



February 27, 2014

Whatcom County Planning Commission
c/o Becky Boxx, Coordinator
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, Washington 98226

Dear Planning Commissioners:

Subject: Comments on File #PLN2012-00012: An amendment to Whatcom County Code Title 20 Zoning, Rural (R) zone lot clustering, removing from WCC 20.36.310(6) a provision that exempts parcels larger than 20 acres from certain lot clustering standards.

Sent via email to PDS_Planning_Commission@co.whatcom.wa.us;
gdavis@co.whatcom.wa.us

Thank you for the opportunity to comment on the proposal to repeal provisions that exempt parcels larger than 20 acres from the limits on the maximum number of lots in a cluster. We strongly support the staff recommend to repeal this provision.

Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State, together. We have more than 800 local supporters in Whatcom County.

The requirement that no more than 16 residential lots be grouped together and that these lots be separated by 500 feet is a minimal common sense limit on cluster subdivisions to protect Whatcom County's rural character. The lots in clusters are small, as small as 12,500 square feet in the R-5A and R-10A zones with public water.¹ While the overall density in the cluster subdivision is limited to the underlying density of one dwelling unit per five or ten acres, putting a large number of 12,500 square foot lots next to each other creates a mini-city neighborhood in the rural area. This adversely affects rural character and can create a wall of homes transforming a rural area into an area to looks like a part of a city. It can also create concentrations of impervious surfaces that can harm nearby water bodies and wetlands.²

¹ Whatcom County Code (WCC) 20.36.253.

² Chester L. Arnold, Jr. & C. James Gibbons, *Impervious Surface Coverage: The Emergence of a Key Environmental Indicator*, 62 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 243, p. 248 (1996) and enclosed with this letter with the filename "9373702.pdf." The Journal of the American Planning Association is a peer reviewed journal, see the Instructions for Authors webpage enclosed with this letter."

Whatcom County's clustering requirements are more liberal than those of other counties. For example, Snohomish County limits the number of lots in a cluster to 13 in rural cluster subdivisions although their spacing requirements between groups of lots are lower.³ However, Snohomish County's rural clustering regulations also include many standards that Whatcom County lacks, such as retaining 50 percent of the tree canopy where possible.⁴ Snohomish County also has perimeter buffers and open spaces standards that Whatcom County lacks.⁵ It would be unwise to lower the spacing requirement between groups of lots without including other measures to protect rural character as such tree retention requirements, buffers, and fewer lots in clusters.

I understand that there have been suggestions that density bonuses be added to the rural cluster subdivision provisions. Whatcom County already has a very large capacity for development in its rural area. Increasing that capacity through rural clustering density bonuses does not make sense unless there is a corresponding reduction in capacity elsewhere in the rural area. This is especially the case given that Whatcom County lacks the water available in the rural area to support more rural development.⁶

Thank you for considering our comments. If you need further information please contact me at 206-343-0681 Ext. 118 or tim@futurewise.org

Sincerely,



Tim Trohimovich, AICP
Director of Planning & Law

Enclosures

³ Snohomish County Code (SCC) 30.41C.070(1)(c); SCC 30.41C.075(3). Accessed on February 27, 2014 at: <http://www.codepublishing.com/wa/snohomishcounty/> and enclosed with this letter.

⁴ SCC 30.41C.050(4).

⁵ SCC 30.41C.075(2); SCC 30.41C.050.

⁶ Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Nooksack Watershed, WRIA 1* p. 1 (Publication Number: 11-11-006, August 2012) accessed on Feb. 27, 2014 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111006.html> and enclosed with this letter.

Chapter 30.41C RURAL CLUSTER SUBDIVISIONS AND SHORT SUBDIVISIONS

Sections:

- [30.41C.010](#) Purpose.
- [30.41C.020](#) Applicability.
- [30.41C.030](#) Approval procedure.
- [30.41C.040](#) Submittal requirements.
- [30.41C.050](#) Site planning principles.
- [30.41C.070](#) Site design and development standards - general.
- [30.41C.075](#) Site design and development standards - buffers and open space.
- [30.41C.080](#) Site design standards - roads, gates and pedestrian pathways.
- [30.41C.090](#) Restricted open space - general requirements.
- [30.41C.100](#) Restricted open space - natural resource lands.
- [30.41C.110](#) Ownership and preservation of restricted open space.
- [30.41C.120](#) Open space management plan.
- [30.41C.130](#) Rural cluster-bulk regulations.
- [30.41C.140](#) Bulk regulations and interim open space for rural clusters in the RUTA.
- [30.41C.150](#) Modifications.
- [30.41C.230](#) Design standards - lot yield.
- [30.41C.240](#) Design standards - bonus residential density.

30.41C.010 Purpose.

The purpose of this chapter is to provide regulations and standards for lot clustering in rural areas consistent with rural character. It does this by an alternative subdivision method for developing rural residential property, whereby landowners and developers are given incentives to cluster lots on the most buildable and least environmentally sensitive portions of sites, while retaining a substantial portion of each site, including most resource lands and environmentally sensitive areas, in restricted open space tracts. In order to take advantage of these incentives, landowners and developers are required to meet specific requirements called forth in this chapter, in the County's rural land use policies, and in requirements that may be elsewhere referenced in the SCC.

Specifically, this chapter is designed:

- (1) To preserve areas of land which are suitable for agriculture, forestry, open space or, when applied in the rural urban transition area, possible future development;
- (2) To preserve rural open space with the purpose of assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, and preservation of wetlands and rural

character;

(3) To produce a development pattern in rural areas consistent with rural character in accordance with rural land use policies and manifesting variety in design rather than uniformity of appearance in siting of clusters, placement of buildings, use of open space, more efficient use of the most buildable portion of sites, and retention of the environmentally sensitive and scenic portions of sites as permanent open space;

(4) To permit flexibility that will encourage a more creative approach in the development of land in rural areas and will result in a more efficient, aesthetic, and environmentally sound use of land, while harmonizing with adjoining development and preserving the county's attractive rural character;

(5) To encourage the development of cluster housing which provides greater compatibility with surrounding development and land uses in rural areas by providing larger buffer areas;

(6) To encourage the retention of more permanently undisturbed open space with its natural vegetative cover which protects continued groundwater recharge and reduces potential water pollution, flooding, erosion and other drainage-related problems often associated with rural development;

(7) To minimize adverse impacts on the county's productive agricultural, forestry, mineral and other important resource lands;

(8) To minimize adverse impacts on the county's environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, geologically hazardous areas, and other critical areas;

(9) To minimize the risk of danger to human life and property by restricting rural development on geologically unstable lands and in flood prone areas;

(10) To minimize the cost of installing essential public and private capital facilities necessary for a rural infrastructure;

(11) To support the provision of more affordable housing in rural areas;

(12) To provide reasonable opportunity for rural property owners to derive economic use of land characterized by features which substantially limit its development potential;

(13) To protect rural natural features and landscape by minimizing tree, vegetation, and soil removal; and

(14) To provide a subdivision or short subdivision alternative for use in the rural/urban transition areas that will maintain and enhance rural character while preserving large tracts for future development upon inclusion into a UGA.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 06-061,

Aug. 1, 2007, Eff date Oct. 1, 2007; Amended by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.020 Applicability.

(1) An application for a rural cluster subdivision or short subdivision shall be combined with the application for a subdivision or short subdivision, and shall be processed as a single application.

(2) Clustering is permitted in the following zones:

- (a) Forestry (F);
- (b) Forestry and Recreation (F & R);
- (c) Rural Resource Transition - 10 acre (RRT-10);
- (d) Rural Five-Acre (R-5);
- (e) Rural Conservation (RC);
- (f) Rural Diversification (RD); and
- (g) Mineral Conservation (MC).

(3) The provisions of this chapter shall not be used in the zones listed in SCC [30.41C.020](#)(2) if the properties are designated on the Future Land Use Map (FLUM) as follows:

- (a) Commercial Forest (CF);
- (b) Commercial Forest-Forest Transition Area (CF-FTA);
- (c) Upland Commercial Farmland (UCF);
- (d) Local Commercial Farmland (LCF); or
- (e) Riverway Commercial Farmland (RCF)
- (f) Rural Residential-Rural Diversification (RR-RD) outside a RUTA overlay; or
- (g) Located within an urban growth area.

(4) Where the mineral resource overlay (MRO) covers a portion of a parcel zoned R-5, the provisions of this chapter may be used on that portion of the parcel located outside the MRO, if the provisions of SCC 30.32C.150 are met.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-083,

December 21, 2005; Eff date Feb. 1, 2006; Amended Ord. 05-089, December 21, 2005, Eff date Feb. 1, 2006; Sept. 5, 2007, Eff date Sept. 21, 2007; Amended by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.030 Approval procedure.

- (1) Rural cluster subdivisions or short subdivisions are subject to the same procedures, requirements, and approval criteria as any standard subdivision or short subdivision as set forth in chapters 30.41A and 30.41B SCC, except when the procedures, requirements, and approval criteria are specifically modified or added to by the provisions of chapter [30.41C](#) SCC.
- (2) Rural cluster subdivisions and short subdivisions are subject to the landscaping provisions of chapter 30.25 SCC.
- (3) Rural cluster subdivisions and short subdivisions shall meet applicable rural concurrency standards and traffic impact mitigation requirements in accordance with chapter 30.66B SCC.
- (4) Rural cluster subdivisions and short subdivisions shall be located in a rural fire district and are required to provide adequate fire flow in accordance with SCC 30.53A.514 through SCC 30.53A.520 or to provide other means of fire protection as approved by the Snohomish County Fire Marshal, unless exempt pursuant to SCC 30.53A.514.
- (5) At the time of application, the site shall not be subject to any pending county enforcement action or in violation of federal, state, or county regulations.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.040 Submittal requirements.

In addition to the documents required by the department's submittal checklist for a preliminary subdivision or short subdivision, an application for a rural cluster must include the following:

- (1) A narrative description of how the proposal is consistent with SCC [30.41C.010](#) and [30.41C.050](#). The narrative document shall also describe how the proposal makes appropriate provisions for the public health, safety, and general welfare; for open spaces, drainage ways, streets, other public ways and safe walking conditions; potable water supplies; sanitary wastes; recreation; fire protection; and other public facilities, if any.
- (2) A site plan showing the existing character of the site, including:
 - (a) Natural features that distinguish the site or are characteristic of the area;
 - (b) The location of existing vegetation and open space;

(c) Existing structures and landscapes, including buildings, rock walls, fences, storage tanks, and areas of cultivation and plantings typical of rural settlement, such as windbreaks, hedgerows, orchards and agricultural fields;

(d) Uses on adjacent properties, including location of houses; and

(e) The location and the approximate size of designated natural resource lands on the project site and on properties adjacent to it.

(3) A site plan depicting how existing character-defining features identified pursuant to SCC [30.41C.040](#)(2)(a) through (c) will be maintained or enhanced by the proposed development, including:

(a) Undisturbed restricted open space tracts under SCC [30.41C.090](#)(2)(d);

(b) Areas where structures and landscapes identified pursuant to SCC [30.41C.040](#)(2)(c) will be retained;

(c) Location of all proposed open space tracts and their intended use; and

(d) A landscape plan showing areas where existing vegetation will be retained and demonstrating compliance with SCC 30.25.033.

(e) A sketch site plan for pre-submittal review of open space tract placement, retention of existing structures and landscape features is strongly encouraged to expedite design review of the subdivision site plan required in accordance with chapters 30.41A and 30.41B,

(4) The approximate location of the building footprint on each lot.

(5) An open space management plan in accordance with SCC [30.41C.120](#).

(6) A description and proposed schedule for phasing of the project, if any.

(7) A sketch and general description of any proposed entrance sign or gate, including approximate dimensions and materials.

(8) A street lighting plan, if street lights are proposed.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.050 Site planning principles.

All rural cluster subdivisions and short subdivisions must comply with the following site planning principles to the greatest extent feasible:

(1) The post-development view of the site from the roads should be as similar to the pre-development view as is practical.

- (2) Avoid placing lots on ridgelines and other prominent topographic features to blend new development into the existing rural landscape.
- (3) Landscaping, using both retention of existing vegetation and new plantings, shall soften and minimize the view of new development and preserve scenic views.
- (4) Retain 50 percent of the overall tree canopy on the predevelopment site whenever feasible.
- (5) Incorporate existing landscape features and structures into the site design to maintain rural character and the familiar landscape.
- (6) Configure the clusters and lots to maintain the natural features of the site and minimize topographic alteration and clearing of existing vegetation.
- (7) Avoid uniformity of cluster siting and building sites to provide visual diversity and maintain the dominance of natural features and open space in the rural area.
- (8) Provide connectivity between open space tracts and natural habitat and wildlife corridors with adjacent properties whenever practical.
- (9) Use low impact development site planning principles identified in chapter 30.63A SCC and low impact development best management practices identified in SCC 30.63C.030 to meet the requirements of chapter 30.63A SCC when they are appropriate to the site conditions.
- (10) Phase land disturbing activity site plans in accordance with any construction phasing.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 10-023, June 9, 2010, Eff date Sept. 30, 2010; Amended by Ord. 10-024, June 9, 2010, Eff date Sept. 30, 2010)

30.41C.070 Site design and development standards - general.

The following standards shall apply to all rural cluster subdivisions and short subdivisions:

- (1) Site design shall be subject to the following standards for clustering and protection of natural resource lands and critical areas:
 - (a) A subdivision may contain more than one cluster of housing lots;
 - (b) The minimum number of residential lots in a cluster shall be 2, except a residential lot may stand alone when an existing residence is maintained;
 - (c) The maximum number of residential lots in a cluster shall be 13;

(d) In addition to the minimum front yard setback defined in Table SCC [30.41C.130](#), the building areas on the plat shall represent residential dwellings and accessory buildings located at varying front yard setback distances to provide a visually diversified streetscape. The minimum variation between setbacks for buildings on adjacent lots shall be 10 feet;

(e) Individual clusters shall be located a minimum of 100 feet from adjacent natural resource lands designated in accordance with chapters 30.32A, 30.32B and 30.32C SCC; and

(f) Designate and protect critical areas and their buffers pursuant to chapter 30.62A SCC.

(2) Tree retention is encouraged on building sites with the approved fire mitigation review in accordance with SCC 30.53A.514.

(3) Services and optional development features shall conform to the following standards:

(a) Electric, telephone, and other utility lines and support infrastructure shall be located underground;

(b) Rural cluster subdivisions or short subdivisions are prohibited from connecting to public sanitary sewers, except when required by the Snohomish County Health District or a state agency to protect public health;

(c) When a proposal includes street lights, lighting should be low intensity and shall be projected downward, with full cut-off illumination that shields light from being emitted upwards toward the night sky or surrounding natural areas;

(d) Entrance signs shall incorporate materials typical of the rural character of the area and shall comply with all applicable provisions of SCC 30.27.060; and

(e) Rural cluster subdivisions shall draw water supply from a public water utility when one is available within 1/4 mile of the project site as measured along the existing right-of-way and the water utility is willing and able to provide service to the subdivision at the time of preliminary subdivision approval.

(4) Rural cluster subdivisions shall, when site conditions allow, use the low impact development best management practices (BMPS) allowed pursuant to SCC 30.63C.030 to meet the requirements of chapter 30.63A SCC. Only when site conditions prevent exclusive use of LID BMPs may the applicant use conventional stormwater management techniques.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Ord. 10-024, June 9, 2010, Eff date Sept. 30, 2010)

30.41C.075 Site design and development standards - buffers and open space.

The following standards shall apply to all rural cluster subdivisions and short subdivisions:

(1) Setback buffers to separate existing or perimeter road rights-of-way that border the development project from the nearest cluster residential lot lines in the development shall be established in open space tracts that are a minimum of 100 feet in width. When the existing site character is meadow or pasture, the setback buffer tract(s) shall be a minimum of 200 feet in width. Setback buffer tracts may be reduced to a minimum of 60 feet in width when a sight-obscuring topographic variation or physical condition, such as forest, will serve as a visual buffer. Setbacks for a meadow or pasture site may be reduced to a minimum of 120 feet in width if natural characteristics such as topography or geologic outcrops, or if existing buildings retained on site, obscure the view of new rural cluster development.

(a) Maintenance of existing vegetation or additional landscaping in setback buffer tracts shall be required in accordance with SCC 30.25.033.

(b) An exception to the vegetation retention requirements in SCC 30.25.033(5) may be made for utility easements and designated road rights-of-way or walkways, if no other options are available.

(2) Perimeter buffers shall be established in open space tracts on all boundaries of the project site abutting residential property. Perimeter buffers shall be a minimum of 50 feet in width unless larger buffers are required under SCC [30.41C.075](#)(1). Maintenance of existing vegetation or additional landscaping in perimeter buffers shall be required in accordance with SCC 30.25.033.

(3) Open space tracts to separate clusters shall be a minimum of 200 feet in width, and may be reduced to a minimum of 120 feet when a sight-obscuring topographic variation or physical condition, such as forest, will serve as a visual buffer between the clusters.

(a) Landscaping in buffers between clusters shall be required in accordance with SCC 30.25.033.

(b) Open space tracts retained for forestry resource uses shall be separated from residential lots by a buffer 100 feet in width.

(4) Open space shall include a minimum of 45 percent of the gross site area except in forestry and recreation zones and designated natural resource lands, where 60 percent is required, and in the rural urban transition area, where 65 percent is required.

(a) Open space required for separation from roadways and adjacent properties and for separation of clusters may be counted toward the open space calculation in lot yield.

(b) Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to designated open space tracts on adjacent properties.

(c) Open space shall be configured so that it is adjacent to or directly across the street from as many of the clustered lots as practical.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.080 Site design standards - roads, gates and pedestrian pathways.

The following standards shall apply to the design of roads in a rural cluster subdivision or short subdivision.

- (1) All roads, whether public or private, shall be designed and constructed in accordance with county engineering design and development standards (EDDS).
- (2) Access to the internal roads of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210.
- (3) Access to the existing public roadway system shall be limited to no more than 2 points per cluster unless specifically approved or required by the county engineer.
- (4) Internal roads shall be provided in accordance with the EDDS and with chapter 30.24 SCC.
- (5) Connect clusters with pedestrian trails or pathways when feasible.
- (6) Pedestrian facilities shall be physically separate from vehicular roadways. Use of pervious materials for pedestrian facilities is encouraged where conditions allow.
- (7) If entrance gates are used, they shall be constructed to accommodate emergency vehicle access in accordance with SCC 30.53A.512. Gate locations and width shall be approved by the fire marshal and the county engineer. Gates serving 2 or fewer dwelling units may be exempt from these requirements if approved by the local fire district.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 10-072, Sept. 8, 2010, Eff date Oct. 3, 2010)

30.41C.090 Restricted open space - general requirements.

- (1) All open space within the rural cluster subdivision used to meet the open space requirements for lot yield calculations shall be restricted open space. Such restricted open space shall be designated, held in tracts separate from residential lots, and marked on the face of the plat.
- (2) To qualify as restricted open space, an area must meet the following standards:
 - (a) It must be used for buffering, critical area protection, resource production, conservation, recreation, community utility purposes, or general preservation;
 - (b) At least 25 percent of the open space tract shall be accessible by all residents of the rural cluster subdivision or short subdivision for passive recreation, except when the restricted open space is fenced off as a critical area protection area. Access points to open space shall be shown

on the face of the plat;

(c) The following uses are permitted in restricted open space tracts unless prohibited by chapter 30.62A, 30.62B or 30.62C SCC:

(i) Beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, equestrian trails, equestrian centers or structures related to animal husbandry or farming, playgrounds, or any nonmotorized passive recreational facilities and other similar uses as authorized by the director;

(ii) Community wells, well houses, water lines, water system appurtenances and community drain fields;

(iii) The following drainage facilities that meet the landscaping requirements in SCC 30.25.023:

(A) Unfenced detention, retention and wetponds;

(B) Stormwater treatment wetlands; and

(C) Stormwater infiltration trenches and bioswales that serve more than one dwelling.

(iv) Natural resource uses in accordance with chapters 30.32A, 30.32B and 30.32C SCC; and

(d) At least 30 percent of the total area of restricted open space shall be left undisturbed. Undisturbed open space may contain critical areas and their buffers. Such undisturbed restricted open space shall be identified on the site plan and marked clearly on the land disturbing activity site plan.

(3) SCC Table 30.41C.090 establishes the minimum percentage of the original gross development area that shall be retained as restricted open space tracts, except when the land is also designated as rural urban transition area (RUTA), which is governed by SCC [30.41C.140](#).

Table 30.41C.090

RESTRICTED OPEN SPACE AREA REQUIREMENTS

Zones and comprehensive plan designation	(1) Forestry (F) zone (2) Forestry & Recreational (F&R) zone (3) Mineral	(1) Rural 5-acre zone in RR-5 & RR-10(RT) without MRO (2) Rural Resource	(1) Rural 5-acre zone in RR (RR Basic) designation without MRO
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	Conservation zone (MC) with or without MRO	Transition 10-acre zone, Rural Conservation (RC) zone & Rural Diversification zones in RR-10(RT) designation with MRO	
Minimum restricted open space	60 percent	45 percent	45 percent
Minimum restricted open space (natural resource lands)	60 percent	60 percent	60 percent
Notes: The Mineral Resource Lands Overlay (MRO) is a comprehensive plan designation overlay which overlaps other designations. Where the MRO overlaps the R-5 zone, residential subdivision is prohibited on any portion of a parcel located within the MRO under SCC 30.32C.150.			

(4) No more than 65 percent of the total restricted open space area may consist of unbuildable land as defined in SCC 30.91U.060.

(5) To retain rural character, the restricted open space shall contain on-site forested areas, active agriculture, meadows, pastures or prominent hillsides or ridges.

(6) The following notice shall be filed on the title of the properties within the plat and shall be placed on the face of the final plat and short plat:

"Tract ___ is a restricted open space tract with limited uses pursuant to chapter [30.41C](#) SCC. The open space tract is intended to be preserved in perpetuity."

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 13-042, July 10, 2013, Eff date July 22, 2013)

30.41C.100 Restricted open space - natural resource lands.

If the open space required in SCC [30.41C.090](#) contains natural resource lands as defined in SCC 30.91N.030, the following shall be required:

(1) A minimum 100-foot open space buffer shall be provided between the boundary of the designated natural resource land and the property lines of any residential lots or any structure within an open space;

and

(2) A disclosure statement regarding the use rights associated with natural resource lands, as required by SCC 30.32A.210, SCC 30.32B.210 or SCC 30.32C.200, shall be recorded on the final plat or final short plat. The disclosure statement shall contain text stating the protections and potential hazards of proximity to agricultural, forestry, or mineral uses as required in SCC 30.32A.220, SCC 30.32B.220 or SCC 30.32C.210.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.110 Ownership and preservation of restricted open space.

The following provisions shall apply to the ownership and preservation of restricted open space as required in SCC [30.41C.090](#):

- (1) Open space requirements must be met with restricted open space tract(s) held in separate ownership from residential lots and marked on the face of the plat with limited uses referenced.
- (2) Restricted open space tracts shall be owned by a single property owner, a homeowners association, a public agency or a not for profit organization.
- (3) When ownership of restricted open space is by a single property owner, the property owner shall:
 - (a) Record a restricted covenant against the open space tract that runs with the land and restricts the use of the open space tract to those uses allowed in SCC [30.41C.090](#)(2); and
 - (b) Provide an open space management plan pursuant to SCC [30.41C.120](#).
- (4) Common ownership shall be by the property owners of the subdivision as a whole, in the form of a homeowners association.
 - (a) The applicant shall provide the county with a description of the association, proof of incorporation of the association, a copy of its bylaws, a copy of the conditions, covenants and restrictions regulating the use of the property and setting forth methods for maintaining the open space.
 - (b) Membership in the homeowners association, and dues or other assessment for maintenance purposes, shall be a requirement of lot ownership within the development.
- (5) All lands classified as natural resource lands, including lands designated mineral resource overlay, that are included in restricted open space areas shall be:
 - (a) Placed under a unified system of property management for the purpose of maximizing their continued or future management for beneficial resource production/conservation purposes; and

(b) If the land is designated mineral resource overlay it shall be subject to the requirements of SCC 30.32C.150.

(6) Forest practices within restricted open space shall be permitted, provided that:

(a) The activity is consistent with an applicable approved forest practice permit; and

(b) The activity is included in the open space management plan.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.120 Open space management plan.

The applicant shall provide a plan for the long term management of designated open space, including maintenance and management of any water supply, stormwater management, wastewater disposal, or any other common facilities which may be located within areas of designated open space.

(1) An open space management plan shall include the following information:

(a) Current ownership information and a plan or provisions to update the project file number when ownership contact information changes;

(b) Parties responsible for maintenance of designated open space, and their contact information;

(c) Description of any uses allowed in designated open space, consistent with SCC [30.41C.090](#)(2);

(d) Any proposed development activities;

(e) Fire breaks provided in accordance with fire district requirements;

(f) Any covenants, conditions and restrictions to be recorded related to open space management; and

(g) Other information that the director determines necessary to ensure proper management of the open space.

(2) The open space management plan must be approved by the director and shall be recorded as a separate document from the subdivision or short subdivision. The recording number shall be referenced on all property deeds arising from the rural cluster subdivision or short subdivision and copies of the management plan shall be provided to property owners with ownership documents.

(3) In approving the open space management plan, the director shall make a written finding that the parties designated as responsible for maintenance of designated open space are capable of performing this function, that provisions are included in the plan for succession to other qualified and

capable parties should that become necessary, and that the county is indemnified should the responsible parties not fulfill their management obligations.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.130 Rural cluster-bulk regulations.

(1) SCC Table 30.41C.130 establishes the bulk regulations for rural cluster subdivisions or short subdivisions located outside of the RUTA and replaces SCC Table 30.23.030 for rural cluster subdivisions. Bulk regulations for rural clusters located inside the RUTA are governed by SCC [30.41C.140](#).

Table 30.41C.130

BULK REGULATION REQUIREMENTS

Zones and comprehensive plan designations	(1) Forestry zone (F) with or without MRO (2) Forestry & Recreation zone (F&R) with or without MRO (3) Mineral Conservation zone (MC) (4) Rural 5-Acre zone in RR-5 & RR-10(RT) designation without MRO designation	(5) Rural Resource Transition (RRT) 10-acre zone, Rural Conservation zone (RC) & Rural Diversification zone in RR-10(RT) designation with MRO
Maximum lot coverage	35 percent	
Minimum lot width at building site	125 feet	
Minimum lot size	20,000 square feet	
Minimum front yard setback ¹	20 feet, plus at least a 10 foot variation in setbacks on lots adjacent to one another	
Minimum rear yard setback	5 feet	
Minimum side yard	25 feet	

setback	20 feet
Minimum setback for residential lots from designated adjacent agriculture, forest and mineral lands	100 feet

¹ Pursuant SCC [30.41C.070\(1\)\(d\)](#), the variations in front yard setbacks shall be at least 10 feet on lots adjacent to each other. Variety in lot size and configuration is also encouraged to avoid creating uniformity, which is characteristic of urban development.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 12-049, Oct. 3, 2012, Eff date Jan. 1, 2013).

30.41C.140 Bulk regulations and interim open space for rural clusters in the RUTA.

Rural cluster subdivisions and short subdivisions located inside of a Rural/Urban Transition Area (RUTA) as designated on the future land use map (FLUM) shall be subject to the open space and bulk regulation requirements set forth in this section.

(1) The open space required in this section shall be designed as interim open space to be reserved for future use as urban development.

(2) SCC Table 30.41C.140 establishes the interim open space requirements and bulk regulations for rural cluster subdivisions or short subdivisions inside a RUTA:

SCC Table 30.41C.140

RUTA BULK REGULATIONS AND INTERIM OPEN SPACE REQUIREMENTS

	Applies to all zoning classifications and parcels underlying a RUTA as designated on Snohomish County GMA Comprehensive Plan Future Land Use Map (FLUM)
Minimum interim open space	65 percent
Maximum lot coverage	35 percent
Minimum lot frontage on a public or private street	80 feet
Minimum lot size	See SCC 30.23.220

Maximum lot size	20,000 square feet
Minimum front yard setback ¹	20 feet
Minimum rear yard setback	5 feet
Minimum side yard setback ¹	10 feet
Minimum setback for single family residential/duplex lots from adjacent agriculture, forest and mineral lands	100 feet

¹ In accordance with 30.91L.170, corner lots have two front yard setbacks.

(3) To maintain rural character of the site and facilitate future re-division of the interim open space, the following provisions apply:

(a) The percentage of interim open space shall be based on the gross area of the original parcel(s) existing at the time the property is subdivided; and

(b) The interim open space tract shall be configured to such shape and dimensions as to allow for future land division based on the following design criteria:

(i) The interim open space tract shall not be fragmented by private road easements;

(ii) The location of the interim open space tract in the subdivision or short subdivision shall accommodate future public roadway access upon re-division and facilitate the clustering of the rural cluster subdivision or short subdivision lots near the periphery of the subdivision or short subdivision boundary rather than a central location; and

(iii) The proposed interim open space on a preliminary plat/short plat drawing shall show a non-binding conceptual shadow plat of 4 dwelling units per acre to reflect the potential for the interim open space to be subdivided in the future, but such shadow plat shall not be depicted on the final plat or short plat.

(4) When more than 40 percent of the gross area of the site is constrained by critical areas, the minimum interim open space requirements may be reduced by up to 40 percent.

(5) The interim open space tract may be used for any use otherwise permitted in restricted open space as specified in SCC [30.41C.090](#)(2), except that no new permanent structures shall be allowed.

(6) The interim open space tract shall be established and maintained in accordance with SCC [30.41C.110](#) and [30.41C.120](#).

(7) The interim open space tract shall not be eligible for further division until it is removed from the RUTA as designated on the FLUM and becomes part of an urban growth area and can be served with adequate utilities. A note on the final plat or short plat shall be included indicating such restriction.

(8) The following notice shall be filed on the title of the properties within the plat and shall be placed on the face of the final plat and short plat:

"Tract ___ is an open space tract reserved for future development when the Urban Growth Area is expanded to include the open space parcel. Future development of this tract may include residential, commercial and industrial uses commonly found in an urban area. The open space tract is not intended to be preserved in perpetuity."

(9) Applicants for rural cluster subdivisions or short subdivision proposed in a RUTA as designated on the FLUM shall notify the adjacent city of plans for proposed infrastructure improvements. When a master annexation inter-local agreement has been adopted by the county council, infrastructure improvements for the rural cluster subdivision or short subdivision shall be subject to approval from the city.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009)

30.41C.150 Modifications.

Rural sites may exhibit diverse characteristics reflecting unique rural character and, in the event that the applicant promotes innovative and creative design in the rural area while meeting the intent of preserving rural character, modifications to some standards required in this chapter may be approved.

(1) An applicant may request a modification to the following standards:

(a) The location of open space, except when adjacent to resource lands;

(b) The amount of existing vegetation that must be preserved pursuant to SCC 30.25.033(5);

(c) Landscaping requirements described in SCC 30.25.033 with modifications pursuant to SCC 30.25.040; and

(d) Width of the open space tract between property lines and roads pursuant to SCC [30.41C.070](#)(2).

(2) A request for modification:

(a) Shall be submitted to the department and processed concurrently with the application for a rural cluster short subdivision or rural cluster subdivision; and

(b) Shall include a narrative description and any documents necessary to demonstrate that the modification meets the approval criteria in SCC [30.41C.030](#)(2) and the performance standards in SCC [30.41C.050](#).

(3) The department, in the case of a rural cluster short subdivision, or the hearing examiner in the case of a rural cluster subdivision, may approve a request for modification when:

(a) The modification furthers the purpose of protecting rural character in accordance with SCC [30.41C.010](#) and [30.41C.050](#);

(b) The modification does not conflict with other applicable provisions of the Snohomish County Code;

(c) The modification fulfills the intended purpose of this chapter and represents an equal or better result than would be achieved by strictly following the requirements of the code; and

(d) The modification provides one or more of the following:

(i) Reduction of visual impact of primary and accessory structures on nearby properties;

(ii) Enhanced use of low impact development methods for the retention and treatment of storm water on site;

(iii) Improvement to on-site water quality control beyond the requirements prescribed in the Snohomish County Code; or

(iv) Increased retention of original natural habitat conditions by 20 percent or more than is required by chapter 30.62A, 30.62B or 30.62C SCC.

(Added by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 13-042, July 10, 2013, Eff date July 22, 2013)

30.41C.230 Design standards - lot yield.

(1) Basic lot yield shall be obtained by dividing the gross site area by the larger of 200,000 square feet or the minimum required lot area of the zone in which the rural cluster subdivision or short subdivision is to be located (with both numbers expressed in the same units).

(2) The maximum lot yield shall be obtained by multiplying the basic lot yield by one plus the density bonus, expressed as a fraction, as specified in SCC [30.41C.240](#).

(3) In determining the lot yield, a designated duplex lot shall be considered as two lots.

(4) Whenever the resulting yield results in a fractional equivalent of 0.5 or more, the yield shall be rounded up to the next whole number; fractions of less than 0.5 shall be rounded down.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-083, December 21, 2005, Eff date Feb. 1, 2006; Amended by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 09-046, August 12, 2009, Eff date September 10, 2009)

30.41C.240 Design standards - bonus residential density.

(1) For all lands, except those specified in subsections 2 and 3 of this section, a rural cluster subdivision or short subdivision shall be awarded a residential density bonus of 15 percent of the maximum density allowed by the underlying zone if the amount of restricted open space equals the amount required in SCC [30.41C.075](#) and [30.41C.090](#). If additional restricted open space is proposed beyond the minimum amount required, a rural cluster subdivision or short subdivision shall be awarded an additional one percent density bonus for every additional one percent of restricted open space designated up to a maximum total density bonus of 35 percent.

(2) A rural cluster subdivision or short subdivision on lands designated local forest or subject to the mineral resource overlay shall be awarded a residential density bonus of 5 percent if the amount of restricted open space meets or exceeds the amount required in SCC [30.41C.075](#) and [30.41C.090](#). If additional restricted open space is proposed beyond the minimum amount required, a rural cluster subdivision or short subdivision shall be awarded an additional one percent density bonus for every additional one percent of restricted open space designated up to a maximum total density bonus of 10 percent.

(3) On lands designated RR-RD within a RUTA overlay, no density bonus is allowed.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-083, December 21, 2005, Eff date Feb. 1, 2006; Amended by Amended Ord. 08-087, Feb. 4, 2009, Eff date Apr. 5, 2009; Amended by Amended Ord. 09-046, August 12, 2009, Eff date September 10, 2009)

Nooksack Watershed, WRIA 1

This focus sheet provides information on the availability of water for new uses in the Nooksack Watershed. This information provides a starting point for potential water users in determining the best strategies for securing water for a future project or proposal in this area.

The Nooksack watershed, also known as Water Resource Inventory Area (WRIA 1), comprises the western portion of Whatcom County, as well as small portions of Skagit County and British Columbia, Canada. It is bounded by Bellingham Bay and the Strait of Georgia on the west and its east side includes portions of the Cascade Mountain range, including Mt. Baker. This watershed has a mix of urban, agricultural, rural land uses.

This watershed consists of the Nooksack River, which originates in the Cascade Mountains, and its numerous tributaries. It also includes the Sumas River (tributary to the Fraser River), and coastal drainages including the Lummi River, and Dakota, California, Terrell, Squalicum, Whatcom, Padden, and Chuckanut Creeks.

The Nooksack River is a source of drinking water for the city of Bellingham, and several other cities in Whatcom County.

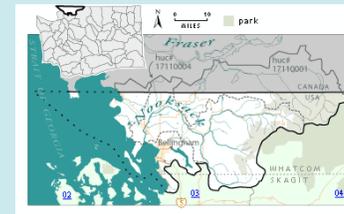
Average precipitation varies between 35 and 70 inches per year in the western portion of the watershed, and increases to maximum average of 140 inches at Mt. Baker. Most of this precipitation arrives during the winter months when water demands are the lowest. Only a fraction of the water becomes available for human and economic uses. During the summer, there is little rain and many streams and rivers are dependent on groundwater inflow. This means that groundwater and surface water are least available when water demands are the highest.

Most water in the Nooksack watershed is already legally spoken for. Increasing demands for water from ongoing population growth, diminishing surface water supplies, declining groundwater levels in some areas during peak use periods, and the impacts of climate change limit Ecology's ability to issue new water rights in this watershed.

Factors affecting water availability

Instream Resources Protection Program rule

An Instream Resources Protection Program rule for the Nooksack watershed ([WAC 173-501](#)) was adopted in 1985. The purpose of the rule is to protect senior water rights, to maintain a healthy ecosystem, and to meet future water



Definitions

Instream flow: A stream flow protected in a rule. These rules specify the amount of water needed in a particular place for a defined time, and typically follow seasonal variations. They are the flow levels needed in the river to protect and preserve instream resources and uses.

Mitigation plan: A scientifically-sound plan intended to avoid impairment to existing water rights or capturing water from a closed source.

Non-consumptive use: A use of water that does not diminish the quantity or quality of water in the water source.

Permit-exempt well: The state Groundwater Code allows for certain uses of small quantities of groundwater without obtaining a permit from Ecology. (RCW 90.44.050)

Seawater intrusion: The movement of salt water into freshwater aquifers.

resource management objectives. Such rules are required by state law (RCW 90.54). The rule establishes minimum instream flows for rivers and creeks in the watershed and requires all lakes and ponds to be retained in their natural condition.

Water rights issued after the date of the rule for surface water or groundwater connected to surface water are subject to these established instream flows. In many instances, this means that Ecology is unable to issue new water rights in the watershed because the new right will either impair a senior water right holder or the established minimum instream flow

Future water diversions or withdrawals that are shown to negatively affect the minimum instream flows or the natural state of the lake or pond cannot be approved without a mitigation plan. As such, it is likely that new water right applicants will need a mitigation plan to secure a new water right.

Watershed Planning under RCW 90.82 (Watershed Planning Act)

In 1998, local and state governments, Indian tribes, and stakeholders representing a variety of local interests began to develop a watershed plan for WRIA 1 under RCW 90.82. The plan was adopted in 2005, after which efforts began to implement it. One fundamental element of the plan is the Instream Flow Action Plan. The Action Plan describes a process to review and quantify instream flow needs in the Nooksack watershed using accepted scientific methods developed since the adoption of the existing instream flow rule. Ecology intends to use this information to determine the availability of water for new consumptive uses.

Coastal areas

Any groundwater withdrawals located in the coastal areas are evaluated for the risk of sea water intrusion into existing fresh groundwater supplies. Applicants for groundwater permits in coastal areas may need to develop an adequate mitigation plan to address this risk.

Closures

The following surface water sources -- and any groundwater connected to them -- are closed year-round by the current rule to further appropriations (unless mitigated). The closures are based on recommendations by the Department of Fish and Wildlife.

Barrett Lake	Fourmile Creek	Saar Creek
Bells Creek	Green Lake	Saxon Creek
Bertrand Creek	Johnson Creek	Squalicum Creek
California Creek	Kamm Ditch/Stickney Slough	Sumas River
Chuckanut Creek	Kendall Creek	Tenmile Creek
Colony Creek	Lake Terrell	Whatcom Creek
Dakota Creek	Lake Whatcom	Wiser Lake
Deer Creek	Oyster Creek	
Fishtrap Creek	Padden Creek	

In addition to year-round closures, certain surface water bodies—and the groundwater connected to them—are closed to new withdrawals during specific times of the year:

Water body	Closure dates
Anderson Creek	May 1 to Oct. 31
Canyon Creek	July 1 to Oct. 31
Cornell Creek	July 1 to Oct. 31
Gallop Creek	July 1 to Oct. 31
Hutchinson Creek	July 1 to Oct. 31
Maple Creek	July 1 to Oct. 31
North Fork Nooksack River	Sept. 1 to Oct. 31
Porter Creek	July 1 to Oct. 31
Racehorse Creek	July 1 to Oct. 31
Silver Creek	May 1 to Oct. 31
Skookum Creek	July 1 to Oct. 31
Smith Creek	May 1 to Oct. 31
South Fork Nooksack River	July 1 to Oct. 31
Terrell Creek	May 1 to Oct. 31
Thompson Creek	July 1 to Oct. 31
Wiser Lake Creek	May 1 to Oct. 31

Though not closed, the Mainstem and the Middle Fork Nooksack River are subject to year-round minimum instream flows. Based on USGS streamflow data, these minimum instream flows are not met an average of 100 days per year, often during the periods when new water rights are desired (late spring through early fall).

Federal Reserved Water Rights and Tribal Involvement

Federally Reserved Water Rights are not quantified at this time and thus the legal availability of water in these areas is undetermined.

The Lummi Nation and the Nooksack Tribe have reservation lands within WRIA 1. The Tribes are very concerned about maintaining flows and fish habitat in the watershed. By request, Ecology notifies the Lummi Nation of all new water right applications and decisions.

Water currently available for new uses

Any applicant for new non-interruptible water may need to hire consultants to carry out technical studies and develop mitigation plans to offset impacts to stream flows. Additionally, applicants may require the services of an attorney to defend the proposed project against appeals by concerned stakeholders and/or existing senior water right holders. *None of these steps will guarantee the application will be approved.*

Water rights for non-consumptive uses in the basin may in most cases be approved by the Department of Ecology.

Note: Applicants are encouraged to connect to an existing public water supply system if available. This is the simplest and fastest option for securing a water supply.

Additional options for processing water right applications

The groundwater permit exemption allows certain users of small quantities of groundwater (most commonly, single residential well owners) to construct wells and develop their water supplies without obtaining a water right permit from Ecology. Such a use is only exempt from the requirement to obtain a water right permit. These water uses are subject to all other provisions of the water code including the seniority system and can be regulated to protect existing water rights. For more information about the groundwater permit exemption, refer to www.ecy.wa.gov/pubs/fwr92104.pdf.

If you cannot hook-up to an existing system, or more water is needed than can be obtained from a permit-exempt well, processing an application through the Cost Reimbursement Program www.ecy.wa.gov/pubs/0511016.pdf may be an option.

For more information on this and other options, refer to “Alternatives for Water Right Application Processing” www.ecy.wa.gov/pubs/1111067.pdf.

Pending water right applications in this watershed

Washington water law is based on the “prior appropriation” system, often called “first in time, first in right.” Applications for water from the same source must be processed in the order they are received. (There are certain exceptions, see “Additional options for processing water right applications” above.)

Ecology asks anyone who needs a water right (new, change, or transfer) to submit the pre-application consultation form and meet with us to review your water supply needs and project proposal.

- Apply for a New Water Right
<http://www.ecy.wa.gov/programs/wr/rights/newrights.html>
- Apply to Change or Transfer a Water Right or Claim
http://www.ecy.wa.gov/programs/wr/rights/change_transfer_use.html

The map in this document shows some of the factors that will be considered when evaluating water right permit applications. Here are some information sources to assist you with your research:

- Locate and research water rights on land parcels anywhere in the state (Water Resource Explorer)
<http://www.ecy.wa.gov/programs/wr/info/webmap.html>
- Pending Water Right Applications by County
<http://www.ecy.wa.gov/programs/wr/rights/tracking-apps.html>
- Subscribe to a water right application RSS feed for a county or WRIA
http://www.ecy.wa.gov/programs/wr/rights/wr_app_rss.html
- WRIA map showing the total number of water right claims, certificates, permits and applications
http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/waterright_wria_opt.pdf
- Search and view well reports using a variety of search tools
<http://apps.ecy.wa.gov/welllog/>

For more information

Northwest Regional Office
 Water Resources Program
 3190 160th Ave. SE
 Bellevue WA 98008
 425-649-7000

Bellingham Field Office
 1440 10th St, #102
 Bellingham WA 98225
 360-715-5200



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