

Appendix 1: Draft Memorandum of Understanding

Note: The report recommendations suggest that a new organizational structure should be established to oversee the governance of an inter-jurisdictional affordable housing program. The recommendations state that the members of the new program should create a Memorandum of Understanding (MOU), or a formal inter-local agreement, to define the roles and responsibilities for the participants. The following provides a draft of an MOU document, with some sections fleshed out based on the recommendations in the report, and others listing key issues that need to be resolved. *The questions in italics represent the topics that should be addressed in each section.*

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This Memorandum of Understanding is entered into by and between _____ [list the initial signers], pursuant to the Interlocal Cooperation Act, Chapter 39.34 Revised Code of Washington, and has been authorized by the governing body of each signer.

1. Rationale

Topics Section 1.1 should address: Why did the signers decide to create this agreement? Who will sign?

1.1. Initial signers. The signers of this Memorandum of Understanding (MOU) are responsible for local and regional planning for housing in their jurisdiction within Snohomish County. The signers find it in their mutual interest to address affordable housing issues on a countywide basis and to increase the supply of affordable housing.

Topics Section 1.2 should address: What actions led to this decision? Why is it in the jurisdictions' interest to work together to increase affordable housing? What relationship will this initiative have with existing affordable housing organizations and/or programs?

1.2. Background. In 2007, Snohomish County Tomorrow, an inter-jurisdictional forum consisting of representatives from the county and each of the cities as well as from the Tulalip Tribes, successfully applied for a competitive Growth Management Act planning grant from the Washington State Department of Community, Trade and Economic Development. The purpose of the grant was to analyze the potential to increase the supply of affordable housing in Snohomish County through intergovernmental collaboration. The Housing Subcommittee of the Snohomish County Tomorrow Planning Advisory Council (PAC) directed the study. It included review of existing housing plans and policies, interviews with key stakeholders, and research on best practices nationally. Based on this study and on input from stakeholders and Snohomish County Tomorrow members, the PAC recommended that local and tribal governments join together on a voluntary basis to form a multijurisdictional affordable housing initiative in Snohomish County.

Affordable housing needs in Snohomish County have been well documented. Snohomish County Tomorrow estimates that in 2007, 80,000 households, earning 100 percent or less of the county median income, were cost-burdened, that is, spent more than 30 percent of their income on housing expenses. The multijurisdictional initiative will provide new tools for participating members to address the affordable housing needs throughout the county.

The signers of this MOU desire to act cooperatively to establish goals, policies and programs for affordable housing in Snohomish County in order to help them meet their affordable housing needs. This cooperative action will focus attention on affordable housing issues, encourage sharing of information on successful policies and programs, and provide joint planning and a consistent approach that will help attract public and private resources for developing affordable housing.

There is an existing network of private nonprofit housing developers, housing authorities, private developers and lenders who are developing affordable housing in Snohomish County. The new multijurisdictional affordable housing program will assist member jurisdictions to work more effectively with that network.

2. Purposes

Topics Section 2.1 should address: What is the purpose of this agreement? What kind of entity will be created?

2.1. Purpose of MOU. The purpose of this MOU is to establish a new multijurisdictional initiative dedicated to increasing the supply of affordable housing in Snohomish County.

Question to be resolved:

- If the signers want to create a separate legal entity, such as a 501(c)(3), this section should reflect this decision. Currently this proposal contemplates a collaboration among jurisdictions without creating a new, separate legal entity.

Topics Section 2.2 should address: What will be the mission/goals of the new initiative? What outcomes for affordable housing will the initiative work to achieve?

2.2. Goals and outcomes of the initiative. The goals of the initiative are to:

- Facilitate collaborative work by member jurisdictions to increase the supply of affordable housing in Snohomish County; and
- Increase understanding and acceptance of affordable housing needs and solutions throughout all Snohomish County communities.

The initiative shall work to achieve the following outcomes:

1. There will be a measurable increase in the number of affordable housing units throughout Snohomish County, including:

- a. More affordable rental housing opportunities for households making up to 50 percent of county median income, especially for seniors, those with disabilities, veterans, families with children, and those working in the service industry and as laborers.
 - b. More affordable home sales opportunities for home buyers making less than the county median income, especially for first-time home buyers and those working in Snohomish County communities who cannot afford to buy a home (e.g., teachers and public safety workers).
2. More affordable housing (both rental and ownership opportunities) in all participating communities, especially where there is a need for more housing and a lack of affordable housing. Affordable housing shall be located where there is good transportation and access to employment opportunities, amenities and services.
 3. Over the long run, local governments shall contribute additional resources toward meeting affordable housing needs in Snohomish County. Resources may include direct financial contributions, fee waivers, donations of land, in-kind contributions, or other forms of support. During the current economic climate, however, local government resources used for affordable housing shall remain about the same.

3. Powers of the Initiative

Topics Section 3.1 & 3.2 should address: How will the initiative assist the members (parties to the agreement) with their local work on affordable housing? What kinds of strategies and activities will the initiative pursue?

3.1. Scope. The initiative shall conduct technical assistance, planning, educational and fund development activities that meet the needs of the members, under a work plan approved by the initiative's Board of Directors.

3.2. Strategies and activities. The initiative shall use the following strategies to assist the members (signers of this MOU) to better meet their affordable housing goals:

- Research and share information on successful policies and programs that help create affordable housing.
- Provide staff expertise in affordable housing planning, design and implementation to assist the members.
- Provide education about affordable housing for municipal and county officials, and the public.
- Help to identify and secure additional federal, state, local and private resources for the development of affordable housing in Snohomish County.

The following list of activities is a menu of potential work plan items for the initiative. Many of these activities would benefit multiple jurisdictions; some may benefit only a single

member jurisdiction. As noted below, the initiative's Board of Directors shall approve its annual work plan.

- Identify strategies and goals to address identified affordable housing needs that are specific to each participating jurisdiction.
- Assist in preparing affordable housing components of comprehensive plans, as required by the state Growth Management Act.
- Develop regulatory or incentive strategies to encourage development of affordable housing (e.g., bonus densities, fee waivers, expedited permitting, accessory dwelling units, use of public lands, design guidelines, cottage housing, etc.).
- Serve as a liaison with nonprofit and for-profit developers of affordable housing.
- Conduct grant writing and other forms of fundraising to support affordable housing. Identify and assess appropriate funding opportunities, and work with member communities to pursue these grants.
- Develop means of sharing information among jurisdictions about effective affordable housing strategies, as well as potential pitfalls in designing or implementing strategies.
- Conduct research on regional and national best practices for affordable housing.
- Conduct educational outreach on affordable housing needs and solutions for elected and appointed officials, and the public.
- Monitor affordability conditions/restrictions for affordable housing units created through local incentive programs of member jurisdictions.
- Explore the feasibility and timing of securing potential resources (from local, state, federal and private sources) to create a local housing trust fund, which could be particularly helpful as economic conditions improve.

4. Membership

Topics Section 4.1 & 4.2 should address: Who can be members? Who are the initial members? How do new interested parties join?

4.1. Initial membership. The initial members of the initiative are the signers to this MOU.

4.2. New members. Membership in this initiative shall be open to county, city and tribal governments in Snohomish County that agree to accept the responsibilities listed below and that sign this MOU. Interested governments may apply to the initiative's Board of Directors, and may join with the Board's approval, and upon signing this MOU and providing the agreed-upon monetary contribution as their share of the initiative's annual cost.

Questions to be resolved:

- Should membership be open to any other entities (such as nonprofit and/or for-profit developers), or just governments?

Topics Section 4.3 should address: What are members' responsibilities?

4.3. Responsibilities of membership. Members agree to make an initial and an annual monetary contribution to the initiative (see 10.2 below), and to serve on the Board of Directors. Members shall be required to secure approval of the MOU from their governing bodies.

Questions to be resolved:

- Will there be other required responsibilities?
- Should each participating jurisdiction be required to secure approval from its own governing body for the initiative's annual work plan and budget (as ARCH does)?

Topics Section 4.4 should address: How does a member resign?

4.4. Withdrawal from membership. A member may withdraw as of the end of any fiscal year by giving six months written notice to the Board of Directors. The withdrawing member is legally and financially responsible for any obligation incurred pursuant to this MOU while a member of the initiative, and is not entitled to the return of any funds, goods or services contributed to the initiative.

Questions to be resolved:

- What length of notice is needed if a party wants to withdraw? (HEART requires 90 days, ARCH one year.)
- Will withdrawals be allowed mid-year? How would that work? (Neither HEART nor ARCH allows this.)

5. Governance

Topics Section 5.1, 5.2 & 5.3 should address: How many seats will be on the Board of Directors? How will the member jurisdictions (parties to the agreement) be represented on the Board? What officers will there be?

5.1. Board of Directors. The initiative shall be governed by a Board of Directors that gives the members representation and uses collaborative decision making. The Board shall be made up of one representative from each participating jurisdiction signing the MOU.

The governing body of each participating jurisdiction shall select its representative to the Board of Directors. The term of office on the Board shall be two years, with no limit to the number of terms a Board member may serve.

Questions to be resolved:

- Will only elected officials from member jurisdictions be allowed to serve on the Board of Directors? If a board member cannot attend a meeting, will alternates be allowed to vote in their place?

- What will be the Board members' terms of office? Will there be a limit to the number of terms one person may serve? (HEART has three-year terms with no limit on the number of terms; ARCH has no term length, since the Board members are the CEO of each party.)

5.2 Powers of the Board. The Board shall provide shared decision-making regarding the direction and policies of the initiative and the use of resources. The Board shall approve the initiative's annual work plan and budget, and oversee the work of the initiative's staff. The Board shall establish the responsibilities of the initiative's director, and shall have the power to hire, evaluate and, if it finds necessary, terminate the director.

The Board may adopt Bylaws and/or other rules and procedures it deems useful for the initiative's governance.

5.3. Officers. The Board of Directors shall have the following officers: Chair, Vice Chair, and Secretary. The Chair shall preside at meetings. The Chair shall be selected by majority vote of the Board. The Board shall appoint a Vice Chair from among its members, who shall preside at meetings in the Chair's absence. The Board shall appoint a Secretary who may or may not be members of the Board.

Questions to be resolved:

- What officers will there be?
- What are the officers' responsibilities?
- How will the officers be selected – vote of the Board?
- Will there be standing committees? (Examples: Executive Committee, Member Agency Committee [used by HEART since not all members are on the Board])

Topics Section 5.4 & 5.5 should address: Will there be an Advisory Committee? If so, how will it be constituted? How many members will it have? What is its role and relationship to the Board of Directors?

5.4 Advisory Board. An Advisory Board shall serve as a sounding board for the Board of Directors, and shall provide advice and recommendations to them. The Advisory Board shall have [# to #?] members representing different aspects of the affordable housing field, such as for-profit and non-profit developers, lenders, philanthropy, affordable housing advocates, and special district, state and federal officials. In addition, jurisdictions that are not members and do not have a seat on the Board of Directors may join the Advisory Board.

Advisory Board members shall be appointed by the initiative's Board of Directors. Each Advisory Board member shall have a two-year term, with service limited to two consecutive terms.

The Board of Directors shall adopt procedures for the convening and administration of the Advisory Board. An Advisory Board member may be removed from the Advisory Board by a majority vote of the Board of Directors.

5.5. Advisory Board Officers. The Advisory Board shall have a Chair selected by the Board of Directors. The Chair shall preside at meetings. The Advisory Board shall appoint a Secretary, who may or may not be a member of the Advisory Board.

Questions to be resolved:

- How many members or what range (e.g., seven to 20) will the Advisory Board have?
- Will it include representation outside the affordable housing field?
- What will be their terms of office?
- Will the Advisory Board Chair be selected by the Board of Directors or elected by the Advisory Board itself?
- Will the Chair have other duties besides presiding at Advisory Board meetings?
- Will the Advisory Board have a Secretary and/or other officers?
- How may an Advisory Board member be removed?

6. Personnel

Topics Section 6.1 should address: What kind of staff will manage the initiative?

6.1. Initiative Director. The initiative shall be managed by a full-time (1 FTE) director, who shall report to the Board of Directors. The director shall be responsible for providing day-to-day organizational leadership, proposing the initiative's annual work plan to the Board, implementing the work plan, and representing the initiative to the community. In addition, the director shall provide staff support on affordable housing issues for all member jurisdictions.

The director shall be selected by the initiative's Board of Directors. Qualifications for the position include: (1) extensive knowledge about affordable housing development programs, and issues; (2) experience with and knowledge about local government; (3) the ability to work collaboratively with city, county and tribal planning staff; (4) experience working with elected officials and community groups; and (5) program/project management experience.

Questions to be resolved:

- Will the initiative be managed by a paid staff person (director), or through a contract with an existing organization, or some other method?
- What are the director's responsibilities and authority?

6.2. Administrative support. One or more entities shall serve as a "host" organization to provide administrative support for the initiative. This role may include such functions as: administrative assistance, information technology, contracting, accounting and payroll services, human resources, and use of space and equipment. This administrative support may be provided as an in-kind contribution or on contract to be paid/reimbursed by the other initiative members.

Questions to be resolved:

- What entity will provide administrative support functions?
- What are the terms of the agreement with the entity that provides administrative support?

7. Meetings of the Board of Directors

Topics Section 7 should address: How often will the Board meet? Who will preside? What constitutes a quorum? What vote is needed to make a decision? How and by whom will the meetings be documented?

The Board of Directors shall meet at least monthly. The Chair of the Board shall preside. A quorum is defined as a majority of Directors. No action may be taken except where a quorum is present.

Each Director shall have one vote on any matter presented to the Board for a vote. All decisions and actions shall be by affirmative vote of a majority of the Directors representing a quorum at the meeting.

The Secretary shall create a meeting summary or minutes for each meeting and ensure that copies are forwarded to the other Board members.

Questions to be resolved:

- Will meetings be open to the public?
- What vote is needed to approve/disapprove an action? HEART requires a majority of the *total* number of Directors; ARCH requires a majority of the Directors *present* at the meeting (as long as a quorum is present).
- How and by whom will the meetings be documented?

8. Meetings of the Advisory Board

Topics Section 8 should address: How often will the Advisory Board meet? Who will preside? What constitutes a quorum? What vote is needed to make a decision? How and by whom will the meetings be documented?

The Advisory Board shall meet quarterly. The Chair of the Advisory Board shall preside. A quorum is defined as a majority of Advisory Board members. All decisions and actions shall be by affirmative vote of a majority of Board members present, assuming a quorum is reached.

The Advisory Board Secretary shall create a meeting summary or minutes for each meeting and ensure that copies are forwarded to the other Advisory Board members and to the initiative's Board of Directors.

Questions to be resolved:

- What constitutes a quorum?
- Will meetings be open to the public?
- What vote is needed to approve/disapprove an action?
- How and by whom will the meetings be documented?

9. Budget and Work Plan

Topics Section 9 should address: What will the initiative's fiscal year be? How will the annual work plan and budget be developed? What approvals are needed?

9.1. **Budget and work plan development.** The initiative's fiscal year shall be _____. The initiative's director shall develop the annual work plan and budget, which shall include an itemization of each member's contribution. The annual work plan shall include measurable objectives based on a sound needs analysis. The initiative's director shall work with the Board to ensure that the work plan meets the needs of the member jurisdictions.

9.2. **Review and approval.** The Board of Directors shall review and vote to approve the annual budget and work plan at a scheduled Board meeting.

9.3 **Progress reports.** The initiative's director shall conduct evaluation activities and report to the Board quarterly on the budget and on the initiative's progress toward achieving the desired objectives and outcomes.

Questions to be resolved:

- What shall the initiative's fiscal year be?
- Should the governing bodies of the member jurisdictions approve the budget, as ARCH does, since they shall be making a contribution to fund the work?

10. Funding and Contributions from Members

Topics Section 10 should address: How is the initiative funded? What is the required contribution from members? How is the amount determined? Can in-kind contributions substitute for cash? How will delinquencies be handled?

10.1. **Sources.** Funding to support the initiative shall come from multiple sources, including a contribution from each member and funds from grants, such as Community Development Block Grant (CDBG) funds, State funds, and private philanthropy.

10.2. **Member contributions.** Every member of the initiative is required to make an annual monetary contribution to support the initiative's operation. Each member's contribution shall be its pro-rata share of the revenue needed for the initiative's operating budget, as adopted by the Board of Directors. The pro-rata share of each member shall be based on its

population. Member contributions are to be paid quarterly by the first day of the quarter. Member contributions are to be in the form of money, unless the Board of Directors approves another form of contribution, such as services, personal property, use of real or personal property, or other in-kind contributions. The acceptance and valuation of any such non-monetary contributions shall be as determined by the Board of Directors.

Questions to be resolved:

- Should the program require annual contributions from members? If so, how are the amounts determined, and will this be payable on an annual or a quarterly basis?
- How will the initial contributions be determined?
- Can in-kind contributions substitute for cash contributions? (Sample language above on non-monetary contributions is from HEART)
- Will there be separate dues or assessments?

10.3 Delinquencies. If a member fails to pay its required contribution by the due date, the member shall not be entitled to vote on matters before the Board of Directors until the contribution has been paid.

Question to be resolved:

- How will payment delinquencies be handled? HEART says that failure to pay by the due date forfeits the right for the entity to have a director on the Board. ARCH says failure to pay for three months means the entity is not entitled to vote on the Board.

11. Term of Agreement

Topics Section 11 should address: How many signers are required for the agreement? What is the effective date and term of the agreement?

11.1. Effective date and term. This MOU shall be considered in effect once it is signed by at least [three?] jurisdictions. The signers agree to participate for at least two years.

Questions to be resolved:

- How many signers are required for the agreement? Or will some other measuring stick be used, such as the county plus a certain number of cities, or enough jurisdictions to provide \$____ for the initial operating budget?
- What is the effective date and term of the agreement?

11.2. Renewal. At the end of two years, the Board of Directors shall evaluate the initiative's progress. The Board of Directors shall make a recommendation to the governing bodies of the member jurisdictions as to whether the Memorandum of Understanding should be renewed and whether the initiative should continue.

Question to be resolved:

- How will the decision be made to renew the initiative/MOU?

11.3. Termination. The initiative can be terminated by an affirmative vote of a majority of the Board of Directors. If the initiative is terminated, its assets and liabilities

_____.

Questions to be resolved:

- What are the procedures for termination?
- If terminated, what will happen to the initiative's assets and liabilities?

12. Amendments

Any amendments to this MOU must be in writing, authorized by the governing bodies of all parties to the MOU, and evidenced by the authorized signatures of all parties.

Question to be resolved:

- How can the MOU be amended?

13. Liability of members

Each signer of this MOU shall be jointly and severally liable for any claims, damages or other causes of action arising from the activities of the initiative, its officers, employees and agents, except as expressly set forth in Section 6.2 of this MOU with regard to personnel directly provided to the initiative by an initiative member; provided that the initiative shall take all steps reasonably possible to minimize the potential liability of the signers, including but not limited to the purchase of liability, casualty, and errors and omissions insurance, and the use of sound risk management techniques. To the extent reasonably practicable, all signers shall be named as additional insureds on all insurance policies of the initiative.

14. Severability

The invalidity of any clause, sentence, paragraph, subdivision, section or portion thereof, shall not affect the validity of the remaining provisions of this MOU.

15. Counterparts

This MOU may be signed in counterparts, and if so signed, shall be deemed to be one integrated MOU.

Questions to be resolved:

- Sections 13 – 15 above come from sample agreements as examples of language on legal issues.
- Are there other legal issues that need to be addressed?

Name of Party

By: _____

Date: _____

Name of Party

By: _____

Date: _____

Name of Party

By: _____

Date: _____

Name of Party

By: _____

Date: _____