

SPONSORED BY: Consent  
PROPOSED BY: PDS  
INTRODUCTION DATE: \_\_\_\_\_

Resolution # \_\_\_\_\_

A RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT  
BETWEEN WHATCOM COUNTY AND GOVERNORS POINT LAND, LP

WHEREAS, Whatcom County Planning and Development Services received an application for a Development Agreement between Whatcom County and Governors Point Land, LP pursuant to RCW 36.70B.170 through .210; and

WHEREAS, A SEPA Mitigated Determination of Non-significance was issued by Whatcom County Planning and Development Services on June 18, 2020.

WHEREAS, WCC 2.11.205(C) designates the hearing examiner to conduct an open record public hearing for development agreements as defined in the Growth Management Act, Chapter 36.70B RCW; and

WHEREAS, An open record public hearing for the development agreement was conducted on November 18, 2020; and

WHEREAS, Pursuant to WCC 2.11.205 the Whatcom County hearing examiner received testimony and made a recommendation of approval to the Whatcom County Council of the development agreement on November 30, 2020.

WHEREAS, The Whatcom County Council reviewed the record and held a meeting on December 8, 2020 to discuss and consider the matter and unanimously agreed that the development agreement should be approved (Exhibit 'A').

WHEREAS, RCW 36.70B.200 states a development agreement must be approved by the adoption of a resolution.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Development Agreement between Whatcom County and Governors Point Land, LP is hereby approved.

AND FURTHER, the Whatcom County Council authorized the Whatcom County Executive to sign said agreement.

APPROVED, this \_\_\_\_ day of December, 2020.

**ATTEST:**

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**

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Dana Brown-Davis,  
Clerk of the Council

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Barry Buchanan,  
Council Chair

APPROVED as to form:

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Civil Deputy Prosecutor

## DRAFT of PROPOSED

### GOVERNORS POINT DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between Whatcom County (the “County”) and Governors Point Land LP (“Owner”) pursuant to the authority granted under the Washington State Growth Management Act, per RCW 36.70B.170 through .210, and the Whatcom County Title 22 Land Use Procedures to facilitate the development of certain real property located within the County upon the following terms and conditions set forth herein.

#### RECITALS

WHEREAS, Owner owns certain real property contained within the area of Governors Point identified in **Exhibit A** (“Property”) and legally described in **Exhibit B**. The Property, as defined herein, is an approximately 126-acre portion of land, containing eight existing legal lots of record located along Pleasant Bay Road, within portions of the NW and SW Quarters, Section 25, NE and SE Quarters, Section 26, and NW Quarter, Section 36, Township 37 N, Range 2 E, W.M.; and

WHEREAS, in this Agreement, the Parties have adapted certain critical terms and conditions (such as shoreline setbacks) vital to this development using modern regulatory tools and achieving no net loss of ecological functions and values on the Property; and

WHEREAS, the Parties rely upon valuable mitigation opportunities to ensure no net loss of ecological functions and values; and

WHEREAS, the Owner has submitted a complete application (“Current Application”) for a long subdivision to divide 126 acres with eight existing parcels into 16 residential lots (“Residential Lots”), 2 non-residential tracts (“Tract B” and “Tract C”), and 1 large reserve tract (“Reserve Tract”) on **Month DD YYYY (“Long Plat”)**; and

WHEREAS, the Current Application will meet zoning and subdivision ordinances in effect at the time of it being deemed a complete application, except as specifically modified by this Agreement; and

WHEREAS, the Owner has submitted completed applications for an updated shoreline substantial development permit for road and utility improvements within Shoreline jurisdiction on Month DD, 2020 and a shoreline conditional use permit for one dock and development of a storage/restroom building within Shoreline jurisdiction on Tract B of the Property on **Month DD, 2020 (“Shoreline Permits”)**; and

WHEREAS, the County has determined that the applicant has provided a continuous source of potable water to supply 16 Residential Lots; and

WHEREAS, the current zoning is RR-5A (1 unit per 5 acre); and

WHEREAS, the Owner has relied on lot clustering provisions authorized by the Whatcom County Code to reduce lot sizes in the proposed Long Plat, and

WHEREAS, the Owner will place into an open space tract approximately 98 acres of the Property as a nature reserve (“Reserve Tract” or “Nature Reserve”), subject to terms herein; and

WHEREAS, said Nature Reserve will forever preserve one of the last remaining stands of intact forested marine coastline in the north Puget Sound region within the Chuckanut Wildlife Corridor, and allow for limited public access; and

WHEREAS, the Current Application for Long Plat has been designed to limit human alteration and to preserve the existing ecological functions, values and ecosystem wide processes, thereby providing a substantial mitigation opportunity; and

WHEREAS, submitted studies show that the overall project design and preservation of Habitat Conservation Areas causes no net loss of ecological functions and values on the Property and fully mitigates impacts caused by the development; and

WHEREAS, the County has determined the Current Application contains public benefits consistent with the Whatcom County Comprehensive Plan and generally to a significantly greater extent than those required by Whatcom County Subdivision, Whatcom County Shoreline Management Program, and Whatcom County Critical Area ordinances; and

WHEREAS, the County issued a SEPA Mitigated Determination of Non-significance for the Current Application on June 18, 2020; and

WHEREAS, following public notice provided in a manner consistent with the County requirements and by law, a public hearing regarding the Current Application for Long Plat, the Shoreline Permits and this Agreement was held by the County Hearing Examiner on **Month DD, YYYY,**

WHEREAS, on **Month DD YYYY** the Whatcom County Hearing Examiner recommended approval of the Owner’s Shoreline Permits for the installation of roads, utilities, guest storage structure(s) and restrooms, and construction of a dock on Tract B; and

WHEREAS, on **Month DD, YYYY** the Whatcom County Hearing Examiner recommended approval of the Current Application for Long Plat (LSS2018-XXXX) at Governors Point; and

WHEREAS, in an open public meeting, the County Council on **Month DD, YYYY** approved this Agreement; and

WHEREAS, the County Council authorizes the County Executive to execute this Agreement on behalf of the County; and

WHEREAS, these recitals are a material part of this Agreement.

## AGREEMENT

THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and Owner agree as follows:

1. Term. This Agreement shall govern the development of the Property for a period of twenty (20) years commencing on either the date of recording of this Agreement or the date of recording the Long Plat for the Current Application, whichever is later.
2. Approval of Development. The County has determined that the Current Application meets the current development regulations in effect at time of its complete application determination per WCC 22.05.060 and this Agreement. Development of the Property shall be consistent with all provisions of the Whatcom County Code, subject to the terms of this Agreement.
  - 2.1. Terms and Conditions. The following specifically-negotiated terms apply to the Property.
    - 2.1.1 The number of subdivided units shall be no greater than 16 residential lots (“Residential Lots”), 2 non-residential tracts (“Tracts B and C”), and 1 large tract (“Reserve Tract” or “Nature Reserve”).
    - 2.1.2 No more than 10% of the 126-acre Property shall be developed or included in a Developable Area. The term “Developable Area” is defined in Section 2.1.5. The remaining undeveloped areas may be placed in a separate tract or when located outside of a designated tract shall be protected from further development by CC&Rs, this Agreement, plat conditions and/or at the time of building permit, and other protective measures in Whatcom County Code in effect at that time. The Developable Area for each Residential Lot and Tracts B and C are recorded numerically on the face of the final approved Long Plat.
    - 2.1.3 Covenants, conditions, and restrictions (“CC&Rs”) shall be recorded for that portion of the Property to be developed under the Long Plat. The CC&Rs shall contain, without limitation, maintenance, repair or replacement requirements to keep common areas and overwater structures in reasonably good repair and shall state a vegetation requirement for native vegetation outside of setbacks. The CC&Rs shall be enforced by a homeowner’s association.
    - 2.1.4 The Owner shall place into open space a Reserve Tract of approximately 98 acres as a limited public access nature preserve, referred to as the Nature Reserve,

subject to the terms herein. The Nature Reserve shall contain no residential density. Owners' requirement to place reserve tract into open space shall be contingent upon final Long Plat approval, and expiration of all appeal periods applicable to final Long Plat approval.

2.1.5 Developable Area. The developable area ("Developable Area") shall mean the area in which all development on the Property may be located including buildings, ornamental landscaping, and structures such as roads, driveways, courtyards, covered walkways, outdoor shelters, carports or similar open sided structures with water tight roof, and those items specified in Section 2.1.7.3. The term "ornamental landscaping" shall include non-native landscaping, lawns and gardens. Notwithstanding the total Developable Area allowed for any given Residential Lot, ornamental landscaping shall not exceed 3,000 square feet in total on any Residential Lot. For Tracts B and C, "Developable Area" includes viewing platforms, restrooms, and storage sheds.

2.1.6 Each single-family dwelling unit on the Property may be comprised of more than one building, such that certain elements of a single-family residential dwelling unit like a sleeping area, or a kitchen facility, are located in an individual, detached building; provided that, all such individual buildings shall be located on a single Residential Lot and shall be connected by covered or uncovered walkways. Each such detached building which constitutes Conditioned Living Space shall be counted toward the 2,900 square floor area limit on residential structures set forth in Section 2.1.6.1 and the 4,000 square foot floor area total limit on buildings as set forth in Section 2.1.6.2.

2.1.6.1 No residential structure located on any Residential Lot on the Property shall exceed 2,900 square feet of conditioned living space ("Conditioned Living Space"). Conditioned Living Space shall include interior space within an enclosed structure intended for human habitation. This 2,900 square foot limitation on Conditioned Living Space shall not include garages or shops, nor shall it include covered exterior courtyards, covered walkways, gazebos, outdoor shelters, storage sheds, carports or similar open sided structures with water tight roof, or similar structures.

2.1.6.2 In total, the floor area of all buildings on a Residential Lot shall not exceed 4,000 square feet. Included in this limitation is the Conditioned Living Space, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings.

2.1.7 Setbacks.

2.1.7.1 The shore setback for Residential Lots 1-7 shall be seventy feet (70') measured from the Ordinary High-Water Mark (OHWM). The shore setback

for Residential Lots 8-16 shall be seventy-five feet (75') measured from the OHWM. Said measurements from OHWM shall be consistent with published guidance by the Department of Ecology, and shall be determined at the time specific developments are proposed. The "shore setback" is the same as the landward boundary of the "shore buffer" or "marine buffer." All shore setbacks shall be identified on the face of the Long Plat.

- 2.1.7.2 The side-yard setback for all Residential Lots and Tract B and Tract C shall be fifteen feet (15').
- 2.1.7.3 A maximum total of 500-square feet of footprint area of development will be allowed within the shore setback for each Residential Lot. This includes roof eaves, decks, patios, covered walkways, stairs, and accessory water-oriented structures without Conditioned Living Space. No stairs shall be constructed to provide access to the shoreline, provided that pedestrian access trails using natural materials (native stone, etc.) with minimal alterations to existing grade and vegetation may be permitted.
- 2.1.8 One dock shall be permitted in Pleasant Bay. The dock's float system shall include a main float with a maximum of eight (8) feet by fifty (50) feet, along with an associated landing float sized to be the minimum necessary for the dock's ramp to function during predictable tidal fluctuations. The parties agree that good cause exists to support this length and width of dock for the following reasons: (a) it is a saltwater dock; (b) the Property would potentially accommodate development of a large number of individual docks but for this limitation, the limitations in section 2.1.9 below, and the terms of this Agreement; and (c) the dock at Pleasant Bay will be a community dock serving more than one Residential Lot.
- 2.1.9 No individual private docks shall be allowed in front of Residential Lot Nos. 1-16. No docks of any kind, including shared docks, shall be allowed in front of Residential Lot Nos. 1-15. The foregoing dock restrictions shall be noted on the face of the Long Plat.
- 2.1.10 Roads shall be constructed to meet current Whatcom County Road Standards or as modified in the conditions of approval of the Governors Point Long Subdivision Preliminary Application, LSS2018-003.
- 2.1.11 Fire suppression requirements shall be based upon current Whatcom County code or as modified in the conditions of approval of the Governors Point Long Subdivision Preliminary Application, LSS2018-003. Deviation from, or modification of such standards as modified shall require the review and approval of the Fire Marshal.

3. Notification to County. Civil drawing review will be required prior to construction of roads, utilities, and site preparation. Civil drawings cannot be approved until after preliminary plat and Agreement approval and all applicable conditions of preliminary plat approval which state at or before civil plan approval are met. Clearing limits shall be clearly marked before construction begins.
4. Reservation of Authority. The County reserves authority to impose new or different regulations on the Property to the extent required by a serious threat to public health and safety. This reservation is intended to comply with RCW 36.70B.170(4) and RCW 58.17.170. If such authority is exercised, the remaining provisions of this Agreement shall remain in full force and effect to the extent the new regulations are not inconsistent therewith and do not undermine achievement of the fundamental purposes of this Agreement.
5. Recording. Owner shall file this Agreement as a matter of public record in the office of the Whatcom County Auditor which shall be in the nature of a covenant running with the Property after approval by the County Council and execution by the Parties hereto.
6. Dispute Resolution. In the event of any dispute as to the interpretation or application of the terms or conditions of the Agreement, the Owner and the County, through their designated representatives, shall meet within ten (10) days after the receipt of a written request from any party for the purpose of attempting in good faith to resolve the dispute. Such a meeting may be continued by mutual agreement to a date certain to include other persons or parties, or to obtain additional information.
7. Mediation. In the event that such a meeting does not resolve the dispute and prior to commencing any litigation except for a request for a temporary restraining order and preliminary injunction, the Parties shall first attempt to mediate the dispute. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. If the Parties are unable to agree upon a mediator, a list of seven mediators with experience in land use matters and applicable Washington State land use law shall be requested from the Whatcom County Superior Court Presiding Judge. Each party shall take its turn in striking one name from the list until one name remains. A flip of a coin shall determine which party strikes the first name. Any expenses of the mediator shall be borne equally by the Parties. However, each side shall bear their own costs and attorney fees arising from participation in the mediation. Mediation shall take place within sixty (60) days following the failure of the meeting described in Section 7 above to resolve a dispute. This mediation provision may be asserted by any Party as grounds for staying any legal action filed in court.
8. Applicable Law. This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington. Whatcom County Superior Court shall be the venue of any suit or proceeding brought with respect to this Agreement.



9. Execution of Additional Documents. The Parties agree to and shall execute any documents which may be necessary, appropriate or convenient to carry out the intent of the development of the Property contemplated by this Agreement.
10. Run with Land - Binding Effect. After recording with the Whatcom County Auditor, this Agreement shall run with the land and be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and personal representatives, including but not limited to the individual lot owners within the Property, throughout the entire term of this Agreement, and where applicable, in perpetuity.
11. Severability. If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the Parties to the maximum extent allowable under law. It is the intent of the parties that the Term (Section 1), number of Residential Lots (Section 2.1.1), Developable Area provisions (Section 2.1.5), building size provisions (Section 2.1.6), setback provisions (Section 2.1.7), and dock provisions (Sections 2.1.8 and 2.1.9), are all considered vital to commitments made by and to the Owner, without which this Agreement would not have been entered. If these provisions are determined to be unenforceable or require any alteration, this Agreement shall be voidable at the option of the Owner up to the time of recording of the final Long Plat.
12. Modification. This Agreement shall not be modified or amended except in writing signed by both Parties or their respective successors in interest.
13. Further Good Faith Cooperation. Each party hereto shall cooperate with the other in good faith to achieve the objectives of this Agreement. The Parties shall not unreasonably withhold requests of information, approvals or consents provided for, or implicit, in this Agreement.
14. Validity of Settlement Agreement and Stipulated Judgment. The parties agree that upon recording of the Long Plat for the Current Application and this Agreement, and the expiration or favorable final resolution of all potential appeals thereof, the Settlement Agreement and Stipulated Judgment previously entered for the Property shall be rendered null and void.
15. No Third-Party Beneficiaries. This Agreement is entered into between the County and Owner with binding effect as set forth in Section 10. This Agreement is not intended to create any right or rights of any kind, for or on behalf of any third party not signatory hereof.
16. No Presumption Against Drafter. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

17. Notices. All communications, notices, and demands of any kind which a party under this Agreement is required, or desires to give to any other party, shall be in writing and be either (1) delivered personally, (2) sent by facsimile or electronic (“e-mail”) transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

County	Governors Point Land LP
_____	_____
_____	_____

Notice by hand, email, or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

19. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement supersedes all previous understandings or agreements between the parties concerning the subject matter of this Agreement.