WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator: Hal. H. Hart</th>
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<tr>
<td>Division Head: Sylvia Goodwin</td>
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<td>Dept. Head: Hal. H. Hart</td>
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<tr>
<td>Prosecutor: Karen Frakes</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
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SUBJECT: Ordinance Establishing Whatcom County's Agricultural Purchase of Development Rights (PDR) program.

ATTACHMENTS: Ordinance and proposed Text

SEPA review required? ( ) Yes ( x ) NO
SEPA review completed? ( ) Yes ( ) NO
Should Clerk schedule a hearing? ( ) Yes, ( x ) NO
Requested Date:

SUMMARY STATEMENT:
Whatcom County, in conjunction with its Purchase of Development Rights Advisory Committee, recently developed recommendations for the creation of a Purchase of Development Rights program to preserve county agricultural land. Council, after review of the PDR Advisory Committee's proposal directed PDS staff to develop a PDR program. The establishment of the Agricultural PDR program is initiated through adoption of authorizing legislation. The attached ordinance provides that legislation.

COUNCIL ACTION TAKEN:

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<th>COUNCIL ACTION TAKEN:</th>
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<td>2002 - 312 8/13/2002: Introduced</td>
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<td>9/10/2002: Adopted 7-0, Ord. #2002-054</td>
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Related File Numbers:

Ordinance or Resolution Number (this item): ORD.#2002-054
ORDINANCE NO. 2002-054

ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM AND OVERSIGHT COMMITTEE

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land, and timber land; and

WHEREAS, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to $30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.
2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 10 day of September, 2002.

ATTEST:

Dana Brown-Davis,
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Ward Nelson, Council Chair

APPROVED as to form

Karen N. Frakes, Civil Deputy Prosecutor

( ) Approved  ( ) Denied

Pete Kremen, Executive

Date: ____________________
EXHIBIT 1
Agricultural Purchase of Development Rights Program

CHAPTER 3.25A
PURCHASE OF AGRICULTURAL DEVELOPMENT RIGHTS PROGRAM

Sections:
Sec. 3.25A.010 Short title.
Sec. 3.25A.020 Purpose.
Sec. 3.25A.030 Applicability.
Sec. 3.25A.040 Definitions.
Sec. 3.25A.050 Designation of program administrator; powers and duties.
Sec. 3.25A.060 Oversight committee established; powers and duties.
Sec. 3.25A.070 Eligibility criteria.
Sec. 3.25A.080 Ranking system.
Sec. 3.25A.090 Conservation easement terms and conditions.
Sec. 3.25A.100 Application and evaluation procedure.
Sec. 3.25A.110 Purchase of development rights procedure.
Sec. 3.25A.120 Restriction on buy-back; extinguishment and exchange of easements.

Sec. 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 ordinance this program shall be known as the “PDR” program.

Sec. 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.

Sec. 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.

Sec. 3.25A.040. Definitions.
The following definitions shall apply in the interpretation and implementation of this chapter:
Administrator. 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. A nonpossessory interest in one or more parcels by one or more qualified easement holders under section 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, imposing limitations or affirmative obligations for the purpose of retaining or protecting agricultural values of the parcel or parcels.
Owner. The owner or owners of the fee simple interest of the parcel.
Development Rights. 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 incidental to agricultural uses.
Parcel. A legal lot of record, lawfully recorded in the Whatcom County Auditors Office. A conservation easement may contain one or more parcels, for purposes of this chapter the term
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"parcel" shall include all parcels covered by, or proposed to be covered by, the conservation easement.

PDR Program Guidelines. 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. Those properties meeting the eligibility criteria established in the PDR Program Guidelines for which development rights may be purchased pursuant to this ordinance.

Sec. 3.25A.050. Designation of program administrator; powers and duties.
(a) Designation. The administrator shall be designated by and report to 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 as attached or hereby amended, 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.

Sec. 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 (non-farmer) from the unincorporated County, one citizen (non-farmer) from an incorporated city. No members may have an ownership interest in any of the lands submitted for purchase pursuant to this ordinance.
   (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 his or her 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.
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(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, resolutions, 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.

Sec. 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.

Sec. 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.

Sec. 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.
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(c) Conservation easement duration. A conservation easement acquired under the terms of this chapter shall be in perpetuity.

Section 3.25A.100. Application and evaluation procedure.
Beginning in the first year following the adoption of this ordinance 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 application 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 application. 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 (b) above, 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.

(c) 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.

(d) Reapplication. An owner of a parcel not selected by the board for purchase of a conservation easement may reapply in any future open application period.

Section 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 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 a 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
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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.

Sec. 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.

Sec. 3.25A.130. Authorization.
(a) The County is hereby authorized to acquire development rights from lands described and
prioritized in Section 3.25A.070 of this ordinance. Such acquisition may be accomplished by
purchase, gift, grant, bequest, devise, covenant or contract but only at a prices which is equal
to or less than the appraised value determined as provided in this ordinance 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 purchase 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.