

# Exhibit A

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1 Chapter 3.25A  
2 WHATCOM COUNTY CONSERVATION EASEMENT PROGRAM

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18

19 **3.25A.010 Short title.**

20 This chapter shall be known and may be cited as the “Whatcom County Conservation Easement  
21 Program.” For the purpose of this chapter this program shall be known as the “CEP.” (Ord. 2018-065  
22 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

23

24 **3.25A.020 Purpose.**

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

30

31 **3.25A.030 Applicability.**

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

36

37 **3.25A.040 Definitions.**

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

39

40 “Administrator” is that person placed in a managerial position over the daily operations of the CEP. The  
41 administrator shall serve as a direct liaison to the program.

42

43 “Conservation easement” means a nonpossessory interest in one or more parcels by one or more  
44 qualified easement holders under WCC 3.25A.090(B) acquired under RCW 64.04.130, whether the  
45 easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or  
46 donation pursuant to the CEP guidelines, imposing limitations or affirmative obligations for the purpose  
47 of retaining or protecting agricultural, forestry, and ecosystem values of the parcel or parcels.

48

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

52  
53 “Owner” means the owner or owners of the fee simple interest of the parcel.

54  
55 “Parcel” means a legal lot of record, lawfully recorded in the Whatcom County auditor’s office. A  
56 conservation easement may contain one or more parcels; for purposes of this chapter the term “parcel”  
57 shall include all parcels covered by, or proposed to be covered by, the conservation easement.

58  
59 The “CEP guidelines” shall be adopted by county council and contain the rules and regulations under  
60 which the CEP operates. They include eligibility criteria, site selection criteria, a standard conservation  
61 easement and other procedures and information necessary to ensure fair and consistent administration  
62 of the CEP.

63  
64 “Qualifying lands” means those properties meeting the eligibility criteria established in the CEP  
65 guidelines for which conservation easements may be purchased pursuant to this chapter. (Ord. 2018-  
66 065 Exh. A; Ord. 2002-054 § 1).

67  
68 **3.25A.050 Designation of program administrator – Powers and duties.**

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

71  
72 B. Powers and Duties. The administrator or his or her designee shall administer the CEP and shall have  
73 powers and duties to:

- 74  
75 1. Establish reasonable and standard procedures and forms consistent with this chapter and the CEP  
76 guidelines for the administration and implementation of the program.  
77  
78 2. Promote the program in cooperation with the CEP oversight committee by providing educational  
79 materials to the public and conducting informational meetings.  
80  
81 3. Investigate and pursue, in conjunction with the county, state, federal and other programs available,  
82 to provide additional public and private resources to fund the program and to maximize private  
83 participation.  
84  
85 4. Evaluate and rank all applications to determine their eligibility and provide assistance to the CEP  
86 oversight committee in ranking properties.  
87  
88 5. Coordinate the preparation of appraisals.  
89  
90 6. Negotiate conservation easement terms and value with the owner or owners.  
91  
92 7. Provide staff support to the county council, the CEP oversight committee, and the county’s  
93 authorized appraiser.  
94

95 8. For each conservation easement accepted into the program, establish baseline data, and assure  
96 that the terms and conditions of the easement are monitored and complied with by coordinating a  
97 monitoring program with each easement holder. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).  
98

99 **3.25A.060 Conservation easement program oversight committee established – Powers and duties.**

100 A. Establishment. The CEP oversight committee is hereby established, as follows:  
101

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

109 2. The members of the committee shall serve at the pleasure of the county council. Each term shall be  
110 for four years.  
111

112 3. The members of the committee shall serve without pay, but the county council may, at its  
113 discretion, reimburse members for actual and necessary expenses incurred in the performance of  
114 their duties.  
115

116 4. The committee shall elect a chairperson and vice-chairperson at its first meeting each calendar year.  
117

118 5. The administrator shall be an ex officio member of the committee.  
119

120 B. Purpose. To provide oversight and evaluation for the county CEP. The CEP oversight committee’s role  
121 is to advise the council in the selection of eligible lands offered for CEP acquisition.  
122

123 C. Powers and Duties. The CEP oversight committee shall have the powers and duties to:  
124

125 1. Promote the program, in cooperation and under the guidance of the administrator, by providing  
126 educational materials to the public and conducting informational meetings.  
127

128 2. Review and make recommendations to the administrator and the county council as to which  
129 conservation easements should be purchased.  
130

131 3. Annually review the CEP guidelines and recommend to the county council any changes needed to  
132 maintain the program’s consistency with the comprehensive plan, or to improve the administration,  
133 implementation and effectiveness of the program.  
134

135 4. Provide an annual report of program accomplishments to county council and county executive.  
136

137 D. Organization – Meetings. Meetings of the committee shall be open and accessible to the public and  
138 shall be subject to the Open Public Meetings Act. The committee shall determine its own meeting  
139 schedule but shall meet at least annually. A public comment period will be provided at each meeting.  
140 Written records of meetings, decisions, findings and recommendations shall be kept and such records  
141 shall be public. The committee shall adopt its own rules and procedures for the conduct of business. The  
142 committee shall elect a chairperson from among its members who shall preside at its meetings. A

143 quorum shall consist of four members present and the committee shall operate on a “majority rule”  
144 basis.

145  
146 E. Technical Advisory Committee. A technical advisory committee, without voting privileges, may be  
147 formed to advise the CEP oversight committee on technical/scientific matters as needed.  
148 Representatives may include but not be limited to individuals from the following agencies: Cooperative  
149 Extension Service, National Resource Conservation Service and Whatcom Conservation District. (Ord.  
150 2018-065 Exh. A; Ord. 2002-054 § 1).

151  
152 **3.25A.070 Eligibility criteria.**

153 In order for a parcel to be eligible for a conservation easement, it must meet eligibility criteria as defined  
154 in the CEP guidelines. (Ord. 2018-065 Exh. A; Ord. 2011-025 § 1 Exh. A; Ord. 2002-054 § 1).

155 **3.25A.080 Ranking system.**

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

160  
161 **3.25A.090 Conservation easement terms and conditions.**

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

166  
167 A. Allowable Uses. Uses that are compatible with the long-term productivity of the soil for the pursuit of  
168 farming or forestry enterprises and/or protection of ecosystem functions and values.

169  
170 B. Designation of Easement Holders. The county shall be the easement holder, and, if designated by the  
171 county council, one or more other public bodies or qualified organizations, as defined in RCW 64.04.130.

172  
173 C. Conservation Easement Duration. A conservation easement acquired under the terms of this chapter  
174 shall be in perpetuity. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

175  
176 **3.25A.100 Application and evaluation procedure.**

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

180  
181 A. Application. Owners of qualifying lands may apply to the CEP at any time.. Application materials will  
182 be provided by the administrator and will include, at a minimum, a standard application form and  
183 information about the CEP. Applications shall be submitted to the administrator and reviewed for  
184 completeness.

185  
186 B. Evaluation. The administrator shall review and determine eligibility and priority classification of  
187 applications. The applications ranked by the administrator shall be forwarded to the CEP oversight  
188 committee. The committee shall review the applications and establish parcels for easement purchase  
189 based on selection criteria contained in CEP guidelines. The committee shall then forward the parcels to

190 the county council which shall review and prioritize parcels on which it will seek to purchase  
191 conservation easements.

192  
193 C. Appraisal. Based on anticipated funding, the administrator shall estimate the number of appraisals  
194 that can be completed during the fiscal year. The committee shall select applications to be appraised in  
195 accordance with CEP guidelines.

196  
197 D. Requirements and Deadlines May Be Waived. Any requirement or deadline set forth in this chapter or  
198 the CEP guidelines may be waived by the county council if, for good cause, it is shown that urgent  
199 circumstances exist that warrant consideration of an application. Under such circumstances the council  
200 may purchase a conservation easement at any time and through any process it deems necessary.

201  
202 E. Reapplication. An owner of a parcel not selected by the county council for purchase of a conservation  
203 easement may reapply in the future. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

204  
205 **3.25A.110 Purchase of conservation easements procedure.**

206 Each application for a conservation easement shall be processed and evaluated pursuant to the  
207 requirements as contained in the CEP guidelines which will include at a minimum the following:

208  
209 A. Conservation Easement Sale. The administrator shall arrange for an appraisal of the value of placing a  
210 conservation easement on the property, to be completed by an independent county-authorized  
211 appraiser. The value of the conservation easement will include the value from eliminating select  
212 development rights and imposing certain use restrictions in perpetuity in order to protect the  
213 agricultural, forestry, and ecosystem values of the property. The CEP oversight committee and  
214 administrator shall review the results of the appraisal. The administrator shall, in writing, invite the  
215 property owner(s) to grant a conservation easement to the county for the amount of the appraised  
216 value of such conservation easement, subject to the terms and conditions of a proposed deed of  
217 easement. Property owners desiring to grant a conservation easement shall submit a written acceptance  
218 of the offer. Nothing in this chapter shall compel an owner to submit an acceptance of the offer.

219  
220 B. Acceptance. Requests to purchase conservation easements shall be made to the county council for  
221 acceptance.

222  
223 C. Conservation Easement Established. A conservation easement shall be established when the owner  
224 and an authorized representative of the holder of the easement have each signed the deed of  
225 easement. The deed shall be recorded in the Whatcom County auditor's office.

226  
227 E. Costs. If the county council approves the purchase of a conservation easement, the county may pay all  
228 other costs including environmental site assessments, surveys, recording costs, if any, and other charges  
229 associated with closing. However, the county shall not pay expenses or fees incurred by the property  
230 owner for independent appraisals or legal, financial, or other advice, or expenses or fees in connection  
231 with the release and subordination of liens to the easement purchased by the county. (Ord. 2018-065  
232 Exh. A; Ord. 2002-054 § 1).

233  
234 **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**

235 If circumstances arise that render the purpose of this easement impossible to accomplish, the easement  
236 can be extinguished only by judicial proceedings. In the event of such an extinguishment or the taking of  
237 the property by the exercise of the power of eminent domain, grantors shall pay to Whatcom County an

238 amount determined by subtracting the fair market value of the property subject to this easement from  
239 the fair market value of the property unrestricted by this easement, at the time of extinguishment or  
240 condemnation, if Whatcom County is not compensated for its property interests at the time of the  
241 extinguishment or condemnation. Other details regarding restrictions on buy-back or extinguishment as  
242 may be deemed necessary shall be contained in the CEP guidelines, and/or the easement deed. (Ord.  
243 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).  
244

245 **3.25A.130 Authorization.**

246 A. The county is hereby authorized to acquire conservation easements from lands described and  
247 prioritized in WCC 3.25A.080. Such acquisition may be accomplished by purchase, gift, grant, bequest,  
248 devise, covenant or contract but only at a price which is equal to or less than the appraised value  
249 determined as provided in this chapter and the CEP guidelines.  
250

251 B. If the owner so elects, the county is authorized to pay the purchase price in a lump-sum single  
252 payment at time of closing, or to enter into contract for installment payments against the purchase  
253 price. When installment purchases are made, the county is authorized to pay interest on the declining  
254 unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the  
255 time of execution of the installment contract and adjusted for the tax-exempt status of such interest.  
256  
257