

May 3, 2007

County Council

Dear Council Members:

Enclosed is a copy of a Review of Whatcom County Purchase of Development Rights Program, Feb. 25, 2006. In developing the PDR program it was anticipated that after the “second round” a review of the program would be under taken. This review by the Agricultural Advisory Committee (AAC) meets that obligation.

The review has a number of findings and recommendations for Council’s action. They are, however, pointed ideas and suggestions, but not fully fleshed details necessary for implementation. More work is necessary for that. The AAC is ready to assist in developing those details if and as requested by the Council. Indeed we would welcome the request to do so. We look forward to your comments, questions and further requests regarding the PDR program and/or regarding the overall effort of keeping prime agricultural land in farming.

Thank you and regards,

Charles Antholt, Chairperson  
Agricultural Advisory Committee

cc. Agricultural Advisory Committee  
PDR Oversight Committee  
Pete Kremen, County Executive

**Review of Whatcom County Purchase of  
Development Rights Program  
February 25, 2006**

**Background:**

The County Council (CC) initiated a Purchase of Development Rights (PDR) program in September 2001. The PDR program arose out of the concern for the loss of agricultural land that was seen as occurring at an alarming and unacceptable rate.<sup>1</sup> Of particular concern was the loss of agricultural land outside of the Agricultural Zone. In particular agricultural land under the Agricultural Protection Overlay (APO) was seen as particularly vulnerable. The initiating documentation for the program called for a review at the conclusion of the second application period. The second round has been completed.<sup>2</sup>

The purposes of the PDR program are to: 1) "...enhance the protection of the County's farmland; 2) enhance the long-term viability of the agricultural enterprises..." and 3) "...provide public benefit by retaining properties in permanent resource use." This was to be done by the establishment of voluntary agricultural PDR program.<sup>3</sup>

In establishing the PDR program, it was recognized that it was "only one component" of any overall farmland protection strategy.<sup>4</sup> Furthermore the PDR development committee recognized that funds would be limited and that the program would need to be carefully targeted. The committee recommended targeting areas for the program on the basis of and in order of importance as follows:

- Agriculture and Rural zoned land that serves as a barrier to development encroachment into large blocks of agricultural land.
- Viable agricultural lands outside the Agricultural Zone and are under extreme pressure for development.
- Lands that are unique and regionally important, such as lands used or suitable for producing highly specialized crops.

Implementation of the program was estimated to take about 1/3 to 1/2 FTE of Planning and Development Services Staff.

For on-going monitoring of the properties that came under the PDR program a partnership between the County and Whatcom Land Trust was established. The expected

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<sup>1</sup> Whatcom County's Comprehensive Plan sets a target of maintaining a minimum of 100,000 acres in agriculture, i.e., productive farming. However, only 88,000 acres are actually zoned "agriculture."

<sup>2</sup> p 3. *Recommendation of the Whatcom Country Purchase of Development Rights Advisory Committee*, August 2002.

<sup>3</sup> Sec. 3.25A.020. Purpose, WCC.

<sup>4</sup> p. 4, *Recommendation of the Whatcom Country Purchase of Development Rights Advisory Committee*,

cost of this partnership was estimated to be somewhere between 3 and 6 percent of the development rights' sale price.

**Progress To-date**

The first “round” of the Program was initiated in October 2002. After the first two rounds 236 acres, or 0.2 percent of APO lands necessary to be preserved to protect all 100,000<sup>5</sup> acres has come under the PDR program. Table 1 summarizes progress to date of the PDR program. The protected properties are from three landowners. All of the properties were APO lands, the lands for which there was most concern when the program was initiated. There were no quantitative targets annually or otherwise set in the originating program documents.

With the completion of the Round 2 purchases the County will have invested \$755,200 of Conservation Future Funds. Those funds have been or will be matched by the United States Department of Agriculture (USDA). To date \$355,000 has been reimbursed to the County from USDA. USDA is committed to reimbursing the balance of the matching funds \$1,418,000 to the County.<sup>6</sup>

Commitments to the Whatcom Land Trust as of February 20, 2006 total \$110,000 or about 4.1 percent of the sales value of the development rights. This commitment is to ensure the properties stay protected in perpetuity.

**Table 1:**

Round	Property	Acres <sup>1</sup>	Cost \$ <sup>2</sup>	WLT <sup>3</sup> \$	Closing Costs \$ <sup>2</sup>	Total Costs \$ <sup>2</sup>	\$/Acre <sup>1</sup>
1	Holz	40	480,000	22, 600	9,100	512,000	12,800
2	Gorsegner	39	230,200	12,600	5,900	248,700	6,400
	Paul Dairy	<u>157</u>	<u>710,000</u>	<u>31,800</u>	<u>6,800</u>	<u>748,600</u>	<u>4,800</u>
	<b>Total</b>	236	1,420,200	67,000	21,800	1,509,300	6,400
In process							
3	Alamwala <sup>4</sup>	91	1,065,000	46,000	15,000	1,126,000	12,400
	R. Fenton	79	285,000	15,000 <sup>5</sup>	5,400 <sup>5</sup>	305,200 <sup>5</sup>	7,800 <sup>5</sup>
	T. Fenton	39					
4	Eby	40					
	Groen	125					

Source: PDS/KOlason

1 Rounded to nearest acre; 2 Rounded to nearest 100; 3 Whatcom Land Trust ;

4 Approved by CC 2/14/06; 5. Estimated.

5. This assumes the 88,000 acres zoned agricultural is adequately protected. Experience suggests this is not necessarily so.

<sup>6</sup>. Source: PDS:Oalson.

### **Rounds 3 and 4**

For round three, there are three active applications. Two owners have accepted the County's offer for a total of 170 acres valued at a total of \$1,350,000. One applicant for 39 acres is currently under review. The Alamwala property of 91 acres went to the CC February 14, 2006 and was approved.

The deadline for applications for round four was December 31, 2005. Two applications were submitted. One for 40 acres is zoned R-5 on APO soils, the second for 125 acres is in an area zoned agricultural. Subsequent to the cut off date, two more farmers have come forward and are interested in the program. If these properties, plus the two earlier properties can be brought into the program round four could potentially protect about 525 acres.

### **More Than Removal of Development Rights**

There is another dimension to this program beyond simply the purchase of a development right and the protection of agricultural land. That is, we note that according to a Washington State study the average cost of servicing a new home exceeds the tax revenue generated by about \$80,000<sup>7</sup> in 2000. With the completion of the second round the PDR program has removed 35 development rights. If the Columbia Public Interest Policy Institute is correct, that suggests the PDR program has helped the county avoid about \$2.8 million in potential obligations for the provision of services. Given that the \$80,000 is an average figure and that delivery of services to rural areas, because of the lack of concentration is usually more costly this figure could well be higher. It is also recognized that the "net" amount of obligations foregone are likely to be something less. That is, assuming that the foregone density is used in a UGA, for example, the obligation to deliver services would remain, although at lower per unit costs because of the increased density.

With USDA reimbursement for half the cost, i.e., \$755,200, with completion of the second round, the County has a potential return, or more properly potential savings of something on the order of \$2 million on its' investment.

### **Why Do We Care About the PDR Program?**

In a market economy the highest and best use of land should be what the market is willing to pay for it. Is that true? Let's look a bit deeper. That is, using the 2002 Agricultural Census we estimate that in 2005 Whatcom County agriculture generated about \$300 million. With a multiplier of only two (to account for John Deere, CENEX, Darigold, where farmers and their employees shop, etc., etc.) agriculture is more likely responsible for at least \$600 million in economic activity per year. At 100,000 acres, the target area to be protected according to the County's Comprehensive Plan, that suggests

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<sup>7</sup> Fodor & Associates, Oct. 2002. *Cost of Growth in Washington State*, Columbia Public Interest Policy Institute, Bellevue, WA, 64 pages.

for each acre taken out of agriculture on the average \$3,000 of annual income is foregone and with the multiplier more likely \$6,000. If that is true, then for an R-5 in an APO area that suggests taking out on the average something on the order of \$15,000 to \$30,000 per annum of economic activity. Does the “development” that pushes agriculture out generate that kind of an annual income stream? Not likely. Furthermore, from above we know that development in rural areas does not cover -- by a considerable margin the costs of delivering required services to those areas.

There are some other perhaps “softer” reasons to keep our farm land in agriculture. That is, farming is part of the County’s heritage. Farming keeps space open and rural as well as gives county citizens a visual a connection to our more basic roots and where our food comes from. Those are not attributes that are easily or even should be quantified, but for many they are valuable and maintaining that value is important. Letting the land slip out of agriculture degrades those important attributes of our farm land and at some point rural Whatcom County could be little different from King County’s Green River valley.

We also care about the PDR program because those folks that keep the space open and in agriculture -- the County’s farmers have value in that land. That value represents a life time of work, their ability to invest in their kids, or their ability to retire with security. The PDR program can help farmers realize value out of his/her land without selling out and yet stay in farming and/or pass the property along to the next generation at its agricultural value, not at a price that reflects its speculative, developmental value.

Economists use the term opportunity cost. That seems particularly applicable here. What might the opportunity cost of land going out of farming be with respect to water quality and salmon habitat? We know that as “development” occurs there is more impervious surface and therefore more troubling run off from “developed” areas than from properly managed farming operations. We can not quantify the opportunity costs, but we note for those concerned about water and salmon habitat the cost of land moving out of agriculture into “development” is considerable.

Lastly the PDR program is a way to remove density from rural agricultural areas that is voluntary, consistent with the rights of property owners, and permanently protects farm land in a way that even agricultural zoning can not. Furthermore the program enhances the economic environment for farming by limiting the growth of the number of people in rural areas. Large numbers of rural non-farm folks can significantly constrain farmers from even utilizing “best practices” to say nothing about working long hours (making hay while the sun shines), moving equipment on country roads, etc. All in all large increases in rural residents make it increasingly difficult for farmers to change practices necessary to respond new opportunities and/or problems that come along from time to time.

### **Problems with the PDR Program:**

a. The PDR program alone can not provide sufficient protection to agricultural lands. This is true today as when the program was formulated. Nevertheless there seems to be an understanding by some that the PDR program, in conjunction with zoning, will adequately protect 100,000 acres of farm land in the County. After three and a half years the 374 acres protected (including the Alamwala property) are not unimportant, but nevertheless modest. Given the pressure on land owners in Whatcom County to sell for development is this too little -- too slowly?

b. Expensive: To date it looks like the average cost per acre is running at about \$8,100. At that rate to put all of the remaining 11,400 acres of APO land under the PDR program to reach the 100,000 acre objective, would imply an outlay on the order of \$92 million in 2006 dollars. If we assume half of the cost would be reimbursed by USDA, County funding of about \$46 million in 2006 dollars would be required. As noted above, however, this program offsets considerable future liabilities for the County. Consequently rather than an outlay per se this program can in fact be looked on as an investment in avoiding future obligations for services in the rural areas.

c. USDA:

i. Dependability of USDA cost-sharing: Funding provided under the Federal Farm and Ranchlands Protection Program (FRPP) is far from certain given contemporary and projected national budget deficits. Indeed in the 2007 budget submission the President's requested 48 percent less than the FRPP's authorized level. It does not seem to prudent to plan on USDA funding.

ii. USDA criteria: Because of USDA criteria, i.e., "one size fits all," last year the program was unable to purchase from a willing seller about 100 acres on a technicality. USDA support while not unappreciated nor insignificant is, however, not always consistent with interests of Whatcom County.

d. Competitiveness in the Land market

i. Transaction time: Sometimes landowners decide to sell their land to raise capital which they may need in a hurry. In that context a seller may decide on a buyer that can minimize the time to settlement. In these circumstances the PDR program does not have a chance at being attractive to prospective sellers.

ii. Attitude about working with the "County:" At times there seems to be a hesitancy and even dislike for working with, in this case selling development rights to the "County." As a result it is sometimes difficult for the "County" to be in a position to make an offer let alone that offer being taken seriously.

iii. Going to settlement: Sellers are uncomfortable about the necessity of "things" having to fall into place over which they have little or no control. For example,

CC approval or locking in USDA funding are two areas of uncertainty (that also slows the process up) for which some potential sellers do not have the patience for.

iv. Between signing up for the PDR program and actual receipt of payment for development rights can take nine to twelve months, but also as much as two years.

e. Staff (County) resources: Currently the PDR program is allocated about 1/3 of a FTE. This review suggests that this is an under estimation of the time actually needed. The 1/3 FTE in fact appears to be a residual, i.e., the time left after other demands on staff have been met. (An example where the immediate seems to push aside the important.) Given the complex informational and implementation needs of the program, a more realistic estimate for the program to be effectively implemented as envisioned will require a full FTE.

f. Inability to attract sufficient applicants from within targeted areas: A great deal of effort went into identifying and targeting particular areas to realize the maximum impact of program resources. In this regard it is important to underline the voluntary nature of the program. Nevertheless, it appears a great deal more community education needs to be carried out to explain the attractive features of the program to property owners.

g. Appraisal values of property in the PDR program: It has been reported that appraisal values of property applying for the program were too low. However, no evidence that appraisals were undervaluing developing rights was found. The Alamwalla property is a recent case in point.

### **Recommendations: Actions for the County**

#### **Strategic:**

1. When the PDR program was adopted it was explicitly recognized as only "...one component of an overall farmland protection strategy." This needs to be reconfirmed and a process started to identify ways by which to augment the PDR program and thereby fully protect agricultural and rural, APO zoned land.

2. The CC has the ability to create a market for Transferable Development Rights (TDRs). Furthermore, in making certain land use decisions the CC creates wealth. Those two capabilities need to be brought together. In so doing some of the wealth created by Council's action can be harnessed and used to purchase TDRs from agricultural land for which protection is needed. In this regard the CC can, for example:

a. Incorporate land identified as high priority areas in the development of the PDR program under the aegis of the Transfer of Development Rights (TDR) program by making these areas "sending" areas.

- b. Requiring property owners seeking an up-zone to purchase TDRs, from high priority PDR Program target areas.
- c. Requiring any expansion of UGAs to purchase TDRs at an appropriate ratio.

By creation of this “market” for development rights the County can directly address the resource sufficiency issue. This would also address the efficiency issue in that “willing buyers and willing sellers” would handle the transaction costs and timing themselves in a manner that meets their needs – not the needs of a bureaucratic process. Note, however, that just as the PDR program can not meet all the needs to preserving farm land, neither can a TDR program.

#### Improvements within the Program

1. Outsourcing implementation of the PDR program up to the preparation of the “documentation packets” for approval by the County. This would include educational outreach to landowners, instituting and overseeing the appraisal process, carrying out the liaison and getting the paper work done necessary for USDA. In so doing, this would advantageously leverage scarce staff resources for more pressing duties. Conservation Resource Funds could be utilized to contract with the Agricultural Preservation Committee or Conservation District, for example.
2. The PDR committee should develop quantitative targets over time to facilitate assessment of progress toward the program’s objectives.
3. The CC should conditionally approve ranking and property purchases concurrently for each application round provided that offer price is at or below appraised value and allocated County funding and matching funds are adequate to cover purchases and associated costs. This effort would greatly streamline and reduce the time needed to complete the purchase process.
4. The CC should authorize an annual budget amount including all required matching funds for placement into a dedicated PDR fund. A separate budget tracking category should also be created to track all expenditures and receipts by contract and each property “development rights” purchase.
5. The PDR Program be provided working funds to purchase the right of first refusal from landowners in “high priority target areas.” The intent of this would be to ensure that the PDR program would have a real, meaningful opportunity to make an offer on development rights in target areas.
6. Consideration be given as to the advisability/prudence of outsourcing to a single service provider to ensure program properties stay protected in perpetuity. Diversification of such services, however, needs to be considered in the context of cost-effectiveness, currently running about 4.1 percent of total costs. In addition to the current

service provider, the Agricultural Preservation Committee, the Conservation District and perhaps others have an interest and perhaps the ability or ability to develop the capacity to carry out this function.

7. The CC should seek to establish a mechanism to allow for the purchase of farm land as it comes on the market. Once purchased the property could have a conservation easement placed on it and then resold to whomever is interested in using the land for agricultural purposes. The intent here is to enable the PDR program to be nibble enough to meet the needs of those sellers who have only very a short time period between the decision to sell and the need for the sales proceeds.

May 3, 2007