

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2009=338

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Tyler Schroeder	T.S.	7/23/09	RECEIVED JUL 28 2009 WHATCOM COUNTY COUNCIL	8/4	Council Introduction
Division Head: Wain Harrison	W.H.	7/23/09		9/15	Planning and Development Committee
Dept. Head: David Stalheim	D.S.	7-23-09		9/15	Council
Prosecutor: Royce Buckingham	R.B.	7-23-09			
Purchasing/Budget: Brad Bennett					
Executive: Pete Kremen	P.K.	7-28-09			

TITLE OF DOCUMENT: *Agricultural Protection Overlay Zone Interim Ordinance*

- ATTACHMENTS:**
- (1) Memo to Council
 - (2) Interim Ordinance amending Title 20

SEPA review required? () Yes (x) NO SEPA review completed? () Yes (x) NO	Should Clerk schedule a hearing? (X) Yes () NO Requested Date: September 15, 2009
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SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

An interim ordinance that amends the definition of a “parcel” in the Agriculture Protection Overlay (APO) zone. The ordinance amends the definition to include adjoining rights-of-way in calculating parcel size. The interim ordinance for properties within jurisdiction of the Shoreline Management Program removes submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in calculating the parcel size.

COMMITTEE ACTION: 9/15/2009: Forwarded to Council for approval	COUNCIL ACTION: 8/04/2009: Introduced 9/15/2009: Council Adopted 5-2 Nelson & Crawford opposed Ord. 2009-066
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Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number: Ord. 2009-066
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Please Note: *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.*

SPONSORED BY: Consent
PROPOSED BY: PDS
INTRODUCTION DATE: 8/04/2009

ORDINANCE NO. 2009-066

**AN INTERIM ORDINANCE AMENDING THE AGRICULTURAL PROTECTION
OVERLAY (APO) ZONE'S DEFINITION OF A PARCEL**

WHEREAS, amendments to the APO zone in this ordinance are for clarity and consistency of definitions within Whatcom County's Zoning Code, Title 20;

WHEREAS, an interim ordinance is necessary to amend development regulations for consistency within the code and to ensure preservation of Agricultural lands in Whatcom County;

WHEREAS, the Agricultural Advisory Committee and staff are requested to recommend options for Zoning code and Comprehensive plan amendments to strengthen farm and land preservation policies;

WHEREAS, the Council makes the following findings of fact and reasons for action in accordance with RCW 36.70.795:

FINDINGS OF FACT AND REASONS FOR ACTION

1. The purpose of the Agricultural Protection Overlay (APO) zone's purpose is "...to maintain and enhance commercial agricultural activity and further protect open space resources within Whatcom County; further the county's efforts in meeting long-term agricultural needs; provide a reasonable mix of uses and activities which may enhance the economic resources available to the farmer; and provide for a variety of uses within the rural areas which are not inconsistent with or incompatible with the use of lands within the area for agricultural activities. This chapter is not intended to interfere with the use of other resources".
2. ORD 2001-016, amended the official Whatcom County Code, Title 20, Chapter 20.38, Agriculture Protection Overlay, to enhance the APO compliance with the Growth Management Act and to provide clarification. Among those changes, the language "*including nominal 20 acre parcels*" was included to provide clarification to the Applicability section of APO; WCC20.38.050. This language has led to inconsistent applicability of APO with regards to land division applications on parcels held in 20 acres.
3. This inconsistent applicability was upheld in a recent July 16, 2009 Whatcom County Hearing Examiner decision. The Administrative Appeal, APL2009-00015, decided that a "parcel" as that term is defined in the Agriculture Protection Overlay consisting of 19.77 acres, is not subject to APO. According to the Hearing Examiner decision,

“the term “minimum lot size” is a term of art within the Zoning Ordinance and it must be presumed that the legislative body’s failure to use the term within the Applicability Section of the APO was intentional. Had the legislative body desired to include one-half of the bounding roads in determining the parcel size to be subjected to the APO, it could have made it applicable to parcels with a “minimum lot size” of twenty acres or larger, instead of giving a specific definition to the term “parcel” in the APO Section and then applying the APO to “parcels” twenty acres or larger in size.”

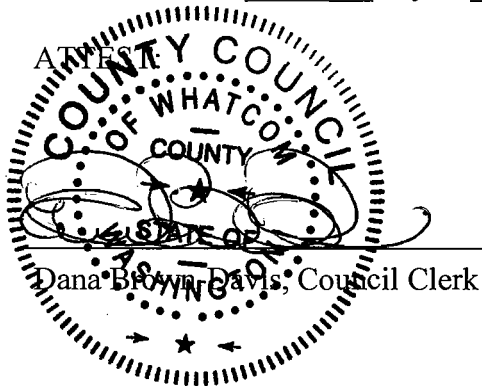
4. The reason for this interim ordinance is to clarify and make consistent the applicability of APO as considered for the purposes of land division. This is done by making the definition of “parcel” consistent with “gross density” and “minimum lot size”. Thereby, requiring all land division applications of parcels held in 20 acres, for the purpose of land division, subject to APO, to implement clustering techniques.
5. With the adoption of this ordinance, APO applicability will be similar in interpretation as the terms “gross density” and “minimum lot size” within the official Whatcom County Code, Title 20, Chapter 20.97, Definitions. Historical interpretation of “gross density” is to measure to center of the adjoining road rights-of-way for purposes of land division applications.
6. This clarification will require clustering techniques to be implemented, for land division proposals, if a parcel is held in 20 acres and is subject to APO.
7. The Whatcom County Council adopted RES2009-040 on July 7, 2009 affirming the County’s goal of maintaining a minimum of 100,000 acres of agricultural land in Whatcom County.
8. 100,000 acres is the minimum goal for ensuring a land base necessary to support a viable agriculture industry in Whatcom County.
9. Currently there are 88,000 acres of agriculturally zoned land in Whatcom County
10. The Agricultural Protection Overlay Soils are those soils determined to be the best soils for farming.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Official Whatcom County Zoning Ordinance (Title 20) is hereby amended as shown in Exhibit A.

BE IT FURTHER ORDANED, by the Whatcom County Council, pursuant to RCW 36.70.795, that this amendment shall be effective for not longer than six months following the effective date of this ordinance

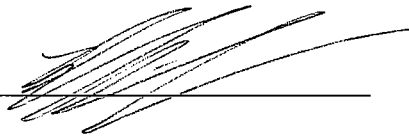
ADOPTED this 15th day of September, 2009.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

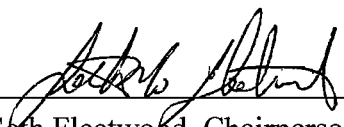


APPROVED as to form:


Approved Denied



Civil Deputy Prosecutor



Seth Fleetwood, Chairperson



Pete Kremen, Executive

Date: 9-17-09

EXHIBIT A

20.38.040 Definitions.

For the purposes of the Agriculture Protection Overlay zone:

(1) A "parcel" is defined as a legal lot of record (WCC 20.83.060) or, if consolidation has taken place pursuant to WCC 20.83.070, the entire area of the consolidated lots. Parcel acreage shall include the area of adjoining road rights-of-way. For properties within the jurisdiction of the Shoreline Management Program, submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in calculating the parcel size. If a parcel is bisected by a public right-of-way, or a river, a pond, or a lake as defined in the critical areas ordinance, and the resultant area is less than 20 acres, the provisions of this chapter do not apply to that portion.

(2) Agriculture protection overlay soils are those soils determined by Whatcom County, in consultation with the Natural Resource Conservation Service and local farmers, as being the best soils for farming. Each soil type named in the list below also has a number. This number is used in the "Soil Survey of Whatcom County Area, May 1992," to identify the mapping unit (soil type) in all text, maps and tables contained in the soil survey.

Agriculture Protection Overlay Soils

No.	Name
12	Birchbay Silt Loam – 0 to 3% slopes
13	Birchbay Silt Loam – 3 to 8% slopes
22	Briscot Silt Loam-Drained – 0 to 2% slopes
31	Clipper Silt Loam-Drained – 0 to 2% slopes
45	Edmonds-Woodlyn Loams-Drained – 0 to 2% slopes
53	Everson Silt Loam-Drained – 0 to 2% slopes
54	Fishtrap Muck-Drained – 0 to 2% slopes
62	Hale Silt Loam-Drained – 0 to 2% slopes
79	Kickerville Silt Loam – 0 to 3% slopes
80	Kickerville Silt Loam – 3 to 8% slopes
95	Larush Silt Loam – 0 to 3% slopes
96	Laxton Loam – 0 to 3% slopes
97	Laxton Loam – 3 to 8% slopes
99	Lynden Sandy Loam – 0 to 3% slopes
100	Lynden Sandy Loam – 3 to 7% slopes
107	Mt. Vernon Fine Sandy Loam – 0 to 2% slopes
115	Oridia Silt Loam-Drained – 0 to 2% slopes
116	Pangborn Muck-Drained – 0 to 2% slopes
123	Puget Silt Loam-Drained – 0 to 2% slopes
124	Puyallup Fine Sandy Loam – 0 to 2% slopes
139	Sehome Loam – 2 to 8% slopes

- 143 Shalcar Muck-Drained – 0 to 2% slopes
- 148 Skipopa Silt Loam – 0 to 8% slopes
- 151 Snohomish Silt Loam-Drained – 0 to 2% slopes
- 162 Sumas Silt Loam-Drained – 0 to 2% slopes
- 165 Tromp Loam – 0 to 2% slopes
- 178 Whatcom Silt Loam – 0 to 3% slopes
- 179 Whatcom Silt Loam – 3 to 8% slopes
- 184 Whitehorn Silt Loam – 0 to 2% slopes
- 186 Winston Silt Loam – 0 to 3% slopes
- 191 Yelm Loam – 3 to 8% slopes

(Ord. 2002-060 § 1, 2002; Ord. 2001-016 § 1, 2001; Ord. 2000-013 § 1, 2000; Ord. 99-092, 1999; Ord. 98-083 Exh. A § 45, 1998. Formerly 20.38.050).

20.38.050 Applicability.

The provisions in this section apply to all rural lands designated R-5A or R-10A on the official zoning map, (a) outside designated urban growth area boundaries, and (b) held in parcels of 20 acres or larger, ~~including nominal 20-acre parcels.~~ The following parcels are exempt from the cluster subdivision requirements:

- (1) Divisions of land into parcels of 40 acres or larger.
- (2) A parcel satisfying both of the following criteria:
 - (a) The parcel includes less than 50 percent agriculture protection overlay soils (detailed site-specific soil mapping provided by a certified professional soil scientist may be substituted for the USDA Soil Survey of Whatcom County mapping, if it can be shown to be more accurate); and
 - (b) Less than 50 percent of the parcel has been designated as agricultural open space for county property tax purposes within the past seven years.
- (3) A parcel with land designated agriculture or forest in the Comprehensive Plan located on less than 25 percent of the parcel perimeter, and surrounded on 75 percent or more of the parcel perimeter by any of the following:
 - (a) More intensive zoning districts, including residential, commercial, light industrial, and heavy industrial districts; or
 - (b) Existing development patterns with residential densities greater than one unit per two acres; or
 - (c) More intensive uses such as, but not limited to, schools, churches, rest homes and other commercial uses.
- (4) A parcel occupied by a use legally established prior to May 20, 1997, where the use affects 50 percent or more of the area of the parcel in a manner that effectively prevents that 50 percent or more from being used for agricultural purposes both for

now and in the foreseeable future. For the purposes of this section, the presence of forestlands and woodlands shall not be construed as a use or condition preventing future use of property for agricultural purposes. Uses that effectively prevent future agricultural use include but are not limited to those where costs to renovate the site to achieve its former agricultural capabilities exceed the value of the land for agricultural use. (Ord. 2002-060 § 1, 2002; Ord. 2001-016 § 1, 2001; Ord. 98-083 Exh. A § 45, 1998. Formerly 20.38.020).