
	Request Total		\$0

1a. Description of request:

Reinstate Clerk III position in Auditor's Office.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3211

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate PDS "Frozen" Positions

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$106,604
	6210	Retirement	\$12,001
	6230	Social Security	\$8,155
	6245	Medical Insurance	\$23,443
	6255	Other H&W Benefits	\$2,512
	6259	Worker's Comp-Interfund	\$988
	6269	Unemployment-Interfund	\$277
	8301	Operating Transfer In	(\$153,980)
	Request Total		\$0

1a. Description of request:

Reinstate the following Planning & Development Service positions:

Assistant Director

Planning Technician

Plans Examiner II

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3212

Fund 1

Cost Center 2900

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate Sheriff "Frozen" Positions

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$42,204
	6210	Retirement	\$4,326
	6230	Social Security	\$3,229
	6245	Medical Insurance	\$15,629
	6255	Other H&W Benefits	\$1,458
	6259	Worker's Comp-Interfund	\$520
	6269	Unemployment-Interfund	\$110
	8301	Operating Transfer In	(\$67,476)
	Request Total		\$0

1a. Description of request:

Reinstate the following administrative positions:

Clerk III

Accounting Technician

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan

Thursday, May 13, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3213

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate County Clerk "Frozen" Positions

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$30,367
	6210	Retirement	\$3,113
	6230	Social Security	\$2,323
	6245	Medical Insurance	\$15,629
	6255	Other H&W Benefits	\$1,420
	6259	Worker's Comp-Interfund	\$390
	6269	Unemployment-Interfund	\$79
	8301	Operating Transfer In	(\$53,321)
	Request Total		\$0

1a. Description of request:

Reinstate the following County Clerk positions:
Court Clerk - .5 FTE Assigned Counsel
Court Clerk

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3208

Fund 108

Cost Center 10895

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate Public Works "Frozen" Position

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$19,455
	6210	Retirement	\$1,994
	6230	Social Security	\$1,488
	6245	Medical Insurance	\$7,814
	6255	Other H&W Benefits	\$724
	6259	Worker's Comp-Interfund	\$260
	6269	Unemployment-Interfund	\$51
	8301	Operating Transfer In	(\$31,786)
	Request Total		\$0

1a. Description of request:

Reinstate Clerk/Receptionist position in Road Admin.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3206

Fund 118

Cost Center 118000

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate Corrections "Frozen" Positions

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$156,795
	6210	Retirement	\$16,291
	6230	Social Security	\$11,995
	6245	Medical Insurance	\$39,072
	6255	Other H&W Benefits	\$3,813
	6259	Worker's Comp-Interfund	\$8,840
	6269	Unemployment-Interfund	\$408
	8301	Operating Transfer In	(\$237,214)
	Request Total		\$0

1a. Description of request:

Reinstate 5 Correction Deputies positions

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan funding

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3209

Fund 124

Cost Center 124111

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate Mental Health Court "Frozen" Position

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$30,276
	6210	Retirement	\$3,103
	6230	Social Security	\$2,316
	6245	Medical Insurance	\$7,814
	6255	Other H&W Benefits	\$759
	6259	Worker's Comp-Interfund	\$364
	6269	Unemployment-Interfund	\$79
	8301	Operating Transfer In	(\$44,711)
	Request Total		\$0

1a. Description of request:

Reinstate Mental Health Court Community Health Specialist II position.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan Funding

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3216

Fund 124

Cost Center 124115

Originator: Anne Deacon

Expenditure Type: One-Time


Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: PeaceHealth- GRACE Program

X  (on behalf of Erika Lautenbach, Director) 5/17/21
Department Head Signature (Required on Hard Copy Submission) Date

Costs:	Object	Object Description	Amount Requested
	4367.1000	Donations	(\$50,000)
	6610	Contractual Services	\$43,787
	8351	Operating Transfer Out	\$6,213
	Request Total		\$0

1a. Description of request:

The Health Department is requesting expenditure authority to support continued operations of the GRACE (Ground-level Response and Coordinated Engagement) program, with dedicated funding from PeaceHealth. This funding will support intensive outreach and case management services to individuals with complex health conditions.

1b. Primary customers:

Whatcom county residents who are GRACE participants. GRACE participants are individuals who utilize at a high frequency the crisis response systems (both law enforcement and EMS) as well as the hospital emergency department.

2. Problem to be solved:

Individuals who demonstrate a high utilization of crisis response systems rarely use these systems appropriately or effectively. Their complex health care needs, including behavioral health needs, are not addressed in a comprehensive manner. These individuals typically require a team of professionals that can provide intensive services in a pre-planned and coordinated manner, focused on reducing inappropriate use of crisis services (including the jail), while promoting their health and well-being. The GRACE program will serve these individuals.

3a. Options / Advantages:

The Whatcom GRACE program will provide intensive services to identified individuals in a team-based approach. Team members will provide outreach, engagement, and comprehensive services to meet the complex needs of individuals who are high utilizers of crisis response systems. Shared care plans will be followed to ensure coordinated services and ongoing support to these individuals are delivered, which will reduce the cost and burden to the community's crisis response systems.

3b. Cost savings:

The county will realize savings by reducing the frequency of use of the crisis system by GRACE participants.

4a. Outcomes:

GRACE participants will reduce their frequency of use of crisis response systems.

4b. Measures:

Reduction in Emergency Department and EMS utilization and jail bookings by GRACE participants.

5a. Other Departments/Agencies:

N/A

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3216

Fund 124

Cost Center 124115

Originator: Anne Deacon

5b. Name the person in charge of implementation and what they are responsible for:

N/A

6. Funding Source:

PeaceHealth

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID #: 3217

Fund 124

Cost Center 124120

Originator: Anne Deacon

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: City of Bellingham GRACE Award

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4337.1001	City of Bham Support	(\$140,000)
	6120	Extra Help	\$10,000
	6610	Contractual Services	\$114,415
	8351	Operating Transfer Out	\$15,585
	Request Total		\$0

1a. Description of request:

We are requesting expenditure authority to expand the GRACE (Ground-level Response and Coordinated Engagement) program by adding another Intensive Case Manager, adding a new component of programming that will respond to people who are experiencing a behavioral health crisis, and paying for planning, design, training and public education of the programs.

1b. Primary customers:

GRACE serves people who require intensive supports and coordination among providers to ensure stability of general and behavioral health. People who are experiencing a behavioral health crisis, yet are not GRACE members will be served with the new GRACE program component.

2. Problem to be solved:

A. People who use emergency response systems often to try to meet their needs, often cycle through these systems without receiving sufficient benefit.

B. People who are experiencing a behavioral health crisis and call 911 may be more appropriately served by a non-law enforcement response.

3a. Options / Advantages:

A. GRACE provides coordinated care and community support to its members, thereby reducing unnecessary emergency services responses, while promoting greater health and stability.

B. People, who are non-GRACE members, who call 911 when having a behavioral health crisis may receive more effective and appropriate care when behavioral health professionals respond on scene. Law enforcement's primary role is public safety, which is not always relevant to 911 calls for behavioral health crises.

3b. Cost savings:

Behavioral health services delivered pursuant to a coordinated community support plan are less expensive and more effective than numerous emergency services responses from EMS or law enforcement.

4a. Outcomes:

The GRACE program will increase personnel and provide services to an additional 20 people at any given time.

4b. Measures:

Number of additional people served in the GRACE program in conjunction with Bellingham Police Department.

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3217

Fund 124

Cost Center 124120

Originator: Anne Deacon

5a. Other Departments/Agencies:

N/A

5b. Name the person in charge of implementation and what they are responsible for:

N/A

6. Funding Source:

Funding for this request is provided by the City of Bellingham, a key partner in the GRACE program.

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3214

Fund 130

Cost Center 130100

Originator: T. Helms/M.Hilley

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Image Trend - contract amendments

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6625	Software Maint Contracts	\$60,000
	Request Total		\$60,000

1a. Description of request:

The budget allocation for the countywide EMS records management system provided through Image Trend was entered incorrectly when preparing the 2021-2022 biennial budget. The contract amendments approved in 2020 were not factored into the allocation when the budget was prepared.

Original budget authority was \$150,000. This amount was correctly reduced to \$120,000 when removing the one-time fees from subsequent contract years. However, contract amendment number-1 increased the recurring fees with the merge of the Bellingham agreement into the countywide agreement was not factored into the budget preparation, nor was the 3% annual increase.

This budget supplemental will allow for adequate budget authority to meet the contractual amount agreed to by both parties.

1b. Primary customers:

Whatcom County residents

2. Problem to be solved:

This budget supplemental provides adequate budget authority for the contract that was amended in 2019 and 2020.

3a. Options / Advantages:

This option will allow us to fulfill our contractual obligations and continue to provide a valuable service to our Whatcom County residents.

3b. Cost savings:

n/a

4a. Outcomes:

Budget authority matches our contractual obligation.

4b. Measures:

Budget authority will be corrected.

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

EMS Levy Fund

Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3215

Fund 167

Cost Center 1673519001

Originator: John Gargett

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Public Safety Radio System Annual Expenses 2021

X

Department Head Signature (Required on Hard Copy Submission)

Date

05/18/21

Costs:	Object	Object Description	Amount Requested
	6860	Equipment Rental	\$23,936
	8301	Operating Transfer In	(\$23,936)
	Request Total		\$0

1a. Description of request:

Northwest Law Enforcement Administrative Radio Network (NW LEARN) coordinated the development and maintenance of the public safety radio network serving Island, San Juan, Skagit, and Whatcom Counties for more than thirty years. The Northwest Regional Council dissolved NW LEARN effective 12/31/20 and transitioned all of the administrative and purchasing functions related to NW LEARN back to member agencies. With the dissolution, NW LEARN fund balance was distributed back to counties along with the responsibility for maintenance and repair of the radio towers, radios, and equipment. Whatcom County's share of the distribution was \$42,707.60 which was deposited 04/05/21 on Treasurer's Receipt #353551. Whatcom County contributions to NW LEARN were made from the General Fund and the dissolution distribution was deposited back to the General Fund.

Whatcom County Sheriff's Office Division of Emergency Management (WCSO-DEM) now has responsibility for repair and maintenance of radio equipment and lease of radio towers and needs budget authority in Emergency Management Fund No. 167 for these expenses.

1b. Primary customers:

Fire/EMS and Law Enforcement agencies in Whatcom County.

2. Problem to be solved:

WCSO-DEM requires additional budget authority for tower leases.

3a. Options / Advantages:

There are no other options since lease of radio towers is required for a functioning system.

3b. Cost savings:

This necessary expense will provide for a functional Public Safety Radio System.

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

Multiple jurisdictions, departments, and agencies utilize the Whatcom County Radio System.

5b. Name the person in charge of implementation and what they are responsible for:

N/A

6. Funding Source:

General Fund (Fund 001)

Tuesday, May 18, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3207

Fund 507

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Reinstate Administrative Services "Frozen" FTEs

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$97,804
	6210	Retirement	\$10,542
	6230	Social Security	\$7,482
	6245	Medical Insurance	\$23,443
	6255	Other H&W Benefits	\$2,392
	6259	Worker's Comp-Interfund	\$988
	6269	Unemployment-Interfund	\$254
	8301	Operating Transfer In	(\$142,905)
	Request Total		\$0

1a. Description of request:

Reinstate the following Administrative Services positions:
Systems Administrator - IT
Senior Systems Analyst - IT
Office Coordinator - Finance

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Rescue Plan funding



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-310

File ID:	AB2021-310	Version:	1	Status:	Agenda Ready
File Created:	05/20/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance establishing the American Rescue Plan Act Fund and establishing a budget for the American Rescue Plan Act Fund

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Establishes a fund to account for the County's American Rescue Plan Act (ARPA) allocation and establishes an initial budget of \$1,732,850 to reinstate positions left unfunded due to COVID-19 economic impacts. In addition, the requested budget will fund seven months of operations at the County's Isolation & Quarantine Facility.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Ordinance, Exhibit A - ARPA Fund

ORDINANCE NO. _____

**ORDINANCE ESTABLISHING THE AMERICAN RESCUE PLAN ACT FUND AND
ESTABLISHING A BUDGET FOR THE AMERICAN RESCUE PLAN ACT FUND**

WHEREAS, on March 11, 2021 President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law, and

WHEREAS, ARPA is intended to combat the COVID-19 pandemic, including the public health and economic impacts, and

WHEREAS, ARPA contains \$362 billion for Coronavirus State and Local Fiscal Recovery Funds, and

WHEREAS, Whatcom County will directly receive \$44,528,542 in two 50% installments, available beginning May 2021 with the balance delivered approximately 12 months later, and

WHEREAS, this funding must be used by December 31, 2024 to support public health expenditures, address negative economic impacts caused by the public health emergency, replace lost public sector revenue, and invest in water, sewer, and broadband infrastructure, and

WHEREAS, the County intends to utilize these funds in 2021 to support the continued efforts of urgent COVID-19 Public Health response efforts, replace lost public sector revenue, and to rebuild and strengthen the County's vital public services by retaining, rehiring, and hiring for County jobs to sustain and improve the post-pandemic level of service provided to the constituents of Whatcom County, and

WHEREAS, the County also intends to work with the community to provide a long-term framework on how best to utilize this substantial infusion of resources to help turn the tide on the pandemic, provide economic stabilization and lay the foundation for a strong and equitable economy and public health system, and

WHEREAS, a new special revenue fund is necessary to properly account for this restricted revenue source,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new fund is hereby established titled American Rescue Plan Act (ARPA) Fund. This fund shall be used to account for the revenues and expenditures related to funding received in accordance with ARPA, and

BE IT FURTHER ORDAINED that the fund is approved with an initial budget of \$1,732,850 as presented in attached Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

() Approved () Denied

Approved by email/C Quinn/M Caldwell
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date:_____

Supplemental Budget Request*Status:* Pending**Non-Departmental**

<i>Suppl ID #</i> 3218	<i>Fund</i>	<i>Cost Center</i>	<i>Originator:</i> M Caldwell
Year 1	2021	Add'l FTE <input type="checkbox"/>	Priority 1

Name of Request: Establish ARPA Fund and Initial Budget**X****Department Head Signature (Required on Hard Copy Submission)****Date**

<i>Costs:</i>	Object	Object Description	Amount Requested
	4331.2101	American Recovery Plan Act	(\$22,264,271)
	6320	Office & Op Supplies	\$14,000
	6610	Contractual Services	\$487,000
	6870	Space Rental	\$390,000
	6990	Solid Waste	\$1,400
	8351	Operating Transfer Out	\$840,450
	Request Total		(\$20,531,421)

1a. Description of request:

Recognize receipt of first half of American Rescue Plan Act (ARPA) funding.

Initial uses:

Fund reinstatement of "frozen" positions which were not budgeted in the 2021-2022 biennium due to the economic impacts of COVID-19.

Fund continued operation of the Byron Street Isolation and Quarantine (IQ) Facility.

1b. Primary customers:

Residents of Whatcom County

2. Problem to be solved:

As a result of the economic impact of the COVID 19 pandemic, 19.5 FTE positions were "frozen" during the 2021-2022 biennial budget and remained unfilled and unbudgeted. The ARPA specifically encourages public entities to utilize this funding to return to normal staffing levels. The budget authority requested in this supplemental will fund the reinstated positions added back in Supplemental #9, supplemental ID #s 3205-3213.

Whatcom County has been funding the IQ Facility since last April out of CARES Act funding. The County has a continued need for this facility; however CARES Act funding for this service has been exhausted. This is a qualified use of ARPA funding. This request will fund rent payments, laundry, cleaning, security, facilities management, SeaMar, Lighthouse Mission, and supplies needed for this facility for March through September 2021. The current lease runs through the end of September.

3a. Options / Advantages:

Leave positions "frozen" and unfunded or utilize ARPA to fully fund the positions.

IQ: Use FEMA to partially fund the facility; however, FEMA has more restrictions and is harder to utilize. ARPA is the more appropriate funding source for this service.

3b. Cost savings:

Costs are completely covered by ARPA funding

4a. Outcomes:

Staffing: Improved county services to taxpayers.

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3218	Fund	Cost Center	Originator: M Caldwell
-----------------	-------------	--------------------	-------------------------------

IQ Facility will be fully funded with grant proceeds.

4b. Measures:

5a. Other Departments/Agencies:

All departments with "frozen" positions will return to pre-COVID staffing levels

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

American Recovery Plan Act



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-296

File ID:	AB2021-296	Version:	1	Status:	Agenda Ready
File Created:	05/13/2021	Entered by:	RSnijder@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/01/2021			Enactment #:	

Primary Contact Email: rsnijder@whatcomcounty.us

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Purchase of Development Rights Program

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance to amend Whatcom County Code 3.25A and PDR Program Guidelines. The proposed amendments would change the program's name, update the site selection criteria, and improve program administration.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Ordinance, Proposed Ordinance Exhibit A, Proposed Ordinance Exhibit B-Changes, Proposed Ordinance Exhibit B- Clean

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

Memorandum

TO: Honorable County Councilmembers
Honorable Executive Sidhu

THROUGH: Mark Personius, PDS Director *MP*

FROM: Becky Snijder van Wissenkerke, PDR Program Administrator *BLS*

DATE: May 11, 2021

SUBJECT: Request to amend Whatcom County Code 3.25A and the PDR Program Guidelines as recommended by the Purchase of Development Rights Oversight Committee

The Purchase of Development Rights Program messaging and outreach were evaluated in 2019. After such evaluation, the Purchase of Development Rights (PDR) Oversight Committee recommends changing the program's name to the Whatcom County Conservation Easement Program. This proposed name better represents the program's purpose: purchasing conservation easements that will protect important agricultural lands, forestland, and ecological areas in Whatcom County. Since the program's establishment, development rights have been removed by placing conservation easements on properties. These conservation easements also protect the land by placing other restrictions, such as limiting the amount of impervious surfaces and prohibiting any use not conducive to agriculture, forestry, or the protection of ecological areas.

In addition to this proposed program name change, the PDR Oversight Committee and PDR Program staff have reviewed Whatcom County Code 3.25A and the PDR Program Guidelines and have identified additional changes that will improve the program's administration. The major change is revising the program's site selection criteria to better identify properties with high conservation value. In 2018, the program expanded to include the protection of forestland and important ecological areas as secondary goals to the program's primary goal of farmland preservation. The current site selection criteria is designed to rank farmland and does not accurately evaluate valuable forestland or important ecological areas. The proposed program guidelines and scoring criteria, as presented in the attached documents, continue to prioritize the protection of agricultural applications while also identifying important forestland and ecological areas for protection.

The PDR Oversight Committee and PDR Program staff recommend this proposed name change and updated guidelines as detailed in the attached ordinance. We look forward to discussing these recommended changes with you.

Please call Becky Snijder van Wissenkerke, PDR Program Administrator, with any questions or concerns at (360)778-5956.

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

WHEREAS, Whatcom County government recognizes agriculture and forestry as major contributors to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural and forestry lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring "open space land, farm and agricultural land, and timber land, and a significant Conservation Futures fund balance is available for additional farm land protection efforts"; and

WHEREAS, Ordinance #2002-054 adopted Whatcom County Code Title 3.25A that authorized the creation of a Purchase of Development Rights (PDR) Program that offers voluntary farm agreements that include the purchase of agricultural conservation easements on farmable land within Whatcom County; and

WHEREAS, Ordinance #2002-054 and WCC 3.25A established a Purchase of Development Rights Oversight Committee to provide review and assistance to the PDR Program Administrator; and

WHEREAS, The Whatcom County Council adopted the PDR Guidelines Document through Resolution #2002-040 which includes specific direction for program administration and conservation easement acquisitions; and

WHEREAS, Ordinance #2018-065 amended Whatcom County Code 3.25A to direct the PDR Program to also offer voluntary agreements to purchase forestry and ecological conservations easements on working forestlands and important ecosystem areas within Whatcom County; and

WHEREAS, The PDR Program messaging was evaluated in 2019 and the Purchase of Development Rights Oversight Committee recommended changing the program's name to the Whatcom County Conservation Easement Program, and

WHEREAS, The Purchase of Development Rights Oversight Committee has updated the program guidelines so as to better identify properties with high conservation value, and

WHEREAS, The Purchase of Development Rights Oversight Committee voted unanimously on April 23, 2021 to recommend approval of the proposed program name change, updated guidelines, and updates to Whatcom County Code 3.25A.

1 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that
2 Whatcom County Code 3.25A is hereby amended as outlined in Exhibit A to this ordinance.
3

4 **BE IT ALSO ORDAINED** by the Whatcom County Council that the PDR Program
5 Guidelines are also amended as outlined in Exhibit B to this ordinance.
6

7 **ADOPTED** this ____ day of _____, 2021.
8
9

10
11 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

12
13 _____
14 Dana Brown-Davis, Clerk of the Council
15

Barry Buchanan, Council Chair
16

17
18 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

19
20 Approved by email/C Quinn/B Snijder
21

22 Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____
25
26

Exhibit A

1 Chapter 3.25A
2 ~~AGRICULTURAL, FORESTRY, AND ECOLOGICAL PURCHASE OF DEVELOPMENT RIGHTS~~
3 ~~PROGRAM~~ WHATCOM COUNTY CONSERVATION EASEMENT PROGRAM
4
5 Sections:
6 **3.25A.010 Short title.**
7 **3.25A.020 Purpose.**
8 **3.25A.030 Applicability.**
9 **3.25A.040 Definitions.**
10 **3.25A.050 Designation of program administrator – Powers and duties.**
11 **3.25A.060 ~~Purchase of development rights~~ Conservation easement program oversight committee**
12 **established – Powers and duties.**
13 **3.25A.070 Eligibility criteria.**
14 **3.25A.080 Ranking system.**
15 **3.25A.090 Conservation easement terms and conditions.**
16 **3.25A.100 Application and evaluation procedure.**
17 **3.25A.110 Purchase of ~~development rights~~ conservation easements procedure.**
18 **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**
19 **3.25A.130 Authorization.**

Comment [BSvW1]: Name changed to highlight the end goal (conservation easement protecting the land) rather than the method (purchasing development rights)

20
21 **3.25A.010 Short title.**
22 This chapter shall be known and may be cited as the “~~Agricultural, Forestry, and Ecological Purchase of~~
23 ~~Development Rights Program~~ Whatcom County Conservation Easement Program.” For the purpose of
24 this chapter this program shall be known as the “~~PDRCEP~~” program. (Ord. 2018-065 Exh. A; Ord. 2013-
25 015 Exh. A; Ord. 2002-054 § 1).
26

27 **3.25A.020 Purpose.**
28 To establish a voluntary agricultural, forestry, and ecological ~~purchase of development~~
29 ~~rights~~ conservation easement program for Whatcom County which will enhance the protection of the
30 county’s farmland, forestland, and important ecosystem areas, enhance the long-term viability of the
31 agricultural and forestry enterprises within the county and provide public benefit by retaining properties
32 in permanent resource use, in addition to the protection of ecosystem functions and values. (Ord. 2018-
33 065 Exh. A; Ord. 2002-054 § 1).
34

35 **3.25A.030 Applicability.**
36 The ~~PDR program~~ CEP shall be available for all qualifying lands, as identified in the ~~PDR program~~ CEP
37 guidelines, except those lands under the ownership or control of the United States of America, the state
38 of Washington or an agency or instrumentality thereof. Any conservation easement acquired pursuant
39 to this chapter shall be voluntarily offered by the owner. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).
40

41 **3.25A.040 Definitions.**
42 The following definitions shall apply in the interpretation and implementation of this chapter:
43

44 “Administrator” is that person placed in a managerial position over the daily operations of the ~~PDR~~
45 ~~program~~ CEP. The administrator shall serve as a direct liaison to the program.
46

47 “Conservation easement” means a nonpossessory interest in one or more parcels by one or more
48 qualified easement holders under WCC 3.25A.090(B) acquired under RCW 64.04.130, whether the

49 easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or
50 donation pursuant to the ~~PDR program~~CEP guidelines, imposing limitations or affirmative obligations for
51 the purpose of retaining or protecting agricultural, forestry, and ecosystem values of the parcel or
52 parcels.

53
54 “Development rights” means an interest in and the right to use and subdivide land for any and all
55 residential, commercial and industrial purposes and activities which are not incident to agricultural,
56 forestry, and/or ecosystem uses.

57
58 “Owner” means the owner or owners of the fee simple interest of the parcel.

59
60 “Parcel” means a legal lot of record, lawfully recorded in the Whatcom County auditor’s office. A
61 conservation easement may contain one or more parcels; for purposes of this chapter the term “parcel”
62 shall include all parcels covered by, or proposed to be covered by, the conservation easement.

63
64 The “~~PDR program~~CEP guidelines” shall be adopted by county council and contain the rules and
65 regulations under which the ~~PDR program~~CEP operates. They include eligibility criteria, site selection
66 criteria, a standard conservation easement and other procedures and information necessary to ensure
67 fair and consistent administration of the ~~PDR program~~CEP.

68
69 “Qualifying lands” means those properties meeting the eligibility criteria established in the ~~PDR~~
70 ~~program~~CEP guidelines for which ~~development rights~~conservation easements may be purchased
71 pursuant to this chapter. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

72
73 **3.25A.050 Designation of program administrator – Powers and duties.**

74 A. Designation. The administrator shall be designated by and report to the director of planning and
75 development services.

76
77 B. Powers and Duties. The administrator or his or her designee shall administer the ~~PDR program~~CEP
78 and shall have powers and duties to:

79
80 1. Establish reasonable and standard procedures and forms consistent with this chapter and the ~~PDR~~
81 ~~program~~CEP guidelines for the administration and implementation of the program.

82
83 2. Promote the program in cooperation with the ~~PDR-CEP~~ oversight committee by providing
84 educational materials to the public and conducting informational meetings.

85
86 3. Investigate and pursue, in conjunction with the county, state, federal and other programs available,
87 to provide additional public and private resources to fund the program and to maximize private
88 participation.

89
90 4. Evaluate and rank all applications to determine their eligibility and provide assistance to the ~~PDR~~
91 ~~CEP~~ oversight committee in ranking properties.

92
93 5. Coordinate the preparation of appraisals.

94
95 6. Negotiate conservation easement terms and value with the owner or owners.

96

97 | 7. Provide staff support to the county council, the PDR-CEP oversight committee, and the county's
98 | authorized appraiser.
99 |
100 | 8. For each conservation easement accepted into the program, establish baseline data, and assure
101 | that the terms and conditions of the easement are monitored and complied with by coordinating a
102 | monitoring program with each easement holder. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).
103 |
104 | **3.25A.060 ~~Purchase of development rights~~Conservation easement program oversight committee**
105 | **established – Powers and duties.**
106 | A. Establishment. The PDR-CEP oversight committee is hereby established, as follows:
107 |
108 | 1. The committee shall consist of seven members appointed by the county executive and confirmed by
109 | county council. Each member shall be a resident in and of Whatcom County. The committee shall be
110 | comprised of three farmers, one individual representing farm-supporting businesses, one individual
111 | possessing real estate experience, one citizen (nonfarmer) from the unincorporated county, and one
112 | citizen (nonfarmer) from an incorporated city. No members may have an ownership interest in any
113 | of the lands submitted for purchase pursuant to this chapter.
114 |
115 | 2. The members of the committee shall serve at the pleasure of the county council. ~~The initial terms of~~
116 | ~~the members shall be as follows: two members shall be for two years; three members shall be for~~
117 | ~~three years; and two members shall be for four years. Each term after the initial~~Each term shall be
118 | for four years.
119 |
120 | 3. The members of the committee shall serve without pay, but the county council may, at its
121 | discretion, reimburse members for actual and necessary expenses incurred in the performance of
122 | their duties.
123 |
124 | 4. The committee shall elect a chairperson, ~~and~~ vice-chairperson ~~and secretary~~ at its first meeting
125 | each calendar year. ~~The secretary need not be a member of the committee.~~
126 |
127 | 5. The administrator shall be an ex officio member of the committee.
128 |
129 | B. Purpose. To provide oversight and evaluation for the county ~~PDR program~~CEP. The PDR-CEP oversight
130 | committee's role is to advise the council in the selection of eligible lands offered for PDR-CEP
131 | acquisition.
132 |
133 | C. Powers and Duties. The PDR-CEP oversight committee shall have the powers and duties to:
134 |
135 | 1. Promote the program, in cooperation and under the guidance of the administrator, by providing
136 | educational materials to the public and conducting informational meetings.
137 |
138 | 2. Review and make recommendations to the administrator and the county council as to which
139 | conservation easements should be purchased.
140 |
141 | 3. Annually review the ~~PDR program~~CEP guidelines and recommend to the county council any changes
142 | needed to maintain the program's consistency with the comprehensive plan, or to improve the
143 | administration, implementation and effectiveness of the program.
144 |

Comment [BSvW2]: All members serve 4 years during their first term

Comment [BSvW3]: Staff provide secretary duties

145 4. Provide an annual report of program accomplishments to county council and county executive.

146
147 D. Organization – Meetings. Meetings of the committee shall be open and accessible to the public and
148 shall be subject to the Open Public Meetings Act. The committee shall determine its own meeting
149 schedule but shall meet at least annually. A public comment period will be provided at each meeting.
150 Written records of meetings, decisions, findings and recommendations shall be kept and such records
151 shall be public. The committee shall adopt its own rules and procedures for the conduct of business. The
152 committee shall elect a chairperson from among its members who shall preside at its meetings. A
153 quorum shall consist of four members present and the committee shall operate on a “majority rule”
154 basis.

155
156 E. Technical Advisory Committee. A technical advisory committee, without voting privileges, may be
157 formed to advise the ~~PDR-CEP~~ oversight committee on technical/scientific matters as needed.
158 Representatives may include but not be limited to individuals from the following agencies: Cooperative
159 Extension Service, National Resource Conservation Service and Whatcom Conservation District. (Ord.
160 2018-065 Exh. A; Ord. 2002-054 § 1).

161
162 **3.25A.070 Eligibility criteria.**

163 In order for a parcel to be eligible for a conservation easement, it must ~~be located outside of an~~
164 ~~established urban growth area and within Rural 2A, Rural 5A*, Rural 5A, Rural 10A, Residential Rural,~~
165 ~~Rural Residential – Island, Rural Forestry, or Agriculture zoned land and meet any additional~~ eligibility
166 criteria as defined in the ~~PDR program CEP~~ guidelines. (Ord. 2018-065 Exh. A; Ord. 2011-025 § 1 Exh. A;
167 Ord. 2002-054 § 1).

Comment [BSvW4]: Leave criteria in guidelines and not list in code.

168
169 ~~*The asterisk refers to Rural 5A areas depicted on the official zoning maps with an asterisk that are~~
170 ~~subject to WCC 20.36.252, Rural residential density overlay.~~

171
172 **3.25A.080 Ranking system.**

173 In order to effectuate the purposes of this chapter, parcels for which conservation easement
174 applications have been received shall be evaluated by utilizing the site selection criteria as contained in
175 the ~~PDR program CEP~~ guidelines. The ranking system shall be used to prioritize the acquisition of
176 conservation easements. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

177
178 **3.25A.090 Conservation easement terms and conditions.**

179 Each conservation easement shall conform with the requirements of this chapter. The deed of easement
180 shall be in a form approved by the county attorney, and shall contain, at a minimum, the provisions
181 incorporated in the standard agricultural, ~~forestry, or ecological~~ conservation easement. Central to the
182 purpose of the ~~PDR program CEP~~ are the following:

Comment [BSvW5]: Ord. 2018-065 expanded program to also include forestry and ecological conservation easements.

183
184 A. Allowable Uses. Uses that are compatible with the long-term productivity of the soil for the pursuit of
185 farming or forestry enterprises and/or protection of ecosystem functions and values.

186
187 B. Designation of Easement Holders. The county shall be the easement holder, and, if designated by the
188 county council, one or more other public bodies or qualified organizations, as defined in RCW 64.04.130.

189
190 C. Conservation Easement Duration. A conservation easement acquired under the terms of this chapter
191 shall be in perpetuity. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

193 **3.25A.100 Application and evaluation procedure.**

194 Beginning in the first year following the adoption of the ordinance codified in this chapter and
195 continuing thereafter, the county shall conduct a voluntary property selection process generally as
196 follows and pursuant to the PDR program CEP guidelines:

197
198 A. Application. Owners of qualifying lands ~~will be invited to make application for purchase of~~
199 ~~development rights may apply to the CEP at any time by the county by giving notice in one newspaper of~~
200 ~~general circulation.~~ Application materials will be provided by the administrator and will include, at a
201 minimum, a standard application form and information about the PDR program CEP. Applications shall
202 be submitted to the administrator and reviewed for completeness.

203
204 B. Evaluation. The administrator shall review and determine eligibility and priority classification of
205 applications. The applications ranked by the administrator shall be forwarded to the PDR CEP oversight
206 committee. The committee shall review the applications and establish parcels for easement purchase
207 based on selection criteria contained in PDR program CEP guidelines. The committee shall then forward
208 the parcels to the county council which shall review and prioritize parcels on which it will seek to
209 purchase conservation easements.

210
211 C. Appraisal. ~~Based on anticipated funding, the administrator shall estimate the number of appraisals~~
212 ~~that can be completed during the fiscal year. For those applications that meet the requirements of~~
213 ~~subsection B of this section, the committee shall select applications to be appraised cause an appraisal~~
214 ~~of the applicant's development rights to be made~~ in accordance with PDR program CEP guidelines.

215
216 D. Requirements and Deadlines May Be Waived. Any requirement or deadline set forth in this chapter or
217 the PDR program CEP guidelines may be waived by the county council if, for good cause, it is shown that
218 urgent circumstances exist that warrant consideration of an application. Under such circumstances the
219 council may purchase a conservation easement at any time and through any process it deems necessary.

220
221 E. Reapplication. An owner of a parcel not selected by the county council for purchase of a conservation
222 easement may reapply in the future. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

223
224 **3.25A.110 Purchase of ~~development rights~~ conservation easements procedure.**

225 Each application for a conservation easement shall be processed and evaluated pursuant to the
226 requirements as contained in the PDR program CEP guidelines which will include at a minimum the
227 following:

228
229 A. Development Rights Conservation Easement Sale. ~~Based on anticipated funding the administrator~~
230 ~~shall estimate the number of development rights that can be acquired from the initial pool of parcels~~
231 ~~identified in WCC 3.25A.100(B). The administrator shall coordinate negotiations with the property~~
232 ~~owners. Upon completion of negotiations, the~~ The administrator shall arrange for an appraisal of the
233 ~~development rights value of placing a conservation easement on the property, to be completed by an~~
234 independent county-authorized appraiser. ~~The value of the conservation easement will include the~~
235 ~~value from eliminating select development rights and imposing certain use restrictions in perpetuity in~~
236 ~~order to protect the agricultural, forestry, and ecosystem values of the property.~~ The PDR CEP oversight
237 committee and administrator shall review the results of the appraisal. The administrator shall, in writing,
238 invite the property owner(s) to sell grant a conservation easement to the county ~~development rights~~ for
239 the amount of the appraised value of such development rights conservation easement, subject to the
240 terms and conditions of a proposed deed of easement. Property owners desiring to ~~sell and/or donate~~

Comment [BSvW6]: When the program started, it was set up to have an application deadline, giving a pool of applicants to evaluate. This was set up with the expectation that there would be a high volume of applicants. Due to a lower volume of applicants, the program has been operating on a rolling basis.

Comment [BSvW7]: Applications to be appraised will often be for projects that have already received an agreement for matching funds. This generally includes applicants who applied a previous year.

Comment [BSvW8]: Not necessary to budget for applications received this year, since the conservation easement sale occurs 2-3 years after application is submitted. Administrator can track funding when seeking council approval to purchase.

Comment [BSvW9]: Conservation easements do more than remove development rights. Some value comes from use restrictions. Examples of use restrictions in agricultural conservation easements include: limiting the amount of impervious surfaces, prohibiting uses that impair the ability to farm, limitations on separating water rights from the property, prohibiting mining and exporting material from property, prohibiting the granting of rights-of-way for power lines, among others.

Use restrictions in forestry conservation easements are similar to those in agricultural conservation easements, but with a prohibition on uses that impair the ability to forest the property.

Ecological conservation easements may include the following restrictions: prohibiting the harvest of timber, prohibiting motorized vehicles, prohibiting excavation or grading.

241 | ~~development rights~~grant a conservation easement shall submit a written acceptance of the offer to sell.
242 | Nothing in this chapter shall compel an owner to submit an acceptance of the offer to sell.

243 |
244 | B. Acceptance. ~~An offer to sell development rights~~Requests to purchase conservation easements shall be
245 | ~~forwarded made~~ to the county council for acceptance.

246 |
247 | C. Conservation Easement Established. A conservation easement shall be established when the owner
248 | and an authorized representative of the holder of the easement have each signed the deed of
249 | easement. The deed shall be recorded in the Whatcom County auditor's office.

250 |
251 | ~~D. Offers Not Made – Offers Not Accepted – Invitation to Other Owners. If an owner invited to sell elects~~
252 | ~~not to do so, then the county administrator may send an invitation to sell to the owner(s) of the next~~
253 | ~~highest prioritized parcel(s) remaining on the list of parcels.~~

254 |
255 | E. Costs. If the county council ~~accepts an offer to sell development rights~~approves the purchase of a
256 | conservation easement, the county may pay all other costs including environmental site assessments,
257 | surveys, recording costs, if any, and other charges associated with closing. However, the county shall not
258 | pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or
259 | other advice, or expenses or fees in connection with the release and subordination of liens to the
260 | easement purchased by the county. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

261 |
262 | **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**

263 | If circumstances arise that render the purpose of this easement impossible to accomplish, the easement
264 | can be extinguished only by judicial proceedings. In the event of such an extinguishment or the taking of
265 | the property by the exercise of the power of eminent domain, grantors shall pay to Whatcom County an
266 | amount determined by subtracting the fair market value of the property subject to this easement from
267 | the fair market value of the property unrestricted by this easement, at the time of extinguishment or
268 | condemnation, if Whatcom County is not compensated for its property interests at the time of the
269 | extinguishment or condemnation. Other details regarding restrictions on buy-back or extinguishment as
270 | may be deemed necessary shall be contained in the PDR program CEP guidelines, and/or the easement
271 | deed. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

272 |
273 | **3.25A.130 Authorization.**

274 | A. The county is hereby authorized to acquire ~~development rights~~conservation easements from lands
275 | described and prioritized in WCC 3.25A.080. Such acquisition may be accomplished by purchase, gift,
276 | grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the
277 | appraised value determined as provided in this chapter and the PDR program CEP guidelines.

278 |
279 | B. If the owner so elects, the county is authorized to pay the purchase price in a lump-sum single
280 | payment at time of closing, or to enter into contract for installment payments against the purchase
281 | price. When installment purchases are made, the county is authorized to pay interest on the declining
282 | unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the
283 | time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

284 |
285 | ~~C. After county acquisition of development rights, the county may purchase the remaining agricultural,~~
286 | ~~forestry, or ecosystem rights or other property interests in such land only when requested by the owner~~
287 | ~~and when such acquisition is necessary to maintain agricultural, forestry, or ecosystem uses of the~~
288 | ~~property. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).~~

Comment [BSvW10]: Applications accepted on a rolling basis, with the purchase of easements also occurring continuously. There is no wait list.

Comment [BSvW11]: Amended and added to 3.25A.110.A

Exhibit B

Changes

Whatcom County

~~Agricultural, Forestry, and Ecological~~ ~~Purchase of Development~~ ~~Rights~~Conservation Easement ~~PROGRAM~~ ~~GUIDELINES~~Program Guidelines

Revised version adopted April 9, 2013,
Second revision adopted November 20, 2018
Third revision adopted [DATE]

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I. INTRODUCTION

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County ~~Agricultural, Forestry, and Ecological Purchase of Development Rights (PDR)~~Conservation Easement Program (CEP).

The Guidelines serve two functions:

- A. To provide an overview of the land preservation process for the property owner. Specifically, this information can be found in Section V.
- B. To establish the rules and operational procedures that the ~~PDR-CEP~~ Oversight Committee and the Administrator must follow when operating a ~~Purchase of Development Rights program~~Conservation Easement Program.

II. ~~PDR PROGRAM~~ CEP OBJECTIVE AND PRINCIPLES

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Responding to the loss of County farmland, the Whatcom County Executive initiated the development of a Purchase of Development Rights (PDR) program in September of 2001. A PDR Advisory Committee comprised of farmers, citizens and conservation organizations was formed and tasked with assisting County staff in the development of a proposal for County Council consideration. The Purchase of Development Rights Program was enacted through Ordinance 2002-054 in September of 2002.

Since that time, Whatcom County continues to experience a rapid development rate. In Response ~~to the continued loss of agricultural land and of other land types such as forest resource lands and areas of ecological importance, the program expanded in 2018 to protect working forestlands and important ecosystem areas. This expansion was enacted through Ordinance 2018-065. In order to better reflect the program's purpose, the program changed names in 2021 to the Whatcom County Conservation Easement Program. This change was enacted through Ordinance 2021-XXX.~~ These program guidelines have been updated accordingly.

Comment [BSvW1]: Update if approved.

A. Objective

The primary objective of the Whatcom County ~~Purchase of Development Rights~~ Conservation Easement Program (CEP), in conjunction with other tools, is the protection of farmland. The secondary objective of the ~~PDR Program~~ CEP is the protection of forestland and areas of ecological importance. The Whatcom County ~~Purchase of Development Rights~~ Conservation Easement Program will help to sustain the farming and forestry enterprises as well as support healthy ecosystem function throughout Whatcom County.

B. Principles

The ~~PDR Program~~ CEP provides a strategic tool to protect County farmland, forestland, and areas of ecological importance.

1. Preserve the County's Agricultural lands, Forestlands and Areas of Ecological Importance

Encourage the protection of a critical mass of agricultural and forestry land to sustain the farm-related and forestry-related businesses and activities that are necessary to support the agricultural and forestry industries in Whatcom County. Additionally, the Program will encourage the protection of areas of ecological importance necessary to sustain ecosystem health and function.

The primary ~~PDR Program~~ CEP emphasis will be:

- a. Reduce conversion of land to non-agricultural uses within the Agricultural District;
- b. Provide a buffer to discourage encroachment into the Agricultural District;
- c. Consolidate and protect areas of agricultural land; and
- d. Protect agricultural lands located outside the Agricultural District that are under increased pressure of development.

The secondary ~~PDR Program~~CEP emphases will be:

- a. Reduce conversion of land to non-forestry uses within the Forestry Districts;
- b. Provide a buffer to encroachment of the Forestry Districts;
- c. Consolidate and protect areas of forestry land;

- d. Address commercially significant forestry lands outside the Forestry Districts that are under pressure of development.
- e. Protect areas of ecological importance and support and enhance ecosystem functions within agricultural and forestry lands;
- h. Improve and support habitat connectivity and protection of critical habitat corridors.

2. Offer Effective Program Design

Maintain a voluntary tool for the preservation of productive agricultural and forestry lands, as well as areas of ecological importance in the County that will:

- a. Provide farmers and foresters with the market based economic value for agricultural and forestry land without selling the land;
- b. Provide property owners with the market based economic value for areas of ecological importance without selling the land.
- c. Support and promote ongoing agricultural and forestry activities by offering an attractive option for farmers, foresters, and landowners;
- d. Support and promote ecosystem function by offering an attractive option for landowners; and
- e. Provide for ongoing monitoring and enforcement.

3. Leverage Program Impact and Efficiency

Enhance and support a coordinated approach to the preservation of the agricultural and forestry lands, as well as areas of ecological importance that will:

- a. Create community support for agricultural and forestry preservation initiatives;
- b. Create community support for the protection of areas of ecological importance;
- c. Complement and foster other County programs and policies to preserve farming and agricultural lands;
- d. Complement and foster other County programs and policies to preserve forestry and forestry lands;
- e. Complement and foster other County programs and policies to enhance ecosystem function and protect areas of ecological importance; and
- c. Leverage other public and private funding sources and provide or increase property owner incentives and program effectiveness.

III. ELIGIBILITY CRITERIA

A. Priority Consideration

Areas around the county have been identified to receive priority consideration for ~~PDR Program~~CEP participation.

Agricultural priority areas (Appendix A) include a combination of the ~~twelve initial PDR Target Areas~~, Ten Rural Study Areas, Watershed Improvement District areas, ~~in addition to the lands within the Agriculture Zone, and additional areas identified in the 2019 Agricultural Landscape Analysis. The 2019 Agricultural Landscape Analysis also highlights active crop land and contiguous blocks of agricultural lands as identified by the Washington State Department of Agriculture as well as suitable agricultural soils as identified by USDA Natural Resource Conservation Service.~~ Preservation of these areas protect designated agricultural lands and can establish a perimeter of PDR farmlands to protect against development encroachment into large blocks of agricultural lands. These lands, due to their soils, land use, and proximity to core agricultural areas, are deemed priority farmlands for program participation due to their vulnerability for conversion to non- agricultural uses.

Comment [BSvW2]: Maps have been updated to include the 2019 Landscape Analysis data.

Forestry priority areas (Appendix B) include lands located within the Rural Forestry zone and areas designated by the Washington State Department of Natural Resources as being priority for protection from conversion under Washington's Forest Action Plan. ~~The 2019 Forestry Landscape Analysis did not identify additional priority areas.~~

Ecological priority areas (Appendix C) include lands containing a mapped Habitat Conservation Area or within 165' of habitat conservation feature, ~~such as This includes~~ fish bearing streams, areas identified under the Washington State Department of Fish and Wildlife's Priority Habitats and Species, and the Chuckanut Wildlife Corridor. ~~Ecological priority areas also include~~ Additionally the mapped FEMA Floodplain and Flood Hazard areas, ~~the have been included in addition to a~~ 300' buffer of the Historic Meander Zone, ~~and additional areas identified in the 2019 Ecological Landscape Analysis. The 2019 Ecological Landscape Analysis also highlights watershed protection recommendations and freshwater habitat as identified by the Washington Department of Ecology, among other areas.~~

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B. ~~PDR Program~~CEP Eligibility

Two factors will be important in determining eligibility:

1. Availability of funding to expand the program and
2. Advancement of ~~PDR Program~~CEP objectives. Priority lands will continue to receive preference over other lands through weighted selection criteria.

All applicant ~~properties~~ for ~~PDR Program~~CEP participation must be:

1. ~~Completely or partially~~ within an Agriculture, Rural, Rural Residential, or Rural Forestry zoning designations. Properties located in Urban Growth

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Revised version adopted, November 20, 2018[DATE]

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Areas are ineligible to participate in the program, unless coordination with cities is a component of an application.

2. At least 1 acre in size.

3. Removing all development rights if the parcel is smaller than 10 acres.

Comment [BSvW3]: Added to match requirements in Section VI.C.1.c.

~~Applications received on parcels smaller than 10 acres may not retain any development rights.~~

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IV. SITE SELECTION CRITERIA

All valid applications will be reviewed to determine if the acquisition of development rights will promote the ~~PDR program's~~ **CEP's** goals and priorities. Selection criteria have been developed to guide, but not control, the review and assessment of eligible properties during selection.

Valid and accepted offers on eligible properties of greater points shall be considered for purchase with available funds before properties receiving lower scores. The criteria, which will be used to evaluate the applications, are outlined below.

Rating instructions: ~~An application will be scored under one of three types of conservation easement selection criteria: 1) Agricultural, 2) Forestry, or 3) Ecological. The agricultural selection criteria allow for a score of up to 1100, while the forestry and ecological selection criteria allow for a score of up to 100. This ensures that agricultural protection is the primary emphasis of the program, with all five criteria sections assessed. There are five to six criteria sections and~~ Each criteria section is rated and assigned a point value based on a 100 point scale. Then each section is assigned a weight factor. ~~The five-six agricultural weight factors add up to 1.1 and the five forestry and ecological weight factors each add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the 5-section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the PDR-CEP Oversight Committee.~~

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Comment [BSvW4]: In 2018, the Program expanded to also include forestry and ecological conservation easements. Scoring needed to be updated to address this change, which resulted in three easement categories.

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A. Agricultural Site Selection Criteria

1. General Site Evaluation

~~The points for each criteria are based on a 100 point scale. Higher points are given to site characteristics that are more desirable, such as parcel size, characteristics that reflect a site's threat of conversion, and characteristics that make a site more desirable to farming, such as available water rights.~~

a. Total size of parcel(s) (nominal acres)

1a. 0 – 409.99	0 points
2b. 10 – 19.99 20	15 points
3e. 20 – 49.99	30 points
4d. 50 – 79.99	70 points
5e. ≥ 80	100 points

~~b.a. Number of existing development rights offered under current zoning~~

a. 1-2	20 points
b. 3	40 points
c. 4	60 points
d. 5	80 points
e. ≥ 6	100 points

~~e.b.~~ Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)

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- a1. ≥ 1 mile.....0 points
b2. $0.50\frac{1}{2}$ to $0.99\frac{1}{2}$ mile.....25 points

e3. $0.25\frac{1}{4}$ to $0.49\frac{1}{4}$ mile.....50 points

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- d4. < ~~0.25~~^{1/4} mile.....-75 points
e5. Adjacent.....-100 points

~~d.a. Percent of parcel actively farmed~~

- ~~a. 0-25%25 points
b. 26-50%50 points
c. 51-75%75 points
d. >75%100 points~~

~~e.c. Number of legal lots of record~~

- ~~1a. 0-2.....-20 points
2b. 3.....-40 points
e3. 4.....-60 points
4d. 5.....-80 points
5e. ≥6.....-100 points~~

~~d. Removal of all remaining unused development rights?~~

- ~~1. Unused development rights remaining0 points
2. All removed.....100-
points
2. Development rights remaining0 pts~~

~~e. Is located within a priority areas parcel is located in:~~

- ~~1a. In priority
area0.....100 points
2b. Not in a priority
area1.....-50 points
3. 2-3.....100 points~~

~~f.a. Legal water availability documentation~~

- ~~a. Certified Water Right/Access to public water.....100 pts
b. Water Claim50 pts
c. No Water documentation or legal water access.....0 pts~~

~~g.a. Proximity to major roads or road intersections~~

~~(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)~~

- ~~1. Property is at an intersection of major roads.....100 Points
2.1. Property is within 1,500 feet of the intersection
of two major roads.....75 Points
3.1. Property fronts on a major road.....50 Points
4.1. Property is within 2,500 feet of a major road.....25 Points~~

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~~h.a. Threat of Conversion/Parcelization~~

~~Total Number of Parcels in surrounding ¼ mile~~

- ~~a) Less than 20 parcels..... 50 Points~~
~~b) 20 – 50 parcels..... 100 Points~~
~~c) 50 – 100 parcels..... 50 Points~~
~~d) more than 100 parcels..... 0 Points~~

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.235, but is subject to ongoing review by the Committee).

2. Development Pressure

a. Number of existing unused development rights offered under current zoning

- 1a. 1-2..... 20 points
2b. 3..... 40 points
3e. 4..... 60 points
4d. 5..... 80 points
5e. ≥/≥6..... 100 points

b. Proximity to major roads or road intersections

(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

1. Property is within 2,500 feet of a major road..... 25 points
2. Property fronts on a major road..... 50 points
3. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
4. Property is at an intersection of major roads..... 100 pPoints
Property is within 1,500 feet of the intersection
of two major roads..... 75 Points
Property fronts on a major road..... 50 Points
Property is within 2,500 feet of a major road..... 25 Points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

- 1.a) Less than < 20 parcels..... 50
pPoints
2.b) 20 – 50 parcels..... 100 pPoints
3.e) 51 – 100 parcels..... 50 pPoints
4.d) more than > 100 parcels..... 0
pPoints

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

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2.3. Land Soil Evaluation

Productive farming, forestry and associated activities depend on soil capability (the suitability of soils for most types of field crops and/or timber production). Therefore, emphasis should be placed on the property's soil characteristics. The scoring system uses the NRCS Prime Farmland classifications, LESA classifications and APO soils classifications, including classification of soils of statewide importance as well as consideration given to site index score for forest soils. Highest points are assigned to better agricultural soils and lower points to poorer agricultural soils. Forest soils also receive additional points. Points are assigned based on the productivity and/or characteristics of the soil (profile, texture, slope, other). A soils chart is included as Appendix D. If a soil has a site index rating and a prime soil rating, the rating with the highest number of points will be applied.

Below is a table detailing the soil point system:

LESA Rating	APO or Non-APO Prime 1	Non-APO - Prime 2-8	Soils of Statewide Importance	Site Index
1	100	90	0	0
2	95	85	0	0
3	90	80	0	0
4	85	75	0	0
No Rating	80	70	50	0
Site Index Rating				
1	0	0	0	60
2	0	0	0	50
3	0	0	0	40
4	0	0	0	30
5	0	0	0	20

Farm applications receive points for this section proportional to the percentage of each soil type that exists on the property. An example of how this would work follows: A farm under review is 40 acres, of which 29.79 acres (about 75%) is soil 179-Whatcom Silt Loam 4-9% slopes, which is classified as LESA 4, APO Prime 1; and 10.21 acres (about 25%) is soil 180-Whatcom Silt Loam 9-15% slopes, which is not classified as APO or Prime, but is a soil of Statewide Importance. This farm would score a total of 76.07 points for this Section, as shown:

A	B	C	D	E	F	G	H	I	J	K
Soil #	Area (in acres)	% (B/Total area)	APO Soil	Prime 1- 6?	LESA Rating	Prime Rating	Statewide Soil	Site Index	Points	score (J*C)
179	29.79	74.48%	Y	Y	4	1	0	2	85	63.30
180	10.21	25.53%	N	N	0	0	yes	2	50	12.76
Total area	40									76.07

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Land Soil Evaluation section has been 0.35, but is subject to ongoing review by the Committee).

4. Agriculture Evaluation

a. Percent of ~~parcel~~property actively farmed

- 1a. 0-25% 25 points
- 2b. 26-50% 50 points
- 3c. 51-75% 75 points
- 4d. >75% 100 points

b. Legal water availability documentation

1. No Water documentation or legal water access..... 0 points
2. Water Claim 50 points
3. Certified Water Right/Access to public water..... 100 points
- ~~b. Water Claim 50 pts~~
- ~~c. No Water documentation or legal water access..... 0 pts~~

c. Parcel is located in Agriculture District and is less than 40 acres or parcel is located in a Rural Study Area?

1. No..... 0 points
2. Yes..... 100 points

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3. Ecological Evaluation

~~The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds.~~

- ~~a. Protection (Overall importance to Water flow processes)~~
- | | |
|---|--------------------|
| a. Highest protection | 100 pts |
| b. Protection | 75 pts |
| c. Protection/Restoration | 50 pts |
| d. e. Conservation (no change) | 25 pts |

~~b. a. Water Flow Restoration — Is property owner willing to restore ecosystem processes beyond the minimum required practices?~~

- | | |
|------------------------|-------------------|
| a. Yes | 50 pts |
| b. Maybe/No | 0 pts |

~~c. a. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)~~

- | | |
|-------------------|-------------------|
| a. Yes | 50 pts |
| b. No | 0 pts |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Ecological-Agriculture Evaluation section has been 0.150, but is subject to ongoing review by the Committee).

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4.5. Special Considerations

a. Site contains heritage/historical significance, i.e. Heritage Barn Registry

- | | |
|---------------------|------------------------|
| 1. 4- No | 0 points |
| Yes | 1050 points |
| 2. 2- No | 0 pts |

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~~—The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds.~~

~~b. Protection (Overall importance to Water flow processes):~~

- | | |
|--|-----------------------|
| 1. Conservation (no change) | 25 points |
| 2. Protection/Restoration | 50 points |
| 3. Protection | 75 points |
| 4. a- Highest protection | 100 points |
| b. Protection | 75 pts |
| Protection/Restoration | 50 pts |
| Conservation (no change) | 25 pts |

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~~c. Water Flow Restoration — Is property owner willing to restore ecosystem processes beyond the minimum required practices?~~

- | | |
|---------------------------|---------------------|
| 1. a- Maybe/No | 0 points |
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2. Yes..... 1050
points
- b. Maybe/No..... 0 pts
- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
1. ~~a. No~~..... 0 points
2. -Yes..... 1050
points
- b. No..... 0 pts
- b. Bargain Sale Opportunity below market value
1. 91% Full Value..... 0 pts
2. 71% - 90% 33 pts
3. 50% - 70% 66 pts
4. < 50% Full Value..... 100 pts
- e. Removal of all remaining development rights?
1. All removed..... 100 pts
2. Development rights remaining 0 pts
- d. Is located within a priority area:
- a. In priority area..... 100 pts
- b. Not in a priority area..... 0 pts

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations ~~Points~~ section has been 0.10, but is subject to ongoing review by the Committee).

5-6. Matching Funds ~~Secured~~ or Bargain Sale

1. 4-0% secured..... 0 points
2. 25% secured..... 25 points
3. 50% secured..... 50 points
4. 75% secured..... 75 points
5. 100% secured..... 100 points
2. 75% secured..... 75 pts
3. 50% secured..... 50 pts
4. 25% secured..... 25 pts
5. 0% secured..... 0pts

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for ~~Bonus Points~~ Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

B. Forestry Site Selection Criteria

1. General Site Evaluation

a. Total size of parcel(s) (nominal acres)

1. 0 – 9.99.....0 points
2. 10 – 19.99 15 points
3. 20 – 49.99.....30 points
4. 50 – 79.99.....70 points
5. ≥80..... 100 points

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b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)

1. >1 mile.....0 points
2. 0.50 to 0.99 mile.....25 points
3. 0.25 to 0.49 mile.....50 points
4. < 0.25 mile.....75 points
5. Adjacent.....100 points

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c. Number of legal lots of record

1. 0-2.....20 points
2. 3.....40 points
3. 4.....60 points
4. 5.....80 points
5. >6.....100 points

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d. Removal of all unused development rights?

1. Unused development rights remaining0 points
2. All removed.....100 points

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e. Number of priority areas parcel is located in

1. 0.....0 points
2. 1.....50 points
3. 2-3.....100 points

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

a. Number of existing unused development rights offered under current zoning

- 1. 1-2..... 20 points
- 2. 3..... 40 points
- 3. 4..... 60 points
- 4. 5..... 80 points
- 5. >6..... 100 points

b. Proximity to major roads or road intersections

(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

- 5. Property is within 2,500 feet of a major road..... 25 points
- 6. Property fronts on a major road..... 50 points
- 7. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
- 8. Property is at an intersection of major roads..... 100 points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

- 1. < 20 parcels..... 50 points
- 2. 20 – 50 parcels..... 100 points
- 3. 51 – 100 parcels..... 50 points
- 4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Forestry Evaluation

a. Site index soil score, spatially weighted

- 1. 5 20 points
- 2. 4 40 points
- 3. 3 60 points
- 4. 2 80 points
- 5. 1..... 100 points

b. Property is identified as priority forestland based on State Forest Action Plan?

- 1. No 0 points
- 2. Yes..... 100 points

c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?

- 1. No..... 0 points
- 2. Yes..... 100 points

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d. Proximity to existing and contiguous blocks of forestland

1. >0.5 mile..... 0 points
2. 0.26 – 0.5 mile..... 50 points
3. 0.11 – 0.25 mile 75 points
4. ≤0.1 mile..... 100 points

e. Property is located at access to other working forestland?

1. No..... 0 points
2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Forestry Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

a. Site contains existing or proposed trails

3. No..... 0 points
4. Yes..... 100 points

b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

5. Conservation (no change)..... 25 points
6. Protection/Restoration..... 50 points
7. Protection..... 75 points
8. Highest protection..... 100 points

c. Is property owner willing to implement forest management practices beyond the minimum required practices?

1. Maybe/No..... 0 points
2. Yes..... 100 points

d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)

1. No..... 0 points
2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

1. 0% secured..... 0 points
2. 25% secured..... 25 points
3. 50% secured..... 50 points
4. 75% secured..... 75 points
5. 100% secured..... 100 points

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

C. Ecological Site Selection Criteria

1. General Site Evaluation

a. Total size of parcel(s) (nominal acres)

1. 0 – 9.99.....	0 points
2. 10 – 19.99.....	15 points
3. 20 – 49.99.....	30 points
4. 50 – 79.99.....	70 points
5. >80.....	100 points

b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)

1. ≥1 mile.....	0 points
2. 0.50 to 0.99 mile.....	25 points
3. 0.25 to 0.49 mile.....	50 points
4. < 0.25 mile.....	75 points
5. Adjacent.....	100 points

c. Number of legal lots of record

1. 0-2.....	20 points
2. 3.....	40 points
3. 4.....	60 points
4. 5.....	80 points
5. ≥6.....	100 points

d. Removal of all unused development rights?

1. Unused development rights remaining.....	0 points
2. All removed.....	100 points

e. Number of priority areas parcel is located in

1. 0.....	0 points
2. 1.....	50 points
3. 2-3.....	100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

a. Number of existing unused development rights offered under current zoning

1. 1-2.....	20 points
2. 3.....	40 points
3. 4.....	60 points
4. 5.....	80 points

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5. >6..... 100 points

b. Proximity to major roads or road intersections

(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

1. Property is within 2,500 feet of a major road..... 25 points
2. Property fronts on a major road..... 50 points
3. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
4. Property is at an intersection of major roads..... 100 points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

1. < 20 parcels..... 50 points
2. 20 – 50 parcels..... 100 points
3. 51 – 100 parcels..... 50 points
4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Ecological Evaluation

The 2019 Landscape Analysis for the program is used to answer Questions 3.a through 3.c.

a. Protect water quality and quantity landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

b. Ecologically important aquatic areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

c. Ecologically important terrestrial areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

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- d. Additional ecologically important areas not included in landscape analysis score?
1. No..... 0 points
 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Ecological Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

- a. Site contains existing or proposed trails
1. No..... 0 points
 2. Yes..... 100 points

- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

1. Conservation (no change)..... 25 points
2. Protection/Restoration..... 50 points
3. Protection..... 75 points
4. Highest protection..... 100 points

- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
2. Maybe/No..... 0 points
 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

6. 0% secured..... 0 points
7. 25% secured..... 25 points
8. 50% secured..... 50 points
9. 75% secured..... 75 points
- 10..... 100% secured..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

6. Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-140). The higher the score, the more closely the property meets the

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goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation. The ~~PDR-CEP~~ Oversight Committee retains the ability to add or subtract up to 5 points on any application. A write-up of committee opinion will be included in all council proceedings.

V. OVERVIEW OF ~~PDR PROGRAM~~CEP PROCEDURES

A. Outreach and Publicity

Step 1: The County shall ~~annually give notice in one newspaper of general circulation in each area where eligible lands are located which may be acquired~~ develop and distribute outreach materials for the CEP. Outreach ~~The notice~~ shall include the properties eligible to participate, the application process and applicable timeframes and extensions.

Comment [BSvW9]: Applications received on a rolling basis, so an annual notice is no longer applicable.

The Administrator may identify each property with potential development rights within priority consideration areas and provide written notification to the property owners.

B. Application and Ranking

Step 2: Voluntary pre-application screening. Interested property owners may meet with the County ~~PDR Program~~CEP Administrator (Administrator) to review their eligibility and special circumstances, if any.

Step 3: Application. An owner of land eligible for ~~PDR Program~~CEP participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County. ~~Lot of Record application must be submitted simultaneously unless determination has already been completed.~~

Comment [BSvW10]: Information on Lot of Record in Step 4 below.

Step 4: Lot of Record/Density Determination. An owner of land eligible for ~~PDR Program~~CEP participation submits a Lot of Record application, ~~and signs a Letter of Intent that states that payment for this service must be made upon closing of the easement or should the applicant wish to withdraw their application.~~ This application determines legal status of lots being considered and determines that number of development rights remaining on said lots. ~~PDR Program application may be submitted simultaneously. The Lot of Record determination must be completed before an appraisal can occur.~~

Comment [BSvW11]: Payment due at submittal of application

Step 5: The Administrator reviews each application for completeness, determines if the subject property meets minimum eligibility criteria and assigns a preliminary score based upon the ~~PDR-CEP~~ site selection criteria.

Step 6: The ~~PDR-CEP~~ Oversight Committee reviews ~~PDR Program~~CEP applications and recommends proposed development rights acquisition utilizing the selection criteria. Recommendations for development right acquisition are prepared and forwarded to County Council to approve, deny, or recommend modification.

Step 7: The Administrator estimates the number of appraisals that can be initiated based on available funds and chooses ~~based on~~ the top ranked parcels from the County Council's list of parcels ~~and the timeline of projects with secured grant funding.~~

Comment [BSvW12]: Appraisals are only valid for one year, so it is important to coordinate with grant timelines.

| ~~The property owner is notified in writing of eligibility status.~~

| Revised version adopted, ~~November 20, 2018~~[DATE]

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~~Step 8: Property owners disputing their ranking may request a reconsideration of their ranking to the PDR Oversight Committee within 14 days after receiving written notice. The Committee shall review the reconsideration request at the next regularly scheduled meeting. Special consideration will be given if applicant modifies the original offer to include a bargain sale. The PDR Oversight Committee may, at its discretion, change the site's rank, recommend the site for subsequent consideration, or deny the request.~~

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Comment [BSvW13]: Applications are received and reviewed on a rolling basis, so this no longer applies.

C. Title

Step 9: The Administrator initiates a title search. Closing is conditioned on the resolution of all unapproved title exceptions, within the County's sole discretion, which may require the receipt of subordination agreements or payoff letter.

D. Pricing Estimate and Appraisal

Step 10: ~~___ The Administrator or designee provides preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s), and spells out conditions under which costs for further due diligence and the lot of record must be reimbursed to the county if the property owner chooses to withdraw from the program within a specified period of time.~~

Comment [BSvW14]: No longer applicable

Step 10: ___ The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).

Step 11: ___ Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the value of placing a conservation easement on the land that removes development rights ~~value of the land proposed for development rights sale~~. The ~~development rights~~ conservation easement value is the difference between the market value of full ownership of the land, and the agricultural or forestry value.

Comment [BSvW15]: Appraisals value the conservation easement. See VII.E.1.

Step 12: ___ The appraiser ~~-~~ submits the completed ~~-~~ appraisal (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.

Step 13: ___ The Administrator or designee meets with ~~-the -~~ property ~~-owner -~~ to ~~-review -~~ the appraisal (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner's questions.

Step 14: ___ If the property owner believes that the land has not been adequately appraised or valued, the owner may, within the time allowed in the schedule, commission an appraisal at the owner's expense.

|

|

Revised version adopted, ~~November 20, 2018~~[DATE]

Page 13

E. Offer to Purchase Easement and Agreement

- Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.
- Step 16: Within 30 days, the property owner accepts, rejects or makes a counter ~~offer~~. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.
- Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

- Step 18: Neighboring property owners are notified that adjacent land is in the process of being preserved.

G. Approval

- Step 19: Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.
- Step 20: Review materials are sent to other participating entities for partially or ~~wholly~~ funded conservation easements several days prior to any deadline.

I. Settlement

- Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.
- Step 23: Checks are ~~requested~~ from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

- Step 24: The conservation easement will be recorded at the County Auditor's office. The County or its designee will monitor the properties under easement at least annually to ensure compliance with the easement.

VI. CONSERVATION EASEMENTS

A. Description

A conservation easement deed is a legally binding document, which is recorded by the County Auditor, forever restricting the property to agricultural, forestry, and/or ecological and directly associated uses, and for which compensation may be paid. As an easement in gross in perpetuity, restrictions are binding upon the owner and future owners, and run with the land.

B. ~~PDR Program~~ Conservation Easements

At the time of acquisition of development rights from a participating property, a conservation easement is placed on the property permanently restricting development of the site and protecting/preserving the agricultural, forestry, and ecological values associated with the site. The conservation easement must be signed by both the property owner(s) and the County Executive or his/her designee and recorded with the property records for the property. A model conservation easement deed is included in these guidelines as attachment D.

1. Conservation Easement Requirements

Conservation easements shall be on a form approved by the Whatcom County Prosecuting Attorney and shall meet the following basic requirements:

- a. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the area subject to the easement;
- b. Restriction is granted in favor of Whatcom County, or if designated by the organizations as defined in RCW64.04.130;
- c. Restriction is granted in perpetuity, and shall bind existing and future property owners; and
- d. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the property, and the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

2. Filing

After the conservation easement is signed and notarized, it must be recorded with the Whatcom County Auditor's Office.

C. Conservation Easement Conveyance

Conservation easements may be either donated or sold, or a combination of both.

1. Conservation Easement Donation

- a. A donation of a total parcel will not be subject to eligibility except as below in section c. Partial parcel donation shall be considered under the same rule as for development rights sales. Notwithstanding the eligibility of the property, acceptance of a fee interest or partial donation is within the discretion of the County Council.
- b. Whatcom County will accept voluntary donations or bequests of development rights as perpetual easements in gross if meeting eligibility criteria (except priority area criteria) and within the discretion of the County Council.
- c. All properties offered for development rights donation must meet the following minimum eligibility criteria:
 - 1. The ~~PDR-CEP~~ Oversight Committee will consider each offer on a case by-case basis, considering the property's consistency with current and future land uses, and
 - 2. The property must be at least 1 acre in size, and
 - 3. Be in agricultural or forestry use or contain ecological values and has not been irrevocably devoted to a use inconsistent with the above values,
 - 4. Cannot be located within an Urban Growth Area, unless coordination with the proximal small city is a component of the donation.

2. Conservation Easement Sale

- a. Whatcom County will purchase perpetual conservation easements on qualified properties in accordance with the policies and procedures of the Whatcom County ~~Agricultural, Forestry, and Ecological Purchase of Development Rights~~ Conservation Easement Program, with Federal, State, County, and/or private funds and any combination thereof.
- b. All properties offered for conservation easement sale must meet minimum eligibility criteria as contained in Section III.

VII. OPERATIONAL PROCEDURES FOR ACQUIRING ~~PDR~~ CONSERVATION EASEMENTS

A. Outreach and Publicity

~~Annually, notice shall be published in one newspaper of general circulation~~ Outreach shall occur to inform landowners about the program and may include advertising in newspapers or other publications, landowner mailers, and presentations. Application opening and closing dates, if any, will be determined by the ~~PDR-CEP~~ Oversight Committee. The Committee shall have the discretion to consider applications in rounds, or individually on a rolling basis. If selection deadlines are extended, the committee will provide public notice of the extension.

B. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County. The application must be submitted to the County on the form provided by the ~~PDR Program~~ CEP, and according to the relevant public notice. Applicants are to include at a minimum:
 - a. Name(s) and address(es) of the property owner(s) of the site;
 - b. Legal description and parcel number(s);
 - c. Copy of the property deed and title;
 - d. Total acreage of farmland to be included in the ~~PDR Program~~ CEP;
 - e. Current land use and soils;
 - f. Number of dwelling units;
 - g. Description of the farming operation;
 - h. Other information necessary to evaluate property eligibility;
 - ~~i. Lot of Record/Density Determination application and payment, or Lot of Record/Density Determination application and signed Letter of Intent agreeing to terms of payment at the time of easement closing or upon withdrawal from program, or completed Lot of Record/Density Determination; and~~
 - j. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.
2. The Administrator shall review each application to determine completeness and eligibility.
3. Applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)
4. The ~~PDR-CEP~~ Oversight Committee shall provide the County Council with information and scoring of properties recommended for conservation easement acquisition by the committee. County Council shall approve or deny pursuit of conservation easement acquisitions on the parcels.

Comment [BSvW16]: Not needed with initial application

5. The Administrator shall then arrange appraisals (or alternate determination of value) of eligible applicant properties as determined by the County Council.
6. The ~~PDR-CEP~~ Oversight Committee and Administrator shall provide updates to the County Council discussing recommended purchases, possible program changes, and anticipated budget needs.

C. Appraisal

1. Appraisals for eligible properties shall be conducted to determine the value of ~~development rights~~ a conservation easement on parcels in the order of acquisition priority and in accordance with grant funding timelines until acquisition funds are expended.
 - a. The appraisals are to be made by an independent appraiser qualified to appraise agricultural, forestry, and/or ecological land for ~~development rights~~ conservation easement purchases. An appraiser is deemed qualified if he or she possesses a State of Washington certification as a State Certified General Real appraiser, MAI designation by the Appraisal Institute (or equivalent), and at least five years agricultural lands appraisal experience. Appraisers shall supply a narrative or UAAR form report, which contains information as required by the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform ~~Appriaisal~~ Appraisal Standards of Federal Land Acquisition (UASFLA) and as specified in any contract with the County.
 - b. An appraisal report is an objective report of market facts. The appraisal report must estimate both the unrestricted fee market value of the land only, excluding the value of buildings, and the agricultural or forestry value of the land only, of which the difference is the ~~development rights~~ conservation easement value.
 - c. Both values shall be based primarily on an analysis of comparable sales. If comparable sales data is not available for agricultural lands, the appraiser may use local farmland rental values or capitalized production values to determine the agricultural values of the land.
 - d. A description of the buildings or other improvements shall appear in the appraisal report; however, the buildings will not be valued and therefore will not be considered in determining the development rights value.
 - e. The appraiser shall report whether the subject property has any land use restrictions, public or private and/or physical attributes, which limit the developmental capability of the land.
 - f. The appraiser shall be advised that conservation easements are perpetual. The perpetual nature of the easement shall take precedent over any agricultural zoning status.

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Comment [BSvW17]: Appraisals have always been for conservation easement value. See VII.E.1.

Comment [BSvW18]: Appraisals are only valid for one year, so it is important to coordinate with grant timelines

Comment [BSvW19]: Critical areas restrictions captured here.

- g. The appraisal shall be in writing and may be discussed with the owners prior to the submission of written offers.

- h. ~~If~~ the property owner believes the property has not been adequately appraised, the owner may, within the time allotted, request that a review appraisal be made at the owner's expense. This appraisal must be completed in accordance with the guidelines set forth herein. If the review (owner's) appraisal is not completed within the allotted time, the application will be delayed for future committee consideration. If a review appraisal is completed, the appraisals will be reviewed by the County's Appraiser. The County's Appraiser in consultation with the Program Administrator and the ~~PDR-CEP~~ Oversight Committee will accept, modify or reject the review appraisal. The determination of the County's Appraiser is final.
- i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the ~~farm~~ land's value before and after the voluntary conservation easement.
2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

D. Title and Survey Issues

1. The Administrator shall request a title report confirming that applicant is the owner of the property and has unrestricted legal right to transfer the development rights (i.e. there must be clear title to transfer the property). The title report will be provided to the County Attorney for review.
2. All encumbrances (including but not limited to: liens, mortgages and judgments) against the property must be subordinated, satisfied or removed prior to development rights acquisition. Mortgage and/or lien holder subordination and releases may be required acknowledging that a conservation easement will be placed on the property and subordinating their interest in the property to the deed restriction.
3. At settlement for a County or joint development rights purchase, the ~~PDR Oversight Committee or applicant~~ Administrator shall provide a title insurance policy issued by a title insurance company authorized to conduct business in Washington State by the Washington State Office of Insurance Commissioner. The cost of such title insurance shall be a shared cost, with the county's portion considered a cost incident to the ~~development rights~~ conservation easement purchase and a reimbursable expense from the County's Conservation Futures Fund.
4. It is the property owner's responsibility to survey (or provide a legal description that meets specific standards) any exceptions from the easement and any graveyards or cellular towers that may be located on the property. It is the

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Comment [BSvW20]: Administrator initiates escrow with title company, which issues title insurance policy.

property owner's responsibility to provide a legal description for any commercial

operation on the farm that is not incidental to the overall farming operation, in order to exclude it from the easement. Surveys shall be conducted by a licensed surveyor in accordance with state and federal regulations.

E. Development Rights Value and Purchase Price

1. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Development rights may only be purchased in perpetuity.

F. Recommendation of ~~Development Rights~~Conservation Easement Purchases by the ~~PDR-CEP~~ Oversight Committee

1. The ~~PDR-CEP~~ Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
 - a. Evaluation according to the site selection criteria
 - b. Consistency with County Comprehensive Plan
 - c. Cost relative to total allocations and appropriations
 - d. Proximity to other land subject to protection easements
2. Upon receiving the recommendations of the ~~PDR-CEP~~ Oversight Committee and the Administrator, the County Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.
3. If a property is approved for ~~development rights~~conservation easement purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County's offer. A written offer will be provided to the property owner. Written notice shall also be provided to land not approved for ~~development rights~~conservation easement purchase.
4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
 - a. Accept the offer.
 - b. Reject the offer.
 1. Reject offer outright
 - a. no further action
 - b. participate in future review
 2. Submit a counter offer within 90 days of written notice of offer by the County.
 - c. Failure to notify the County within 30 days shall constitute rejection of the offer.

5. ~~If~~ If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
 - a. Lump Sum
 - b. Installment Purchase Agreement (IPA)
 - c. Like-Kind Exchange
 - d. Or a combination of the above
6. For ~~development rights~~conservation easement purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.
7. All Agreements of Sale and Conservation Easements require the County Council's approval.

G. Grant of the Agricultural, Forestry, and/or Ecological Protection Conservation Easement

Before the purchase of development rights can be finalized, a conservation easement in a form approved by the County Attorney and consistent with the policies of the ~~PDR Program~~CEP Guidelines, must be placed on the property permanently restricting development of the site and preserving its agricultural, forestry and/or ecological values.

The principal interest of the County is to ensure that lands are preserved and subsequently stewarded in a manner that maintains and enhances their farmland, forestland, and/or ecological values. There may be some instances where there is a public interest in another public entity or non-profit organization to hold the conservation easement, for continued stewardship and protection of the land. The County will consider:

1. The preferences of the donor or seller;
2. Administrative, monitoring, and enforcement issues associated with the conservation easement and the resources available to address these issues;
3. Requirement of Federal, State or County funding sources utilized to purchase ~~development rights~~conservation easements.

H. ~~Development Rights~~Conservation Easement Purchase Recommendations/Submission Requirements

1. County Council: Each recommendation for ~~development rights~~conservation easement purchases with County funds, State funds, Federal funds, private donor funds or a combination of funds shall be presented to the County Council at a

regularly scheduled public meeting.

2. Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.

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VIII. CONSERVATION FUTURES FUND

A. Intent

This fund was established in 1992 to be used solely to acquire right and interests in open space land, farm and agricultural land, and timber land, so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use and enjoyment.

B. Fund Sources

This Conservation Futures Fund is funded by a real property tax applied to all real property within Whatcom County at a rate determined by the county administration and county council.

C. Fund Source Accounts

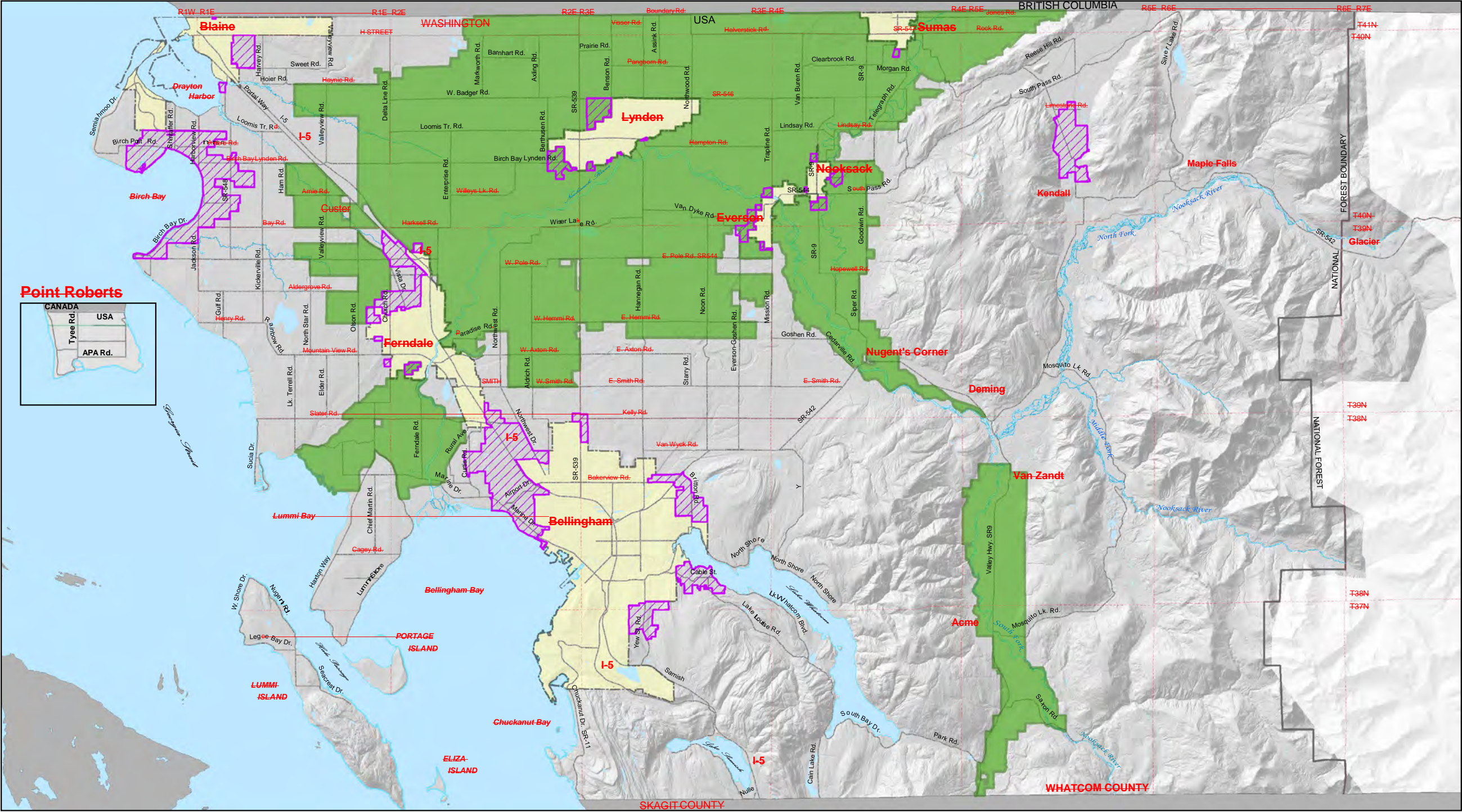
Council shall annually consider an allocation of Conservation Futures Fund to be placed in a ~~Purchase of Development Rights~~Conservation Easement Program Account.

D. Installment Payment Fund

1. The intent of installment payment funds, which are established by the County, is to encumber and invest committed funds for which recipient property owners have elected annual installment payments for a period, which may vary according to the wishes of the property owner.
2. The full consideration of any transaction for which installment payments of five years or less have been elected shall be placed in the fund, less the amount of any first installment to be paid at settlement. This amount shall be invested and annual installment payments shall include the interest accrued.
3. Annual installment payments shall be made on or before January 20th of each year.
4. A property owner may enter into an Installment Purchase Agreement for fifteen (15) to thirty (30) years at an interest rate to be negotiated between the property owner and the County. The property owner will receive semi-annual interest payments that are tax exempt. Principal will be paid in one lump sum at the end of term. The property owner will also receive a security representing the Installment Purchase Agreement. The property owner may sell or assign this Agreement.

E. Public Expenditures

1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the ~~PDR Program~~CEP Account shall be limited to interests in qualified agricultural, forestry, and/or ecological land participating in the Whatcom County's ~~Agricultural, Forestry, and Ecological Purchase of Development Rights~~Conservation Easement Program, and other expenses necessary to the acquisition of conservation easements authorized under RCW 84.34.200-.240.
3. The annual appropriation to the ~~PDR Program~~CEP by the County Council shall be available for the calendar year in which the appropriation was made and or the subsequent calendar year.



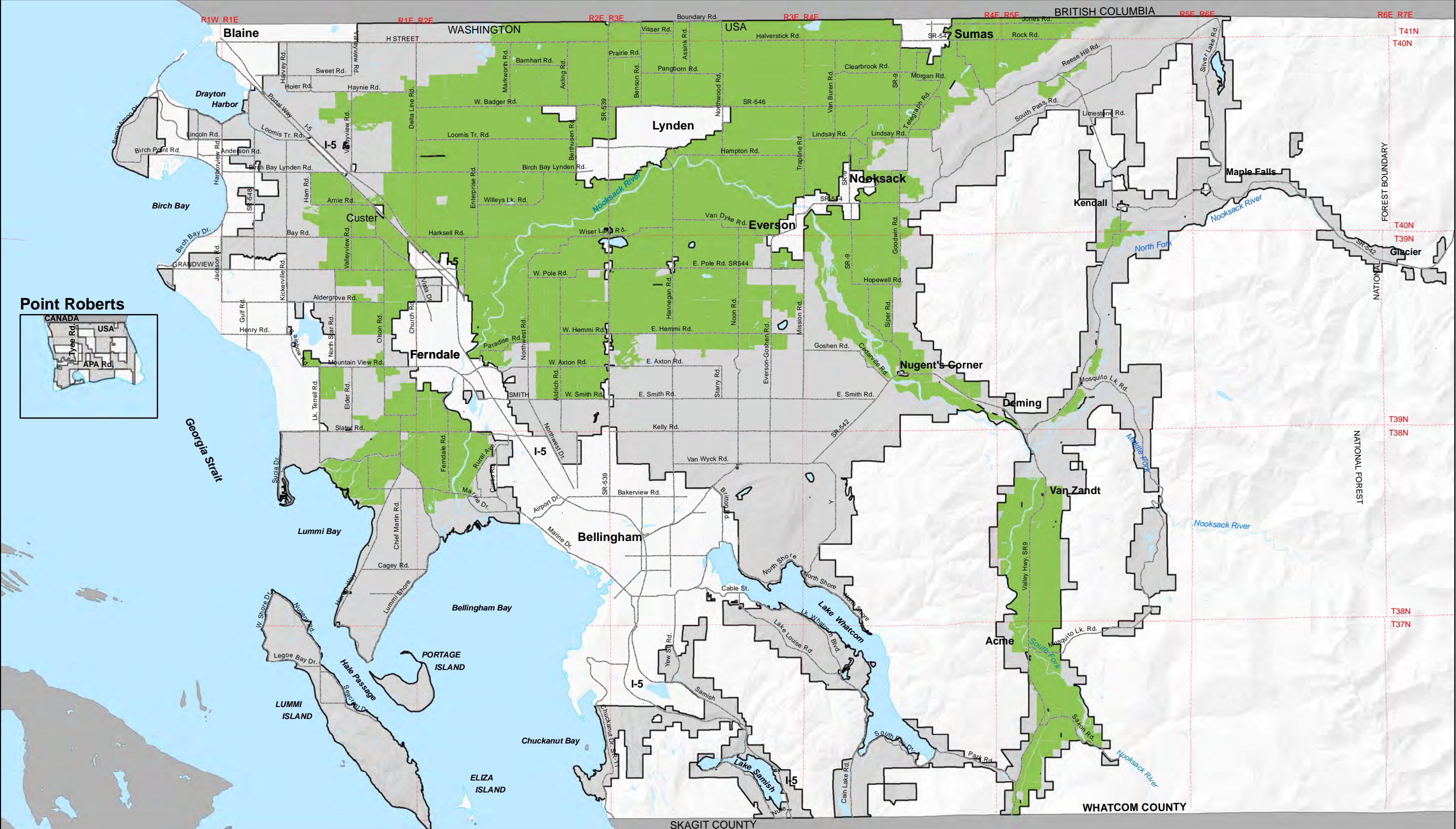
Whatcom County Agricultural Priority Areas
Agriculture Zone, Rural Study Areas,
Initial PDR-Target Areas, and Watershed-
Improvement Districts

- Urban-Growth Areas
- Ag. Zone/Rural Study Areas/PDR-Target Areas/WIDs
- Incorporated City

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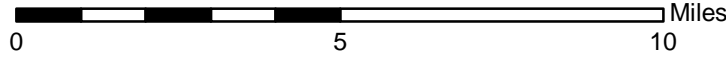
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Whatcom County Agricultural Priority Areas

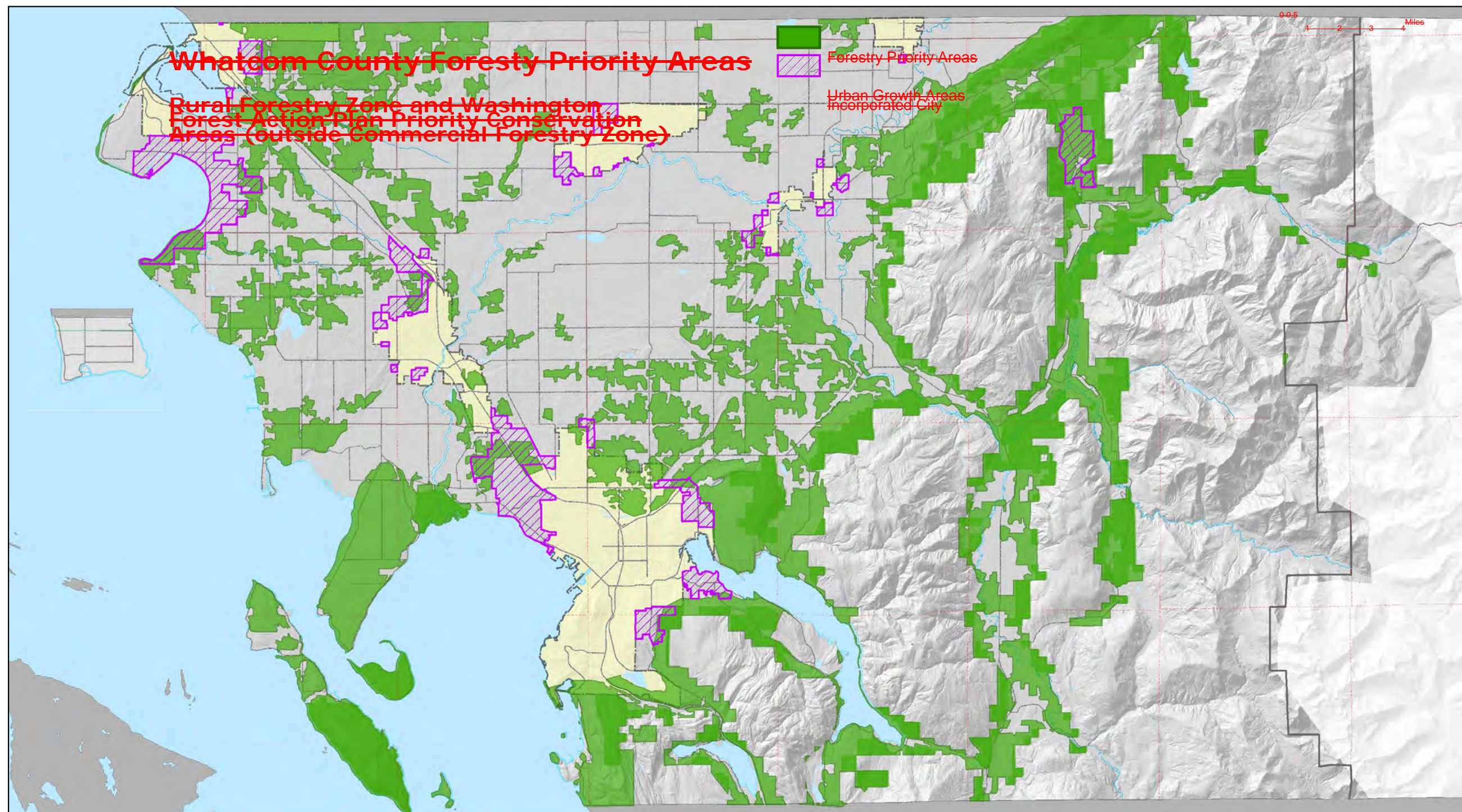
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

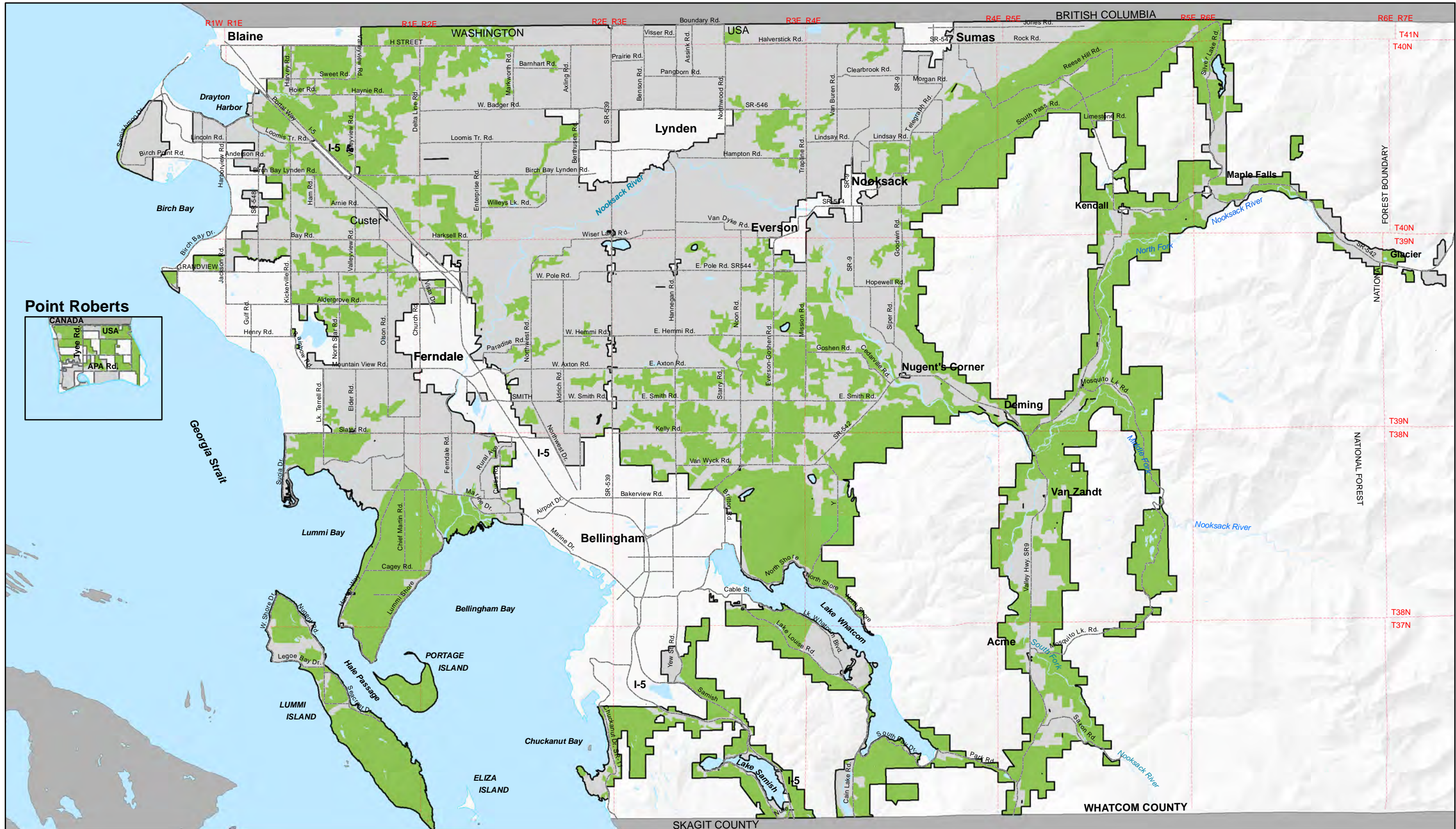
-  Agricultural Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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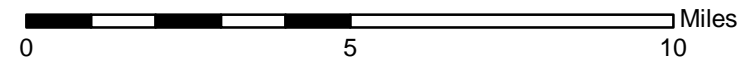




Whatcom County Forestry Priority Areas

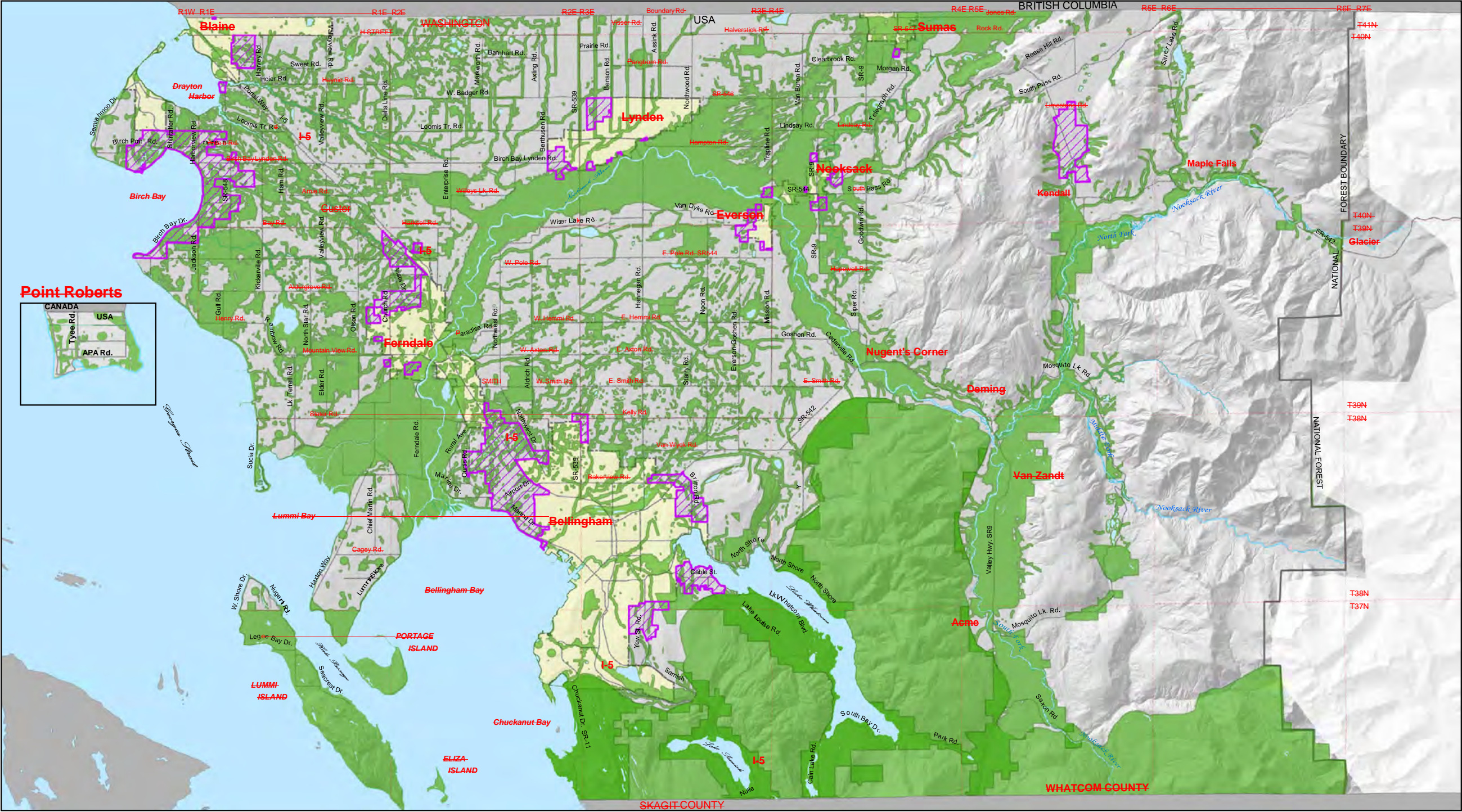
Rural Forestry Zone and WA Forest Action Plan Priority Areas

-  Forestry Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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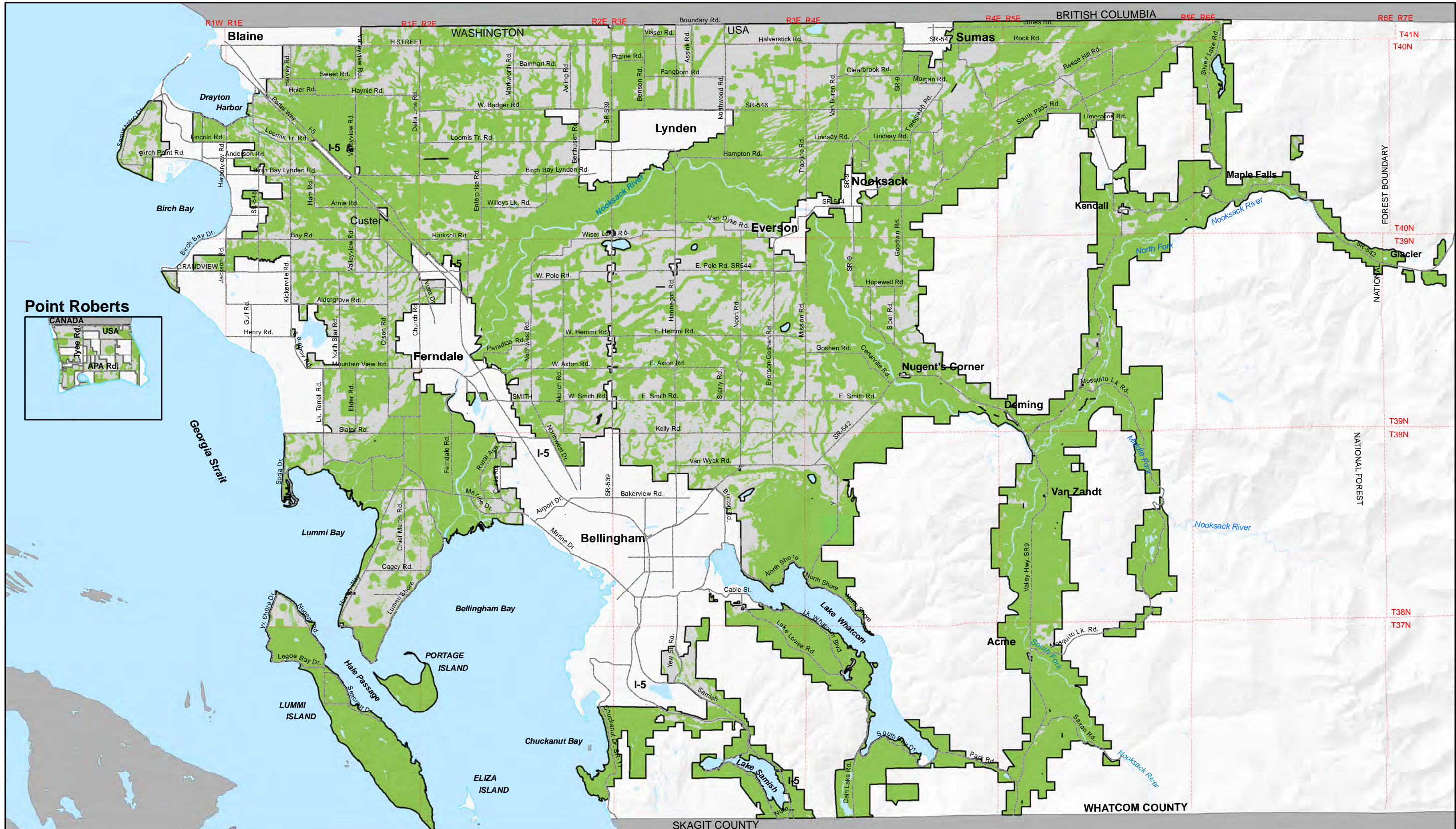


Whatcom County Ecological Priority Areas
Habitat Conservation Areas and FEMA Floodplain
(outside of Commercial Forestry Zone)

- Hab. Conservation Areas/Fema Floodplain
- Urban Growth Areas
- Incorporated City



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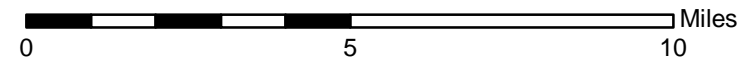
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Whatcom County Ecological Priority Areas

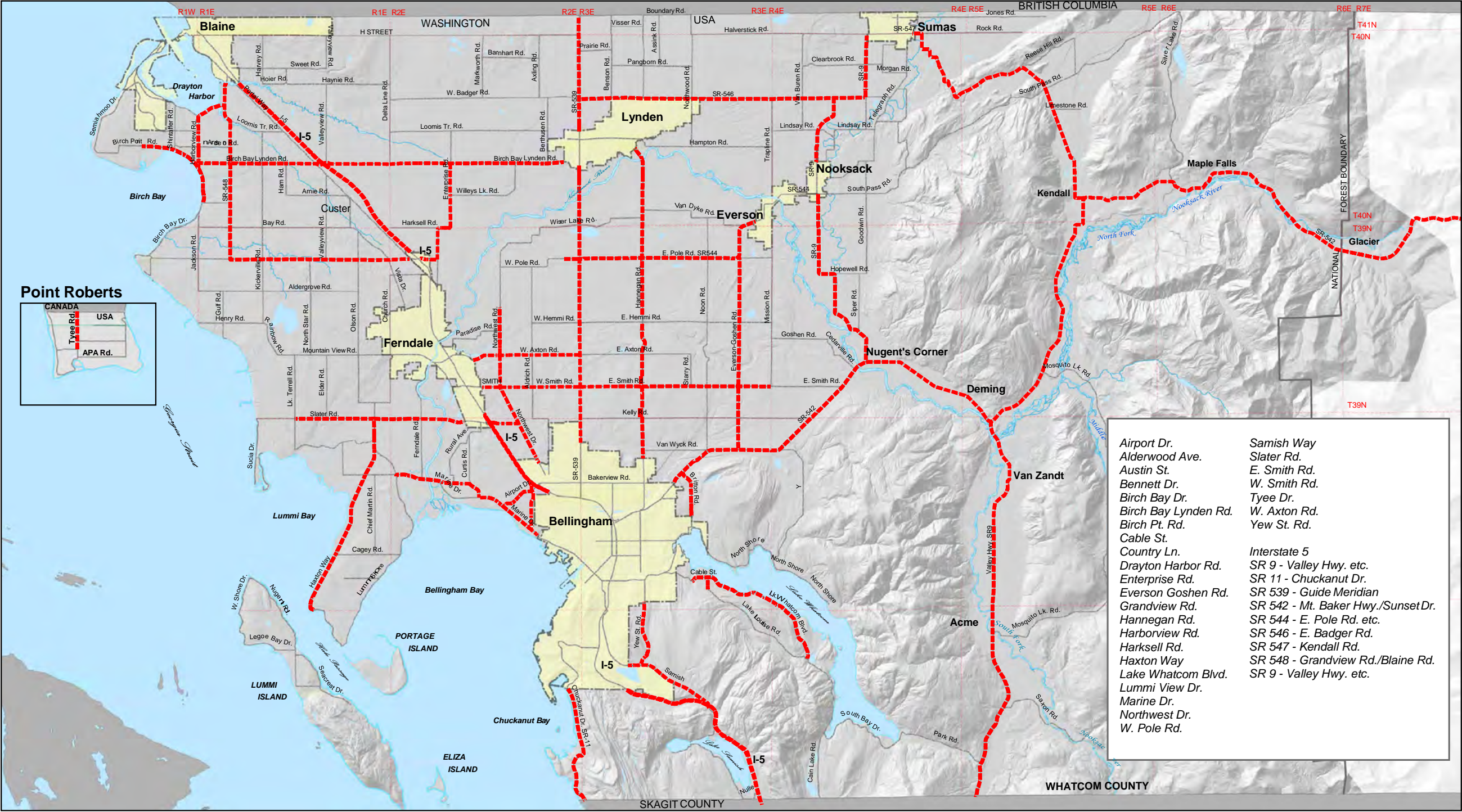
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

-  Ecological Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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Whatcom County

Major Roads - >3,000 Average Daily Trips

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APPENDIX E

Soils List

Soil #	Soil Name	APO y/n	LESA Group	PRIME	STATEWIDE IMPORTANCE	Site Index
1	ANDIC CRYOCHREPTS - 60 TO 90% SLOPES	NN	<u>00</u>	<u>00</u>		
2	ANDIC CRYOCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	NN	<u>00</u>	<u>00</u>		
3	ANDIC XEROCHREPTS - 60 TO 90% SLOPES	NN	<u>00</u>	<u>00</u>		3
4	ANDIC XEROCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	NN	<u>00</u>	<u>00</u>		3
5	ANDIC XEROCHREPTS-COOL ROCK OUTCROP COMPLEX-60 TO 90% SLOPES	NN	<u>00</u>	<u>00</u>		4
6	BARNESTON GRAVELLY LOAM - 0 TO 8% SLOPES	NN	<u>30</u>	<u>40</u>		2
7	BARNESTON VERY GRAVELLY LOAM - 8 TO 15% SLOPES	NN	<u>00</u>	<u>40</u>		2
8	BARNESTON VERY GRAVELLY LOAM - 15 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>		2
9	BARNESTON VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		2
10	BARNHARDT GRAVELLY LOAM - 0 TO 5% SLOPES	NN	<u>14</u>	<u>14</u>		3
11	BELLINGHAM SILTY CLAY LOAM - 0 TO 2% SLOPES	NN	<u>00</u>	<u>22</u>		
12	BIRCHBAY SILT LOAM - 0 TO 3% SLOPES	<u>YY</u>	<u>1+</u>	<u>1+</u>		3
13	BIRCHBAY SILT LOAM - 3 TO 8% SLOPES	<u>YY</u>	<u>0+</u>	<u>0+</u>	yes	3
14	BIRCHBAY SILT LOAM - 8 TO 15% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	3
15	BLAINEGATE SILTY CLAY - 0 TO 1% SLOPES	NN	<u>00</u>	<u>00</u>	yes	
16	BLAINEGATE-URBAN LAND COMPLEX - 0 TO 1% SLOPES	NN	<u>00</u>	<u>00</u>		
17	BLETHEN GRAVELLY LOAM - 5 TO 15% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	3
18	BLETHEN GRAVELLY LOAM - 15 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	3
19	BLETHEN GRAVELLY LOAM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		3
20	BLETHEN VERY BOULDERY LOAM - 5 TO 40% SLOPES	NN	<u>00</u>	<u>00</u>		3
21	BOROSAPRISTS - 0 TO 2% SLOPES	NN	<u>00</u>	<u>00</u>		
22	BRISCOT SILT LOAM DRAINED - 0 TO 2% SLOPES	<u>YY</u>	<u>33</u>	<u>25</u>		
23	BRISCOT ORIDIA AND SUMAS SOILS - 0 TO 2% SLOPES	NN	<u>00</u>	<u>55</u>		
24	CHUCKANUT LOAM - 3 TO 8% SLOPES	NN	<u>00</u>	<u>0+</u>	yes	
25	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 5 TO 15% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	2
26	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 15 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	2
27	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		2
28	CHUCKANUT-SHALCAR COMPLEX - 0 TO 15% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	2
29	CHUCKANUT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	NN	<u>00</u>	<u>00</u>		2
30	CLENDENEN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>		
31	CLIPPER SILT LOAM-DRAINED - 0 TO 2% SLOPES	<u>YY</u>	<u>22</u>	<u>22</u>		
32	COMAR SILT LOAM - 5 TO 15% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	2
33	COMAR SILT LOAM - 15 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>	yes yes	2
34	COMAR SILT LOAM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		2
35	CRINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		
36	CUPPLES GRAVELLY LOAM - 5 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>		2
37	CUPPLES GRAVELLY LOAM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		2
38	DEKAPEN LOAM - 8 TO 25% SLOPES	NN	<u>00</u>	<u>00</u>	yes	3
39	DEMING GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	<u>00</u>	<u>00</u>		
40	DEMING GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	<u>00</u>	<u>00</u>		

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41	DIOBSUD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
42	EDFRO VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		
43	EDFRO VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		

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94	LABOUNTY SILT LOAM-DRAINED - 0 TO 2% SLOPES	NN	00	22		
95	LARUSH SILT LOAM - 0 TO 3% SLOPES	YY	33	13		2
96	LAXTON LOAM - 0 TO 30% SLOPES	YY	1+	1+		2
97	LAXTON LOAM - 3 TO 8% SLOPES	YY	1+	1+		2
98	LAXTON LOAM - 8 TO 15% SLOPES	NN	00	00	yes yes	2
99	LYNDEN SANDY LOAM	YY	1+	14		3
100	LYNDEN SANDY LOAM - 3 TO 7% SLOPES	YY	1+	14		3
101	LYNDEN-URBAN LAND COMPLEX - 0 TO 5% SLOPES	NN	00	00		3
102	LYNNWOOD SANDY LOAM - 0 TO 5% SLOPES	NN	00	40		3
103	LYNNWOOD SANDY LOAM - 5 TO 20% SLOPES	NN	00	00	yes yes	3
104	MONTBORNE GRAVELLY LOAM - 5 TO 30% SLOPES	NN	00	00		3
105	MONTBORNE GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		3
106	MONTBORNE-RINKER COMPLEX - 30 TO 60% SLOPES	NN	00	00		3
107	MT. VERNON FINE SANDY LOAM - 0 TO 2% SLOPES	YY	22	13		2
108	NATI LOAM - 5 TO 15% SLOPES	NN	00	00	yes yes	2
109	NATO LOAM = 15 TO 30% SLOPES	NN	00	00	yes yes	2
110	NATI LOAM - 30 TO 60% SLOPES	NN	00	00		3
111	NEPTUNE VERY GRAVELLY SANDY LOAM- 0 TO 3% SLOPES	NN	00	40		3
112	OAKES VERY GRAVELLY LOAM - 8 TO 30% SLOPES	NN	00	00		2
113	OAKES VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
114	OAKES VERY GRAVELLY LOAM - 60 TO 80% SLOPES	NN	00	00		4
115	ORIDIA SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
116	PANGBORN MUCK-DRAINED - 0 TO 2% SLOPES	YY	33	22		
117	PICKETT-ROCK OUTCROP COMPLEX - 5 TO 30% SLOPES	NN	00	00		4
118	PICKETT-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	NN	00	00		4
119	PILCHUCK LOAMY FINE SAND - 0 TO 3% SLOPES	NN	00	70		3
120	PITS	NN	00	00		
121	POTCHUB LOAM - 8 TO 30% SLOPES	NN	00	00		
122	POTCHUB LOAM - 30 TO 60% SLOPES	NN	00	00		
123	PUGET SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
124	PUYALLUP FINE SANDY LOAM - 0 TO 2% SLOPES	YY	22	43		2
125	REVEL LOAM - 5 TO 30% SLOPES	NN	00	00		4
126	REVEL LOAM - 30 TO 60% SLOPES	NN	00	00		4
127	REVEL-WELCOME-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	NN	00	00		4
128	RINKER VERY CHANNERY SILT LOAM - 8 TO 30% SLOPES	NN	00	00	yes	3
129	RINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		3
130	RIVERWASH	NN	00	00		
131	ROCK OUTCROP	NN	00	00		
132	ROCK OUTCROP-KULSHAN COMPLEX - 60 TO 90% SLOPES	NN	00	00		
133	RUBBLE LAND	NN	00	00		
134	SAAR GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	00	00		
135	SAAR GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		
136	SAAR-HARTNIT COMPLEX - 5 TO 40% SLOPES	NN	00	00		
137	SANDUN VERY GRAVELLY SANDY LOAM - 5 TO 30% SLOPES	NN	00	00		
138	SANDUN VERY GRAVELLY SANDY LOAM - 30 TO 60% SLOPES	NN	00	00		
139	SEHOME LOAM - 2 TO 8% SLOPES	YY	00	1+		2
140	SEHOME LOAM - 8 TO 15% SLOPES	NN	00	00	yes yes	2
141	SEHOME GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00	yes	2

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					yes	
142	SEHOME GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
143	SHALCAR MUCK-DRAINED - 0 TO 2% SLOPES	YY	33	22		

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144	SHALCAR AND FISHTRAP SOILS - 0 TO 2% SLOPES	NN	00	22		
145	SHUKSAN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	00	00		
146	SHUKSAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00	yes	
147	SHUKSAN-KULSHAN-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	NN	00	00		
148	SKIPOPA SILT LOAM - 0 TO 8% SLOPES	YY	00	2+		3
149	SKIPOPA-BLAINEGATE COMPLEX - 0 TO 8% SLOPES	NN	00	20	yes	3
150	SKYKOMISH VERY GRAVELLY LOAM - 3 TO 30% SLOPES	NN	00	00		3
151	SNOHOMISH SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
152	SNOQUALMIE GRAVELLY LOAMY SAND - 0 TO 3% SLOPES	NN	00	40	yes	3
153	SORENSEN VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	NN	00	00	yes	2
154	SORENSEN VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		2
155	SPRINGSTEEN VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		
156	SQUALICUM GRAVELLY LOAM - 5 TO 15% SLOPES	NN	00	00	yes yes	2
157	SQUALICUM GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00	yes	2
158	SQUALICUM GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
159	SQUALICUM-URBAN LAND COMPLEX - 5 ATO 20% SLOPES	NN	00	00		2
160	SQUIRES VERY CHANNERY LOAM - 5 TO 30% SLOPES	NN	00	00		2
161	SQUIRES VERY CHANNERY LOAM - 30 TO 60% SLOPES	NN	00	00		2
162	SUMAS SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
163	TACOMA SILT LOAM - 0 TO 1% SLOPES	NN	00	50		
164	TACOMA SILT LOAM-DRAINED - 0 TO 1% SLOPES	NN	00	50		
165	TROMP LOAM - 0 TO 2% SLOPES	YY	1+	1+		3
166	TWINSI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		
167	TWINSI VERY STONY LOAM - 30 TO 60% SLOPES	NN	00	00		
168	TYPIC CRYORTHODS - 60 TO 90% SLOPES	NN	00	00		
169	TYPIC CRYORTHODS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	NN	00	00		
170	TYPIC PSAMMAQUENTS-TIDAL - 0 TO 1% SLOPES	NN	00	00	yes	
171	URBAN LAND	NN	00	00		
172	URBAN LAND-WHATCOM-LABOUNTY COMPLEX - 0 TO 8% SLOPES	NN	00	00	yes	2
173	VANZANDT VERY GRAVELLY LOAM - 5 TO 15% SLOPES	NN	00	00		2
174	VANZANDT VERY GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00		2
175	VANZANDT VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
176	WELCOME LOAM - 5 TO 30% SLOPES	NN	00	00	yes	3
177	WELCOME LOAM - 30 TO 60% SLOPES	NN	00	00		3
178	WHATCOM SILT LOAM - 0 TO 3% SLOPES	YY	22	1+		2
179	WHATCOM SILT LOAM - 3 TO 8% SLOPES	YY	44	1+		2
180	WHATCOM SILT LOAM - 8 TO 15% SLOPES	NN	00	00	yes	2
181	WHATCOM SILT LOAM - 30 TO 60% SLOPES	NN	00	00		2
182	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 8% SLOPES	NN	44	22		2
183	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 15% SLOPES	NN	00	20	yes	2
184	WHITEHORN WILT LOAM - 0 TO 2% SLOPES	YY	33	22		
185	WICKERSHAM CHANNERY SILT LOAM - 0 TO 8% SLOPES	NN	44	14		2
186	WINSTON SILT LOAM - 0 TO 3% SLOPES	YY	00	1+		2
187	WINSTON LOAM - 3 TO 15% SLOPES	NN	00	00	yes	2
188	WINSTON LOAM - 15 TO 40% SLOPES	NN	00	00	yes	2
189	WISEMAN VERY CHANNERY SAND LOAM - 0 TO 8% SLOPES	NN	00	40		3
190	WOLLARD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		
191	YELM LOAM - 3 TO 8% SLOPES	YY	1+	1+	yes	2
192	YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES	NN	00	00		2

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APPENDIX F

Model Conservation Easement Deed

A sample Conservation Easement Deed based on the assumption of matching funds from the USDA-NRCS Agricultural Conservation Easement Program, is included in the following pages.

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225-4082

DOCUMENT TITLE: AGRICULTURAL CONSERVATION EASEMENT

GRANTOR: OWNERS

GRANTEES: WHATCOM LAND TRUST AND WHATCOM COUNTY

ABBR. LEGAL DESCRIPTION: Parcel # XXXXXXXXXXXX 0000

AGRICULTURAL CONSERVATION EASEMENT DEED

This Agricultural Conservation Easement Deed ("Deed") is made and entered into this ____ day of ___, 20__ by OWNERS ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("Grantees"), and the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. Further, the State of Washington, by and through the Washington State Recreation and Conservation Office (RCO) is a third party beneficiary and has certain rights herein, including third party right of enforcement.

RECITALS:

The following recitals are a material part of this Easement:

Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit B is the legal

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~~description and Exhibit C is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.~~

~~Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture's Natural Resources Conservation Service (herein the "United States") has provided on behalf of the Commodity Credit Corporation \$XX,XXX (XX thousand and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.~~

~~While "Grantees" include the Whateom Land Trust and Whateom County, use of the term "Grantees" does not imply that joint approval is required to exercise Grantees' rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.~~

~~The Protected Property is approximately XX acres and is currently farmed.~~

~~The Protected Property has significant agricultural value to Grantees and to the people of Whateom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Exhibit E.~~

~~Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whateom County Ordinance No. 2002-054, provided in Exhibit D, to preserve land for agricultural purposes and has substantial public benefits.~~

~~As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.~~

~~This Easement is acquired in part with a grant from RCO pursuant to that certain grant agreement (#XX) between RCO and Grantee, signed by RCO on date and by Grantee on date ("RCO Grant Agreement"). RCO is a third-party beneficiary of certain rights under this easement, including those identified in Exhibit H (State of Washington Recreation and Conservation Office Third Party Rights and Requirements), which is attached hereto and incorporated herein by reference and will run with the land in perpetuity.~~

~~CONVEYANCE AND CONSIDERATION.~~

~~For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$XX,XXX by Whateom County, RCO and the United States to Grantor, Grantor~~

_____ hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

_____ This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

_____ Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's, successors and assigns in perpetuity.

_____ PURPOSE.

_____ The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

_____ RELATIONSHIP OF PARTIES.

_____ Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

_____ The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section III. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

~~The above Section IV.A. does not pertain to monitoring and enforcement of a conservation plan, the responsibility for which rests with the Natural Resource Conservation Service and Whatecom County as described in Section VIII A below.~~

~~RIGHT OF ENFORCEMENT.~~

~~Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.~~

~~The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.~~

~~Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with Agricultural Conservation Easement Program requirements.~~

~~PERMITTED USES AND ACTIVITIES. Grantor may:~~

~~Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section VII below.~~

~~Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.~~

~~Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section XII of this Easement, and shown on Exhibit E, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section VII~~

~~Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm-worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.~~

~~On the "Farmstead", as defined in Section XII of this Easement, and shown in Exhibit D, engage in any uses or activities, including removal, replacement, maintenance, and remodeling of a single family residence, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section VII below. The construction and maintenance of an Accessory Dwelling Unit (ADU) is allowed within the "Farmstead" so long as it is allowed through Whatcom County Planning and Development Services.~~

~~Plant or maintain trees on the Agricultural Land, as defined in Section XII of this Easement only as follows:~~

~~Maintain a woodlot for the production of firewood to be used on the Protected Property;~~

~~Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.~~

~~Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.~~

~~Install a small scale wind power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small scale wind power generator prior to installation.~~

~~Grantor has the right to conduct non farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the~~

~~Protected Property and subordinate to the agricultural and residential use of the Protected Property.
Activities which market petroleum or chemical products are prohibited.~~

~~PROHIBITED USES AND ACTIVITIES.~~

~~Unless specifically permitted by Section VI above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:~~

~~Use or activities inconsistent with the purpose of this Easement.~~

~~Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.~~

~~Cover more than two percent (2%) of the area (approximately XX,XXX square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.~~

~~Construct non-agricultural structures or facilities.~~

~~Conduct any use or activity that removes or damages the long term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.~~

~~Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section VII, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.~~

~~Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres. Land subject to such alteration shall be returned to pre-activity conditions in accordance with baseline data set forth in Exhibit E.~~

~~Use off road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.~~

~~Grant easements or rights of way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.~~

~~Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.~~

~~The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by products generated on the Protected Property is permitted.~~

~~WATER RIGHTS:~~

~~The Parties agree that the Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.~~

~~Grantee Trust will include reference, in Baseline Report, to water rights associated with the Protected Property. The documentation of the water rights are attached to this Easement in Exhibit F. In its monitoring visits, Grantee Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Grantee Trust believes that Grantor is not sufficiently informed about protecting Grantor's water rights, Grantee Trust will refer Grantor to Whateom County and will urge Grantor to take the Water Rights protection actions.~~

~~Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section IV. RELATIONSHIP OF PARTIES notwithstanding, Whateom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whateom County may pursue remedies in accordance with Sections XIII and XIV of this Easement or may itself take appropriate action to protect the water rights.~~

~~If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture,~~

~~Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.~~

~~CONSERVATION PLAN:~~

~~As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.~~

~~In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.~~

~~If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.~~

~~For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement~~

_____ is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whateom County.

_____ **~~RIGHTS CONVEYED TO GRANTEES.~~**

_____ To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

_____ To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.

_____ (1) To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement;

_____ (2) To enter the land at such other times as necessary if the Trust has reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.

_____ In the event of uses or activities inconsistent with the purpose and provisions of this Easement, The Trust may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

_____ Forbearance by The Trust to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

_____ **~~NO PUBLIC ACCESS.~~**

_____ This Easement provides no right of access to the general public.

_____ **~~BASELINE DATA.~~**

_____ To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare baseline data sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The baseline data may consist of reports, maps, photographs, and other documentation. Grantor and Grantee will execute a statement verifying that the baseline data accurately represents the condition of the Protected Property as of this time. Baseline data is contained in Exhibit E. The baseline data will delineate the Farmstead and Agricultural Land as defined below.

_____ The baseline data will specifically establish the extent of the Farmstead, which includes that portion of the Protected Property used for agricultural buildings, structures and improvements

~~and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.~~

~~The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas such as critical areas and woodlands as well as cropland or grazing land.~~

~~INFORMAL DISPUTE RESOLUTION.~~

~~Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.~~

~~GRANTEES' REMEDIES.~~

~~If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.~~

~~If Grantor does not take immediate action to cure the violation and restore the Protected Property, Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity.~~

~~In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.~~

~~If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement,~~

~~Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in paragraph A.~~

~~Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.~~

~~RESPONSIBILITY FOR COST AND LIABILITIES.~~

~~Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States and RCO, and hold Grantees and the United States and RCO harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section XIX. L. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.~~

~~EXTINGUISHMENT AND TRANSFER.~~

~~The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whateom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whateom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.~~

~~Grantor agrees to:~~

~~Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or~~

~~intends to divest itself, of any permanent or temporary interest in the Protected Property.~~

~~Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.~~

~~Whatecom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by United States and Whatecom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.~~

~~AMENDMENT:~~

~~Upon approval of the United States, Grantor and all Grantees may agree to amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose and that the result of the amendment is to strengthen the effectiveness of the Easement.~~

~~SUBORDINATION:~~

~~Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit G.~~

~~GENERAL PROVISIONS~~

~~Notices:~~

~~Any notice under this Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:~~

_____~~Grantor: Owners~~
_____~~Address~~
_____~~Bellingham, WA 98226~~

_____~~Grantee, Trust: Whateom Land Trust PO Box 6131~~
_____~~Bellingham, WA 98227~~

_____~~Grantee, County: Whateom County~~
_____~~Attn: Agricultural PDR Administrator 5280 Northwest Drive~~
_____~~Bellingham, WA 98226~~

_____~~NRCS: USDA NRCS~~
_____~~316 West Boone Avenue, Suite 450~~
_____~~Spokane, WA 99201~~

_____~~RCO: Recreation and Conservation Office PO Box 40917~~
_____~~Olympia WA 98504 0917~~

_____~~Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.~~

_____~~Controlling Law:~~
_____~~The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whateom County Superior Court.~~

_____~~Liberal Construction:~~
_____~~Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whateom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.~~

_____~~Severability:~~

~~If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.~~

~~Entire Agreement.~~

~~This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.~~

~~No Forfeiture.~~

~~Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.~~

~~Warranty of Good Title.~~

~~Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.~~

~~Grantor Grantees.~~

~~The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above named Grantees, their successors and assigns.~~

~~Successors and Assigns.~~

~~The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.~~

~~Federal Enforcement.~~

~~In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.~~

General Indemnification

~~Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.~~

Environmental Warranty

~~Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.~~

~~Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.~~

~~"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.~~

~~“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.~~

~~Merger~~

~~The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this conservation easement deed are set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the protected property by or to the Grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of “Merger” or any other legal doctrine.~~

~~In the event that either Grantee takes legal title to Grantor’s interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 107(b)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.~~

~~This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT A is attached hereto and incorporated herein by reference and will run with the land in perpetuity [or for the maximum duration allowed under applicable State laws]. As required by 16~~

~~U.S.C. Section 3865 et seq. and 7 CFR Part 1468 et seq. and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT B is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT A that is appended to and made a part of this easement deed.~~

~~SCHEDULE OF EXHIBITS.~~

~~Minimum Terms for Agricultural Land Easements
Legal Description of Property Subject to Easement
Site Map
Ordinance # 2002-054
Baseline Data
Water Rights
Subordination Agreement example~~

~~State of Washington Recreation and Conservation Office Third Party Rights and Requirements~~

~~TO HAVE AND TO HOLD unto Grantees and the United States of America, and their successors, and assigns forever.~~

~~PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW~~

~~IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this~~
~~_____ day of __, 20____.~~

~~Grantor~~

~~Grantor~~

~~STATE OF WASHINGTON~~)

~~ss.~~

~~COUNTY OF WHATCOM~~)

~~I certify that I know or have satisfactory evidence that _____, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.~~

~~Dated: _____~~

~~Notary Public~~

Print Name _____ My commission expires _____

~~(Use this space for notarial stamp/seal)~~

The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above-
Agricultural Conservation Easement Deed.

Dated: ____

By ____

Its ____

STATE OF WASHINGTON ____)

) ss.

COUNTY OF WHATCOM ____)

I certify that I know or have satisfactory evidence that ____ is the person who appeared before me, and
said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized
to execute the instrument and acknowledged it as the

____ of ____ voluntary act of such party for the uses and purposes mentioned in the ____ to be the free and
instrument.

Dated: ____

Notary Public
Print Name ____

(Use this space for notarial stamp/seal)

My commission expires ____

~~THE STATE OF WASHINGTON, BY AND THROUGH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, Third Party Beneficiary, does hereby accept the above Grant Deed of Agricultural Conservation Easement.~~

 Dated:

By _____

_____Its_____

~~STATE OF WASHINGTON~~)

~~_____) ss.~~

~~COUNTY OF THURSTON~~)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____

_____ of _____ voluntary act of such party for the uses and purposes mentioned in the _____ to be the free and instrument.

 Dated:

Notary Public

Print Name _____
My commission expires _____

~~(Use this space for notarial stamp/seal)~~

~~EXHIBIT A~~

~~MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS~~

~~The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit B, hereafter referred to as "the Protected Property", for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Protected Property.~~

~~The OWNERS (collectively Grantor), WHATCOM COUNTY AND WHATCOM LAND TRUST (collectively Grantee), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Grantee to protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is appended to this easement deed. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control. If other sections of the of the ALE have terms and conditions that are consistent with, but more restrictive than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive than Section I Paragraph 4 and Section II then Section I Paragraph 4 and Section II will control.~~

~~SECTION I. MINIMUM CONSERVATION DEED RESTRICTIONS~~

~~Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.~~

~~The Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:~~

~~**Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use~~

~~of the property will be subject to the ALE Plan on the Protected Property.~~

~~The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.~~

~~The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.~~

~~**Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 4% of the Protected Property, excluding NRCS approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.~~

~~**Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. The following activities are inconsistent with the purposes of ALE and specifically prohibited, subject to the qualifications stated below:~~

~~*Subdivision*~~

~~Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited, except where State or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.~~

~~*Industrial or Commercial Uses* Industrial or commercial activities on the Protected Property are prohibited except for the following:~~

~~agricultural production and related uses conducted as described in the ALE Plan;~~

~~the sale of excess power generated in the operation of alternative energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation~~

~~_____~~
~~_____~~ purposes of this Easement;
~~_____~~

~~_____~~ temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;
~~_____~~

~~_____~~ commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries; and
~~_____~~

~~_____~~ small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.
~~_____~~

~~_____~~ *Construction on the Protected Property* All new structures and improvements must be located within the Building Envelopes, containing approximately XX acres and described in EXHIBIT E which is appended to and made a part of the ALE.

~~_____~~ The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the agricultural use and future viability, and related conservation values of the Protected Property.
~~_____~~

~~_____~~ Utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural structures are consistent with the ALE Plan described Section I, Paragraph I.
~~_____~~

~~_____~~ New roads may be constructed if they are within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.
~~_____~~

~~_____~~ Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.
~~_____~~

~~_____~~ Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property.
~~_____~~

~~Granting of easements for utilities and roads~~—The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the agricultural use and future viability, and related conservation values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

~~Surface Alteration~~—Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

~~dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an ALE Plan;~~

~~erosion and sediment control pursuant to a plan approved by the Grantee;~~

~~as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or~~

~~Agricultural activities conducted in accordance with the ALE Plan.~~

~~Oil, Gas, or Mineral Exploration and Extraction~~—Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited, except for limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property. Extraction of materials used for agricultural operations must be limited to a small, defined area or acreage identified in EXHIBIT E and must not harm the conservation values or the agricultural uses of the Protected Property.

~~Impervious surfaces as defined in Section I, Paragraph (2) of this Easement will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses permitted by this paragraph.~~

~~If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).~~

~~Preserving Agricultural Uses.~~ The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the ALE Plan and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the ALE's protection for the agricultural use and future viability, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i) (vii) and the following activities, subject to the qualifications stated below:

~~Agricultural Production~~ The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph I.

~~Forest Management and Timber Harvest~~ Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

~~On Farm Energy Production~~ Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

~~Grassland Uses of the Protected Property~~ Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct

~~livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantee or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to the Grantors, or set forth within the ALE Plan for the Protected Property.~~

~~SECTION II. PROTECTION OF THE UNITED STATES' INTERESTS~~

~~**United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.~~

~~In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.~~

~~The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.~~

~~In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.~~

~~**General Disclaimer.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims,~~

~~demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.~~

~~**Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.~~

~~Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.~~

~~"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.~~

~~"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.~~

~~**Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United~~

~~States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.~~

~~With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is 35 % percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.~~

~~If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.~~

~~The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.~~

~~**Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.~~

_____~~1~~_____~~EXHIBIT B~~
_____~~2~~_____
_____~~3~~_____~~Legal Description~~
_____~~4~~
_____~~5~~
_____~~DESCRIPTION~~
_____~~N 6~~
_____~~7~~_____~~SITUATE IN WHATCOM COUNTY, WASHINGTON 8~~
_____~~9~~_____~~SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS,~~
_____~~10~~_____~~RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE 11~~
_____~~12~~_____~~APN/Parcel ID: XXXXXXXXXXXXXX 0000~~

_____ 1	Exhibit C – Site Map
_____ 2	

B-1

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS
PROGRAM AND OVERSIGHT COMMITTEE**

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land, and timber land; and

WHEREAS, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that :

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 10 day of September, 2002.

ATTEST:



Dana Brown-Davis,
Clerk of the Council

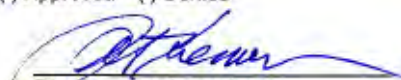
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Ward Nelson, Council Chair

APPROVED as to form

☒ Approved ☐ Denied


Karen N. Frakes, Civil Deputy Prosecutor
Pete Kremen, Executive

~~EXHIBIT E Baseline Documentation~~

~~The Baseline Data Inventory for the Agricultural Conservation Easement Deed is maintained by the
Whatecom Land Trust. The remainder of this page is intentionally blank.~~

1	EXHIBIT F Water Rights Documentation
2	
3	

~~EXHIBIT G – Subordination Agreement~~

~~When recorded return to:~~

~~Grantor; Grantee: _____~~

~~Legal Description~~

~~Abbreviated form: _____ Additional legal at Exhibit A.~~

~~Assessor's Tax Parcel Number: _____~~

~~Reference number(s) of related/assigned/released documents: _____ Reference(s) to document(s) appears on page(s) _____~~

~~SUBORDINATION AGREEMENT~~

~~NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.~~

~~The undersigned subordinator agrees as follows:~~

~~_____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of _____ County;~~

~~_____ ("Easement Holder") is the holder of a conservation easement dated _____, 20____, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;~~

~~_____, [husband and wife,] [("Owner") or ("Owners")] [is the owner or are the owners] of all the real property described in the conservation easement identified above in Paragraph 2.~~

In consideration of benefits to Subordinator from [("Owner") or ("Owners")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.

This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.

The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this ____ day of __, 20__.

SUBORDINATOR _____ SUBORDINATOR

(Name) (Name)

STATE OF WASHINGTON _____)

) ss.

COUNTY OF _____)

I _____ certify that I _____ know or _____ have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: __

~~EXHIBIT H~~

~~State of Washington Recreation and Conservation Office Third Party Rights and Requirements~~

~~GENERAL~~

~~As indicated on page 1, Washington State Recreation and Conservation Office (“RCO”) is a third-party beneficiary to this Easement, which was acquired in part with a grant from RCO pursuant to grant agreement #XX between RCO and Whatcom County.~~

~~Permanent protection of the Protected Property will further the purposes of the Washington State Farmlands Preservation Account (FPA) established under RCW 79A.15.130(1), which provides that moneys appropriated to the FPA “must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.” The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that “it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.”~~

~~RCO PROHIBITED USES~~

~~**Commercial feedlots.** The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used to receive livestock that are confined solely for the purpose of growing or finishing. However, seasonal confinement of animals raised on the Protected Property and year round confinement for the commercial production of dairy products on the Protected Property are expressly permitted. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.~~

~~**No aquaculture.** Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Protected Property.~~

~~**No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property (“Compensatory Mitigation”) is prohibited on the~~

~~Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.~~

~~RCO THIRD PARTY RIGHT OF ENFORCEMENT~~

~~RCO is hereby granted third party right of enforcement of this Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. RCO and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that RCO and Grantee do not agree as to whether the Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Easement, it shall first follow the dispute resolution process and remedies described in Sections XIII and XIV of the easement; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.~~

~~This third party right of enforcement does not extend to any other third party except as described within the terms of this easement and exhibits and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring agricultural lands in the event RCO is dissolved or reorganized.~~

~~In the event that the Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section II (5) and distributed as further provided in Section II (5); or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.~~

~~In the event that the Protected Property is used by Grantor in a manner that is not consistent with the Purpose of this Easement or the terms of the RCO Grant Agreement, RCO shall have the right, in addition to any other remedies described in this Easement, to require that Grantor pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section II (5) and distributed as further provided in Section II (5); or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time. Any costs, fees or damages paid by Grantor for enforcement of this Easement or restoration of the Conservation Values pursuant to Exhibit E shall be deducted from this amount. RCO agrees that it will follow the dispute~~

~~resolution process and remedies described in Sections XIII and XIV before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing RCO under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by RCO. Upon Grantor's repayment of such amount to RCO, Grantee and RCO agree to prepare and record, a deed amendment to release Grantor from any further obligations to RCO or Grantee under this Easement.~~

~~SUBSEQUENT TRANSFER OR EXTINGUISHMENT~~

~~**Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.~~

~~The amount of the proceeds to which Grantee and any Beneficiary to this Easement shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XVI. Grantee may use all such proceeds for the acquisition of property interests that are substantially equivalent to those conveyed by this Easement. Grantee shall consult with and receive the approval of RCO in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO the same or substantially equivalent rights as provided for in this Easement.~~

~~In granting this Easement, Grantor has considered the fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement. Grantor's inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.~~

~~**Valuation.** This Easement constitutes a real property interest immediately vested in Grantee. For purposes of this Section, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the then fair market value of the Protected Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Protected Property), at the time of termination or extinguishment, as determined by an appraisal that meets RCO requirements for appraisals, by (b) the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, unencumbered by the Easement, at the time of this grant.~~

~~For purposes of this Section, the Parties agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement is 35% and shall remain constant.~~

~~**Distribution of Proceeds.** In the event of extinguishment of this Easement pursuant to Section XVI, condemnation of this Easement pursuant to Exhibit A, or damages received by Grantor in an amount equal to the fair market value of this Easement pursuant to Section XIV, any proceeds attributable to the value of the Easement RCO is entitled to 45.75% of any such proceeds.~~

~~**Subsequent Transfers.** Grantor agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section 5.4 shall not impair the validity of this Easement or limit its enforceability in any way.~~

~~AMENDMENT.~~

~~**Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantee under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.~~

~~ASSIGNMENT~~

~~**Assignment.** Grantee's Interest. Grantee's interest in this Easement is transferable with prior written notice to and consent of RCO, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended, and a qualified recipient of grant funds from the farmlands preservation account under RCW 79A.15.139. Grantee shall not assign this Easement without notice to and consent of Grantor and RCO, which consent shall not be unreasonably withheld. As conditions of such transfer, Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of the RCO Grant Agreement, as described in Section 1.1 of this exhibit. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice;~~

~~provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.~~

~~**Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then Grantee's rights and duties hereunder shall become vested and fall upon RCO, who may then assign Grantee's rights and duties hereunder to an organization with a similar mission to that of Grantee.~~

~~**NO MERGER.**~~

~~**No Merger.** In the event that Grantee acquires all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section XIX-M.~~

~~**COSTS OF ENFORCEMENT.**~~

~~**1.1. Costs of Enforcement.** In the event the RCO exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the RCO exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.~~

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PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225

DOCUMENT TITLE: **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: _____

GRANTEES: **WHATCOM LAND TRUST AND WHATCOM COUNTY**

ABBR. LEGAL DESCRIPTION:

Full Legal Description in Exhibit A

TAX PARCEL # _____

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this _____ day of
20____, by _____ ("Grantor"), the WHATCOM LAND TRUST

(“Trust”), and WHATCOM COUNTY, WASHINGTON (“County”) (“collectively, Grantees”), and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

1. RECITALS

- 1.1. Grantor is fee simple owner of real property (the “Protected Property”) in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.
- 1.2. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.
- 1.3. The Protected Property is approximately _____ acres and is currently farmed.
- 1.4. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Baseline Documentation (Exhibit D). It is the intent of all parties that the agricultural values described in the baseline shall remain for the life of this easement and shall be used along with annual monitoring to identify future changes on the easement area.
- 1.5. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, which establishes the Purchase of Development Rights Program to preserve land for agricultural purposes and has substantial public benefits.
- 1.6. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.
- 1.7. Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (herein “NRCS”) has provided on behalf of the Commodity Credit Corporation \$ _____ (_____ and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.

2. CONVEYANCE AND CONSIDERATION

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2.1. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$ _____ by the Whatcom County and the NRCS to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

2.2. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

2.3. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's, successors and assigns in perpetuity.

3. PURPOSE

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The granting of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

4. RELATIONSHIP OF PARTIES

4.1. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

4.2. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section 3. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

4.3. The above Section 4.1. does not pertain to monitoring and enforcement of a conservation farm plan, the responsibility for which rests with NRCS and Whatcom County as described in Section 9.

5. RIGHT OF ENFORCEMENT

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with the Agricultural Conservation Easement Program requirements.

6. PERMITTED USES AND ACTIVITIES

Grantor may:

6.1. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section 7 below.

6.2. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.

6.3. Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section 12 of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section 7.4. Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property.

temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.

- 6.4. Remove, Maintain, Expand, or Replace temporary hoop houses and temporary greenhouses with no foundation outside of the Farmstead area so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.5. On the "Farmstead", as defined in Section 12 of this Easement, and shown in Exhibit B, engage in any uses or activities, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section 7 below.
- 6.6. Plant or maintain trees on the Agricultural Land, as defined in Section 12 of this Easement only as follows:
 - 6.6.1. Maintain a woodlot for the production of firewood to be used on the Protected Property.
 - 6.6.2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.
 - 6.6.3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.
 - 6.6.4. Plant and maintain trees to provide shading for grazing livestock.
 - 6.6.5. Plant and maintain trees used in fruit or nut production.
- 6.7. Install a small-scale wind and solar power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind and solar power generator prior to installation.
- 6.8. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Unless specifically permitted by Section 6 above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

- 7.1. Use or activities inconsistent with the purpose of this Easement.
- 7.2. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement.
- 7.3. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.
- 7.4. Cover more than two percent (2%) of the area (approximately _____ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.
- 7.5. Construct non-agricultural structures or facilities.
- 7.6. Conduct any use or activity that removes or damages the long-term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.
- 7.7. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section 8, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.
- 7.8. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres.
- 7.9. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law

enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.

7.10. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.

7.11. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.

7.12. The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.

8. WATER RIGHTS

8.1. The Parties agree that any Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.

8.2. Trust will include reference, in Baseline Documentation (Exhibit D), to any water rights associated with the Protected Property. In its monitoring visits, Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Trust believe that Grantor is not sufficiently informed about protecting Grantor's water rights, Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.

8.3. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section 4 RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections 13 and 14 of this Easement or may itself take appropriate action to protect the water rights.

8.4. If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.

9. CONSERVATION PLAN

9.1. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the Whatcom Conservation District and approved by NRCS. This conservation plan shall be developed

using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.

9.2. In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

9.3. If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.

9.4. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

10. RIGHTS CONVEYED TO GRANTEES

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

10.1. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.

10.2. To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement.

10.3. To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or

terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.

10.4. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, the Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

10.5. Forbearance by the Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

11. NO PUBLIC ACCESS

This Easement provides no right of access to the general public.

12. BASELINE DOCUMENTATION

12.1. To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare Baseline Documentation sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The Baseline Documentation may consist of reports, maps, photographs, and other documentation. Grantor and Grantees will execute a statement verifying that the Baseline Documentation accurately represents the condition of the Protected Property as of this time. Baseline Documentation is contained in Exhibit D. The Baseline Documentation will delineate the Farmstead and Agricultural Land as defined below.

12.2. The Baseline Documentation will specifically establish the area and extent of the Farmstead, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, as well as that portion used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.

12.3. The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas, such as woodlands, as well as cropland or grazing land.

13. INFORMAL DISPUTE RESOLUTION

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will

be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

14. GRANTEES' REMEDIES

14.1. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.

14.2. Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity if Grantor:

14.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees;

14.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period;
or

14.2.3. Fails to continue diligently to cure such violation until finally cured.

14.3. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.

14.4. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in Section 14.1.

14.5. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

15. RESPONSIBILITY FOR COST AND LIABILITIES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section 19.12. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

16. EXTINGUISHMENT AND TRANSFER

16.1. The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.

16.2. Grantor agrees to:

16.2.1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.

16.2.2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

16.3. Whatcom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by the United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to

give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

17. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantees under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.

18. SUBORDINATION

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit E.

19. GENERAL PROVISIONS

19.1. Effective Date. The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

19.2. Notices. Any notice under this Agricultural Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Grantor:

Grantee, Trust:

Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227

Grantee, County:

Whatcom County PDS
Attn: PDR Program Administrator
5280 Northwest Drive
Bellingham, WA 98226

Third Party Grantee, NRCS: USDA-NRCS

Attn: Easement Programs

11707 E. Sprague Ave, Suite 301
Spokane Valley, WA 99206

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

19.3. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

19.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

19.5. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

19.6. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

19.7. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.

19.8. Warranty of Good Title. Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.

19.9. Grantor-Grantees. The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.

19.10. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

19.11. Federal Enforcement. In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of

Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.

19.12. General Indemnification. Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

19.13. Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

19.13.1. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

19.13.2. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar

environmental health, safety, building and land use as may now or at any time hereafter be in effect.

19.13.3. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

19.14. Recordation. Grantees shall record this instrument in a timely fashion in the official records of Whatcom County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

19.15. No Merger. In the event that Grantees acquire all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantees, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantees covenant to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party.

19.15.1. In the event that either Grantee takes legal title to Grantor's interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 170 (h)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.

20. RCPP MINIMUM DEED TERMS

This Conservation Easement is acquired with funds provided, in part, under the Regional Conservation Partnership Program (RCPP) (16 U.S.C. Section 3871 et seq. and 7 CFR part 1464). The Exhibit F is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by the RCPP, and as a condition of receiving RCPP funds, all present and future use of the Protected Property identified in Exhibit A (legal description) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled RCPP Minimum Deed Terms in Exhibit F that is appended to and made a part of this easement deed. The rights of the United States acquired under this Conservation Easement shall be unaffected by any subsequent amendments or repeal of the RCPP.

21. SCHEDULE OF EXHIBITS

21.1. Exhibit A. Legal Description

21.2. Exhibit B. Site Map

21.3. Exhibit C. Ordinance

21.4. Exhibit D. Baseline Documentation

21.5. Exhibit E. Subordination Agreement Example

21.6. Exhibit F. RCPP Minimum Deed Terms

TO HAVE AND TO HOLD unto Grantees and the State of Washington, and their successors, and assigns forever.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this _____ day of _____, 20____.

Grantor

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name
My commission expires _____

(Use this space for notarial stamp/seal)

WHATCOM COUNTY does hereby accept the above Agricultural Conservation Easement Deed.

Dated: _____
_____ Grantee

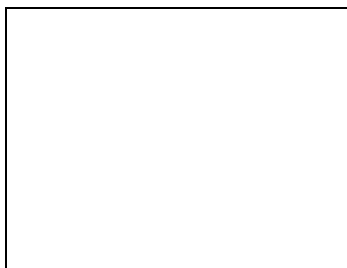
By _____
Satpal Sidhu, County Executive

Approved as to Legal Form: _____ By _____
Senior Civil Deputy Prosecuting Attny

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that _____ is the
person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated
that they were authorized to execute the instrument and acknowledged it as the
_____ of _____ to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name
My commission expires _____

The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above
Agricultural Conservation Easement Deed.

Dated: _____

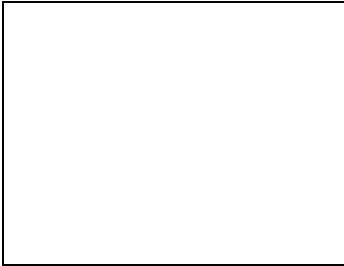
_____ By _____

Its _____

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name
My commission expires _____

THE UNITED STATES OF AMERICA, BY AND THROUGH THE NATURAL RESOURCES CONSERVATION SERVICE, Third Party Beneficiary, does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: _____

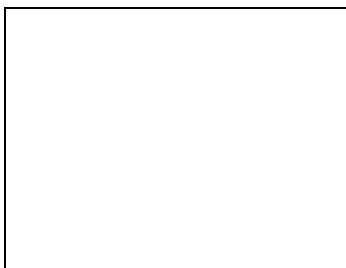
By _____

Its _____

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF THURSTON _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name
My commission expires _____

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3	<u>EXHIBIT A</u>
4	<u>Legal Description</u>
5	
6	<u>APN/Parcel ID:</u>

Exhibit B
Site Map

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EXHIBIT C
Ordinance

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS
PROGRAM AND OVERSIGHT COMMITTEE**

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land , and timber land; and

WHEREAS, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that :

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

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2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 10 day of September, 2002.

ATTEST:



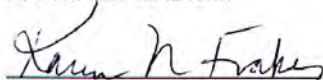
Dana Brown-Davis,
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

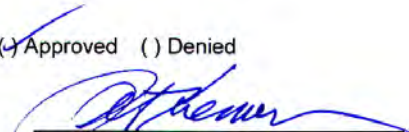

Ward Nelson, Council Chair

APPROVED as to form

☒ Approved ☐ Denied



Karen N. Frakes, Civil Deputy Prosecutor


Pete Kremen, Executive

Date: _____

EXHIBIT D
Baseline Documentation

The Baseline Documentation for the _____ Agricultural Conservation Easement is kept by the
Whatcom Land Trust at 412 N Commercial, Bellingham WA 98225. The remainder of this page is
intentionally blank.

EXHIBIT E
Subordination Agreement Example

When recorded return to:

Grantor: _____

Grantee: _____

Legal Description

Abbreviated form: _____

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: _____

Reference number(s) of related/assigned/released documents: _____

Reference(s) to document(s) appears on page(s) _____

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. _____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of _____ County;
2. _____ ("Easement Holder") is the holder of a conservation easement dated _____, 20____, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;

3. _____, *[husband and wife,] [("Owner") or ("Owners")]* *[is the owner or are the owners]* of all the real property described in the conservation easement identified above in Paragraph 2.
4. In consideration of benefits to Subordinator from *[("Owner") or ("Owners")]*, receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.
5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.
6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.
- Executed this _____ day of _____, 20__.

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

STATE OF WASHINGTON)

) ss.

COUNTY OF)

I certify that I know or have satisfactory evidence that
is the person who appeared before me, and said person acknowledged that they signed this instrument, on
oath stated that they were authorized to execute the instrument and acknowledged it as the
of to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name

My commission expires

(Use this space for notarial stamp/seal)

EXHIBIT F
RCPP Minimum Deed Terms

The Regional Conservation Partnership Program (16 U.S.C. Section 3871 et seq.), facilitated and provided funding for the purchase of a Conservation Easement ("Conservation Easement") on real property described in Exhibit A, hereafter referred to as the "Protected Property," to further the restoration, protection, enhancement, management, maintenance, and monitoring of agricultural values on the Protected Property (the "Conservation Values").

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The _____ (collectively "Grantor"), the **Whatcom Land Trust** ("Trust"), and **Whatcom County, Washington** ("County") ("collectively, Grantees"), and the **United States of America** (the "United States") and its assigns, acting by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation ("CCC") (jointly referred to as the "Parties") acknowledge that the Conservation Easement is acquired by the Grantee for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values (the "purposes of the Conservation Easement"). Decision making on behalf of NRCS is delegated to the Chief of NRCS or authorized designee (hereafter referred to as "Chief of NRCS"). Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Trust.

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In order to ensure compliance with the Regional Conservation Partnership Program, 16 U.S.C. Section 3871 et. seq. and 7 CFR part 1464, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the Conservation Easement. Notwithstanding any other provision of the Conservation Easement, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other sections of the Conservation Easement, Sections I and II will control; however, if other sections of the Conservation Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other sections of the Conservation Easement are more restrictive to the rights of the Grantor than Section I, Paragraph 3 and Section II, then Section I, Paragraph 3 and Section II will control.

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SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of the Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.

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The terms and conditions of the Conservation Easement run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Limitation on Impervious Surfaces. Impervious surfaces will not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Conservation Easement.

2. Limitations on Uses. Any uses or activities that are inconsistent with the purposes of the Conservation Easement are prohibited. The following activities are inconsistent with the purposes of the Conservation Easement and are specifically prohibited, subject to the qualifications stated below:

(A) Subdivision – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Uses consistent with the purposes of the Conservation Easement;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purposes of the Conservation Easement;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Conservation Values;

(iv) Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.; and

(v) Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) Construction on the Protected Property – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), containing approximately _____ total acres and described or shown in Exhibit B, which is appended to and made a part of this Conservation Easement.

The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Conservation Values. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 2(C)**, that neither individually nor collectively have an adverse impact on the Conservation Values, may be located outside of the Building Envelope(s) with prior written approval of the Grantee.

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New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the purposes of the Conservation Easement.

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(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Conservation Values as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purposes of the Conservation Easement; and

(iv) Agricultural activities and related conservation activities conducted in accordance with this Conservation Easement and the RCPP Easement Plan as described in Section I, paragraph 4.

(F) Surface and Subsurface Mineral Exploration and Extraction –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Paragraph (F).

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

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of impacts to the Conservation Values.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

3. Allowed Uses. The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) Agricultural Production – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) On-Farm Energy Production – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

4. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

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SECTION II – PROTECTION OF THE UNITED STATES' INTERESTS AND EASEMENT ENFORCEMENT

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1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

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Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

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2. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

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Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

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connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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▲ "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

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▲ "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

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▲ **3. Extinguishment, Termination, and Condemnation.** The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

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▲ If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

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The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

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4. Amendment. This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

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5. United States Right of Enforcement. In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

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In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Conservation Easement.

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The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

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the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.

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Exhibit B

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Whatcom County Conservation Easement Program Guidelines

Revised version adopted April 9, 2013,
Second revision adopted November 20, 2018
Third revision adopted [DATE]



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I. INTRODUCTION

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County Conservation Easement Program (CEP).

The Guidelines serve two functions:

- A. To provide an overview of the land preservation process for the property owner. Specifically, this information can be found in Section V.
- B. To establish the rules and operational procedures that the CEP Oversight Committee and the Administrator must follow when operating a Conservation Easement Program.

II. CEP OBJECTIVE AND PRINCIPLES

Responding to the loss of County farmland, the Whatcom County Executive initiated the development of a Purchase of Development Rights (PDR) program in September of 2001. A PDR Advisory Committee comprised of farmers, citizens and conservation organizations was formed and tasked with assisting County staff in the development of a proposal for County Council consideration. The Purchase of Development Rights Program was enacted through Ordinance 2002-054 in September of 2002.

Since that time, Whatcom County continues to experience a rapid development rate. In Response to the loss of forest resource lands and areas of ecological importance, the program expanded in 2018 to protect working forestlands and important ecosystem areas. This expansion was enacted through Ordinance 2018-065. In order to better reflect the program's purpose, the program changed names in 2021 to the Whatcom County Conservation Easement Program. This change was enacted through Ordinance 2021-XXX. These program guidelines have been updated accordingly.

A. Objective

The primary objective of the Whatcom County Conservation Easement Program (CEP), in conjunction with other tools, is the protection of farmland. The secondary objective of the CEP is the protection of forestland and areas of ecological importance. The Whatcom County Conservation Easement Program will help to sustain the farming and forestry enterprises as well as support healthy ecosystem function throughout Whatcom County.

B. Principles

The CEP provides a strategic tool to protect County farmland, forestland, and areas of ecological importance.

1. Preserve the County's Agricultural lands, Forestlands and Areas of Ecological Importance

Encourage the protection of a critical mass of agricultural and forestry land to sustain the farm-related and forestry-related businesses and activities that are necessary to support the agricultural and forestry industries in Whatcom County. Additionally, the Program will encourage the protection of areas of ecological importance necessary to sustain ecosystem health and function.

The primary CEP emphasis will be:

- a. Reduce conversion of land to non-agricultural uses within the Agricultural District;
- b. Provide a buffer to discourage encroachment into the Agricultural District;
- c. Consolidate and protect areas of agricultural land; and
- d. Protect agricultural lands located outside the Agricultural District that are under increased pressure of development.

The secondary CEP emphases will be:

- a. Reduce conversion of land to non-forestry uses within the Forestry

- Districts;
- b. Provide a buffer to encroachment of the Forestry Districts;
- c. Consolidate and protect areas of forestry land;
- d. Address commercially significant forestry lands outside the Forestry Districts that are under pressure of development.
- e. Protect areas of ecological importance and support and enhance ecosystem functions within agricultural and forestry lands;
- h. Improve and support habitat connectivity and protection of critical habitat corridors.

2. Offer Effective Program Design

Maintain a voluntary tool for the preservation of productive agricultural and forestry lands, as well as areas of ecological importance in the County that will:

- a. Provide farmers and foresters with the market based economic value for agricultural and forestry land without selling the land;
- b. Provide property owners with the market based economic value for areas of ecological importance without selling the land.
- c. Support and promote ongoing agricultural and forestry activities by offering an attractive option for farmers, foresters, and landowners;
- d. Support and promote ecosystem function by offering an attractive option for landowners; and
- e. Provide for ongoing monitoring and enforcement.

3. Leverage Program Impact and Efficiency

Enhance and support a coordinated approach to the preservation of the agricultural and forestry lands, as well as areas of ecological importance that will:

- a. Create community support for agricultural and forestry preservation initiatives;
- b. Create community support for the protection of areas of ecological importance;
- c. Complement and foster other County programs and policies to preserve farming and agricultural lands;
- d. Complement and foster other County programs and policies to preserve forestry and forestry lands;
- e. Complement and foster other County programs and policies to enhance ecosystem function and protect areas of ecological importance; and
- c. Leverage other public and private funding sources and provide or increase property owner incentives and program effectiveness.

III. ELIGIBILITY CRITERIA

A. Priority Consideration

Areas around the county have been identified to receive priority consideration for CEP participation.

Agricultural priority areas (Appendix A) include a combination of the Ten Rural Study Areas, Watershed Improvement District areas, lands within the Agriculture Zone, and additional areas identified in the 2019 Agricultural Landscape Analysis. The 2019 Agricultural Landscape Analysis also highlights active crop land and contiguous blocks of agricultural lands as identified by the Washington State Department of Agriculture as well as suitable agricultural soils as identified by USDA Natural Resource Conservation Service. Preservation of these areas protect designated agricultural lands and can establish a perimeter of PDR farmlands to protect against development encroachment into large blocks of agricultural lands. These lands, due to their soils, land use, and proximity to core agricultural areas, are deemed priority farmlands for program participation due to their vulnerability for conversion to non- agricultural uses.

Forestry priority areas (Appendix B) include lands located within the Rural Forestry zone and areas designated by the Washington State Department of Natural Resources as being priority for protection from conversion under Washington's Forest Action Plan. The 2019 Forestry Landscape Analysis did not identify additional priority areas.

Ecological priority areas (Appendix C) include lands containing a mapped Habitat Conservation Area or within 165' of habitat conservation feature, such as fish bearing streams, areas identified under the Washington State Department of Fish and Wildlife's Priority Habitats and Species, and the Chuckanut Wildlife Corridor. Ecological priority areas also include mapped FEMA Floodplain and Flood Hazard areas, the 300' buffer of the Historic Meander Zone, and additional areas identified in the 2019 Ecological Landscape Analysis. The 2019 Ecological Landscape Analysis also highlights watershed protection recommendations and freshwater habitat as identified by the Washington Department of Ecology, among other areas.

B. CEP Eligibility

Two factors will be important in determining eligibility:

1. Availability of funding to expand the program and
2. Advancement of CEP objectives. Priority lands will continue to receive preference over other lands through weighted selection criteria.

All applicant properties for CEP participation must be:

1. **Completely or partially within an Agriculture, Rural, Rural Residential, or Rural Forestry zoning designations. Properties located in Urban Growth Areas are ineligible to participate in the program, unless coordination with cities is a component of an application.**
2. **At least 1 acre in size.**
3. **Removing all development rights if the parcel is smaller than 10 acres.**

IV. SITE SELECTION CRITERIA

All valid applications will be reviewed to determine if the acquisition of development rights will promote the CEP's goals and priorities. Selection criteria have been developed to guide, but not control, the review and assessment of eligible properties during selection.

Valid and accepted offers on eligible properties of greater points shall be considered for purchase with available funds before properties receiving lower scores. The criteria, which will be used to evaluate the applications, are outlined below.

Rating instructions: An application will be scored under one of three types of conservation easement selection criteria: 1) Agricultural, 2) Forestry, or 3) Ecological. The agricultural selection criteria allow for a score of up to 110, while the forestry and ecological selection criteria allow for a score of up to 100. This ensures that agricultural protection is the primary emphasis of the program. There are five to six criteria sections and each criteria section is rated and assigned a point value based on a 100 point scale. Then each section is assigned a weight factor. The six agricultural weight factors add up to 1.1 and the five forestry and ecological weight factors each add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the CEP Oversight Committee.

A. Agricultural Site Selection Criteria

1. General Site Evaluation

- a. Total size of parcel(s) (nominal acres)
 1. 0 – 9.99.....0 points
 2. 10 – 19.9915 points
 3. 20 – 49.99.....30 points
 4. 50 – 79.99.....70 points
 5. ≥80.....100 points
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
 1. ≥1 mile.....0 points
 2. 0.50 to 0.99 mile.....25 points
 3. 0.25 to 0.49 mile.....50 points
 4. < 0.25 mile.....75 points
 5. Adjacent.....100 points
- c. Number of legal lots of record
 1. 0-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥ 6.....100 points

- d. Removal of all unused development rights?
 1. Unused development rights remaining0 points
 2. All removed.....100 points
- e. Number of priority areas parcel is located in
 1. 0.....0 points
 2. 1.....50 points
 3. 2-3.....100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2..... 20 points
 2. 3..... 40 points
 3. 4..... 60 points
 4. 5..... 80 points
 5. ≥6..... 100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)
 1. Property is within 2,500 feet of a major road..... 25 points
 2. Property fronts on a major road..... 50 points
 3. Property is within 1,500 feet of the intersection
 of two major roads..... 75 points
 4. Property is at an intersection of major roads..... 100 points
- c. Threat of Conversion/Parcelization
 Total Number of Parcels in surrounding ¼ mile
 1. < 20 parcels..... 50 points
 2. 20 – 50 parcels..... 100 points
 3. 51 – 100 parcels..... 50 points
 4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Soil Evaluation

Productive farming, forestry and associated activities depend on soil capability (the suitability of soils for most types of field crops and/or timber production). Therefore, emphasis should be placed on the property's soil characteristics. The scoring system uses the NRCS Prime Farmland classifications, LESA classifications and APO soils classifications, including classification of soils of statewide importance as well as consideration given to site index score for forest soils. Highest points are assigned to better agricultural soils and lower points to poorer agricultural soils. Forest soils also receive additional points. Points are assigned based on the productivity and/or characteristics of the soil (profile, texture, slope, other). A soils chart is included as Appendix D. If a soil has a site index rating and a prime soil rating, the rating with the highest number of points will be applied.

Below is a table detailing the soil point system:

LESA Rating	APO or Non-APO Prime 1	Non-APO - Prime 2-8	Soils of Statewide Importance	Site Index
1	100	90	0	0
2	95	85	0	0
3	90	80	0	0
4	85	75	0	0
No Rating	80	70	50	0
Site Index Rating				
1	0	0	0	60
2	0	0	0	50
3	0	0	0	40
4	0	0	0	30
5	0	0	0	20

Farm applications receive points for this section proportional to the percentage of each soil type that exists on the property. An example of how this would work follows: A farm under review is 40 acres, of which 29.79 acres (about 75%) is soil 179-Whatcom Silt Loam 4-9% slopes, which is classified as LESA 4, APO Prime 1; and 10.21 acres (about 25%) is soil 180-Whatcom Silt Loam 9-15% slopes, which is not classified as APO or Prime, but is a soil of Statewide Importance. This farm would score a total of 76.07 points for this Section, as shown:

A	B	C	D	E	F	G	H	I	J	K
Soil #	Area (in acres)	% (B/Total area)	APO Soil	Prime 1- 6?	LESA Rating	Prime Rating	Statewide Soil	Site Index	Points	score (J*C)
179	29.79	74.48%	Y	Y	4	1	0	2	85	63.30
180	10.21	25.53%	N	N	0	0	yes	2	50	12.76
Total area	40									76.07

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Soil Evaluation section has been 0.35, but is subject to ongoing review by the Committee).

4. Agriculture Evaluation

- a. Percent of property actively farmed
 - 1. 0-25% 25 points
 - 2. 26-50% 50 points
 - 3. 51-75% 75 points
 - 4. >75% 100 points
- b. Legal water availability documentation
 - 1. No Water documentation or legal water access..... 0 points
 - 2. Water Claim 50 points
 - 3. Certified Water Right/Access to public water..... 100 points
- c. Parcel is located in Agriculture District and is less than 40 acres or parcel is located in a Rural Study Area?
 - 1. No..... 0 points
 - 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Agriculture Evaluation section has been 0.15, but is subject to ongoing review by the Committee).

5. Special Considerations

- a. Site contains heritage/historical significance, i.e. Heritage Barn Registry
 - 1. No..... 0 points
 - 2. Yes..... 100 points
- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
 - 1. Conservation (no change)..... 25 points
 - 2. Protection/Restoration..... 50 points
 - 3. Protection..... 75 points
 - 4. Highest protection..... 100 points
- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
 - 1. Maybe/No..... 0 points
 - 2. Yes..... 100 points
- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
 - 1. No..... 0 points
 - 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

6. Matching Funds or Bargain Sale

- | | |
|----------------------|------------|
| 1. 0% secured..... | 0 points |
| 2. 25% secured..... | 25 points |
| 3. 50% secured..... | 50 points |
| 4. 75% secured..... | 75 points |
| 5. 100% secured..... | 100 points |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

B. Forestry Site Selection Criteria

1. General Site Evaluation

- | | |
|---|------------|
| a. Total size of parcel(s) (nominal acres) | |
| 1. 0 – 9.99..... | 0 points |
| 2. 10 – 19.99 | 15 points |
| 3. 20 – 49.99..... | 30 points |
| 4. 50 – 79.99..... | 70 points |
| 5. ≥80..... | 100 points |
| b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO) | |
| 1. ≥1 mile..... | 0 points |
| 2. 0.50 to 0.99 mile..... | 25 points |
| 3. 0.25 to 0.49 mile..... | 50 points |
| 4. < 0.25 mile..... | 75 points |
| 5. Adjacent..... | 100 points |
| c. Number of legal lots of record | |
| 1. 0-2..... | 20 points |
| 2. 3..... | 40 points |
| 3. 4..... | 60 points |
| 4. 5..... | 80 points |
| 5. ≥6..... | 100 points |
| d. Removal of all unused development rights? | |
| 1. Unused development rights remaining | 0 points |
| 2. All removed..... | 100 points |
| e. Number of priority areas parcel is located in | |
| 1. 0..... | 0 points |
| 2. 1..... | 50 points |
| 3. 2-3..... | 100 points |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2..... 20 points
 2. 3..... 40 points
 3. 4..... 60 points
 4. 5..... 80 points
 5. ≥6..... 100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)
 5. Property is within 2,500 feet of a major road..... 25 points
 6. Property fronts on a major road..... 50 points
 7. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
 8. Property is at an intersection of major roads..... 100 points
- c. Threat of Conversion/Parcelization
Total Number of Parcels in surrounding ¼ mile
 1. < 20 parcels..... 50 points
 2. 20 – 50 parcels..... 100 points
 3. 51 – 100 parcels..... 50 points
 4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Forestry Evaluation

- a. Site index soil score, spatially weighted
 1. 5 20 points
 2. 4 40 points
 3. 3 60 points
 4. 2 80 points
 5. 1..... 100 points
- b. Property is identified as priority forestland based on State Forest Action Plan?
 1. No 0 points
 2. Yes..... 100 points
- c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?
 1. No..... 0 points
 2. Yes..... 100 points
- d. Proximity to existing and contiguous blocks of forestland
 1. >0.5 mile..... 0 points
 2. 0.26 – 0.5 mile..... 50 points
 3. 0.11 – 0.25 mile 75 points

4. ≤ 0.1 mile..... 100 points

e. Property is located at access to other working forestland?

1. No..... 0 points

2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Forestry Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

a. Site contains existing or proposed trails

3. No..... 0 points

4. Yes..... 100 points

b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

5. Conservation (no change)..... 25 points

6. Protection/Restoration..... 50 points

7. Protection..... 75 points

8. Highest protection..... 100 points

c. Is property owner willing to implement forest management practices beyond the minimum required practices?

1. Maybe/No..... 0 points

2. Yes..... 100 points

d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)

1. No.....0 points

2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

1. 0% secured..... 0 points

2. 25% secured..... 25 points

3. 50% secured..... 50 points

4. 75% secured..... 75 points

5. 100% secured..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

C. Ecological Site Selection Criteria

1. General Site Evaluation

- a. Total size of parcel(s) (nominal acres)
 1. 0 – 9.99.....0 points
 2. 10 – 19.9915 points
 3. 20 – 49.99.....30 points
 4. 50 – 79.99.....70 points
 5. ≥80.....100 points
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
 1. ≥1 mile.....0 points
 2. 0.50 to 0.99 mile.....25 points
 3. 0.25 to 0.49 mile.....50 points
 4. < 0.25 mile.....75 points
 5. Adjacent.....100 points
- c. Number of legal lots of record
 1. 0-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥6.....100 points
- d. Removal of all unused development rights?
 1. Unused development rights remaining0 points
 2. All removed.....100 points
- e. Number of priority areas parcel is located in
 1. 0.....0 points
 2. 1.....50 points
 3. 2-3.....100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥6.....100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic

volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

1. Property is within 2,500 feet of a major road..... 25 points
2. Property fronts on a major road..... 50 points
3. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
4. Property is at an intersection of major roads..... 100 points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

1. < 20 parcels..... 50 points
2. 20 – 50 parcels..... 100 points
3. 51 – 100 parcels..... 50 points
4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Ecological Evaluation

The 2019 Landscape Analysis for the program is used to answer Questions 3.a through 3.c.

a. Protect water quality and quantity landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

b. Ecologically important aquatic areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

c. Ecologically important terrestrial areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

d. Additional ecologically important areas not included in landscape analysis score?

1. No..... 0 points
2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Ecological Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

- a. Site contains existing or proposed trails
 1. No..... 0 points
 2. Yes..... 100 points
- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
 1. Conservation (no change)..... 25 points
 2. Protection/Restoration..... 50 points
 3. Protection..... 75 points
 4. Highest protection..... 100 points
- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
 2. Maybe/No..... 0 points
 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

6. 0% secured..... 0 points
7. 25% secured..... 25 points
8. 50% secured..... 50 points
9. 75% secured..... 75 points
- 10..... 100%
- secured..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-110). The higher the score, the more closely the property meets the goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation. The CEP Oversight Committee retains the ability to add or subtract up to 5 points on any application. A write-up of committee opinion will be included in all council proceedings.

V. OVERVIEW OF CEP PROCEDURES

A. Outreach and Publicity

Step 1: The County shall develop and distribute outreach materials for the CEP. Outreach shall include the properties eligible to participate, the application process and applicable timeframes and extensions.

The Administrator may identify each property with potential development rights within priority consideration areas and provide written notification to the property owners.

B. Application and Ranking

Step 2: Voluntary pre-application screening. Interested property owners may meet with the County CEP Administrator (Administrator) to review their eligibility and special circumstances, if any.

Step 3: Application. An owner of land eligible for CEP participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County.

Step 4: Lot of Record/Density Determination. An owner of land eligible for CEP participation submits a Lot of Record application. This application determines legal status of lots being considered and determines that number of development rights remaining on said lots. The Lot of Record determination must be completed before an appraisal can occur.

Step 5: The Administrator reviews each application for completeness, determines if the subject property meets minimum eligibility criteria and assigns a preliminary score based upon the CEP site selection criteria.

Step 6: The CEP Oversight Committee reviews CEP applications and recommends proposed development rights acquisition utilizing the selection criteria. Recommendations for development right acquisition are prepared and forwarded to County Council to approve, deny, or recommend modification.

Step 7: The Administrator estimates the number of appraisals that can be initiated based on available funds and chooses based on the top ranked parcels from the County Council's list of parcels and the timeline of projects with secured grant funding.

C. Title

Step 9: The Administrator initiates a title search. Closing is conditioned on the resolution of all unapproved title exceptions, within the County's sole discretion, which may require the receipt of subordination agreements or payoff letter.

D. Pricing Estimate and Appraisal

- Step 10: The Administrator or designee provides preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s).
- Step 10: The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).
- Step 11: Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the value of placing a conservation easement on the land that removes development rights. The conservation easement value is the difference between the market value of full ownership of the land, and the agricultural or forestry value.
- Step 12: The appraiser submits the completed appraisal (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.
- Step 13: The Administrator or designee meets with the property owner to review the appraisal (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner's questions.
- Step 14: If the property owner believes that the land has not been adequately appraised or valued, the owner may, within the time allowed in the schedule, commission an appraisal at the owner's expense.

E. Offer to Purchase Easement and Agreement

- Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.
- Step 16: Within 30 days, the property owner accepts, rejects or makes a counter offer. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.
- Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

- Step 18: Neighboring property owners are notified that adjacent land is in the process of

being preserved.

G. Approval

- Step 19: Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.
- Step 20: Review materials are sent to other participating entities for partially or wholly funded conservation easements several days prior to any deadline.

I. Settlement

- Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.
- Step 23: Checks are requested from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

- Step 24: The conservation easement will be recorded at the County Auditor's office. The County or its designee will monitor the properties under easement at least annually to ensure compliance with the easement.

VI. CONSERVATION EASEMENTS

A. Description

A conservation easement deed is a legally binding document, which is recorded by the County Auditor, forever restricting the property to agricultural, forestry, and/or ecological and directly associated uses, and for which compensation may be paid. As an easement in gross in perpetuity, restrictions are binding upon the owner and future owners, and run with the land.

B. Conservation Easements

At the time of acquisition of development rights from a participating property, a conservation easement is placed on the property permanently restricting development of the site and protecting/preserving the agricultural, forestry, and ecological values associated with the site. The conservation easement must be signed by both the property owner(s) and the County Executive or his/her designee and recorded with the property records for the property. A model conservation easement deed is included in these guidelines as attachment D.

1. Conservation Easement Requirements

Conservation easements shall be on a form approved by the Whatcom County Prosecuting Attorney and shall meet the following basic requirements:

- a. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the area subject to the easement;
- b. Restriction is granted in favor of Whatcom County, or if designated by the organizations as defined in RCW64.04.130;
- c. Restriction is granted in perpetuity, and shall bind existing and future property owners; and
- d. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the property, and the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

2. Filing

After the conservation easement is signed and notarized, it must be recorded with the Whatcom County Auditor's Office.

C. Conservation Easement Conveyance

Conservation easements may be either donated or sold, or a combination of both.

1. Conservation Easement Donation

- a. A donation of a total parcel will not be subject to eligibility except as below in section c. Partial parcel donation shall be considered under the same rule as for development rights sales. Notwithstanding the eligibility of the property, acceptance of a fee interest or partial donation is within the discretion of the County Council.
- b. Whatcom County will accept voluntary donations or bequests of development rights as perpetual easements in gross if meeting eligibility criteria (except priority area criteria) and within the discretion of the County Council.
- c. All properties offered for development rights donation must meet the following minimum eligibility criteria:
 - 1. The CEP Oversight Committee will consider each offer on a case by-case basis, considering the property's consistency with current and future land uses, and
 - 2. The property must be at least 1 acre in size, and
 - 3. Be in agricultural or forestry use or contain ecological values and has not been irrevocably devoted to a use inconsistent with the above values,
 - 4. Cannot be located within an Urban Growth Area, unless coordination with the proximal small city is a component of the donation.

2. Conservation Easement Sale

- a. Whatcom County will purchase perpetual conservation easements on qualified properties in accordance with the policies and procedures of the Whatcom County Conservation Easement Program, with Federal, State, County, and/or private funds and any combination thereof.
- b. All properties offered for conservation easement sale must meet minimum eligibility criteria as contained in Section III.

VII. OPERATIONAL PROCEDURES FOR ACQUIRING CONSERVATION EASEMENTS

A. Outreach and Publicity

Outreach shall occur to inform landowners about the program and may include advertising in newspapers or other publications, landowner mailers, and presentations. Application opening and closing dates, if any, will be determined by the CEP Oversight Committee. The Committee shall have the discretion to consider applications in rounds, or individually on a rolling basis. If selection deadlines are extended, the committee will provide public notice of the extension.

B. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County. The application must be submitted to the County on the form provided by the CEP, and according to the relevant public notice. Applicants are to include at a minimum:
 - a. Name(s) and address(es) of the property owner(s) of the site;
 - b. Legal description and parcel number(s);
 - c. Copy of the property deed and title;
 - d. Total acreage of farmland to be included in the CEP;
 - e. Current land use and soils;
 - f. Number of dwelling units;
 - g. Description of the farming operation;
 - h. Other information necessary to evaluate property eligibility;
 - i. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.
2. The Administrator shall review each application to determine completeness and eligibility.
3. Applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)
4. The CEP Oversight Committee shall provide the County Council with information and scoring of properties recommended for conservation easement acquisition by the committee. County Council shall approve or deny pursuit of conservation easement acquisitions on the parcels.
5. The Administrator shall then arrange appraisals (or alternate determination of value) of eligible applicant properties as determined by the County Council.
6. The CEP Oversight Committee and Administrator shall provide updates to the County Council discussing recommended purchases, possible program changes,

and anticipated budget needs.

C. Appraisal

1. Appraisals for eligible properties shall be conducted to determine the value of a conservation easement on parcels in the order of acquisition priority and in accordance with grant funding timelines until acquisition funds are expended.
 - a. The appraisals are to be made by an independent appraiser qualified to appraise agricultural, forestry, and/or ecological land for conservation easement purchases. An appraiser is deemed qualified if he or she possesses a State of Washington certification as a State Certified General Real appraiser, MAI designation by the Appraisal Institute (or equivalent), and at least five years agricultural lands appraisal experience. Appraisers shall supply a narrative or UAAR form report, which contains information as required by the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards of Federal Land Acquisition (UASFLA) and as specified in any contract with the County.
 - b. An appraisal report is an objective report of market facts. The appraisal report must estimate both the unrestricted fee market value of the land only, excluding the value of buildings, and the agricultural or forestry value of the land only, of which the difference is the conservation easement value.
 - c. Both values shall be based primarily on an analysis of comparable sales. If comparable sales data is not available for agricultural lands, the appraiser may use local farmland rental values or capitalized production values to determine the agricultural values of the land.
 - d. A description of the buildings or other improvements shall appear in the appraisal report; however, the buildings will not be valued and therefore will not be considered in determining the development rights value.
 - e. The appraiser shall report whether the subject property has any land use restrictions, public or private and/or physical attributes, which limit the developmental capability of the land.
 - f. The appraiser shall be advised that conservation easements are perpetual. The perpetual nature of the easement shall take precedent over any agricultural zoning status.
 - g. The appraisal shall be in writing and may be discussed with the owners prior to the submission of written offers.
 - h. If the property owner believes the property has not been adequately appraised, the owner may, within the time allotted, request that a review appraisal be made at the owner's expense. This appraisal must be completed in accordance with the guidelines set forth herein. If the review (owner's) appraisal is not completed within the allotted time, the application will be delayed for future

committee consideration. If a review appraisal is completed, the appraisal will be reviewed by the County's Appraiser. The County's Appraiser in consultation with the Program Administrator and the CEP Oversight Committee will accept, modify or reject the review appraisal. The determination of the County's Appraiser is final.

- i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

D. Title and Survey Issues

1. The Administrator shall request a title report confirming that applicant is the owner of the property and has unrestricted legal right to transfer the development rights (i.e. there must be clear title to transfer the property). The title report will be provided to the County Attorney for review.
2. All encumbrances (including but not limited to: liens, mortgages and judgments) against the property must be subordinated, satisfied or removed prior to development rights acquisition. Mortgage and/or lien holder subordination and releases may be required acknowledging that a conservation easement will be placed on the property and subordinating their interest in the property to the deed restriction.
3. At settlement for a County or joint development rights purchase, the Administrator shall provide a title insurance policy issued by a title insurance company authorized to conduct business in Washington State by the Washington State Office of Insurance Commissioner. The cost of such title insurance shall be a shared cost, with the county's portion considered a cost incident to the conservation easement purchase and a reimbursable expense from the County's Conservation Futures Fund.
4. It is the property owner's responsibility to survey (or provide a legal description that meets specific standards) any exceptions from the easement and any graveyards or cellular towers that may be located on the property. It is the property owner's responsibility to provide a legal description for any commercial operation on the farm that is not incidental to the overall farming operation, in order to exclude it from the easement. Surveys shall be conducted by a licensed surveyor in accordance with state and federal regulations.

E. Development Rights Value and Purchase Price

1. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Development rights may only be purchased in perpetuity.

F. Recommendation of Conservation Easement Purchases by the CEP Oversight Committee

1. The CEP Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
 - a. Evaluation according to the site selection criteria
 - b. Consistency with County Comprehensive Plan
 - c. Cost relative to total allocations and appropriations
 - d. Proximity to other land subject to protection easements
2. Upon receiving the recommendations of the CEP Oversight Committee and the Administrator, the County Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.
3. If a property is approved for conservation easement purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County's offer. A written offer will be provided to the property owner. Written notice shall also be provided to land not approved for conservation easement purchase.
4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
 - a. Accept the offer.
 - b. Reject the offer.
 1. Reject offer outright
 - a. no further action
 - b. participate in future review
 2. Submit a counter offer within 90 days of written notice of offer by the County.
 - c. Failure to notify the County within 30 days shall constitute rejection of the offer.
5. If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
 - a. Lump Sum
 - b. Installment Purchase Agreement (IPA)
 - c. Like-Kind Exchange
 - d. Or a combination of the above

6. For conservation easement purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.
7. All Agreements of Sale and Conservation Easements require the County Council's approval.

G. Grant of the Agricultural, Forestry, and/or Ecological Protection Conservation Easement

Before the purchase of development rights can be finalized, a conservation easement in a form approved by the County Attorney and consistent with the policies of the CEP Guidelines, must be placed on the property permanently restricting development of the site and preserving its agricultural, forestry and/or ecological values.

The principal interest of the County is to ensure that lands are preserved and subsequently stewarded in a manner that maintains and enhances their farmland, forestland, and/or ecological values. There may be some instances where there is a public interest in another public entity or non-profit organization to hold the conservation easement, for continued stewardship and protection of the land. The County will consider:

1. The preferences of the donor or seller;
2. Administrative, monitoring, and enforcement issues associated with the conservation easement and the resources available to address these issues;
3. Requirement of Federal, State or County funding sources utilized to purchase conservation easements.

H. Conservation Easement Purchase Recommendations/Submission Requirements

1. County Council: Each recommendation for conservation easement purchases with County funds, State funds, Federal funds, private donor funds or a combination of funds shall be presented to the County Council at a regularly scheduled public meeting.
2. Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.

VIII. CONSERVATION FUTURES FUND

A. Intent

This fund was established in 1992 to be used solely to acquire right and interests in open space land, farm and agricultural land, and timber land, so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use and enjoyment.

B. Fund Sources

This Conservation Futures Fund is funded by a real property tax applied to all real property within Whatcom County at a rate determined by the county administration and county council.

C. Fund Source Accounts

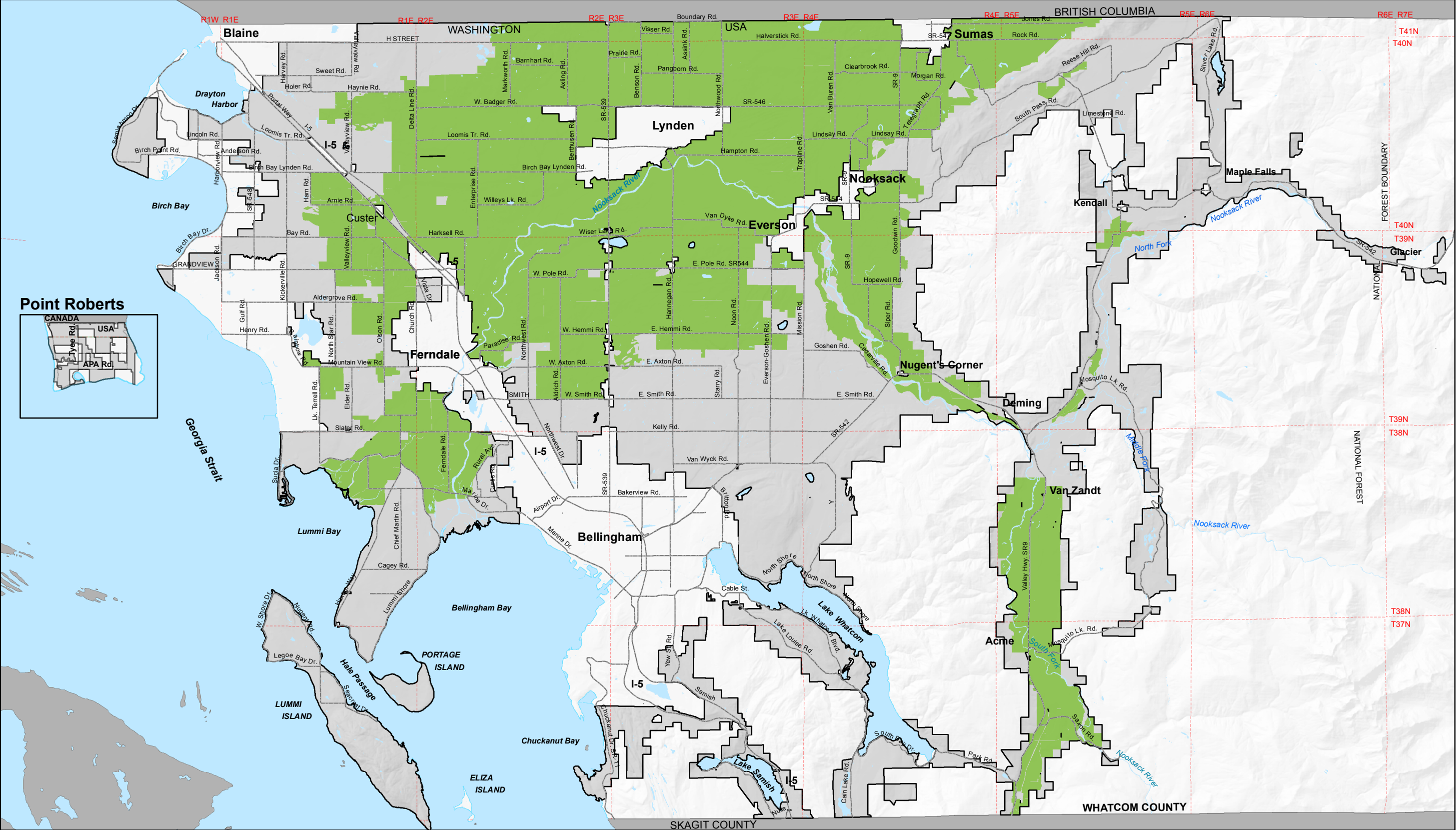
Council shall annually consider an allocation of Conservation Futures Fund to be placed in a Conservation Easement Program Account.

D. Installment Payment Fund

1. The intent of installment payment funds, which are established by the County, is to encumber and invest committed funds for which recipient property owners have elected annual installment payments for a period, which may vary according to the wishes of the property owner.
2. The full consideration of any transaction for which installment payments of five years or less have been elected shall be placed in the fund, less the amount of any first installment to be paid at settlement. This amount shall be invested and annual installment payments shall include the interest accrued.
3. Annual installment payments shall be made on or before January 20th of each year.
4. A property owner may enter into an Installment Purchase Agreement for fifteen (15) to thirty (30) years at an interest rate to be negotiated between the property owner and the County. The property owner will receive semi-annual interest payments that are tax exempt. Principal will be paid in one lump sum at the end of term. The property owner will also receive a security representing the Installment Purchase Agreement. The property owner may sell or assign this Agreement.



E. Public Expenditures

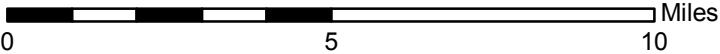
1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the CEP Account shall be limited to interests in qualified agricultural, forestry, and/or ecological land participating in the Whatcom County Conservation Easement Program, and other expenses necessary to the acquisition of conservation easements authorized under RCW 84.34.200-.240.
3. The annual appropriation to the CEP by the County Council shall be available for the calendar year in which the appropriation was made and or the subsequent calendar year.



Whatcom County Agricultural Priority Areas

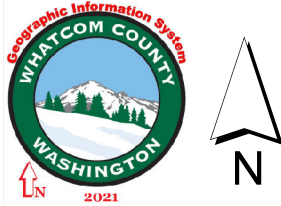
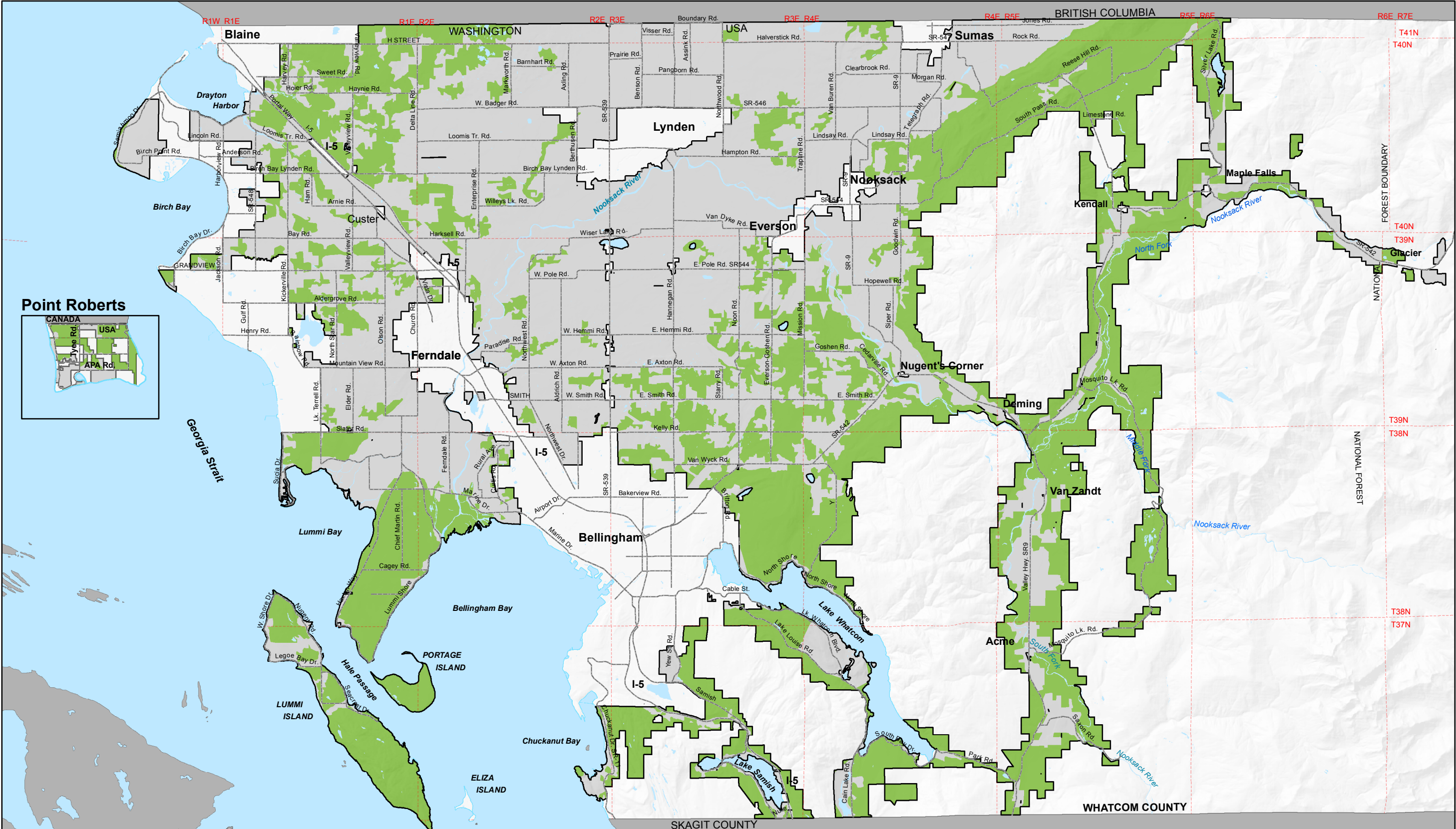
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

-  Agricultural Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

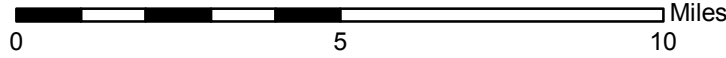
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Whatcom County Forestry Priority Areas

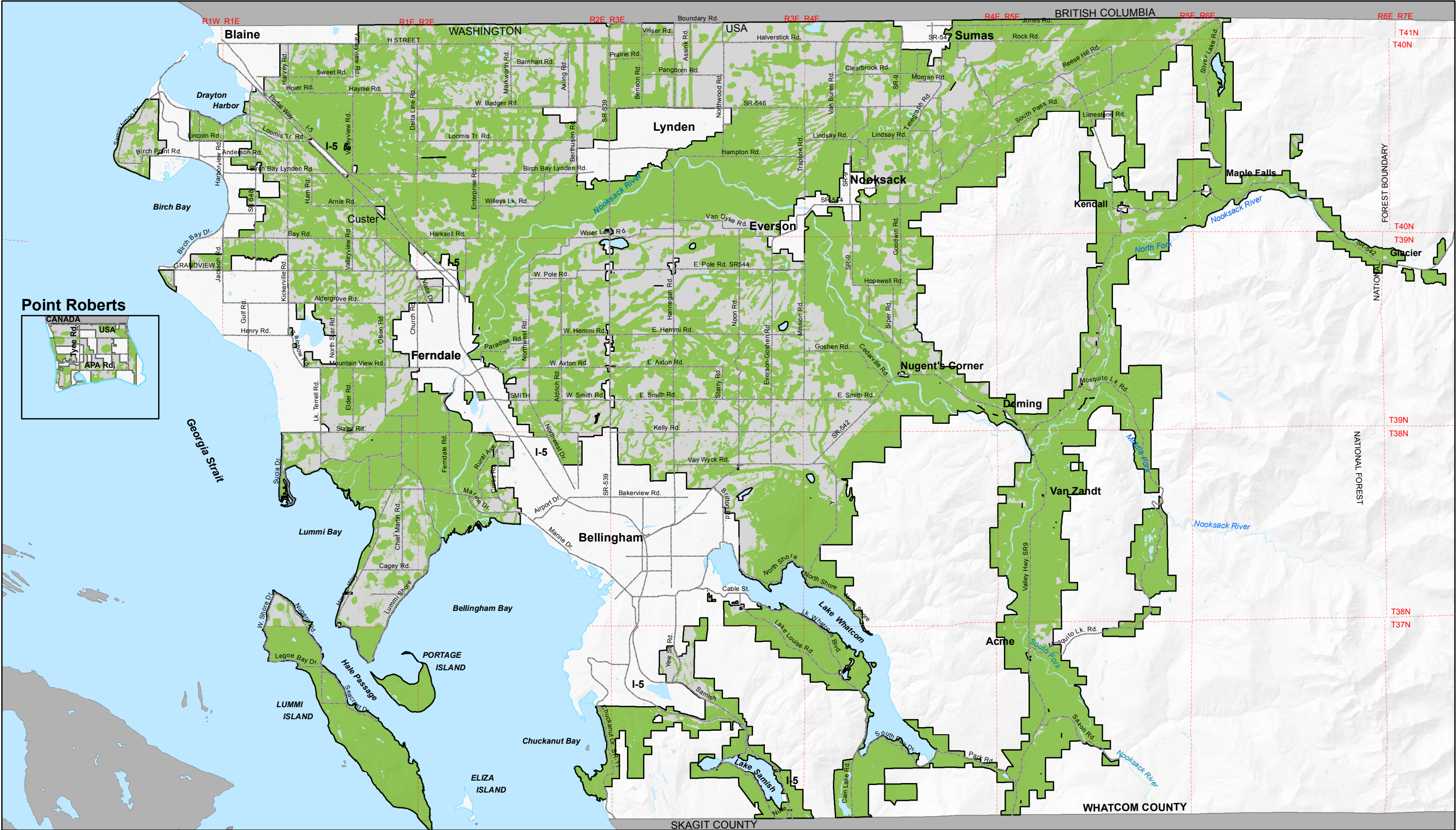
Rural Forestry Zone and WA Forest Action Plan
Priority Areas

- Forestry Priority Area
- Conservation Easement Program Area
(Agriculture, Rural, Rural Residential, and Rural Forestry
Zoning Outside Urban Growth Areas)





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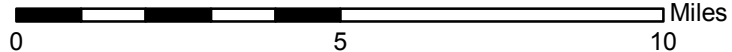
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Whatcom County Ecological Priority Areas

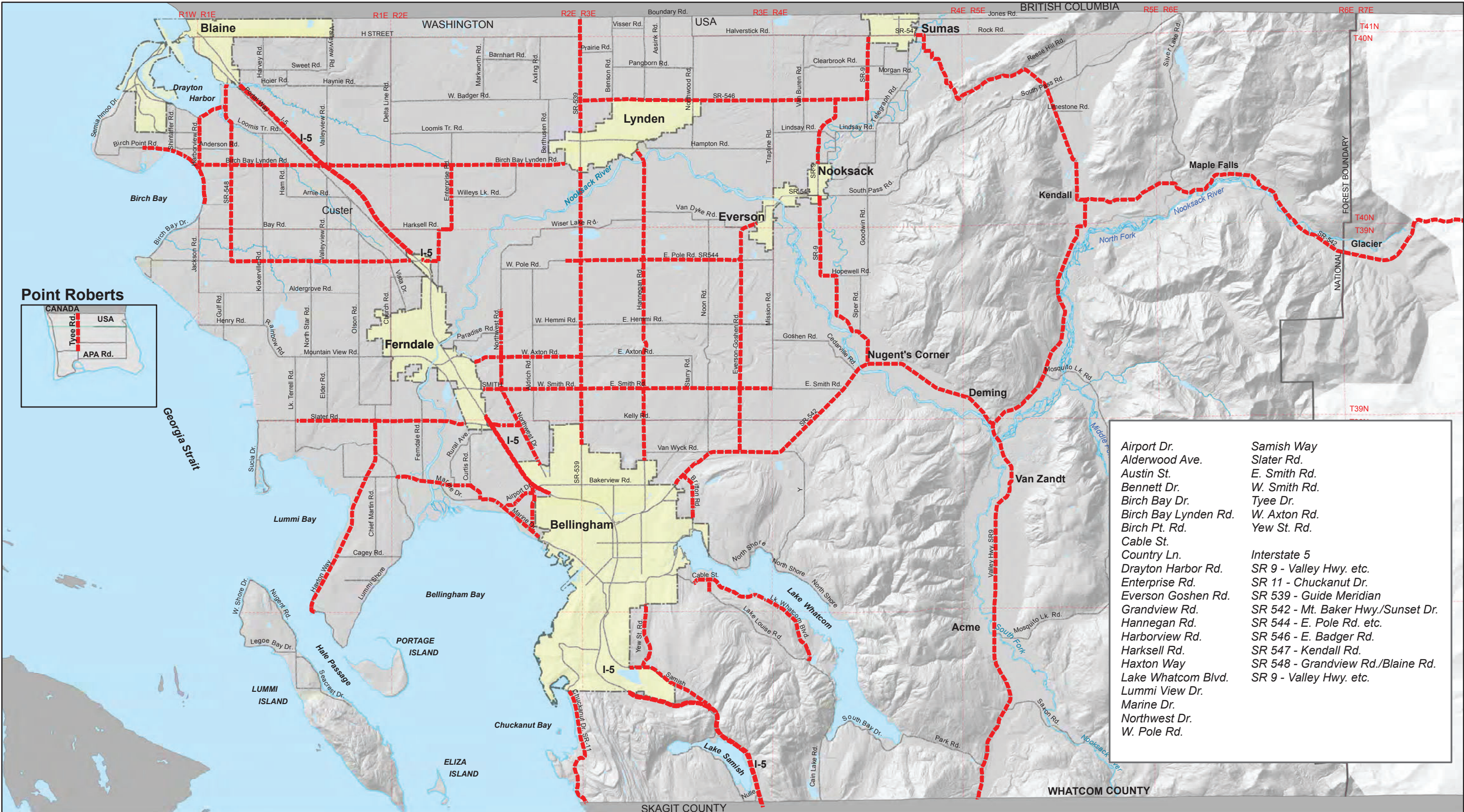
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

-  Ecological Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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Whatcom County

Major Roads - >3,000 Average Daily Trips

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0 0.5 1 2 3 Miles
649

APPENDIX E

Soils List

Soil #	Soil Name	APO y/n	LESA Group	PRIME	STATEWIDE IMPORTANCE	Site Index
1	ANDIC CRYOCHREPTS - 60 TO 90% SLOPES	N	0	0		
2	ANDIC CRYOCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		
3	ANDIC XEROCHREPTS - 60 TO 90% SLOPES	N	0	0		3
4	ANDIC XEROCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		3
5	ANDIC XEROCHREPTS-COOL ROCK OUTCROP COMPLEX-60 TO 90% SLOPES	N	0	0		4
6	BARNESTON GRAVELLY LOAM - 0 TO 8% SLOPES	N	3	4		2
7	BARNESTON VERY GRAVELLY LOAM - 8 TO 15% SLOPES	N	0	4		2
8	BARNESTON VERY GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
9	BARNESTON VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
10	BARNHARDT GRAVELLY LOAM - 0 TO 5% SLOPES	N	1	1		3
11	BELLINGHAM SILTY CLAY LOAM - 0 TO 2% SLOPES	N	0	2		
12	BIRCHBAY SILT LOAM - 0 TO 3% SLOPES	Y	1	1		3
13	BIRCHBAY SILT LOAM - 3 TO 8% SLOPES	Y	0	0	yes	3
14	BIRCHBAY SILT LOAM - 8 TO 15% SLOPES	N	0	0	yes	3
15	BLAINEGATE SILTY CLAY - 0 TO 1% SLOPES	N	0	0	yes	
16	BLAINEGATE-URBAN LAND COMPLEX - 0 TO 1% SLOPES	N	0	0		
17	BLETHEN GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0	yes	3
18	BLETHEN GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0	yes	3
19	BLETHEN GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		3
20	BLETHEN VERY BOULDERY LOAM - 5 TO 40% SLOPES	N	0	0		3
21	BOROSAPRISTS - 0 TO 2% SLOPES	N	0	0		
22	BRISCOT SILT LOAM DRAINED - 0 TO 2% SLOPES	Y	3	2		
23	BRISCOT ORIDIA AND SUMAS SOILS - 0 TO 2% SLOPES	N	0	5		
24	CHUCKANUT LOAM - 3 TO 8% SLOPES	N	0	0	yes	
25	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 5 TO 15% SLOPES	N	0	0	yes	2
26	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 15 TO 30% SLOPES	N	0	0	yes	2
27	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 30 TO 60% SLOPES	N	0	0		2
28	CHUCKANUT-SHALCAR COMPLEX - 0 TO 15% SLOPES	N	0	0	yes	2
29	CHUCKANUT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	N	0	0		2
30	CLENDENEN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
31	CLIPPER SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	2	2		
32	COMAR SILT LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
33	COMAR SILT LOAM - 15 TO 30% SLOPES	N	0	0	yes	2
34	COMAR SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
35	CRINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
36	CUPPLES GRAVELLY LOAM - 5 TO 30% SLOPES	N	0	0		2
37	CUPPLES GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
38	DEKAPEN LOAM - 8 TO 25% SLOPES	N	0	0	yes	3
39	DEMING GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
40	DEMING GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
41	DIOBSUD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
42	EDFRO VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		
43	EDFRO VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		

44	EDFRO VERY STONY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
45	EDMONDS-WOODLYN LOAMS - DRAINED - 0 TO 2% SLOPES	Y	0	0		
46	ELIZA SILT LOAM - DRAINED - 0 TO 1% SLOPES	N	0	5		
47	ELIZA-TACOMA SILT LOAMS - 0 TO 1% SLOPES	N	0	5		
48	EVERETT GRAVELLY SANDY LOAM-HARD SUBSTRATUM - 2 TO 8% SLOPES	N	0	4		3
49	EVERETT VERY GRAVELLY SANDY LOAM - 8 TO 15% SLOPES	N	0	4		3
50	EVERETT VERY GRAVELLY SANDY LOAM - 15 TO 35% SLOPES	N	0	0	yes	3
51	EVERETT COMPLEX - 2 TO 8% SLOPES	N	0	4		3
52	EVERETT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	N	0	0		3
53	EVERSON SILT LOAM-DRAINED - 0 TO 2% SLOPES	N	2	2		
54	FISHTRAP MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		
55	GALLUP SILT LOAM - 30 TO 60% SLOPES	N	0	0		
56	GALLUP SILT LOAM - 60 TO 80%	N	0	0		
57	GALLUP SILT LOAM-COLD - 30 TO 60% SLOPES	N	0	0		
58	GALLUP SILT LOAM-COLD - 60 TO 80% SLOPES	N	0	0		
59	GETCHELL LOAM - 3 TO 30% SLOPES	N	0	0		
60	GETCHELL LOAM - 30 TO 60% SLOPES	N	0	0		
61	HALE SILT LOAM - 0 TO 2% SLOPES	N	0	2		4
62	HALE SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	2	2		4
63	HALLENTON SILT LOAM-DRAINED - 0 TO 1% SLOPES	N	0	2		
64	HANNEGAN VERY GRAVELLY LOAM - 15 TO 40% SLOPES	N	0	0		
65	HARTNIT SILT LOAM-COLD - 5 TO 30% SLOPES	N	0	0		
66	HARTNIT SILT LOAM-COLD - 30 TO 60% SLOPES	N	0	0		
67	HARTNIT-GALLUP-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	N	0	0		
68	HEISLER VERY GRAVELLY SILT LOAM - 8 TO 30%	N	0	0	yes	2
69	HEISLER VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
70	HINKER VERY CHANNERY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
71	HINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
72	HISTOSOLS-PONDED - 0 TO 1% SLOPES	N	0	2		
73	HOVDE SILT LOAM - 0 TO 2% SLOPES	N	0	0	yes	
74	HOZOMEEN GRAVELLY LOAM - 20 TO 45% SLOPES	N	0	0		
75	HYDRAQUENTS-TITAL - 0 TO 1% SLOPES	N	0	0		
76	JACKMAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
77	JORGENSEN GRAVELLY SILT LOAM - 3 TO 15% SLOPES	N	0	0		
78	JUG VERY GRAVELLY LOAM - 3 TO 15% SLOPES	N	0	0	yes	2
79	KICKERVILLE SILT LOAM - 0 TO 3% SLOPES	Y	1	1		2
80	KICKERVILLE SILT LOAM -3 TO 8% SLOPES	Y	1	1		2
81	KICKERVILLE SILT LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
82	KICKERVILLE-URBAN LAND COMPLEX - 0 TO 3% SLOPES	N	0	0		2
83	KINDY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		4
84	KINDY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		4
85	KINDY-OSO COMPLEX - 5 TO 40% SLOPES	N	0	0		
86	KLAWATTI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
87	KLAWATTI V. GRAVELLY SANDY LOAM-SERPENTINE-10 TO 30% SLOPES	N	0	0		
88	KLAWATTI V. GRAVELLY SANDY LOAM-SERPENTINE-10 TO 30% SLOPES	N	0	0		
89	KLAWATTI-ROCK OUTCROP COMPLEX - 60 TO 80% SLOPES	N	0	0		
90	KLINE GRAVELLY SANDY LOAM - 2 TO 8% SLOPES	N	0	4		3
91	KULSHAN LOAM - 5 TO 30% SLOPES	N	0	0		
92	KILSHAN LOAM - 30 TO 60% SLOPES	N	0	0		
93	LABOUNTY SILT LOAM - 0 TO 2% SLOPES	N	4	2		

94	LABOUNTY SILT LOAM-DRAINED - 0 TO 2% SLOPES	N	0	2		
95	LARUSH SILT LOAM - 0 TO 3% SLOPES	Y	3	1		2
96	LAXTON LOAM - 0 TO 30% SLOPES	Y	1	1		2
97	LAXTON LOAM - 3 TO 8% SLOPES	Y	1	1		2
98	LAXTON LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
99	LYNDEN SANDY LOAM	Y	1	1		3
100	LYNDEN SANDY LOAM - 3 TO 7% SLOPES	Y	1	1		3
101	LYNDEN-URBAN LAND COMPLEX - 0 TO 5% SLOPES	N	0	0		3
102	LYNNWOOD SANDY LOAM - 0 TO 5% SLOPES	N	0	4		3
103	LYNNWOOD SANDY LOAM - 5 TO 20% SLOPES	N	0	0	yes	3
104	MONTBORNE GRAVELLY LOAM - 5 TO 30% SLOPES	N	0	0		3
105	MONTBORNE GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		3
106	MONTBORNE-RINKER COMPLEX - 30 TO 60% SLOPES	N	0	0		3
107	MT. VERNON FINE SANDY LOAM - 0 TO 2% SLOPES	Y	2	1		2
108	NATI LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
109	NATO LOAM = 15 TO 30% SLOPES	N	0	0	yes	2
110	NATI LOAM - 30 TO 60% SLOPES	N	0	0		3
111	NEPTUNE VERY GRAVELLY SANDY LOAM- 0 TO 3% SLOPES	N	0	4		3
112	OAKES VERY GRAVELLY LOAM - 8 TO 30% SLOPES	N	0	0		2
113	OAKES VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
114	OAKES VERY GRAVELLY LOAM - 60 TO 80% SLOPES	N	0	0		4
115	ORIDIA SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
116	PANGBORN MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		
117	PICKETT-ROCK OUTCROP COMPLEX - 5 TO 30% SLOPES	N	0	0		4
118	PICKETT-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	N	0	0		4
119	PILCHUCK LOAMY FINE SAND - 0 TO 3% SLOPES	N	0	7		3
120	PITS	N	0	0		
121	POTCHUB LOAM - 8 TO 30% SLOPES	N	0	0		
122	POTCHUB LOAM - 30 TO 60% SLOPES	N	0	0		
123	PUGET SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
124	PUYALLUP FINE SANDY LOAM - 0 TO 2% SLOPES	Y	2	4		2
125	REVEL LOAM - 5 TO 30% SLOPES	N	0	0		4
126	REVEL LOAM - 30 TO 60% SLOPES	N	0	0		4
127	REVEL-WELCOME-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	N	0	0		4
128	RINKER VERY CHANNERY SILT LOAM - 8 TO 30% SLOPES	N	0	0	yes	3
129	RINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		3
130	RIVERWASH	N	0	0		
131	ROCK OUTCROP	N	0	0		
132	ROCK OUTCROP-KULSHAN COMPLEX - 60 TO 90% SLOPES	N	0	0		
133	RUBBLE LAND	N	0	0		
134	SAAR GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
135	SAAR GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
136	SAAR-HARTNIT COMPLEX - 5 TO 40% SLOPES	N	0	0		
137	SANDUN VERY GRAVELLY SANDY LOAM - 5 TO 30% SLOPES	N	0	0		
138	SANDUN VERY GRAVELLY SANDY LOAM - 30 TO 60% SLOPES	N	0	0		
139	SEHOME LOAM - 2 TO 8% SLOPES	Y	0	1		2
140	SEHOME LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
141	SEHOME GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0	yes	2
142	SEHOME GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
143	SHALCAR MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		

144	SHALCAR AND FISHTRAP SOILS - 0 TO 2% SLOPES	N	0	2		
145	SHUKSAN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
146	SHUKSAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0	yes	
147	SHUKSAN-KULSHAN-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	N	0	0		
148	SKIPOPA SILT LOAM - 0 TO 8% SLOPES	Y	0	2		3
149	SKIPOPA-BLAINEGATE COMPLEX - 0 TO 8% SLOPES	N	0	2	yes	3
150	SKYKOMISH VERY GRAVELLY LOAM - 3 TO 30% SLOPES	N	0	0		3
151	SNOHOMISH SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
152	SNOQUALMIE GRAVELLY LOAMY SAND - 0 TO 3% SLOPES	N	0	4	yes	3
153	SORENSEN VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0	yes	2
154	SORENSEN VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
155	SPRINGSTEEN VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
156	SQUALICUM GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
157	SQUALICUM GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
158	SQUALICUM GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
159	SQUALICUM-URBAN LAND COMPLEX - 5 ATO 20% SLOPES	N	0	0		2
160	SQUIRES VERY CHANNERY LOAM - 5 TO 30% SLOPES	N	0	0		2
161	SQUIRES VERY CHANNERY LOAM - 30 TO 60% SLOPES	N	0	0		2
162	SUMAS SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
163	TACOMA SILT LOAM - 0 TO 1% SLOPES	N	0	5		
164	TACOMA SILT LOAM-DRAINED - 0 TO 1% SLOPES	N	0	5		
165	TROMP LOAM - 0 TO 2% SLOPES	Y	1	1		3
166	TWINSI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
167	TWINSI VERY STONY LOAM - 30 TO 60% SLOPES	N	0	0		
168	TYPIC CRYORTHODS - 60 TO 90% SLOPES	N	0	0		
169	TYPIC CRYORTHODS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		
170	TYPIC PSAMMAQUENTS-TIDAL - 0 TO 1% SLOPES	N	0	0	yes	
171	URBAN LAND	N	0	0		
172	URBAN LAND-WHATCOM-LABOUNTY COMPLEX - 0 TO 8% SLOPES	N	0	0	yes	2
173	VANZANDT VERY GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0		2
174	VANZANDT VERY GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
175	VANZANDT VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
176	WELCOME LOAM - 5 TO 30% SLOPES	N	0	0	yes	3
177	WELCOME LOAM - 30 TO 60% SLOPES	N	0	0		3
178	WHATCOM SILT LOAM - 0 TO 3% SLOPES	Y	2	1		2
179	WHATCOM SILT LOAM - 3 TO 8% SLOPES	Y	4	1		2
180	WHATCOM SILT LOAM - 8 TO 15% SLOPES	N	0	0		2
181	WHATCOM SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
182	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 8% SLOPES	N	4	2		2
183	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 15% SLOPES	N	0	2	yes	2
184	WHITEHORN WILT LOAM - 0 TO 2% SLOPES	Y	3	2		
185	WICKERSHAM CHANNERY SILT LOAM - 0 TO 8% SLOPES	N	4	1		2
186	WINSTON SILT LOAM - 0 TO 3% SLOPES	Y	0	1		2
187	WINSTON LOAM - 3 TO 15% SLOPES	N	0	0		2
188	WINSTON LOAM - 15 TO 40% SLOPES	N	0	0		2
189	WISEMAN VERY CHANNERY SAND LOAM - 0 TO 8% SLOPES	N	0	4		3
190	WOLLARD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
191	YELM LOAM - 3 TO 8% SLOPES	Y	1	1	yes	2
192	YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES	N	0	0		2

APPENDIX F

Model Conservation Easement Deed

A sample Conservation Easement Deed based on the assumption of matching funds from the USDA-NRCS Agricultural Conservation Easement Program, is included in the following pages.

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225

DOCUMENT TITLE: _____ **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: _____

GRANTEES: **WHATCOM LAND TRUST AND WHATCOM COUNTY**

ABBR. LEGAL DESCRIPTION:

Full Legal Description in Exhibit A

TAX PARCEL # _____

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this ____ day of _____ 20__, by _____ ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("collectively, Grantees"), and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

1. RECITALS

- 1.1. Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.

- 1.2. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.
- 1.3. The Protected Property is approximately _____ acres and is currently farmed.
- 1.4. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Baseline Documentation (Exhibit D). It is the intent of all parties that the agricultural values described in the baseline shall remain for the life of this easement and shall be used along with annual monitoring to identify future changes on the easement area.
- 1.5. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, which establishes the Purchase of Development Rights Program to preserve land for agricultural purposes and has substantial public benefits.
- 1.6. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.
- 1.7. Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (herein “NRCS”) has provided on behalf of the Commodity Credit Corporation \$_____ (_____ and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.

2. CONVEYANCE AND CONSIDERATION

- 2.1. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$_____ by the Whatcom County and the NRCS to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.
- 2.2. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.3. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor’s, successors and assigns in perpetuity.

3. PURPOSE

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The granting of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

4. RELATIONSHIP OF PARTIES

- 4.1. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.
- 4.2. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section 3. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.
- 4.3. The above Section 4.1. does not pertain to monitoring and enforcement of a conservation farm plan, the responsibility for which rests with NRCS and Whatcom County as described in Section 9.

5. RIGHT OF ENFORCEMENT

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with the Agricultural Conservation Easement Program requirements.

6. PERMITTED USES AND ACTIVITIES

Grantor may:

- 6.1. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section 7 below.
- 6.2. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.
- 6.3. Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section 12 of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section 7.4. Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.4. Remove, Maintain, Expand, or Replace temporary hoop houses and temporary greenhouses with no foundation outside of the Farmstead area so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.5. On the "Farmstead", as defined in Section 12 of this Easement, and shown in Exhibit B, engage in any uses or activities, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section 7 below.
- 6.6. Plant or maintain trees on the Agricultural Land, as defined in Section 12 of this Easement only as follows:

- 6.6.1. Maintain a woodlot for the production of firewood to be used on the Protected Property.
- 6.6.2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.
- 6.6.3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.
- 6.6.4. Plant and maintain trees to provide shading for grazing livestock.
- 6.6.5. Plant and maintain trees used in fruit or nut production.
- 6.7. Install a small-scale wind and solar power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind and solar power generator prior to installation.
- 6.8. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Unless specifically permitted by Section 6 above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

- 7.1. Use or activities inconsistent with the purpose of this Easement.
- 7.2. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over

two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement.

- 7.3. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.
- 7.4. Cover more than two percent (2%) of the area (approximately _____ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.
- 7.5. Construct non-agricultural structures or facilities.
- 7.6. Conduct any use or activity that removes or damages the long-term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.
- 7.7. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section 8, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.
- 7.8. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres.
- 7.9. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.
- 7.10. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.
- 7.11. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.
- 7.12. The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.

8. WATER RIGHTS

- 8.1. The Parties agree that any Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.
- 8.2. Trust will include reference, in Baseline Documentation (Exhibit D), to any water rights associated with the Protected Property. In its monitoring visits, Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Trust believe that Grantor is not sufficiently informed about protecting Grantor's water rights, Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.
- 8.3. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section 4 RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections 13 and 14 of this Easement or may itself take appropriate action to protect the water rights.
- 8.4. If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.

9. CONSERVATION PLAN

- 9.1. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the Whatcom Conservation District and approved by NRCS. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.
- 9.2. In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to

correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

- 9.3. If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.
- 9.4. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

10. RIGHTS CONVEYED TO GRANTEES

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

- 10.1. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.
- 10.2. To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement.
- 10.3. To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.
- 10.4. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, the Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.
- 10.5. Forbearance by the Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

11. NO PUBLIC ACCESS

This Easement provides no right of access to the general public.

12. BASELINE DOCUMENTATION

- 12.1. To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare Baseline Documentation sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The Baseline Documentation may consist of reports, maps, photographs, and other documentation. Grantor and Grantees will execute a statement verifying that the Baseline Documentation accurately represents the condition of the Protected Property as of this time. Baseline Documentation is contained in Exhibit D. The Baseline Documentation will delineate the Farmstead and Agricultural Land as defined below.
- 12.2. The Baseline Documentation will specifically establish the area and extent of the Farmstead, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, as well as that portion used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.
- 12.3. The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas, such as woodlands, as well as cropland or grazing land.

13. INFORMAL DISPUTE RESOLUTION

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

14. GRANTEES' REMEDIES

- 14.1. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.
- 14.2. Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity if Grantor:

- 14.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees;
 - 14.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
 - 14.2.3. Fails to continue diligently to cure such violation until finally cured.
- 14.3. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.
- 14.4. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in Section 14.1.
- 14.5. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

15. RESPONSIBILITY FOR COST AND LIABILITIES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section 19.12. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

16. EXTINGUISHMENT AND TRANSFER

- 16.1. The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement

impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.

16.2. Grantor agrees to:

16.2.1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.

16.2.2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

16.3. Whatcom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by the United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

17. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantees under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.

18. SUBORDINATION

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit E.

19. GENERAL PROVISIONS

19.1. Effective Date. The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

19.2. Notices. Any notice under this Agricultural Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Grantor:

Grantee, Trust:

Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227

Grantee, County:

Whatcom County PDS
Attn: PDR Program Administrator
5280 Northwest Drive
Bellingham, WA 98226

Third Party Grantee, NRCS: USDA-NRCS

Attn: Easement Programs
11707 E. Sprague Ave, Suite 301
Spokane Valley, WA 99206

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

19.3. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

19.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be

ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

- 19.5. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.
- 19.6. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.
- 19.7. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.
- 19.8. Warranty of Good Title. Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.
- 19.9. Grantor-Grantees. The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.
- 19.10. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- 19.11. Federal Enforcement. In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.
- 19.12. General Indemnification. Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to,

Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

19.13. Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

19.13.1. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

19.13.2. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

19.13.3. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

19.14. Recordation. Grantees shall record this instrument in a timely fashion in the official records of Whatcom County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

19.15. No Merger. In the event that Grantees acquire all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge

the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantees, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantees covenant to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party.

19.15.1. In the event that either Grantee takes legal title to Grantor's interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 170 (h)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.

20. RCPP MINIMUM DEED TERMS

This Conservation Easement is acquired with funds provided, in part, under the Regional Conservation Partnership Program (RCPP) (16 U.S.C. Section 3871 et seq. and 7 CFR part 1464). The Exhibit F is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by the RCPP, and as a condition of receiving RCPP funds, all present and future use of the Protected Property identified in Exhibit A (legal description) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled RCPP Minimum Deed Terms in Exhibit F that is appended to and made a part of this easement deed. The rights of the United States acquired under this Conservation Easement shall be unaffected by any subsequent amendments or repeal of the RCPP.

21. SCHEDULE OF EXHIBITS

- 21.1. Exhibit A. Legal Description
- 21.2. Exhibit B. Site Map
- 21.3. Exhibit C. Ordinance
- 21.4. Exhibit D. Baseline Documentation
- 21.5. Exhibit E. Subordination Agreement Example
- 21.6. Exhibit F. RCPP Minimum Deed Terms

TO HAVE AND TO HOLD unto Grantees and the State of Washington, and their successors, and assigns forever.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day of _____, 20__.

Grantor

[illegible]

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

Dated: _____

By _____

Approved as to Legal Form:

By _____

[illegible]

Dated: _____

(Use this space for notarial stamp/seal)

Dated: _____

Its _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

--	--

Notary Public
Print Name _____
My commission expires _____

By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

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EXHIBIT A
Legal Description

APN/Parcel ID: _____

Exhibit B
Site Map

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EXHIBIT C
Ordinance

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS
PROGRAM AND OVERSIGHT COMMITTEE**

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land , and timber land; and

WHEREAS, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that :

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

- 1 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this
2 ordinance shall not affect or impair the validity of the ordinance as a whole or any
3 part thereof other than the part so declared to be invalid.
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8 **ADOPTED** this 10 day of September, 2002.
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10
11 **ATTEST:**

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13 

14 Dana Brown-Davis,
15 Clerk of the Council

16 **WHATCOM COUNTY COUNCIL**
17 **WHATCOM COUNTY, WASHINGTON**

18 
19 Ward Nelson, Council Chair

20 **APPROVED** as to form

21 ☒ Approved ☐ Denied

22 
23 Karen N. Frakes, Civil Deputy Prosecutor


Pete Kremen, Executive

Date: _____

EXHIBIT D
Baseline Documentation

The Baseline Documentation for the _____ Agricultural Conservation Easement is kept by the Whatcom Land Trust at 412 N Commercial, Bellingham WA 98225. The remainder of this page is intentionally blank.

EXHIBIT E
Subordination Agreement Example

When recorded return to:

Grantor: _____

Grantee: _____

Legal Description

Abbreviated form: _____

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: _____

Reference number(s) of related/assigned/released documents: _____

Reference(s) to document(s) appears on page(s) _____

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. _____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of _____ County;
2. _____ ("Easement Holder") is the holder of a conservation easement dated _____, 20__, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;

3. _____, [*husband and wife,*] [("*Owner*") **or** ("*Owners*")] [*is the owner or are the owners*] of all the real property described in the conservation easement identified above in Paragraph 2.
4. In consideration of benefits to Subordinator from [("*Owner*") **or** ("*Owners*")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.
5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.
6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this _____ day of _____, 20__.

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that they signed this instrument, on
oath stated that they were authorized to execute the instrument and acknowledged it as the
_____ of _____ to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT F

RCPD Minimum Deed Terms

The Regional Conservation Partnership Program (16 U.S.C. Section 3871 et seq.), facilitated and provided funding for the purchase of a Conservation Easement (“Conservation Easement”) on real property described in Exhibit A, hereafter referred to as the “Protected Property,” to further the restoration, protection, enhancement, management, maintenance, and monitoring of agricultural values on the Protected Property (the “Conservation Values”).

The _____ (collectively “Grantor”), the **Whatcom Land Trust** (“Trust”), and **Whatcom County, Washington** (“County”) (“collectively, Grantees”), and the **United States of America** (the “United States”) and its assigns, acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”) (jointly referred to as the “Parties”) acknowledge that the Conservation Easement is acquired by the Grantee for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values (the “purposes of the Conservation Easement”). Decision making on behalf of NRCS is delegated to the Chief of NRCS or authorized designee (hereafter referred to as “Chief of NRCS”). Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Trust.

In order to ensure compliance with the Regional Conservation Partnership Program, 16 U.S.C. Section 3871 et. seq. and 7 CFR part 1464, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the Conservation Easement. Notwithstanding any other provision of the Conservation Easement, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other sections of the Conservation Easement, Sections I and II will control; however, if other sections of the Conservation Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other sections of the Conservation Easement are more restrictive to the rights of the Grantor than Section I, Paragraph 3 and Section II, then Section I, Paragraph 3 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of the Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.

The terms and conditions of the Conservation Easement run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Limitation on Impervious Surfaces. Impervious surfaces will not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Conservation Easement.

2. Limitations on Uses. Any uses or activities that are inconsistent with the purposes of the Conservation Easement are prohibited. The following activities are inconsistent with the purposes of the Conservation Easement and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Uses consistent with the purposes of the Conservation Easement;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purposes of the Conservation Easement;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Conservation Values;

(iv) Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.; and

(v) Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), containing approximately ____ total acres and described or shown in Exhibit B, which is appended to and made a part of this Conservation Easement.

The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Conservation Values. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 2(C)**, that neither individually nor collectively have an adverse impact on the Conservation Values, may be located outside of the Building Envelope(s) with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the purposes of the Conservation Easement.

(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Conservation Values as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;
- (ii) Erosion and sediment control pursuant to a plan approved by the Grantee;
- (iii) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purposes of the Conservation Easement; and
- (iv) Agricultural activities and related conservation activities conducted in accordance with this Conservation Easement and the RCPP Easement Plan as described in Section I, paragraph 4.

(F) Surface and Subsurface Mineral Exploration and Extraction –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Paragraph (F).

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

of impacts to the Conservation Values.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

3. Allowed Uses. The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

4. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

SECTION II – PROTECTION OF THE UNITED STATES’ INTERESTS AND EASEMENT ENFORCEMENT

1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

2. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

3. Extinguishment, Termination, and Condemnation. The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

4. Amendment. This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

5. United States Right of Enforcement. In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms **of this Conservation Easement, as determined in the sole discretion of the Secretary.**

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Conservation Easement.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.