

PROGRAM GUIDEBOOK:

Commercial Property Assessed Clean Energy + Resilience (C-PACER) Program

Whatcom County, Washington



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I. Introduction

CLIMATE PROTECTION AND ENERGY CONSERVATION ACTION PLAN

The 2007 Whatcom County Climate Protection and Energy Conservation Action Plan aims to reduce the County's greenhouse gas (GHG) emissions. Strategies such as energy efficiency improvements in homes and businesses are noted in the plan as the easiest and most cost-effective methods.

In 2016, the Whatcom County Council added Policy 10D-6 to the Comprehensive Plan calling for the creation of a Climate Impact Advisory Committee to, in part, review the implementation of the 2007 Climate Action Plan. The County Council established the Whatcom County Climate Impact Advisory Committee in December 2017 (Ordinance 2017-080) to review and provide recommendations to the County Council and Executive on issues related to the preparation and adaptation for, and the prevention and mitigation of, impacts of climate change (WCC 2.126).

In 2019, the Community Research Project was launched to collect information from local stakeholders on strategies to reduce or mitigate GHG emissions and support climate resiliency and adaptation. A set of actions were developed for consideration in a revised Climate Action Plan, including strategies to increase energy efficiency and conservation in buildings and support for a Property Assessed Clean Energy program to subsidize energy conservation and renewable energy improvements to buildings.

In 2021, the Climate Impact Advisory Committee began working to update the Climate Action Plan using information collected in recent years such as a GHG inventory, vulnerability assessments, and other sources. The focus of the plan is addressing human-built infrastructure, including buildings as well as land use, to reduce GHGs.

ABOUT C-PACER

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program is voluntary and allows owners of eligible properties to seek long-term financing from private capital providers for qualified improvements including energy efficiency, renewable energy, water conservation, and resiliency investments. Capital providers offer financing and the property owner repays the loan to the capital provider over time, such as the case with a traditional loan. However, with C-PACER financing, the loan is assigned to the property as an assessment and remains with the property until it is repaid, regardless of any transfers of property ownership. Collection of the assessment is assigned by the County to the capital provider, and the property owner pays the assessment directly to the capital provider.

Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whoever owns the property at the time. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, solar installations, or seismic upgrades – over the useful life of the measures. The period of the financing agreement will not exceed the useful life of the qualified project or weighted useful life if more than one qualified improvement is included.

Enforcement of the C-PACER lien is the responsibility of the capital provider. In the event of default, only the payments in arrears are due.

LEGAL AUTHORITY

In 2020, the Washington State legislature passed C-PACER enabling legislation, HB 2405, which allows counties to establish C-PACER programs. The legislation specified that the efficiency and resiliency of buildings is essential for ensuring the health and safety of residents, employees, and tenants. Whatcom County (the "County") administers a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") financing program (the "C-PACER Program" or the "Program") under chapter 36.165 of the Revised Code of Washington (RCW) (the "C-PACER Act").

The responsibility of the County is limited to a) an ordinance and guidelines that govern how its C-PACER program works and b) review of the lien application for compliance with the C-PACER state law, and then recording a unique agreement that includes the acknowledgement of a special property assessment by the County. The repayment of the C-PACER financing is between a private lender and a property owner, when the lender's lien against the property is filed, with no obligation on the part of the County.

WHATCOM COUNTY C-PACER PROGRAM GUIDEBOOK

This Program Guidebook aims to assist eligible property owners to understand the provisions of Whatcom County's C-PACER program and navigate the application process.

In this document you can find information about the eligibility requirements for C-PACER properties and projects in Whatcom County and the process for applying for C-PACER project approval.

II. Whatcom County C-PACER Guidelines

The C-PACER Program enables financing for eligible property owners (“Property Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in this Guidebook. The purpose of this Program Guidebook is to provide clarity on the guidelines of the Whatcom County C-PACER program, in compliance with the state enabling legislation.

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of Whatcom County, and is approved in connection with, and as an attachment to, the enabling ordinance (Ord. 2021-____) for this program (the “C-PACER Ordinance”) dated _____, 2021. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance and the C-PACER Act.

The Guidebook provides information on guidelines, eligibility, approval criteria, and the application form and checklist for the administration of the C-PACER Program for Whatcom County.

Qualified Improvements, including all eligible costs that are to be financed as permitted by the C-PACER Act and described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Property Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Property Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Washington State, and
- The appropriate steps and forms needed for a C-PACER application to Whatcom County.

1. C-PACER Program Boundaries

Whatcom County Council adopted Ordinance number 2021-_____ on _____, 2021, establishing the C-PACER Program for all eligible properties within the boundaries of the County, including both incorporated and unincorporated areas (the “Region”). The Region is illustrated in Map 1.

2. Administration of Program; Authorized Officials

The Planning and Development Services Director or their designee (the “Director”) is designated and authorized to review each Project Application to confirm that it is complete. The Director will then obtain signatures from the County Executive to execute the Assessment Agreement and C-PACER Lien documents on behalf of the County and release the documents for the applicant or capital provider to record with the real property records via the County Auditor.

As part of Program operation, the Director will:

- Accept the Project Applications and Checklist (see Exhibit 1) from applicant (Property Owners and/or Capital Provider) for prospective C-PACER projects;
- Review the Project Application and Checklist to determine completion;

- Approve, conditionally approve, or disapprove the Project Application and communicate to applicant;
- Request the County Executive’s signature on the Assessment Agreement (Exhibit 2), Notice of Assessment Interest and C-PACER Lien (“Notice of Assessment Interest”) (Exhibit 3) and Assignment of Notice of Assessment Interest and Assessment Agreement (“Assignment”) (Exhibit 4); and
- Release documents for the applicant or capital provider to record with the County Auditor.

3. Eligibility Requirements

Eligible Property means any privately-owned commercial, agricultural, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region. Eligible properties include those owned by a not-for-profit organization.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Property Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of qualifying eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvement means a permanent improvement affixed to the real property that meets at least one of the following criteria:

- Decreases energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, or allows for the reduction in demand, or reduces greenhouse gas emissions (“Energy Efficiency Improvement”);
- Supports the production of clean, renewable energy, as defined in the Clean Energy Transformation Act (RCW 19.405.020(34)), including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature (“Renewable Energy Improvement”);
- Decreases water consumption or demand and addresses safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking (“Water Conservation Improvement”); or
- Increases resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids (“Resiliency Improvement”).

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of

a Qualified Improvement permanently affixed to an Eligible Property.

- For Renewable Energy Improvements, “permanently affixed” includes Qualified Projects that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the renewable energy system, if the power purchase agreement or lease contains all of the following provisions:
 - a) The Renewable Energy Improvement relates to a Renewable Resource, defined in RCW 19.405.020(34) as follows: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests; or (i) biomass energy.
 - b) The term of the power purchase agreement or lease is at least as long as the term of the related Assessment Agreement.
 - c) The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Assessment Agreement.
 - d) Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the system prior to completion of the full repayment of the C-PACER Lien.
 - e) After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the C-PACER financing.
 - f) The power purchase agreement or lease specifies the holder of the C-PACER Lien is a third-party beneficiary of the power purchase agreement or lease until the C-PACER Lien has been fully repaid.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed.

Qualifying Capital Provider may be any of the following:

- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a C-PACER Capital Provider in two different states with C-PACE programs;
- a federal -chartered bank or credit union; or
- a state-chartered bank or credit union

Qualifying costs that can be C-PACER financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Lender’s fees;
- Program application and administrative fees;
- Project development and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance; and
- Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.

4. Application Process

The Planning and Development Services Department will review the Application for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed C-PACER transaction. All applicants are encouraged to review the Project Application and Checklist to ensure that the types of documentation and information required are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect a number of application and due diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties may agree to the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Property Owner and the Capital Provider prepare the Project Application, consisting of the Project Application, Checklist, and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that the County will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) The applicant submits the completed Project Application and Checklist with the corresponding application fee and additional information to Planning and Development Services. Applicants must submit a hard copy and an electronic copy of all application materials.
- (3) The Planning and Development Services Department will have 15 business days to review the Project Application and issue a determination (approve, conditionally approve, or deny). If the department has received an unusually high number of applications, or if review is delayed because of some force majeure event, the department may notify the applicant that the application review and determination will be delayed by no more than 15 additional business days.
- (4) The Planning and Development Services Department application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. *County approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.* The Planning and Development Services Department will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for the County to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and the Planning and Development Services Department will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (5) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent (see Exhibit 5) is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (6) Upon receipt of approval, the Capital Provider will draft the following “Closing Documents”: The Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment and Assessment Agreement. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (7) If the Project Application received conditional approval, the Closing Documents executed by the County may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (8) At closing, after program fees have been paid, the Planning and Development Services Department will release executed agreements to the applicant or capital provider, including the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment Interest and C-PACER Lien, to record via the Whatcom County Auditor.
- (9) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement, and the Property Owner completes the Qualified Improvements and submits a certificate of completion to the Planning and Development Services Department.
- (10) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement

5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached) (see Exhibit 1)
 - Lienholder(s) Consent (form attached) (see Exhibit 5)
 - Certificate of Qualified Improvements: (see Exhibit 6)
- (1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building:
A certification stating that the proposed Qualified Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.

The certification must be performed by a licensed professional engineer or accredited individual or firm from the following list:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional (BEMP)
 - Operations & Performance Management Professional Certification (OPMP)
 - High-Performance Building Design Professional Certification (HBDP)

- Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
- Building Performance Institute
 - Energy Auditor
- Investor Confidence Project
 - ICP Quality Assurance Assessor

Other professional entities may be accepted by the Planning and Development Services Department at its discretion.

- (2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV design specialist certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional entities may be accepted by the Planning and Development Services Department at its discretion.
- (3) For lead reduction in water improvements, a Water Quality Association Professional Certification.
- (4) For Resilience Improvements on an existing building: Certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience, including but not limited to seismic improvements, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
- (5) For new construction:
 - (A) Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency, water efficiency, or renewable energy code requirements. If the building as a whole performs above code, all energy and water-related improvements are eligible for financing.
 - (B) Relating to resilience, certification by a licensed professional Civil Engineer that the proposed Qualified Improvements will result in improved resiliency. If the building as a whole performs above or exceeds code requirements for resiliency, all resiliency-related improvements that relate to that particular requirement are eligible for financing.
- (6) For all Qualified Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Qualified Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements and that the Qualified Improvements are permanently affixed, as described in this Guidebook.

6. Closing Documents

The following documents require the signature of the County Executive and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Property Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Assessment Agreement (see Exhibit 2)
- Notice of Assessment Interest and C-PACER Lien (see Exhibit 3)
- Assignment of Notice of Assessment Interest and C-PACER Lien and Assessment Agreement (see Exhibit 4)

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. Whatcom County has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Property Owners and Capital Providers.

8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER assessment installments payments, including foreclosure, remain the responsibility of the Capital Provider, and the terms are negotiated within the Financing Agreement.

9. Enforcement of C-PACER Lien

The assessment and C-PACER lien shall be assigned by the County to the Capital Provider at the close of any approved C-PACER financing. The C-PACER lien may be enforced with respect to delinquent C-PACER assessment installments by the Capital Provider at any time after one year from the date of delinquency, and may be foreclosed in the same manner as a mortgage lien under chapter 61.12 RCW, except that no sale of the property shall discharge or in any manner affect the priority of the C-PACER lien with respect to installments not yet due and payable at the time of sale, and no deficiency judgment may be sought by the Capital Provider with respect to any unpaid assessment at the time of sale.

10. Program Fee

Whatcom County, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Ordinance, this Guidebook, the draft documents, as well as for reviewing a Project Application for completeness and executing the Assessment Agreement, C-PACER Lien, and Assignment, is entitled to an application and program fee, which is specified in the Unified Fee Schedule. The Property Owner must pay this fee to the County as a condition precedent to releasing documents for recording.

11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

12. Form of Closing Documents

The Program has adopted form Closing Documents: Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessments Interest and Assessment Agreement. A Property Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms. By submitting the Closing Documents to the County, the applicant acknowledges there are no substantive changes to the forms. If any material or substantive terms are changed in the Closing Documents, the applicant must submit a summary of detailed changes formatted in a bulleted list with page references and descriptions of modifications.

The forms are attached as Exhibits 2, 3, and 4, and are incorporated herein as referenced.

13. Written Consent from Lienholder(s) Required

Before entering into an Assessment Agreement with the County, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a lien, mortgage, or security interest in the real property.

For qualifying multifamily projects (residential projects of 5 or more dwelling units), the Capital Provider must obtain written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements encumbering the real property as a condition precedent to the participation in the Program by the property.

If the consents are executed at closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Planning and Development Services Department, an amended Project Application with the consents attached must be sent to the Planning and Development Services Department. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the Whatcom County website. Whatcom County may engage in events and/or provide written materials to increase awareness about the Whatcom County C-PACER program. Whatcom County encourages other stakeholders to develop and share materials to promote the Whatcom County C-PACER program to serve the public benefit of health and safety.

15. County Has No Liability or Financial Responsibility

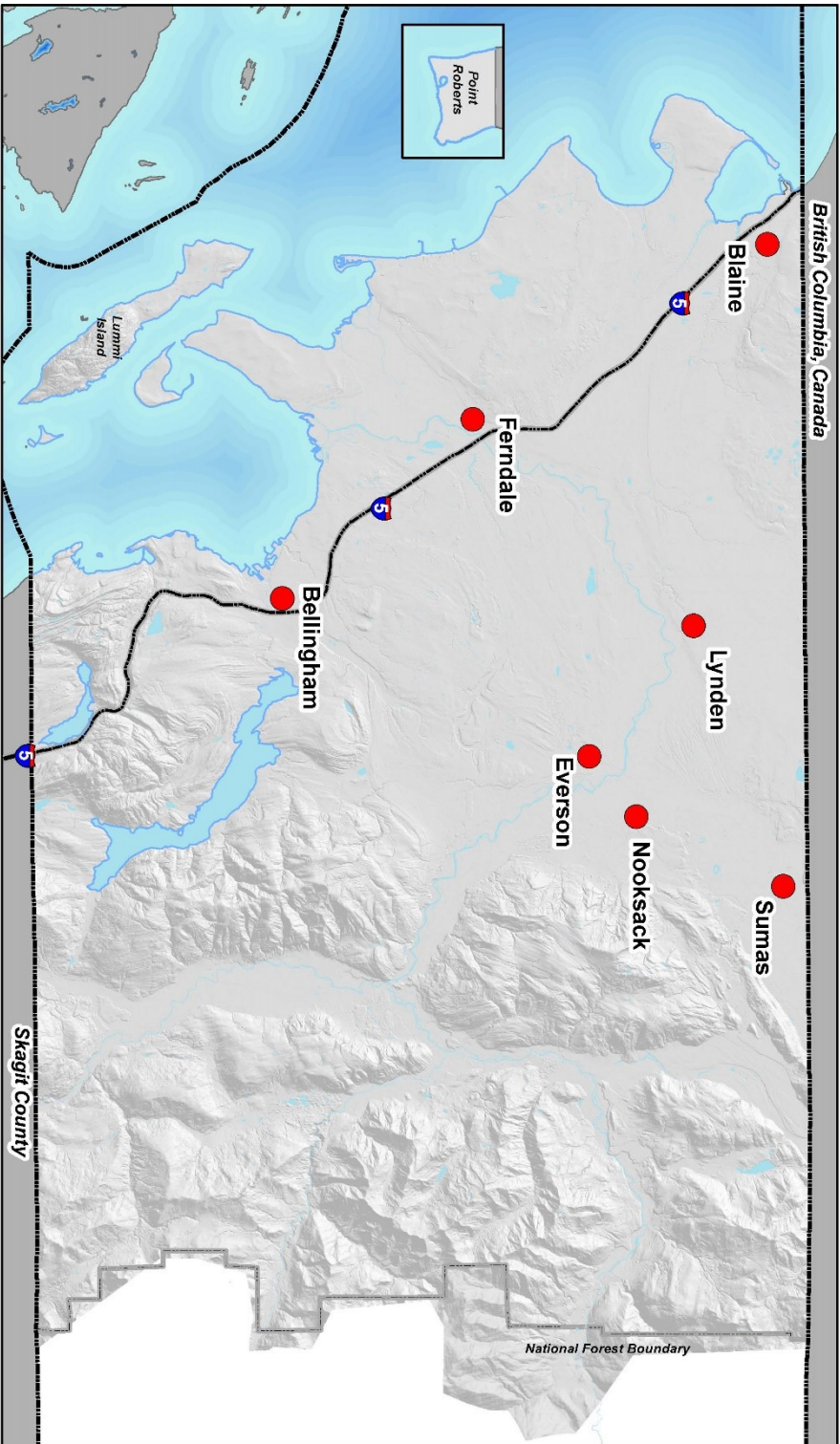
Neither Whatcom County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program.

The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

16. Limitation of Whatcom County's Authority

Whatcom County may not enforce any privately financed debt under this Program. Neither the State of Washington nor Whatcom County may use public funds to fund or repay any loan between a capital provider and property owner. No provisions of this Program shall be interpreted to pledge, offer, or encumber the full faith and credit of Whatcom County, nor shall Whatcom County pledge, offer, or encumber its full faith and credit for any lien amount through this Program.

MAP 1: Whatcom County C-PACER Boundary Map



Whatcom County

- Legend**
- Incorporated City
 - Interstate 5
 - Whatcom County Boundary

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County declines any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, completeness, or reliability of the data. The user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damages, loss, or liability arising from any use of this map.



EXHIBIT 1: Project Application and Checklist

EXHIBIT 2: Assessment Agreement

EXHIBIT 3: Notice of Assessment Interest and C-PACER Lien

EXHIBIT 4: Assignment of Notice of Assessment Interested and C-Pacer Lien and Assessment Agreement

EXHIBIT 5: Lienholder Consent

**EXHIBIT 6: Certificate of Qualified Improvements
(Energy, Water, Renewable Energy, Resilience Certificate of Compliance)**

EXHIBIT 7: Certificate of Capital Provider Qualifications

EXHIBIT 8: Certificate of C-PACER Improvements Completion