

Chapter 3.25A

AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

3.25A.010 Short title.

This chapter shall be known and may be cited as the “Agricultural Purchase of Development Rights Program.” For the purpose of this chapter this program shall be known as the “PDR” program. (Ord. 2002-054 § 1).

3.25A.020 Purpose.

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county’s farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use. (Ord. 2002-054 § 1).

3.25A.030 Applicability.

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

3.25A.040 Definitions.

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

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

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

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

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

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

The “PDR program guidelines” shall be adopted by county council and contain the rules and regulations under which the PDR program operates. They include eligibility criteria, site

selection criteria, a standard conservation easement and other procedures and information necessary to ensure fair and consistent administration of the PDR program.

“Qualifying lands” means those properties meeting the eligibility criteria established in the PDR program guidelines for which development rights may be purchased pursuant to this chapter. (Ord. 2002-054 § 1).

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

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

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

1. Establish reasonable and standard procedures and forms consistent with this chapter and the PDR program guidelines for the administration and implementation of the program.
2. Promote the program in cooperation with the PDR oversight committee by providing educational materials to the public and conducting informational meetings.
3. Investigate and pursue, in conjunction with the county, state, federal and other programs available, to provide additional public and private resources to fund the program and to maximize private participation.
4. Evaluate and rank all applications to determine their eligibility and provide assistance to the PDR oversight committee in ranking properties.
5. Coordinate the preparation of appraisals.
6. Negotiate conservation easement terms and value with the owner or owners.
7. Provide staff support to the county council, the PDR oversight committee, and the county’s authorized appraiser.
8. For each conservation easement accepted into the program, establish baseline data, and assure that the terms and conditions of the easement are monitored and complied with by coordinating a monitoring program with each easement holder. (Ord. 2002-054 § 1).

3.25A.060 Purchase of development rights oversight committee established – Powers and duties.

A. Establishment. The PDR oversight committee is hereby established, as follows:

1. The committee shall consist of seven members appointed by the county executive and confirmed by county council. Each member shall be a resident in and of Whatcom County. The committee shall be comprised of three farmers, one individual representing farm-supporting businesses, one individual possessing real estate experience, one citizen (nonfarmer) from the unincorporated county, and one citizen (nonfarmer) from an incorporated city. No members may have an ownership interest in any of the lands submitted for purchase pursuant to this chapter.
2. The members of the committee shall serve at the pleasure of the county council. The initial terms of the members shall be as follows: two members shall be for two years; three

members shall be for three years; and two members shall be for four years. Each term after the initial term shall be for four years.

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

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

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

B. Purpose. To provide oversight and evaluation for the county PDR program. The PDR oversight committee's role is to advise the council in the selection of eligible lands offered for PDR acquisition.

C. Powers and Duties. The PDR oversight committee shall have the powers and duties to:

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

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

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

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

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

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

3.25A.070 Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must be located outside of an established urban growth area and within Rural 5A, Rural 10A or Agriculture zoned land and meet any additional eligibility criteria as defined in the PDR program guidelines. (Ord. 2002-054 § 1).

3.25A.080 Ranking system.

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

3.25A.090 Conservation easement terms and conditions.

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

A. Allowable Uses. Uses that are compatible with the long-term productivity of the soil for the pursuit of farming enterprises.

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

C. Conservation Easement Duration. A conservation easement acquired under the terms of this chapter shall be in perpetuity. (Ord. 2002-054 § 1).

3.25A.100 Application and evaluation procedure.

Beginning in the first year following the adoption of the ordinance codified in this chapter and continuing at least once a year until funding has been expended, the county shall conduct a voluntary property selection process (“selection round”) generally as follows and pursuant to the PDR program guidelines.

A. Application. During each application round, owners of qualifying lands will be invited to make application for purchase of development rights by the county by giving notice in one newspaper of general circulation. Application materials will be provided by the administrator and will include, at a minimum, a standard implication form and information about the PDR program. Applications shall be submitted to the administrator and reviewed for completeness.

B. Evaluation. Upon closing of the application period, the administrator shall review and determine eligibility and priority classification of applications. The applications ranked by the administrator shall be forwarded to the PDR oversight committee. The committee shall review the applications and establish an initial pool of parcels for purchase based on selection criteria contained in PDR program guidelines. The committee shall then forward the initial pool of parcels to the county council which shall review and prioritize parcels on which it will seek to purchase conservation easements.

C. Appraisal. For those applications that meet the requirements of subsection B of this section, the committee shall cause an appraisal of the applicant’s development rights to be made in accordance with PDR program guidelines. The appraisal shall determine the difference between the fair market value of full ownership of the land (excluding buildings thereon) and the fair market value of the agricultural right to the land.

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

E. Reapplication. An owner of a parcel not selected by the county council for purchase of a conservation easement may reapply in any future open application period. (Ord. 2002-054 § 1).

3.25A.110 Purchase of development rights procedure.

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

A. Development Rights Sale. Based on anticipated funding the administrator shall estimate the number of development rights that can be acquired from the initial pool of parcels identified in WCC 3.25A.100(B). The administrator shall coordinate negotiations with the property owners. Upon completion of negotiations, the administrator shall arrange for an appraisal of the development rights by an independent county-authorized appraiser. The PDR oversight committee and administrator shall review the results of the appraisal. The administrator shall, in writing, invite property owners to sell to the county development rights for the amount of the appraised value of such development rights, subject to the terms and conditions of a proposed deed of easement. Property owners desiring to sell and/or donate development rights shall submit a written offer to sell. Nothing in this chapter shall compel an owner to submit an offer to sell.

B. Acceptance. An offer to sell development rights shall be forwarded to the county council for acceptance.

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

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

E. Costs. If the county council accepts an offer to sell development rights, the county may pay all other costs including environmental site assessments, surveys, recording costs, if any, and other charges associated with closing. However, the county shall not pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or other advice, or expenses or fees in connection with the release and subordination of liens to the easement purchased by the county. (Ord. 2002-054 § 1).

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

If circumstances arise that render the purpose of this easement impossible to accomplish, the easement can be extinguished only by judicial proceedings. In the event of such an extinguishment or the taking of the property by the exercise of the power of eminent domain, grantors shall pay to Whatcom County an amount determined by subtracting the fair market value of the property subject to this easement from the fair market value of the property

unrestricted by this easement, at the time of extinguishment or condemnation if Whatcom County is not compensated for its property interests at the time of the extinguishment or condemnation. Other details regarding restrictions on buy-back or extinguishment as may be deemed necessary shall be contained in the PDR program guidelines. (Ord. 2002-054 § 1).

3.25A.130 Authorization.

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

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

C. After county acquisition of development rights, the county may purchase the remaining agricultural rights or other property interests in such land only when requested by the owner and when such acquisition is necessary to maintain agricultural uses of the property. (Ord. 2002-054 § 1).

BUSINESS RULES AND PROCEDURES

AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS OVERSIGHT COMMITTEE OF WHATCOM COUNTY, WASHINGTON

The Whatcom County Agricultural Purchase of Development Rights Oversight Committee (PDR Oversight Committee), formed by the County Council pursuant to Ordinance 2002-054, adopted September 13, 2002, does hereby adopt the following rules and procedures for the transaction of its business:

1. NAME

The official name is the "Whatcom County Purchase of Development Rights Oversight Committee."

2. AUTHORITY

The Committee was appointed by the County Executive and confirmed by the County Council.

3. PURPOSE

The PDR Oversight Committee shall review all applications to the PDR program and make recommendations to the County Council. The PDR Committee shall also review the Program Guidelines and make recommendations for changes.

4. OFFICERS - ELECTION

The PDR Oversight Committee shall elect a Chairperson and Vice-chairperson. These officers are elected for terms of one year with no term limits.

In the event of a vacancy in the office of Chairperson, the Vice-chairperson automatically becomes the Chairperson. A vacancy occurring in the office of Vice-chairperson is filled by election of a replacement to serve for the un-expired portion of the term. A vacancy in an office automatically occurs upon the third consecutive unexcused absence of an officer from the regular meetings, unless otherwise agreed to by the majority of the committee membership.

5. OFFICER DUTIES

The Chairperson has the responsibility of presiding at meetings of the PDR Oversight Committee, placing items on the agenda, calling special meetings, canceling meetings, excusing members for valid reasons from attendance at PDR Oversight Committee meetings and shall be the spokesperson for the committee.

The Vice-chairperson assumes the responsibilities of the Chairperson in his/her absence.

6. MEETINGS

Regular meetings will be scheduled by the committee as necessary. For periods of time where more frequent meetings are anticipated a supplemental schedule will be established. The meeting place will be published 10 days in advance.

Special meetings may be called by a majority vote of the members at a regular meeting. Special meetings may also be called by order of the Chairperson upon giving written notice to other members at least 24 hours before the meeting. The written notice must state the time, place and business to be transacted. Final action cannot be taken on any item that is not included on the agenda.

All meetings shall be open to the public and be held in compliance with all applicable provisions of the Appearance of Fairness Doctrine (RCW 42.36) and the Open Public Meetings Act (RCW 42.30). Applicants may petition the Chair to direct a specified committee member to abstain from participating in discussions or decisions concerning their application. A request by the Chair to withdraw will be honored by all committee members.

7. ATTENDANCE

The Chairperson, upon the fourth consecutive unexcused absence of any member from the regular meetings, shall bring forward the issue to the full PDR Oversight Committee to consider a recommendation to the County Council for replacement of that member. In the event of regular recurring absences any member can bring the matter to the committee for discussion. An absence is unexcused when a committee member does not contact the Chairperson, Vice-Chairperson, or staff in advance.

8. QUORUM – DECISION MAKING

A majority of the current membership, but not less than three, is required to conduct regular business

Decision-making will endeavor to be by consensus. Consensus means all of the following:

- (a) That everyone on the committee can live with and support a decision taken.
- (b) That the positions of each member have been heard, respected, and seriously considered.

In the event that efforts to reach consensus have failed and a vote of the majority affirms that future efforts to reach consensus are doubtful, a role call vote of the members shall be taken. A simple majority shall prevail.

Any committee member or committee members may file for the record a minority opinion. Such minority opinion shall include the specific issue, proposed code language, or policy which is opposed and a rationale for the minority opinion. When possible preferred alternative language or options should be included in the minority report. Members supporting the minority report shall be listed in the minority report.

9. ORDER OF BUSINESS

The regular order of business is as follows:

- (c) Roll call
- (d) Determination of Quorum
- (e) Approval or modification of previous meeting summary
- (f) Open Session for the public to speak on agricultural issues
- (g) Staff reports or agency presentations
- (h) PDR Oversight Committee discussion, deliberations and decision-making
- (i) Adjournment

10. OPEN SESSION FOR THE PUBLIC TO SPEAK ON AGRICULTURE ISSUES

All meetings are to be open to the public and shall include time for the public to speak on PDR issues. The Chairperson or the committee, by consensus, may limit speakers to five (5) minutes per person per meeting to make their points.

11. REPORTING TO THE WHATCOM COUNTY COUNCIL

- a. The PDR Oversight Committee shall forward ranking recommendations for applicants to the PDR Program and any proposed amendments or recommendations PDR Program Guidelines, deemed necessary to realize the implementation of the PDR Program.
- b. A member may be chosen to represent the PDR Oversight Committee in front of the County Council or a Council Committee regarding a particular matter. No member shall represent the committee without being duly authorized by the committee.
- c. The Chair (or Vice-chair) will sign the report forwarded to the County Council to reflect the decision of the committee.
- d. Any PDR Oversight Committee member may address the County Council on any issue relating to agriculture in Whatcom County. The member must state clearly if he/she is speaking on behalf of the PDR Oversight Committee or in another capacity.
- e. All media requests will go through the Chair of the PDR Oversight Committee.

12. MEETING SUMMARIES AND RECORDS

Meeting summaries will be maintained as per (WCC 2.125.050). Meeting summaries shall be approved by the PDR Oversight Committee and signed by the Chairperson at the next meeting.

13. NOTICE - AGENDA

Copies of the agenda will be placed in the mail to PDR Oversight Committee members at least one week prior to the next meeting.

14. STAFF

The Planning & Development Services Department will provide staffing for the PDR Oversight Committee (WCC 2.125.060).

15. AMENDMENT

These rules may be amended by a majority vote of the PDR Oversight Committee, provided notice of the proposed amendment has been placed in the mail or delivered to the members at least one week in advance.

ADOPTED ON THE 13th OF January, 2001

AMENDED ON THE 26th of February, 2010

PDR Oversight Committee Chairperson

Date