

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Planner: Jeff Griffin	JRG	03/18/94	RECEIVED APR 20 1994 WHATCOM COUNTY COUNCIL	4/26/94	Council intro
Division Head: Dan Taylor	DDT			5/10/94	P&D/Council
Dept. Head: Nate Brown	NWB				
Prosecutor:					
Purchasing/Budget:					
Executive:					

SUBJECT: File #15-94:GMA: An Ordinance Amending the Official Whatcom County Code, Title 14, requiring notification to purchasers and developers of property on or within one quarter mile of designated Mineral Resource Lands.

ATTACHMENTS: Proposed Ordinance
 Agency Report with attached Staff Report
 Draft Planning Commission Minutes See AB 94-248

SUMMARY STATEMENT: *Please complete sections of box as appropriate & explain the item below.*

Related County contract #: n/a	Should Clerk schedule a hearing? NO /X/ YES / / Requested date:
Amount budgeted for this item/project: \$ n/a	Is it (or will it be) within budget? YES / / NO / / (Please explain below) n/a
Budget line item number(s): n/a	

The purpose of this ordinance is to promote a good neighbor policy between mineral and non-mineral property owners by requiring notification to purchasers and users of property adjacent to or near Mineral Resource Lands of the inherent potential problems associated with such purchase or use.

ORIGINATOR'S RECOMMENDED ACTION: The Director of Planning and Development Services recommends Council accept the Planning Commission's recommendation and adopt the proposed ordinance.

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

4/26/94: Council Intro
 5/10/94: Council adopted the ordinance, with amendments. 5-1, Harris opposed. Starkenburg abstained.

SPONSORED BY: Planning

PROPOSED BY: Council

INTRODUCTION DATE: 4/26/94

ORDINANCE NO. 94-029

AN ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY CODE, TITLE 14, REQUIRING NOTIFICATION TO PURCHASERS AND DEVELOPERS OF PROPERTY ON OR WITHIN ONE QUARTER MILE OF DESIGNATED MINERAL RESOURCE LANDS.

WHEREAS, the Planning and Development Services Department has proposed to amend the text of the Whatcom County Code, Title 14, Use of Natural Resources, to require notification procedures for property located within proximity to Designated Mineral Resource Lands, pursuant to RCW 36.70A.060 of the Growth Management Act; and

WHEREAS, pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald on Thursday, March 31, 1994; and

WHEREAS, a Determination of Non-Significance had been issued on March 31, 1994, by the responsible Deputy SEPA Official; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on April 13, 1994, and considered all testimony and after due deliberation forwarded the matter to the County Council with some modifications and a recommendation of approval; and

WHEREAS, the Council held a public meeting on May 10, 1994 to consider this matter and approved the Planning Commission recommendation with one amendment concerning notification distance; and.

WHEREAS, the Council found the amendments in the best interest of the public health, safety, and welfare; and

WHEREAS, the Council has adopted the following Findings and Conclusions:

Findings

1. The GMA requires that Whatcom County require notification on all new plats, short plats, development permits, and building permits issued for development activities on or within three hundred feet of designated mineral resource lands.
2. Some Puget Sound counties have adopted resource land notification ordinances prior to the comprehensive plan, however, most have instead chosen to await direction from the comprehensive plan process prior to implementation.
3. The GMA sets 300' as the minimum notification distance, however Whatcom Counties right-to-farm and forestry ordinances require one-half mile.

- 1 4. The main impacts to consider in determining notification distance include noise,
2 traffic, fumes, and dust generation. Noise impacts may carry the farthest and be
3 the most disturbing.
4
- 5 5. Hold harmless agreements are agreements made by the landowner to refrain from
6 legal action arising out of any reasonable and lawful activity on said adjacent land
7 which occurs in the normal course of their established use.
8
- 9 6. It is unlikely that County nuisance laws, being primarily noise related, would apply
10 to surface mining operations because these operations are subject to established
11 noise limits.
12
- 13 7. Regardless of County action, nuisance complaints may still be brought in Whatcom
14 County under state law (RCW 9.66), as a county ordinance may not limit legal
15 causes of action authorized under state law.
16

17 Conclusions

18 A notification process will help to inform potential property owners of the existence of
19 mineral extraction activities in the vicinity. This may not be desirable to present owners of
20 property affected by this proposal, however it is in the best interest of future proprietors.
21 It would also support mineral extraction activities within designated Whatcom County
22 Mineral Resource Lands.
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NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Official Whatcom County Code, Title 14, Use of Natural Resources is hereby amended as shown in the attached Exhibit A.

Section 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.

ADOPTED this 10th day of May, 1994.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



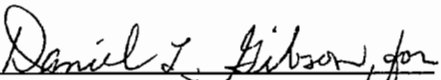
Ramona Reeves, Council Clerk



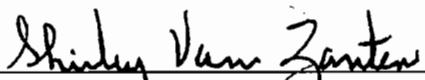
Robert Imhof, Chairperson

APPROVED as to form & content:

Approved Denied



Karen Frakes, Civil Deputy Prosecutor



Shirley Van Zanten, Executive

Date: 5/11/94

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EXHIBIT A

Title 14
USE OF NATURAL RESOURCES

New Chapter 14.06
Mineral Resource Land Disclosure

New Sections:

14.06.010	Policy and Purposes
14.06.020	Definitions
14.06.030	Disclosure

14.06 .010 Policy and Purposes.

A. It is the declared policy of this County to encourage the protection and conservation of designated Mineral Resource Lands and discourage future incompatible uses from these areas.

B. The purpose of this ordinance is to promote a good neighbor policy between mineral and non-mineral property owners by requiring notification to purchasers and users of property adjacent to or near mine operations of the inherent potential problems associated with such purchase or use, including but not limited to the noises, odors, dust, chemicals, smoke, truck traffic, and hours of operations that may accompany mine operations. Through mandatory disclosures purchasers and users will better understand the consequences of living near mine operations and be prepared to accept attendant conditions as the natural result of living in or near mining areas.

14.06 .020 Definitions.

A. 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, conditional use permits, and shoreline substantial development permits.

B. "Designated Mineral Resource Area" - Areas that have been designated by Whatcom County as Mineral Resource Areas.

C. "Mining Operations" - Conditions or activity which occurs on or around a mine.

1 D. "Best Management Practices" means current management practices available as defined
2 by Whatcom County, the Washington State Department of Natural Resources, the United
3 States Department of Agriculture Soil Conservation Service, Washington State University
4 Cooperative Extension Service in Whatcom County, and other land based professional or
5 industrial mineral organizations.
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10 **14.06 .030 Disclosure.**
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12 A. The statement set forth in subsection B (Notice of Disclosure) of this section shall be used
13 under the following circumstances and in the following manners:
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15 1. Upon the conveyance of a fee interest in real property the seller shall require that
16 the Notice of Disclosure be signed by the purchaser and recorded in the County Auditor's
17 office in conjunction with the deed conveying the real property when the real property is on
18 or within three hundred feet of the area designated as mineral resource land on the map or
19 maps comprising the Whatcom County Comprehensive Plan.
20

21 2. Upon the issuance of a discretionary development permit for land on or within three
22 hundred feet of the area designated as Mineral Resource Land on the map or maps comprising
23 the Whatcom County Comprehensive Plan, the discretionary development permit shall include
24 a condition that the owners of the property be required to sign a statement of
25 acknowledgement containing the Notice of Disclosure on forms provided by Whatcom County,
26 which shall then be recorded in the County Auditor's Office.
27

28 3. All building permits and discretionary development permits for land on or within
29 three hundred feet of the area designated as Mineral Resource Land on the map or maps
30 comprising the Whatcom County Comprehensive Plan shall contain the Notice of Disclosure.
31

32 B. The following shall constitute the disclosure required by this section:
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34 The subject property is on or within three hundred feet of designated Mineral Resource
35 Land upon which a variety of mining related activities may occur that are not
36 compatible with residential development for certain periods of limited duration.
37 Whatcom County has determined that the use of real property for mineral operations
38 is a priority use in designated Mineral Resource Lands and will not consider to be a
39 nuisance those inconveniences or discomforts arising from mine operations, if such
40 operations are consistent with commonly accepted best management practices and
41 otherwise comply with local, state, and federal laws. Copies of these laws are
42 available at the Whatcom County Planning and Development Services office.
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