

**WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT**

I. OVERVIEW

File # PLN2010-00005

File Name: Paradise Road, Agriculture to Rural (R10)

Applicant: Gordon Gerard / Larry Stoner, agent

Requested Action:

The proposal is for a Comprehensive Plan and Zoning map amendment. Amendments will change subject property's Comprehensive Plan designation from Agricultural Resource Land to Rural and change the zoning from Agriculture to R10, one dwelling unit per ten acres. The four parcels included in this request total approximately 60 acres.

Reason for Request:

The applicant states that the rezone is needed because the land is not suitable for agricultural production and that the proposed R10 zoning will provide a buffer between the rural residential areas (R1 to the east and R5 to the north), and the agricultural land to the west and south.

Recommendation:

Staff recommends approval of the Comprehensive Plan and Zoning Map amendments in this request.

II. BACKGROUND

The application was submitted in late 2009 and was docketed by the Whatcom County Council in March 2010. A similar request in 2008 was not docketed. The applicant has paid the applicable fees, authorizing Planning and Development Services staff to begin work on the application.

The northern 15 acre part of the proposal is in residential use (one house) and is on the south and east side of Paradise Road. The southern 45 acres has residential use (two houses) and most of the property has been used as a sand pit since before 1970. The sand pit is said to be nearly depleted. The application states that the land in this request has never been used for agricultural production. Members of the Agricultural Advisory Committee state that some of the land was in agricultural production during the 1950s and 1960s.

Most of the subject land is labeled as "Pits" (#120) in the soil survey. The

remainder is classified as Lynnwood Sandy Loam 5 – 20% slopes (#103).
Lynnwood Sandy Loam not listed as a prime soil and is not on the list for the
Whatcom County's Agricultural Protection Overlay (APO) soils.

Information from one of the property owners, states that the "sand pit" is two
separately developed non-conforming surface mines. Thirty acres is covered under
a DNR permit and is subject to land reclamation.

Location and Site Description

The site is located immediately south and east of Paradise Road in the vicinity of
1000 Paradise Road; 1.5 miles east of Ferndale and 0.5 miles west of Northwest
Drive. The application consists of 60 acres in four parcels (34, 9, 1, and 15 acres,
south to north, respectively). There is one residence each on the 9, 1, and 15 acre
parcels and none on the 34 acre parcel.

Surrounding Property Uses

North: Residential (5 acre minimum lot size); and agriculture with auto and scrap
storage.

East: Several homes (ten parcels adjoin this proposal on the eastern border) are
in a Rural R1 zone (1 acre minimum lot size) east of the proposed rezone. A well
for several of these homes is also east of the proposed rezone.

South: Agriculture, mostly pasture.

West: Agriculture with a farmstead including farm buildings and other
infrastructure; pasture.

Comprehensive Plan Designation: Agricultural Resource Lands

Zoning Designation: Agriculture

Public Facilities and Services:

Water:	Wells
Sewer:	Septic
Fire:	Whatcom County Fire District #7
Police:	Whatcom County Sheriff
School:	Ferndale School District (#502)

III. ANALYSIS

A. Description and Analysis of Comprehensive Plan Proposed Amendments

The proposed Comprehensive Plan Map amendment is to amend the Comprehensive
Plan designation of the subject property from Agriculture - Resource Lands to Rural.

COMPREHENSIVE PLAN DESIGNATIONS MAP (page 2-81, Whatcom County Comprehensive Plan, January 2010)

Title: Rural - Rural

Purpose: To provide opportunity for a variety of low-density residential development including cluster development with the flexibility to practice farming or forestry, or operate a home occupation or cottage industry; to retain a sense of community. Also to encourage agriculture and forestry activities through the use of incentives.

Definition: Allows one dwelling unit per two, five, or ten acres, but encouraging ten acre development; with less traffic noise and congestion than in urban areas; low-density population; open space; privacy; largely forestry and agriculture oriented; rural level of services.

Locational Low residential density; areas with physical environmental constraints;

Criteria: areas characterized by full and part-time forestry and agriculture, but not designated as commercial resource lands. One unit per two acre zoning is limited to previously developed areas or as in-fill development only.

Title: Agriculture - Resource Lands

Purpose: To recognize and promote agriculture in Whatcom County and protect prime agricultural soils and productive agricultural lands from conversion to other uses. To prevent conflicts between residential and agricultural uses.

Definition: Commercial agriculture lands located on parcels 40 acres or larger, with one dwelling unit per 40 acres allowed.

Locational Soils identified as prime agricultural soils; large parcels; existing

Criteria: commercial agricultural uses.

Discussion:

The four subject parcels, totaling about 60 acres, have not been used for agricultural production since the 1960s. The existing Agricultural Resource Land designation is not supported by the use of the land during the past 40 years nor by the quality of the soils. About half of the 60 acres, was classified as "Pits" (#120) in the soil survey, and most of the remainder was mapped as Lynnwood Sandy Loam 5 to 20% (#103). The major field work for the soil survey was completed in 1982. The Lynnwood Sandy Loam soil is not a prime soil, according to the soil survey, nor is it listed as an Agricultural Protection Overlay (APO) soil by Whatcom County (WCC 20.38).

Whatcom County Comprehensive Plan - Land Use Chapter

Policy 2A-4 – Designate land uses that reflect the best use of the land.

Discussion:

Amending the Comprehensive Plan and Zoning map to the Rural Comprehensive Plan and Zoning designation would be consistent with policy 2A-4 to designate land uses that reflect the best uses of the land. The current designation as Agriculture is not a reasonable or good use of this land due to its poor quality for productive agriculture.

B. Description and Analysis of Zoning Code Proposed Amendments

The proposed zoning change is to amend the properties' zoning designation from Agriculture to R10 (Rural, 10 acre minimum lot size).

Discussion:

Agriculture District (from Whatcom County Code 20.40)

The primary purposes of the Agriculture "district are to implement the agricultural designation of the Comprehensive Plan, established pursuant to RCW 36.70A.170, preserve, enhance and support the production of food and fiber in Whatcom County to maintain a sufficiently large agricultural land base to ensure a viable agriculture industry and to maintain the economic feasibility of supporting services. Whatcom County supports agricultural activities as the highest priority use in the Agriculture District, with all other uses being subordinate to agricultural activities. Whatcom County seeks to minimize conflict with surrounding zoning districts, in conjunction with Chapter 14.02 WCC, Right to Farm. In order to limit the further fragmentation of the commercial agricultural land base, the Agriculture District includes smaller areas of land with poorer quality soils or nonagricultural uses, which do not meet the definition of agriculture lands of long-term commercial significance." ...

The primary permitted uses within the Agricultural zone are:

.051 Dairying, raising of livestock, husbandry of small animals, raising of crops, horticulture, apiculture, and temporary portable equipment used for processing of locally harvested crops.

.052 Small wood-lot management, tree farming, commercial forestry and reforestation, including the temporary use of portable harvesting or processing equipment, excluding chemical processing such as lumber treatment.

.053 One single-family dwelling per legal lot of record.

.054 Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.

.055 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.

.058 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.088 Adult family homes as defined in Chapter 70.128 RCW.

.089 Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.090 Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.091 Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district." ...

Rural District (from Whatcom County Code 20.36)

The purpose of Rural district is to implement the Rural designation of the appropriate subarea Comprehensive Plan which calls for the maintenance of rural character and environmentally fragile areas by allowing a variety of low intensity uses that are compatible and complementary with the conservation of agricultural, forestry and related uses. Furthermore, the purpose of this district is to provide the option for residential uses to arrange in cluster development patterns while reserving tracts of land for rural uses and potential future resubdivision.

The primary permitted uses in the rural zone include:

- .051** One single-family detached dwelling per lot.
- .052** Agriculture including animal husbandry, horticulture, viticulture, floriculture and beekeeping; and the cultivation of crops.
- .053** Sod farming; provided, that removal of such material does not exceed 500 cubic yards of soil per year.
- .054** Fish farms, and aquaculture and mariculture projects; provided, that no new seafood or fish-raising facilities or ponds shall be located within 1,000 feet of agricultural operations requiring pesticide, and/or herbicide applications as part of their normal farm practices.
- .055** Small wood lot management, tree farming, commercial forestry and reforestation, including the temporary use of portable management harvesting or processing equipment.
- .056** Private, noncommercial, recreation occupancy of a recreational vehicle; ...
- .057** Noncommercial extraction of sand, gravel or both for farm enhancement purposes; provided all materials extracted remain on land owned or leased by the farmer for agricultural purposes.
- .058** Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.
- .060** Public uses associated with government office buildings; public works maintenance yards or facilities, such as shops; storage buildings; and athletic fields and associated facilities if located within the current county complex at Northwest and Smith Roads. Other government or quasi-government uses of similar or complementary types would also be allowed if such uses are compatible with the character of existing facilities and the surrounding neighborhood. Facilities that do not conform to the current pattern of use, including, but not limited to, jail facilities or hazardous waste facilities, that could reasonably be expected to arouse the concern or alarm of the public, or that are incompatible with the surrounding neighborhood, shall require normal conditional use review.
- .061** One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power

for lighting.

.063 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.

.064 Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.

.065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.088 Adult family homes as defined in Chapter 70.128 RCW.

.089 Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.090 Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.091 Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

Rezoning the property to the R10 Rural zoning designation will allow the owners to develop a maximum of three to four additional residences on the property.

Whatcom County Code (WCC) Evaluation Criteria

The following analysis evaluates the amendments in relation to approval criteria for comprehensive plan amendments (WCC 2.160.080) and for zoning amendments (WCC 20.90.051(3)(a)).

For Comprehensive Plan Amendments:

(1) The amendment conforms to the requirements of GMA, is internally consistent with the Comprehensive Plan, is consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

The proposed amendment changes the designation from Agriculture - Resource Lands to Rural lands. The Growth Management Act's (GMA) designation process for Agricultural Resource Lands includes using an evaluation process described in the Washington Administrative Code; 365-190-050 (full text in Exhibit B). Lands are considered for designation as agricultural resource lands based on three factors:

- (a) The land is not already characterized by urban growth ...
- (b) The land is used or capable of being used for agricultural production ..., and
- (c) The land has long-term commercial significance for agriculture. ...

The land in this proposal does not meet the GMA criteria for Agricultural Resource Land. Most of it is not used or capable of being used for agricultural production. None of the land in the proposal contains prime soils according to the USDA's soil survey, and it does not have long-term significance for the commercial production

of food or other agricultural products. "Prime farmland" as defined by the USDA's Natural Resources Conservation Service (NRCS), "is the land that is best suited to food, feed, forage, fiber, and oilseed crops."

This proposal is consistent with the county's Comprehensive Plan, and is not inconsistent with any interlocal planning agreements. The Comprehensive Plan (Policy 8A-8) states that the NRCS soil survey is to be maintained "as the basic guideline for designating agricultural resource lands." The NRCS soil survey identifies most of the land in this proposal as "Pits," (sand pits) and the remainder as Lynnwood Sandy Loam 5 – 20% slopes, which is not a prime soil as determined by the USDA.

Comprehensive Plan Policy 8A-5 states, "Require all requests for re-designation from agricultural land to demonstrate that changed site conditions or circumstances have occurred since the original designation to such an extent that the site no longer satisfies the designation criteria for agricultural lands."

The process used to include this land as agricultural resource land was flawed and this land should not have been included as agricultural resource land. An evaluation process, as described in the GMA (36.70A.170 RCW) and as defined in the Washington Administrative Code (365-190-050 WAC (see Exhibit B)), has not been used in the designation process and this land was erroneously included as agricultural resource land.

Comprehensive Plan Policy 8A-12 states that "The Agricultural Advisory Committee shall advise the Whatcom County Executive and Council on agricultural issues and agricultural land use." The Agricultural Advisory Committee considered the application at their April 5, 2010 meeting and voted to support the applicant's request.

Goal 8-D of the Comprehensive Plan is to "Reduce land use conflicts between Whatcom County's agriculture and non-agricultural landowners." The buffering provided by the proposed R10 zoning between the residential land (R1) and the farm land should reduce the potential for future conflict between agricultural operators and residential uses.

(2) Further studies made or accepted by the department of planning and development services and planning commission indicate a need for the amendment or that changed conditions indicate a need for the amendment.

There are no further studies applicable to this request.

(3) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

(a) The anticipated effect upon the rate or distribution of population

growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The applicant states that this amendment will serve the public interest by providing a buffer between the agricultural land to the west and the rural residential land to the east (there are 10 residential parcels that intersect with the eastern boundary of the proposal). If this property were to be reclaimed for agriculture, the possibility of conflict between residential uses and agricultural uses could increase.

(b) The anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

There will be no significant effect on the County or any other service providers if the site is re-designated from Agriculture to Rural. There is the possibility of three or four additional homes on the 60 acres (there are now three).

Additional residential use in this location could increase traffic on the roads that serve this area as well as the need for school capacity (including school bus service), and fire service.

(c) Anticipated impact upon designated agricultural, forest and mineral resource lands

This proposal will rezone 60 acres of land zoned as Agriculture to Rural (R10). Although zoned as agricultural land, the land has not been used for agricultural production for several decades and, therefore, the rezone should not decrease the county's agricultural productivity. The applicant indicates that this rezone will provide a buffer between the agricultural operations to the west and the rural residential land to the east (R1) and north (R5) making for less potential conflict between residential and agricultural uses.

More residential uses on site could increase the use of groundwater and thereby decrease the amount available for farming and for stream flow. Increased storm water runoff is also possible if additional impervious surfaces or altered or compacted soils are added to the site.

(4) The amendment does not include nor facilitate illegal spot zoning.

No, it does not. The R10 designation would not be considered spot zoning; adjoining properties are zoned R5, R1, and Agriculture. There is also R10 zoning within 800 feet of this proposal.

5. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area.

The criteria of this section do not apply to this Comprehensive Plan amendment, as this amendment does not expand the boundaries of an Urban Growth Area.

a. One development right shall be transferred for every five acres included into an UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

b. Exceptions to required TDRs include urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.

c. Urban growth area expansion initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

For Zoning Amendments:

Evaluate compliance with provisions as provided by WCC 20.90.050

Environmental Review

A SEPA Determination of Non-Significance was issued on the proposed Comprehensive Plan and Zoning map amendments on April 26, 2010.

Whatcom County Comprehensive Plan

Land Use Chapter

Policy 2A-4 – Designate land uses that reflect the best use of the land.

Discussion:

Amending the Comprehensive Plan and Zoning map to the Rural Comprehensive Plan and Zoning designation would be consistent with policy 2A-4 to designate land uses that reflect the best uses of the land. The current designation as Agriculture is not a reasonable or good use of this land due to its poor quality for productive agriculture.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. Much of the property (40 acres) included in this request has been mined for sand. Sand removal started prior to 1970.
2. The Department of Natural Resources has a reclamation permit in place (# 10746) for 30 acres. The proposed use of the property in the 1972 permit, which the county signed of on, is for "Development" subsequent to mining and reclamation.
3. The soil survey for this land shows half of the land in this request is mapped as "Pits". Most of the remainder of the soil is mapped as "Lynnwood Sandy Loam 5 to 20% slopes". Field work for the soil survey was completed in 1982, and may not reflect subsequent mining activities.
4. The Agricultural Advisory Committee at its April 5, 2010 meeting voted to support the requested change in the Comprehensive Plan Designation from Agriculture – Resource Lands to Rural and to change the zoning from Agriculture to Rural with 10 acre minimum lot size.
5. The land included in this request is not prime farm land, according to the Natural Resources Conservation Service soil survey, and is not listed as an Agricultural Protection Overlay soil in Whatcom County's code.
6. Amending the Comprehensive Plan designation from Agriculture - Resource Lands to Rural and changing the zoning from Agriculture to R10 will provide a buffer between more intensive rural development (R1) to the east and Agricultural activities to the west.
7. Rezoning the property from Agricultural Resource Land to the Rural Comprehensive Plan designation; and changing the zoning designation from Agriculture to R10 will allow for the property owners to develop their properties for a maximum of three or four additional home sites. There are currently three residences on the 60 acres included in the request.
8. A SEPA threshold Determination of Non-Significance (DNS) was issued on April 26, 2010.
9. On May 2, 2010 a legal notice was published for the Public Hearing on the proposed Comprehensive Plan and Zoning Map amendment.
10. On April 30, 2010 property owners within 1000 feet of the subject parcels were notified of the proposed Comprehensive Plan and Zoning amendments; 107 letters were sent.
11. On April 30, 2010, three signs were posted on the property notifying of the

proposed rezone.

12.A Whatcom County Planning Commission public hearing was held on May 13, 2010.

V. PROPOSED CONCLUSIONS

The subject amendment is consistent with the approval criteria of WCC 20.10.080 and serves the public interest.

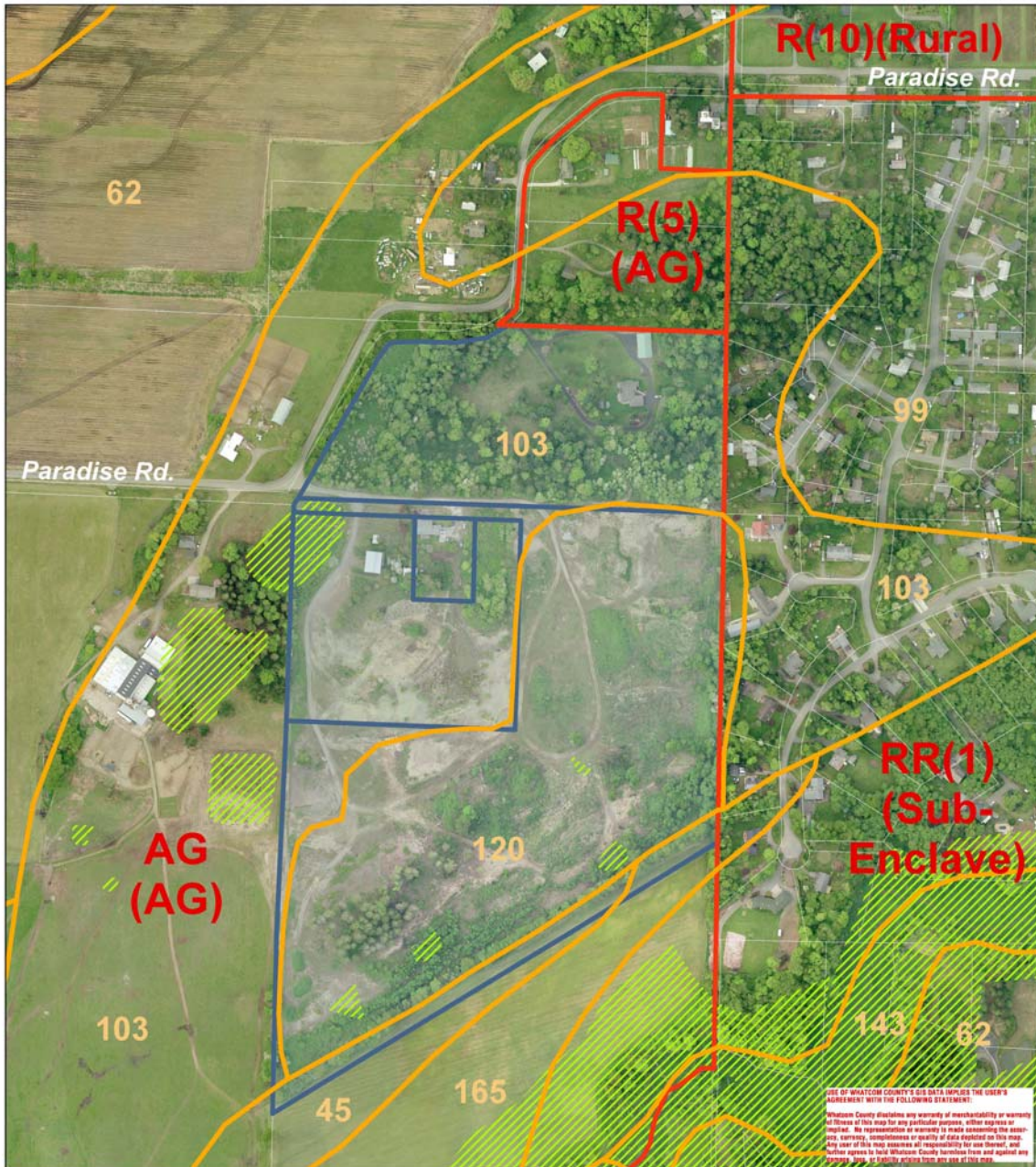
VI. RECOMMENDATION

Staff recommends the Planning Commission recommend approval of Exhibit A, the proposed Comprehensive Plan and Zoning map amendments. This recommendation is based on the findings and conclusions identified by staff in the staff report.

Attachments:

**Exhibit A – Comprehensive Plan and Zoning Code Map Amendments
Map with zoning and soil lines.**

- PLN 2010-00005 Gerard



**Requested Comprehensive Plan
 and Zoning Map Amendment
 AG to Rural, AG to R(10)**

- Approx. 60 Ac., Paradise Rd.

-  NRCS Soils
-  Zoning/Comp. Plan Boundary
-  Wetlands
-  Subject Properties

May 2008 Aerial



February 2010 sbw.



Exhibit B – Washington Administrative Code Section 365-190.050

WAC 365-190-050

[Agency filings affecting this section](#)

Agricultural resource lands.

(1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC [365-196-815](#).

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC [365-196-310](#).

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter [84.34](#) RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas and to markets and suppliers;

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby; and

(x) Land values under alternative uses.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating at least the minimum amount of agricultural resource lands needed to maintain economic viability for the agricultural industry and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated agricultural resource land needed to maintain the economic viability of the agricultural sector in the county over the long term.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW [36.70A.050](#) and [36.70A.190](#). 10-03-085, § 365-190-050, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW [36.70A.050](#). 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]