

ORDINANCE NO. 14562

AN ORDINANCE ESTABLISHING A PURCHASE OF DEVELOPMENT RIGHTS PROGRAM IN THURSTON COUNTY BY AMENDING TITLE 17 OF THE THURSTON COUNTY CODE BY ADDING A NEW CHAPTER, CHAPTER 17.35.

**WHEREAS**, Thurston County is required to plan under Chapter 36.70A RCW, the Growth Management Act (GMA), which contains fourteen goals that are intended to guide the development and adoption of comprehensive plans and associated development regulations, which relate to urban growth, rural development, reduced sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space, recreation, the environment, citizen participation and coordination, public facilities and services, and historic preservation; and

**WHEREAS**, the GMA requires the comprehensive plan and development regulations to demonstrate and uphold the concepts of internal consistency, conformity, and concurrency; and

**WHEREAS**, the GMA requires a process of early and continuous citizen participation for amending comprehensive plans and development regulations; and

**WHEREAS**, the development regulations in Thurston County adopted under the GMA must be consistent with the Thurston County Comprehensive Plan and associated Joint Plans; and

**WHEREAS**, the GMA has established a goal to "maintain and enhance natural resource based industries, including productive timber, agricultural and fisheries industries, and to encourage the conservation of productive forest lands and productive agricultural lands and discourage incompatible uses"; and

**WHEREAS**, this Ordinance implements changes to the Thurston County Comprehensive Plan Natural Resource Chapter, by Resolution No. 14401, which findings therein are incorporated herein by this reference; and

**WHEREAS**, it is a policy of the Thurston County Comprehensive Plan to develop innovative strategies for the conservation of farmland; and

**WHEREAS**, the Natural Resource Lands chapter of the Thurston County Comprehensive Plan affirms that agricultural lands of long-term commercial significance should receive the highest priority for conservation; and

**WHEREAS**, the Thurston County Comprehensive Plan declares it should be a policy to utilize Purchase of Development Rights programs as economic incentives for farmers to stay in agriculture; and

**WHEREAS**, the Thurston County Agricultural Advisory Committee was established in 1978 by the Thurston County Board of County Commissioners to represent farm and family forestry landowners; and

**WHEREAS**, in 2008 the Thurston County Advisory Committee was charged with the development of a Working Lands Strategic Plan; and

**WHEREAS**, the Thurston County Working Lands Strategic Plan was adopted in February 2010 to establish "a basis for encouraging and ensuring a continued and coordinated approach to the preservation of agriculture and forestry's economic viability"; and

**WHEREAS**, the Thurston County Working Lands Strategic Plan has identified the establishment of a Purchase of Development Rights program as a first level priority for ensuring the long-term economic viability of agriculture and forestry in Thurston County; and

**WHEREAS**, two public meetings were held on April 18, 2011 and April 25, 2011 to receive public feedback and comment; and

**WHEREAS**, the amendments adopted by this ordinance were the subject of a public hearing before the Board of County Commissioners on July 26, 2011; and

**WHEREAS**, in formulating its decision, the Board of County Commissioners considered comments received through the public hearing and public process; and

**WHEREAS**, in formulating the amendments adopted by this ordinance, the Board of County Commissioners has considered the goals contained in the GMA; and

**WHEREAS**, the Board of County Commissioners believes adopting the amendments are necessary for the preservation of the public health, safety, and general welfare of Thurston County residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THURSTON COUNTY, AS FOLLOWS:**

**SECTION 1. AMMENDMENT TO TITLE 17 TCC.** New chapter 17.35 TCC is hereby adopted as attached in Exhibit 1.

**Chapter 17.35**

**Thurston County Purchase of Development Rights Program**

**17.35.010 Short title.**

This chapter shall be known and may be cited as the "Thurston County Purchase of Development Rights Program." For the purpose of this chapter, this program shall be known as the "PDR" program.

**17.35.020 Purpose.**

A. To establish a voluntary purchase of development rights program for Thurston 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.

B. To maximize the benefit of County expenditures by applying PDR funds as a source to match other grants.

C. To facilitate partnerships in the preservation and management of agricultural lands by favoring the expenditure of PDR funds for acquisitions that will be owned and managed by entities who are eligible to acquire and manage such lands, as determined by the criteria of existing state and federal agricultural lands preservation grant programs.

**17.35.030 Applicability.**

Lands which meet the definition of agricultural land, as defined in RCW 84.34.020, except those lands under the ownership or control of the United States of America, the state of Washington or an agency or instrumentality thereof, shall be eligible to participate in the PDR program.

**17.35.040 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.

"Agricultural Land" is land which meets the criteria of RCW 84.34.020.

"Conservation easement" means a nonpossessory interest in one or more parcels by one or more easement holders acquired under RCW 64.04.130.

“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.

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

“Parcel” means a legal lot of record, lawfully recorded in the Thurston County auditor’s office. A conservation easement may encompass 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.

“PDR Program Guidelines” refers to the primary reference manual for the administration of the PDR program and shall include, at a minimum, elements mandated under TCC.17.35.070, 080 and 090.

**17.35.050 Program administrator – Powers and duties.**

**A. Powers and Duties. The administrator or his / 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 opportunities, 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 all applications to determine their eligibility and provide assistance to the PDR oversight committee in ranking properties.
5. Provide staff support to the Board of County Commissioners and the PDR oversight committee.
6. 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.

**17.35.060 Purchase of development rights oversight committee established – Powers and duties.**

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

**1. The duties and functions of the PDR oversight committee shall be carried out by the existing Thurston County Agricultural Advisory Committee. No members may have an ownership interest in any of the lands submitted for purchase pursuant to this chapter.**

**B. Purpose.** To provide oversight and evaluation for the county PDR program. The role of the PDR oversight committee is to advise the Board of County Commissioners in the selection and ranking of proposals for PDR funding.

**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 Board of County Commissioners as to which conservation easements should be funded.**

**3. Annually review the PDR program guidelines and recommend to the Board of County Commissioners any changes needed to maintain program 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 the Board of County Commissioners and county manager.**

**D. Organization – Meetings.** The PDR oversight committee (committee) shall determine a 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 are not limited to, individuals from the following agencies: Cooperative Extension Service, National Resource Conservation Service and Thurston Conservation District.

**17.35.070 Eligibility criteria.**

**A. The PDR Program Guidance Manual shall establish guidelines to favor proposals meeting the following criteria:**

- 1. Proposals meeting the definition of agricultural land as defined in RCW 84.34.020.**
- 2. Proposals that are deemed eligible for funding by a state or federal farm or agricultural lands grant program and for which an application is either in process or approved for funding.**
- 3. Proposals seeking only matching funds.**
- 4. Proposals that have identified a qualified easement holder to hold and manage the easement.**

**17.35.080 Ranking system.**

**To effectuate the purposes of this chapter, weighted scoring for each criterion contained in TCC 17.35.070 shall be contained in the PDR program guidelines. A ranking system shall be used to prioritize the proposals and make funding recommendations to the Board of County Commissioners.**

**17.35.090 Conservation easement terms and conditions.**

**Each conservation easement shall conform to 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 which are compatible with the long-term productivity of the soil for the pursuit of farming enterprises.**
- B. Designation of Easement Holders.**
- C. With Board of County Commissioners approval, per 17.35.100(D), the County may acquire and hold an easement using PDR funds when no viable alternative exists.**
- D. Conservation Easement Duration. The PDR Program Guidance Manual shall establish criteria to favor easements in perpetuity over limited term easements.**

**17.35.100 Application and evaluation procedure.**

**Beginning in the first year following the adoption of the ordinance codified in this chapter and continuing at least once per 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, project proponents will be invited to make application for funding of purchase of development rights by the county. 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 of the applications. The applications shall be forwarded to the PDR oversight committee. The committee shall review the applications and establish an initial pool of proposals to fund, based on selection criteria contained in PDR program guidelines. The committee shall then forward the initial pool to the Board of County Commissioners which shall review and prioritize parcels on which it will seek to fund the purchase of development rights.

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 Board of County Commissioners if, for good cause, it is shown that urgent circumstances exist that warrant consideration of an application. Under such circumstances, the Board of County Commissioners may purchase a development right at any time it deems necessary.

D. Reapplication. An eligible project not funded in any given application round may reapply in any future open application period.

**17.35.110 Purchase of development rights procedure.**

Each application shall be processed and evaluated pursuant to the requirements as contained in the PDR program guidelines.

**17.35.120 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 Thurston 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 Thurston 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.

**17.35.130 Authorization.**

**A. The county is hereby authorized to fund the acquisition of development rights from lands described and prioritized in accordance with the procedures and criteria specified in this Chapter.**

**B. After acquisition of development rights, the county may purchase the remaining real property interests or other property interests in such land only when requested by the owner and when such acquisition is necessary to preserve the opportunity for farming on the property.**

**SECTION 2. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or other portion of this Ordinance or its application to any person is, for any reason, declared to be invalid, illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon adoption.

ADOPTED: September 27, 2011

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
Thurston County, Washington

[Signature]  
Clerk of the Board

[Signature]  
Chair

APPROVED AS TO FORM:

[Signature]  
Commissioner

JOHN TUNHEIM  
PROSECUTING ATTORNEY

[Signature]  
Commissioner

By: [Signature]  
Jeffrey G. Fancher  
Deputy Prosecuting Attorney