

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2010-049

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Tyler Schroder	TLS	12/30/09	RECEIVED JAN 05 2010 WHATCOM COUNTY COUNCIL	1/12/2010	Introduction
Division Head: Wain Harrison				1/26/2010	Planning and Development Committee
Dept. Head: David Stalheim	gdr	12/31/09		1/26/2010	Council
Prosecutor: Royce Buckingham	RB	12-31-09		2/09/10	P&D/Council
Purchasing/Budget: Brad Bennett				2/23/10	Hearing
Executive: Pete Kremen	PK	1-5-10			

TITLE OF DOCUMENT:

Ordinance clarifying the applicability of Agricultural Protection Overlay (APO) by including the area of adjoining road rights-of-way in the calculations of parcel acreage for APO zone.

ATTACHMENTS:

- (1) Memorandum
- (2) Ordinance

SEPA review required? Yes NO
 SEPA review completed? Yes NO

Should Clerk schedule a hearing? Yes NO
 Requested Date:

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.)

The proposal is to amend the definition of "parcel" in the Agricultural Protection Overlay (APO) zone to include adjoining rights-of-way in calculating parcel size. The proposal also removes submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark in calculating the parcel size for properties within jurisdiction of the Shoreline Management Program .

COMMITTEE ACTION:

1/26/2010: Held in committee
 2/09/2010: Amended and forwarded to Council for approval

COUNCIL ACTION:

1/12/2010: Introduced
 2/09/2010: Held for Hearing 2/23/2010
 2/23/2010: Council Adopted 6-1 Brenner opposed Ord. 2010-012

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Ord. 2010-012

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: 1/12/2010

ORDINANCE NO. 2010-012

Amending Whatcom County's zoning code, Title 20, for the purposes of clarifying the applicability of Agricultural Protection Overlay (APO) by including the area of adjoining road rights-of-way in the calculations of parcel acreage for APO zone.

WHEREAS, The proposed amendment to the Whatcom County Official Zoning Ordinance was initiated by Whatcom County Council, and was given file number PLN2009-00020 by Planning and Development Services Department;

WHEREAS, Whatcom County Council adopted an interim ordinance, ORD2009-066, on September 15, 2009, to address the applicability of APO by including the area of adjoining road rights-of-way in the calculations of parcel acreage for APO;

WHEREAS, Notice of the Planning Commission hearing for the subject ordinance and text amendment was published in the Bellingham Herald on November 29, 2009;

WHEREAS, Notice of the proposed amendment was sent to the Department of Community, Trade and Economic Development (CTED) and other state agencies on November 10, 2009. On December 1, 2009 CTED notified Whatcom County that notice of the proposed amendment had been received and had been forwarded to other interested parties as required. No comments regarding the proposed amendment have been received from CTED, to date;

WHEREAS, On August 3, 2009, the Whatcom County State Environmental Policy Act (SEPA) Official issued a SEPA threshold Determination of Non-Significance (DNS) in regards to the proposed text amendment, a non-project action. No comments were received regarding this determination;

WHEREAS, A Whatcom County Planning Commission public hearing was held on the subject amendment December 10, 2009. The Planning Commission voted to recommend approval to the Whatcom County Council with a 7-0 vote;

1
2 **WHEREAS**, The County Council has adopted the following findings of fact:
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7 **FINDINGS OF FACT**
8

- 9 1. The purpose of the Agricultural Protection Overlay (APO) zone's purpose is
10 "...to maintain and enhance commercial agricultural activity and further
11 protect open space resources within Whatcom County; further the county's
12 efforts in meeting long-term agricultural needs; provide a reasonable mix
13 of uses and activities which may enhance the economic resources available
14 to the farmer; and provide for a variety of uses within the rural areas
15 which are not inconsistent with or incompatible with the use of lands
16 within the area for agricultural activities. This chapter is not intended to
17 interfere with the use of other resources".
18
- 19 2. ORD 2001-016, amended the official Whatcom County Code, Title 20,
20 Chapter 20.38, Agriculture Protection Overlay, to enhance the APO
21 compliance with the Growth Management Act and to provide clarification.
22 Among those changes, the language "including nominal 20 acre parcels"
23 was included to provide clarification to the Applicability Section of APO;
24 WCC20.38.050. This language has led to inconsistent applicability of APO
25 with regards to land division applications on parcels held in 20 acres.
26
- 27 3. This inconsistent applicability was upheld in a recent July 16, 2009
28 Whatcom County Hearing Examiner decision. The Administrative Appeal,
29 APL2009-00015, decided that a "parcel" as that term is defined in the
30 Agriculture Protection Overlay consisting of 19.77 acres, is not subject to
31 APO..
32
- 33 4. According to the Hearing Examiner decision "the term "minimum lot size"
34 is a term of art within the Zoning Ordinance and it must be presumed that
35 the legislative body's failure to use the term within the Applicability
36 Section of the APO was intentional. Had the legislative body desired to
37 include one-half of the bounding roads in determining the parcel size to be
38 subjected to the APO, it could have made it applicable to parcels with a
39 "minimum lot size" of twenty acres or larger, instead of giving a specific
40 definition to the term "parcel" in the APO Section and then applying the
41 APO to "parcels" twenty acres or larger in size."
42
- 43 5. This ordinance is to clarify and make consistent the applicability of APO as
44 considered for the purposes of land division. This is done by making the
45 definition of "parcel" consistent with "gross density" and "minimum lot
46 size". Thereby, requiring all land division applications of parcels held in 20

1 acres, for the purpose of land division, subject to APO, to implement
2 clustering techniques.
3
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- 5 6. With the permanent adoption of this interim ordinance, APO applicability
6 will be similar in interpretation as the terms "gross density" and "minimum
7 lot size" within the official Whatcom County Code, Title 20, Chapter 20.97,
8 Definitions. Historical interpretation of "gross density" is to measure to
9 center of the adjoining road rights-of-way for purposes of land division
10 applications.
11
- 12 7. This clarification will require clustering techniques to be implemented, for
13 land division proposals, if a parcel is held in 20 acres and is subject to
14 APO.
15
- 16 8. The Whatcom County Council adopted RES2009-040 on July 7, 2009
17 affirming the County's goal of maintaining a minimum of 100,000 acres of
18 agricultural land in Whatcom County.
19
- 20 9. 100,000 acres is the minimum goal for ensuring a land base necessary to
21 support a viable agriculture industry in Whatcom County.
22
- 23 10. Currently there are 88,000 acres of agriculturally zoned land in Whatcom
24 County
25
- 26 11. The Agricultural Protection Overlay Soils are those soils determined to be
27 the best soils for farming.
28
- 29 12. Pursuant to Whatcom County Code (WCC) 20.90.050, as of March 11,
30 2009, Whatcom County Planning and Development Services has:
31 evaluated the proposed amendment in relationship to the goals, objectives
32 and policies of the Whatcom County Comprehensive Plan as authorized by
33 the Washington State Growth Management Act (GMA) – RCW 36.70A; and
34 considered possible environmental impacts that have been identified by
35 the lead agency designated SEPA official through the State Environmental
36 Policy Act (SEPA) threshold determination process.

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NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Official Whatcom County Zoning Ordinance, Title 20 is hereby amended as shown on 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 and part thereof other than the part so declared to be invalid.

ADOPTED this 23rd day of February, 2010.




WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Sam Crawford, Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON



Pete Kremen, County Executive

APPROVED AS TO FORM:



Civil Deputy Prosecutor

() Approved () Denied

Date Signed: 2-24-10

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, unless it can be demonstrated by the applicant that agricultural practices have not been conducted on a given parcel since January 1, 1975, in which case the parcel size shall be calculated without including the adjoining road right-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

- 1 115 Oridia Silt Loam-Drained – 0 to 2% slopes
- 2 116 Pangborn Muck-Drained – 0 to 2% slopes
- 3 123 Puget Silt Loam-Drained – 0 to 2% slopes
- 4 124 Puyallup Fine Sandy Loam – 0 to 2% slopes
- 5 139 Sehome Loam – 2 to 8% slopes
- 6 143 Shalcar Muck-Drained – 0 to 2% slopes
- 7 148 Skipopa Silt Loam – 0 to 8% slopes
- 8 151 Snohomish Silt Loam-Drained – 0 to 2% slopes
- 9 162 Sumas Silt Loam-Drained – 0 to 2% slopes
- 10 165 Tromp Loam – 0 to 2% slopes
- 11 178 Whatcom Silt Loam – 0 to 3% slopes
- 12 179 Whatcom Silt Loam – 3 to 8% slopes
- 13 184 Whitehorn Silt Loam – 0 to 2% slopes
- 14 186 Winston Silt Loam – 0 to 3% slopes
- 15 191 Yelm Loam – 3 to 8% slopes
- 16 (Ord. 2002-060 § 1, 2002; Ord. 2001-016 § 1, 2001; Ord. 2000-013 § 1, 2000;
- 17 Ord. 99-092, 1999; Ord. 98-083 Exh. A § 45, 1998. Formerly 20.38.050).

18 **20.38.050 Applicability.**

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

- 23 (1) Divisions of land into parcels of 40 acres or larger.
- 24 (2) A parcel satisfying both of the following criteria:
 - 25 (a) The parcel includes less than 50 percent agriculture protection overlay soils
 26 (detailed site-specific soil mapping provided by a certified professional soil scientist
 27 may be substituted for the USDA Soil Survey of Whatcom County mapping, if it can
 28 be shown to be more accurate); and
 - 29 (b) Less than 50 percent of the parcel has been designated as agricultural open
 30 space for county property tax purposes within the past seven years.
- 31 (3) A parcel with land designated agriculture or forest in the Comprehensive Plan
 32 located on less than 25 percent of the parcel perimeter, and surrounded on 75
 33 percent or more of the parcel perimeter by any of the following:
 - 34 (a) More intensive zoning districts, including residential, commercial, light industrial,
 35 and heavy industrial districts; or
 - 36 (b) Existing development patterns with residential densities greater than one unit
 37 per two acres; or
 - 38 (c) More intensive uses such as, but not limited to, schools, churches, rest homes
 39 and other commercial uses.

1 (4) A parcel occupied by a use legally established prior to May 20, 1997, where the
2 use affects 50 percent or more of the area of the parcel in a manner that effectively
3 prevents that 50 percent or more from being used for agricultural purposes both for
4 now and in the foreseeable future. For the purposes of this section, the presence of
5 forestlands and woodlands shall not be construed as a use or condition preventing
6 future use of property for agricultural purposes. Uses that effectively prevent future
7 agricultural use include but are not limited to those where costs to renovate the site
8 to achieve its former agricultural capabilities exceed the value of the land for
9 agricultural use. (Ord. 2002-060 § 1, 2002; Ord. 2001-016 § 1, 2001; Ord. 98-083
10 Exh. A § 45, 1998. Formerly 20.38.020).

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