

Exhibit A

Changes

1 Chapter 3.25A

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

4
5 Sections:

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

7 **3.25A.020 Purpose.**

8 **3.25A.030 Applicability.**

9 **3.25A.040 Definitions.**

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

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

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

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

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

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

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

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

19 **3.25A.130 Authorization.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment [BSvW3]: Staff provide secretary duties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

192

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

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

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

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

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

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

219 **3.25A.110 Purchase of ~~development rights~~conservation easements procedure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 | 3.25A.130 Authorization.

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

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

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

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