

CLEARANCES:	Initial	Date	Date Received in Council Office	Agenda Date	Assigned To
Originator-cfb c:\f1\6\ritofarm.ab	<i>JB</i>	<i>2/19/92</i>		2/25/92	Council-Intro
Division Head-				3/10/92	Hearing
Department Head-	<i>JWD</i>	<i>2/14/92</i>			
Prosecutor Review-					
Purchasing/Budget Dir.-					
Executive-					

**SUBJECT:** FILE REF: 13-91.GMA AN ORDINANCE AMENDING THE WHATCOM COUNTY ZONING ORDINANCE, TITLE 20 AND THE WHATCOM COUNTY SUBDIVISION REGULATIONS, TITLE 21, AND CREATING A NEW CHAPTER OF THE WHATCOM COUNTY CODE, TITLE 14; TO ADOPT A RIGHT TO FARM LAW THAT COMPLIES WITH THE GROWTH MANAGEMENT ACT BY REQUIRING THAT ALL PLATS, SHORT PLATS, DEVELOPMENT PERMITS, AND BUILDING PERMITS ISSUED FOR DEVELOPMENT ACTIVITIES ON, OR NEAR DESIGNATED AGRICULTURAL LANDS CONTAIN A NOTICE THAT THE SUBJECT PROPERTY IS NEAR DESIGNATED AGRICULTURAL LANDS ON WHICH COMMERCIAL ACTIVITIES MAY OCCUR THAT ARE NOT COMPATIBLE WITH RESIDENTIAL DEVELOPMENT.

**ATTACHMENTS:** Agency Report with attached Staff Report  
 (Note: There is one agency report for all resource lands.)  
 Excerpts from Planning Commission Minutes: January 14, January 30, and February 12, 1992.  
 (Note: These are the same minutes for all three resource land designations.)  
 Draft Ordinance

Public Hearing Needed? Yes /    / No / XX /

**SUMMARY STATEMENT:** The Growth Management Act mandates that counties require all plats, development permits, and building permits for activities on, or within three hundred feet of designated agricultural lands contain a notice that the property is near designated agricultural lands on which a variety of commercial activities may occur that are not compatible with residential development. Title 20 requires that when a subdivision is adjacent to an agricultural zone or use, owners shall agree to refrain from any legal action against the adjacent property owners or Whatcom County for reasonable and lawful activity on said agricultural land in the normal course of the use. Existing County Comprehensive Plan policies require a "hold harmless" agreement attached to the face of the plat. The proposed right to farm ordinance incorporates the Title 20 requirements, plan policies, and the Growth Management requirement. In addition, a disclosure notice as per Skagit County's Right to Farm Law is required when property ownership is transferred by sale or other means.

**RECOMMENDED ACTION:** Planning staff recommends Council uphold the Planning Commission recommendation and adopt the attached ordinance.

**COMMITTEE ACTION (including dates):**

**COUNCIL ACTION (including dates):**

3/10/92: Council approved the ordinance with the amendment to add Exhibit A to the top of page 26. 7-0

ORDINANCE NO. 92-015

**AN ORDINANCE AMENDING THE WHATCOM COUNTY ZONING ORDINANCE, TITLE 20 AND THE WHATCOM COUNTY SUBDIVISION REGULATIONS, TITLE 21, AND CREATING A NEW CHAPTER OF THE WHATCOM COUNTY CODE, TITLE 14; TO ADOPT A RIGHT TO FARM LAW THAT COMPLIES WITH THE GROWTH MANAGEMENT ACT BY REQUIRING THAT ALL PLATS, SHORT PLATS, DEVELOPMENT PERMITS, AND BUILDING PERMITS ISSUED FOR DEVELOPMENT ACTIVITIES ON, OR NEAR DESIGNATED AGRICULTURAL LANDS CONTAIN A NOTICE THAT THE SUBJECT PROPERTY IS NEAR DESIGNATED AGRICULTURAL LANDS ON WHICH COMMERCIAL ACTIVITIES MAY OCCUR THAT ARE NOT COMPATIBLE WITH RESIDENTIAL DEVELOPMENT.**

WHEREAS, the Washington State Legislature passed the Growth Management Act (GMA) in 1990 and amended it in 1991, requiring counties and cities to classify and protect agriculture resource lands of long-term commercial significance (RCW 36.70A.170); and

WHEREAS, the Whatcom County Planning Department has drafted a proposed right to farm ordinance that would confirm and strengthen existing language in Title 20 regarding required plat language; would implement existing subarea Comprehensive Plan policies regarding "hold harmless" agreements for plats; would comply with and exceed the requirements of the Growth Management Act with respect to notification of proximity of agricultural lands and activities to properties being issued building permits or subdivision approval; and

WHEREAS, pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald on Thursday, January 2, 1992; and

WHEREAS, a Determination of Nonsignificance was issued by the Deputy SEPA Official on January 9, 1992; and

WHEREAS, the Planning Commission held a public hearing on the amendments on January 14, 1992 and considered all public testimony on the issues; and

WHEREAS, the Planning Commission held work sessions to discuss the issues on January 30, 1992, and on February 12, 1992 and, after due deliberation made a determination that the proposal be approved; and

WHEREAS, the Council reviewed the Planning Commission recommendation and at a public meeting on March xx, 1992, reviewed and approved the Planning Commission recommendations.

**NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:**

1. The Whatcom County Code is hereby amended by adding a new chapter to Title 14; adding to or replacing appropriate sections of the Official Whatcom County Zoning Ordinance, Title 20 of the Whatcom County Code; and adding to or replacing appropriate sections of the Whatcom County Subdivision Regulations, Title 21 of the Whatcom County Code as set forth in the attached Exhibit A to comply with the Growth Management Act requirement to protect Agricultural Resource land.
2. The Council finds the public health, safety and general welfare are promoted by this change.
3. The Council adopts the following findings and conclusions developed by staff and adopted by the Planning Commission.

**FINDINGS**

- 1. Adoption of the proposed right to farm ordinance would confirm and strengthen existing language in Title 20 regarding required plat language; would implement existing subarea Comprehensive Plan policies regarding "hold harmless" agreements for plats; and would comply with and exceed one of the requirements of the Growth Management Act with respect to notification of proximity of agricultural lands and activities to properties being issued building permits or subdivision approvals.

**CONCLUSIONS**

- 1. Adoption of the proposed right to farm ordinance confirms and strengthens existing zoning regulations; implements existing subarea Plan policies; and complies with Growth Management Act requirements.
- 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

PASSED this 10th day of March, 1992.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

Daniel N. Warner  
Daniel Warner, Chairperson

APPROVED     VETOED

Shirley Van Zanten  
Shirley Van Zanten, County Executive

ATTEST:

Ramona Reun  
Clerk of the Council

APPROVED AS TO FORM:

Robert Carmichael  
Robert Carmichael  
Civil Deputy Prosecuting Attorney

Date 3-11-92

Adding a New Chapter to Title 14 Whatcom County Code

14.02  
WHATCOM COUNTY  
RIGHT TO FARM ORDINANCE

**14.02 .010 Policy and Purposes.**

- (1) (a) It is the declared policy of this County to promote farm operations and to inform residents of the County's support for the right to farm.
- (1) (b) State planning goals encourage the conservation of productive agricultural lands and discourage incompatible uses. Land uses adjacent to farm lands should not interfere with farm operations.
- (2) The purpose of this ordinance is to promote a good neighbor policy between agricultural and non-agricultural property owners by requiring notice to purchasers and users of property adjacent to or near farm operations of the inherent potential problems associated with such purchase or use, including but not limited to the NOISES, ODORS, DUST, CHEMICALS, SMOKE, AND HOURS OF OPERATIONS that may accompany farm operations. Through mandatory disclosures purchasers and users will better understand the consequences of living near farm operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.
- (3) An additional purpose of this ordinance is to facilitate the unhampered continuation of legal and customary operations associated with farm operations.

**14.02 .020 Definitions.**

- (1) Discretionary Development Permits - Permits requiring discretionary review, including but not limited to subdivision permits, short subdivision approvals, binding site plan approvals, planned unit developments, special use permits, variances, shoreline substantial development permits, and conditional use permits.
- (2) "Farm" means that land, buildings and machinery used in the commercial production of farm products.
- (3) "Farm Operations" means condition or activity which occurs on a farm in connection with the commercial production of land based farm products, and includes but is not limited to: market produce at roadside stands or farm markets: preparation for market, delivery to storage or to market, or to carriers for transportation to market; transportation of equipment; noise, dust, fumes; operation of machinery and irrigation pumps; ground and aerial seeding or spraying; the application of chemical and organic fertilizers, conditioners, insecticides, pesticides and herbicides and associated drift of such materials; and the employment and use of farm labor.
- (4) "Farm Products" means those land based plants and animals useful to human beings, and including, but not limited to: forage and sod crops, grains and feed crops, dairy and dairy products, livestock - including breeding and grazing, fruits, vegetables, flower seeds, grasses, trees, fish, apiaries and horticultural products, or any other product which incorporates the use of food, feed and fiber, or fur.
- (5) "Good Management Practices" means current, economically feasible, management practices available as defined by the American Society of Agronomy, the United States Department of Agriculture Soil Conservation Service, the Washington State University Cooperative Extension Service in Whatcom County, and other land based professional or industrial agricultural organizations.
- (6) "Person" means an individual, corporation, partnership, association, or other legal entity.

**14.02 .030 Disclosure.**

(1) The statement set forth in subsection (2) ("Disclosure") shall be used under the following circumstances and in the following manners:

(a) Upon the conveyance of a fee interest in real property **THE SELLER SHALL REQUIRE THAT DISCLOSURE STATEMENT AS SET FORTH IN SUBSECTION (2)** be signed by the purchaser and recorded in the County Auditor's office in conjunction with the deed conveying the real property when one of the following conditions are met:

- (1) that the real property is within one-half mile of real property upon which farm operations are conducted
- (2) the real property is within the area designated as AGRICULTURE on the map or maps comprising the Whatcom County Comprehensive Plan.
- (3) the real property is within one-half mile of the area designated as AGRICULTURE on the map or maps comprising the Whatcom County Comprehensive Plan.

(b) Upon the issuance of a discretionary development permit for land on or within one-half mile of the area designated as AGRICULTURE on the map or maps comprising the Whatcom County Comprehensive Plan or within one-half mile of land upon which farm operations are being conducted, the discretionary development permit shall include a condition that the owners of the property be required to sign a statement of acknowledgement containing the Disclosure (2) on forms provided by Whatcom County, which shall then be recorded in the County Auditor's Office.

(c) All building permits and discretionary development permits for land on or within one-half mile of the area designated as AGRICULTURE on the map or maps comprising the Whatcom County Comprehensive Plan or within one half mile of land upon which farm operations are being conducted shall contain a Notice of Disclosure (2).

(2) The following shall constitute the disclosure required by this section:

The subject property is within or near designated AGRICULTURE lands or farm operations upon which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FLIES, FUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.

**14.02 .040 Hold Harmless.**

All discretionary development permits for land on or within one-half mile of the area designated as AGRICULTURE in the Whatcom County Comprehensive Plan or upon which farm operations are being conducted shall contain the following agreement: The developer and any subsequent purchaser or successors in interest will refrain from any legal action to restrain or collect damages from owners or operators of such agricultural lands, or from Whatcom County, arising out of any reasonable and lawful farm operations on said agricultural lands which occurs in the normal course of their established use.

The agreement shall appear as a covenant or deed restriction upon the subject property, or the plat and each lot thereof, and shall run with the land. Said covenant or deed restriction may be removed by submission to and approval by the Whatcom County Hearing Examiner, of a petition representing a majority of the land owned by property owners within one-half mile of the plat boundary. However, the Hearing Examiner shall remove the restriction only upon finding that the risk of liability to Whatcom County or the previously existing farm operations will not be increased thereby.

**14.02 .050 Codification.**

WCC 14.02.010 through 14.02.040 shall be codified to add to or replace appropriate sections of Title 20 of the Whatcom County Code, also referred to as the Official Whatcom County Zoning Ordinance and to add to or replace appropriate sections of Title 21 of the Whatcom County Code, also referred to as the Whatcom County Subdivision Regulations.

**14.02 .060 Severability.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.