

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Matt W. Aamot	MA	8-30-04	<b>RECEIVED</b>  <b>SEP 7 - 2004</b>  <b>WHATCOM COUNTY COUNCIL</b>	9-14-04	Introduction
Division Head: Sylvia Goodwin	SG	8-31-04		9/28/04	Plan & Devel/Council
Dept. Head: Hal Hart	HH	9-1-04		1/25/2005	Council.
Prosecutor: Karen Frakes	KNF	9/2/04			
Purchasing/Budget:					
Executive: Pete Kremen	PK	9-7-04			

SUBJECT: Ordinance adopting amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code relating to airport/land use compatibility planning.

**ATTACHMENTS:**

- (1) Proposed ordinance
- (2) Planning Commission Findings of Fact & Reasons for Action, Conclusions, and Recommendations
- (3) Planning Commission minutes

Note: Background materials are available for review at the County Council office.

SEPA review required? ( x ) Yes ( ) NO	Should Clerk schedule a hearing? ( ) Yes ( x <sup>1</sup> ) NO
SEPA review completed? ( x ) Yes ( ) NO	Requested Date:
<sup>1</sup> A hearing must be held if the Council changes the Planning Commission recommendation (WCC 20.10.110).	

**SUMMARY STATEMENT:** Discourage incompatible land uses around public airports by adopting Comprehensive Plan policies that address noise, safety compatibility and height hazards;

- ✓ Zoning amendments that increase permitting requirements or prohibit certain higher intensity land uses in the vicinity of Bellingham International Airport;
- ✓ Zoning amendments that address height limitations surrounding airports;
- ✓ Notice requirements that will alert airport operators of a proposal for a subdivision, conditional use permit, or rezone in the vicinity of an airport, so they can submit comments to the hearing examiner or planning commission; and
- ✓ A new airport disclosure that would let people know when they are receiving a permit or buying property in proximity to an airport.

Note: The subject proposal is one of a number of comprehensive plan amendments initiated this year. These amendments must be considered concurrently by the County Council so that the cumulative effect of the various proposals can be evaluated (RCW 36.70A.130). Additionally, pursuant to the review schedule established in WCC 20.10.120, final Council action on these amendments should occur on or about November 30.

**COUNCIL ACTION TAKEN:**  
 9/14/2004: Introduced.  
 9/28/2004: Forwarded to concurrency meeting.  
 1/25/2005: Adopted 7-0, Ord. #2005-004

Distribution Request	
Indicate those who should receive a copy after Council action. List specific names to the right.	
ADS Facilities Management	
ADS Finance	
ADS Human Resources	
ADS Info Services	
Assessor	Keith Willnauer
Auditor	
Cooperative Extension	
District Court	
Executive	
Health	
Hearing Examiner	
Jail	
Juvenile	
Parks	
Planning	Hal Hart
Prosecutor	
Public Works	
Sheriff	
Superior Court	
Treasurer	
Other	

Related County Contract #:

ated File Numbers: AB2004-082

Ordinance or Resolution Number (this item): Ord. #2005-004

SPONSORED BY: Planning  
PROPOSED BY: Planning  
INTRODUCTION DATE: 9/14/2004

ORDINANCE # 2005-004

**ADOPTING  
COMPREHENSIVE PLAN AND COUNTY CODE AMENDMENTS  
RELATING TO AIRPORT/LAND USE COMPATIBILITY PLANNING**

**WHEREAS**, The Growth Management Act requires counties and cities to review and, if needed, revise comprehensive plans to ensure continued compliance with the GMA (RCW 36.70A.130); and

**WHEREAS**, Airport/land use compatibility planning occurred primarily in the 2004 review cycle; and

**WHEREAS**, Legal notice was published in the Bellingham Herald; and

**WHEREAS**, The Planning Commission held a public hearing on the proposal; and

**WHEREAS**, The Planning Commission has evaluated the proposed amendments and made modifications; and

**WHEREAS**, the County Council has considered the Planning Commission's Findings of Fact & Reasons for Action, Conclusions and Recommendations.

The Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

1. Notice of a Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 10, 2004.
2. Notice of a Planning Commission hearing for the subject amendments was sent to airport representatives, pilot representatives, the Port of Bellingham, the Washington Department of Transportation Aviation Division and other interested parties on June 8 and June 11, 2004.
3. The Planning Commission held a public hearing on the subject amendments on June 24, 2004.

4. A determination of non-significance was issued under the State Environmental Policy Act (SEPA) on August 30, 2004.
5. The Growth Management Act contains planning goals to guide development of comprehensive plans and development regulations (RCW 36.70A.020). Planning Goal # 3 is to “Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.”
6. State law requires that local comprehensive plans and development regulations must contain provisions to discourage incompatible land uses around public use airports (RCW 36.70A.510 and RCW 36.70.547).
7. Existing Whatcom County Comprehensive Policy 2D-7 states “Incompatible uses will be discouraged adjacent to general aviation airports to preserve the safety and efficient use of these airports . . .”
8. County-wide Planning Policies J-6 and K-1 address airport planning, including reduction of land use conflicts around facilities such as airports.
9. There are five public use airports in Whatcom County: Bellingham International Airport, Blaine Municipal Airport, Lynden Airport, Floathaven Sea Plane Base and the Port of Bellingham Sea Plane Base.
10. The County Council created an Airport/Land Use Compatibility Advisory Committee on September 23, 2003, when it passed Resolution No. 2003-058.
11. The committee, which was composed of citizen, business, pilot and airport representatives, held its first meeting on December 11, 2003 and met 12 times over the following six months. The committee finished its work and issued final recommendations on June 17, 2004.
12. The Washington State Department of Transportation (WSDOT) Aviation Division issued a document entitled Airports and Compatible Land Use Volume 1 in Feb. 1999. This document identifies three critical issues that should be considered when addressing compatibility between airports and surrounding land uses: Noise, safety, and height hazards.
13. The WSDOT Aviation Division stated that the California Airport Land Use Planning Handbook (Shutt Moen Associates, January 2002) is the best available information for evaluating compatibility between airports and adjacent land uses. The Whatcom County Airport/Land Use Compatibility Advisory Committee considered relevant portions of this handbook when evaluating land use compatibility around the five public use airports in Whatcom County.
14. The subject proposal amends the Whatcom County Comprehensive Plan to discourage incompatible land uses around certain public use airports in Whatcom County. Specific Comprehensive Plan policies address noise, safety and height hazards.

15. The subject proposal amends the Official Whatcom County Zoning Ordinance (Title 20) to increase permitting requirements or prohibit certain land uses around the Bellingham International Airport in order to discourage incompatible land uses around this airport.
16. The subject proposal amends the Official Whatcom County Zoning Ordinance (Title 20) to clarify height limitations and variance requirements around certain public use airports.
17. The subject proposal amends the Whatcom County Code to require notice to airport representatives of conditional use permits, subdivisions, rezones and certain other land use applications around public use airports.
18. The subject proposal creates a new section in the Whatcom County Code that requires disclosure of potential noise impacts to people who are buying property or receiving a permit in the vicinity of certain public use airports.
19. The Growth Management Act requires counties and cities to review and, if needed, revise comprehensive plans every seven years to ensure continued compliance with the GMA (RCW 36.70A.130).
20. Whatcom County has undertaken this seven-year review and evaluation in 2004 for airport/land use compatibility planning. Whatcom County has identified the revisions shown on attached Exhibit A to satisfy the airport/land use compatibility provisions of state law (RCW 36.70A.510 and RCW 36.70.547).

## CONCLUSIONS

1. The subject amendments are consistent with Growth Management Act, County Wide Planning Policies, and Whatcom County Comprehensive Plan.
2. The subject amendments comply with the approval criteria for comprehensive plan amendments of WCC 20.10.080.

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

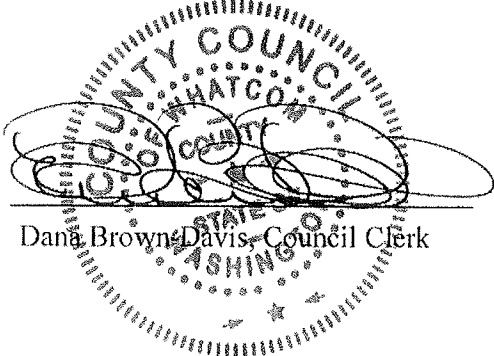
Section 1. The Whatcom County Comprehensive Plan and Whatcom County Code are hereby amended as shown on Exhibit A.

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 any part thereof other than the part so declared to be invalid.

ADOPTED this 25 day of January, 2005

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON



Dana Brown Davis  
Council Clerk

Laurie Caskey-Schreiber, Council Chair

APPROVED as to form:

Approved     Denied

Karen A. Fakes  
Civil Deputy Prosecutor

Pete Kremen, Executive

Date: 1-28-05

# EXHIBIT A

## Section I: Comprehensive Plan Amendments

*Amend chapter 2 of the Whatcom County Comprehensive Plan as follows (new language is shown with underlining and language proposed to be deleted is shown with strike-throughs):*

Policy 2D-7: Incompatible uses will be discouraged adjacent to public use general aviation airports to preserve the safety and efficient use of these airports. Incompatible uses are land uses that:

- Could be impacted by airplane noise;
- Could create or be impacted by airplane accidents; or
- Create height hazards that could adversely impact aircraft that are taking off or landing.

~~Incompatible land uses may include K-12 schools, hospitals, nursing homes, daycare, churches, high occupancy buildings, places of public assembly, residential development, storage of large quantities of hazard/explosive materials and tall structures that could interfere with airport operations.~~

*Rationale for proposed amendment:*

1. *Bellingham International Airport is considered to be a commercial airport, even though it has general aviation traffic. Therefore, the term public use airport was substituted to clarify that this policy applies to Bellingham International Airport.*
2. *The general statement about incompatible land uses was removed from this section because Policies 2D-9 and 2D-10 specifically define the land uses that are discouraged.*

Policy 2D-8: Require disclosure of potential airport noise impacts to people who are buying or obtaining a permit on property within one mile of a public use airport.

*Rationale for proposed amendment:*

1. *State law requires Whatcom County to discourage incompatible land uses adjacent to general aviation airports (RCW 36.70.547).*

2. *There are three critical issues that affect the compatibility of airports with adjacent land uses: Noise, safety relating potential for aircraft accidents, and height hazards (Airports and Compatible Land Use, Volume I, Washington State Department of Transportation Aviation Division, February 1999, p. 16)*
3. *Proposed policy 2D-8 would provide up-front education to people moving near an airport in order to avoid situations where a buyer or permit holder later becomes disgruntled because they did not realize the noise impacts associated with normal airport operations.*
4. *Based upon departure and arrival traffic patterns associated with normal airport operations, the advisory committee believes that noise can impact people within approximately one mile from airports. Therefore, the disclosure should apply within one mile.*

Policy 2D-9: Land uses that are incompatible with the operation of the Bellingham International Airport, Blaine Municipal Airport or Lynden Airport should be discouraged when Whatcom County evaluates conditional use permits and rezones. Specifically, Whatcom County should follow the process set forth below when considering whether proposed conditional use permits and rezones would allow incompatible land uses:

- Notify the applicable airport representative of the proposed conditional use permit or rezone. Consider comments submitted by the airport representative relating to compatibility of the proposed land use with the operation of the airport; and
- Determine whether the proposed conditional use or rezone is within zone 1 (runway protection zone), zone 2 (inner approach/departure zone), zone 3 (inner turning zone), zone 4 (outer approach/departure zone), zone 5 (sideline zone), or zone 6 (traffic pattern zone) as shown on the Safety Compatibility Zone Examples from the *California Airport Land Use Planning Handbook* (Shutt Moen Associates, January 2002, p. 9-38). Safety compatibility zone “example 1” will be applied to the Blaine Municipal Airport and Lynden Airport and safety compatibility zone “example 3” will be applied by the Bellingham International Airport; and
- Compare any proposed or potential land uses within zones 1 through 6 with the Basic Safety Compatibility Qualities and the Safety Compatibility Criteria Guidelines in the *California Airport Land Use Planning Handbook* (Shutt Moen Associates, January 2002, pp. 9-44, 9-45 and 9-47) and identify incompatible land uses.

- The above provisions of Policy 2D-9 do not apply to property owned by the airport. However, airport owners should assess the compatibility of land uses proposed on airport property with operation of the airport.

*Rationale for proposed amendment:*

1. *State law requires Whatcom County to discourage incompatible land uses adjacent to general aviation airports (RCW 36.70.547).*
2. *The Washington State Department of Transportation – Aviation Division indicated that the California Airport Land Use Planning Handbook (Shutt Moen Associates, January 2002) is the best available information for addressing land use compatibility around airports (e-mail from John Shambaugh of WSDOT – Aviation Division dated 12-3-03).*
3. *In order to discourage incompatible land uses the County should evaluate proposed conditional use permits and rezones to determine if any land uses are proposed near an airport that are incompatible with the operation of that airport.*
4. *Proposed Policy 2D-9 is intended to protect airports from encroachment by incompatible land uses rather than to hinder construction of buildings that are customarily located on airport property. Additionally, airport owners are in the best position to determine whether land uses they allow on airport property will create conflicts with the airport. Therefore, this policy should not be applied to the owner of the airport property. Rather, airport owners should take the initiative to ensure that incompatible land uses are not allowed on airport property.*

Policy 2D-10 Discourage tall structures around public use airports that hamper the efficient and safe use of navigable airspace. Specifically, discourage structures from exceeding the height of the imaginary surfaces defined in Federal Aviation Regulations (FAR) Part 77 around airports that have mapped such imaginary surfaces (airports that have mapped Part 77 imaginary surfaces are shown in Appendix I of the Whatcom County Comprehensive Plan).

*Rationale for proposed amendment:*

1. *State law requires Whatcom County to discourage incompatible land uses adjacent to general aviation airports (RCW 36.70.547).*
2. *Proposed Policy 2D-10 seeks to protect airspace around existing airports that have mapped the horizontal, conical, primary, approach, and transitional “imaginary surfaces” defined in Section 77.25 of the Part 77 regulations.*

3. *Currently, the Bellingham International Airport and Blaine Municipal Airport have mapped these imaginary surfaces. In the future, Lynden could choose to map the imaginary surfaces around their airport and apply to amend the Whatcom County Comprehensive Plan to include the imaginary surface mapping in Appendix I.*

Policy 2W-4 Land uses that are incompatible with the operation of the Lynden Airport should be discouraged when rezoning land in the Urban Growth Area west of Benson Rd. and south of Badger Rd. Specifically, Whatcom County should follow the process set forth below when considering whether a proposed rezone discourages incompatible land uses:

- Determine whether any land in the proposed rezone is within zone 1 (runway protection zone), zone 2 (inner approach/departure zone), or zone 3 (inner turning zone) as shown on Safety Compatibility Zone Example 1 from the *California Airport Land Use Planning Handbook* (Shutt Moen Associates, January 2002, p. 9-38).
- Compare the land uses allowed by the proposed zoning with the Basic Safety Compatibility Qualities for zones 1, 2, and 3 and the Safety Compatibility Criteria Guidelines for zones 1, 2, and 3 in the *California Airport Land Use Planning Handbook* (Shutt Moen Associates, January 2002, pp. 9-44 and 9-47) and identify incompatible land uses.
- Determine whether land in zone 1, 2 or 3 is proposed for a zoning district that allows residential land uses, schools, day care centers, hospitals, nursing homes, or above ground bulk fuel storage.
- Unless no alternatives are feasible, require residential land uses, schools, day care centers, hospitals, and nursing homes to be clustered or otherwise located outside of zones 1, 2 and 3 and require above ground bulk fuel storage to be located outside of zones 1, 2 and 3. The intent is to preserve as much open space as possible in zones 1, 2 and 3.

*Rationale for proposed amendment:*

1. *State law requires Whatcom County to discourage incompatible land uses adjacent to general aviation airports, including the Lynden Airport (RCW 36.70.547).*
2. *The area within unincorporated Whatcom County around the Lynden Airport is zoned "agriculture," which allows one-dwelling/40 acres (with provisions for farm-worker housing and limited non-agricultural uses).*

3. *The area immediately west of Benson Rd. is in the Urban Growth Area. The Lynden Comprehensive Plan indicates that this area would eventually be residential - 8 units/acre (City of Lynden Comprehensive Plan, Map 13 and p. 98).*
4. *The Washington State Department of Transportation – Aviation Division indicated that the California Airport Land Use Planning Handbook (Shutt Moen Associates, January 2002) is the best available information for addressing land use compatibility around airports (e-mail from John Shambaugh of WSDOT – Aviation Division dated 12-3-03).*
5. *Zone 1 (runway protection zone), zone 2 (inner approach/departure zone), zone 3 (inner turning zone), and zone 6 (traffic pattern zone) from the California handbook are located in the existing Lynden Urban Growth area located west of Benson Rd.*
6. *The California handbook recommends restrictions on residential land uses, schools, day care centers, hospitals, nursing homes, and aboveground bulk fuel storage in zones 1, 2 and 3. There are also some restrictions recommended for zone 6, but these recommendations allow more development than in zones 1, 2, and 3 (for example, there are no limits to residential development in zone 6).*
7. *In order to discourage incompatible land uses, while recognizing that this land has already been designated as an Urban Growth Area, the County should evaluate the land uses proposed in zones 1, 2, and 3 and should discourage residential uses and buildings where more vulnerable and/or immobile populations congregate in these areas. Additionally, open space should be encouraged in zones 1, 2, and 3.*

Policy 2W-5 Land uses that are incompatible with the operation of the Lynden Airport should be discouraged if expansion of the Urban Growth Area west of Benson Rd. and south of Badger Rd. is considered. Specifically, the Lynden Urban Growth Area should not be expanded in this area unless it can be demonstrated that:

- Residential land uses, schools, day care centers, hospitals, nursing homes, and above ground bulk fuel storage would be clustered or otherwise located outside zone 2 (inner approach/departure zone), zone 3 (inner turning zone), and zone 4 (outer approach/departure zone) as shown on Safety Compatibility Zone Example 1 from the California Airport Land Use Planning Handbook (Shutt Moen Associates, January 2002, p. 9-38).

*Rationale for proposed amendment:*

1. *There is an existing Urban Growth Area adjacent to Benson Rd. The area west of this Urban Growth Area is designated Agriculture land in the Whatcom County Comprehensive Plan. Safety compatibility zone 1 is located entirely within the existing Urban Growth Area. Policy 2W-5 would not apply to safety compatibility zone 1, because this policy relates to expansion of the Urban Growth Area, not the existing Urban Growth Area.*
2. *Zone 2 (inner approach/departure zone), zone 3 (inner turning zone), zone 4 (outer approach/departure zone) and zone 6 (traffic pattern zone) from the California handbook are located west of the Lynden Urban Growth Area in the vicinity of Double Ditch Rd.*
3. *If a proposal is ever submitted to expand the Urban Growth Area into this area, the County should consider (among other things) the compatibility of potential land uses with the Lynden Airport. This is especially true in zones 2, 3, and 4, as the California handbook recommends more restrictions in these zones than in zone 6.*

## Section II: Whatcom County Code Amendments

*Amend the Whatcom County Code as follows (new language is shown with underlining and language proposed to be deleted is shown with strike-throughs):*

### A. PROPOSED ZONING AMENDMENTS

*Amend the General Commercial (GC) District in the Whatcom County Code as follows:*

#### **20.62.050 Permitted uses.**

Unless otherwise provided herein, permitted and conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses and Appeals), the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

.051 Automobile, motorcycle, marine and farm implement sales, repair and service; provided that all repair services are conducted within an enclosed building.

.052 Automobile service stations, car washes and public garages.

.053 Mobile home and recreational vehicle sales.

.054 Eating and drinking establishments, provided that such uses require a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.055 Rental agencies.

.056 Indoor commercial recreation facilities limited to bowling alleys, skating rinks, indoor theaters and physical fitness centers, provided that such uses require a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.057 Passenger terminal facilities.

.058 Service establishment including but not limited to barber and beauty shops, laundries, dry cleaners, furniture repair, frozen food lockers, funeral parlors, animal hospitals, auction houses, financial institutions, fraternal organizations and professional offices.

.059 Retail establishments including but not limited to grocery, liquor, drug, sundries, variety, building supplies, clothing, florist, nurseries, optical, sporting goods, appliance, music and pet stores.

.060 Printing and publishing establishments.

.061 Public utilities.

.062 Rental storage establishments.

.063 Public and community facilities including police and fire stations, libraries, community centers, recreation facilities, and other similar noncommercial uses, provided that such uses require a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.064 Hotels and motels, provided that such uses require a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.065 One single-family dwelling per lot of record subject to:

(1) Health department requirements regarding soil type and water supply.

(2) Height regulations, lot coverage, open space, development standards and performance standards shall be in accordance with the provisions of Chapter 20.20 WCC; except that side and rear yard setbacks shall be 10 feet from vacant, adjacent, commercially zoned properties.

(3) A deed restriction recorded with the Whatcom County auditor is attached to the lot(s) at the time of building permit issuance stating that the dwelling(s) is located in a General Commercial zone and buyers should be aware that commercial uses will be allowed on surrounding parcels and owners have no grounds for protest.

(4) Such use requires a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.066 Duplexes and multifamily dwellings not to exceed 18 units per acre subject to:

(1) Availability of adequate public sewer, or water, and appropriate storm drainage;

(2) The maximum number of units shall be determined by the health department based on soil type and water supply;

(3) Provision of adequate right-of-way and street improvements to bring adjacent roadways up to necessary standards;

(4) Height regulations, lot coverage, open space, development standards and performance standards shall be in accordance with the provisions of Chapter 20.22 WCC;

(5) Site plan review shall be done by the technical review committee to ensure compliance with the intent of the general development standards WCC 20.62.650. Four or less units per acre are exempt from this requirement.

(6) A deed restriction recorded with the Whatcom County auditor is attached to the lot(s) at the time of building permit issuance stating that the dwelling(s) is located in a General Commercial zone and buyers should be aware that commercial uses will be allowed on surrounding parcels and owners have no grounds for protest.

(7) Duplexes and multi-family dwellings shall not be located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.067 One storage building per lot; provided, that the storage building shall not exceed 120 square feet in floor area 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.

.068 Adult family homes as defined in Chapter 70.128 RCW, provided that such uses require a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

.069 Child care facilities; provided, that child care facilities in a family dwelling shall conform to the definition of home occupation, WCC 20.97.180, and further provided that:

- (1) Child care facilities require a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

**20.80.675 Height limitations surrounding airports.**

- (1) No structure shall exceed the height of the imaginary surfaces defined in Federal Aviation Regulations (FAR) Part 77 around airports that have mapped such imaginary surfaces (airports that have mapped Part 77 imaginary surfaces are shown in Appendix I of the Whatcom County Comprehensive Plan). This restriction shall not apply to single family residences and accessory structures that have a building height of 30' or less.
- (2) The hearing examiner shall have authority to grant a variance from the height limit of WCC 20.80.675(1).
- (3) The variance application variance shall be accompanied by:
  - (a) A letter from the Federal Aviation Administration evaluating the effects of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace; and
  - (b) A letter from an official representative of the airport evaluating the effects of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.
- (4) If the Federal Aviation Administration or the official representative of the airport fails to respond within 45 days to a written request by the applicant to evaluate the proposal, the variance application may be submitted without the evaluation(s) required by WCC 20.80.675(3).
- (5) A variance may be granted if the hearing examiner finds that:
  - (a) The strict application of the height limit will result in unnecessary hardship; and
  - (b) The height proposed will not be contrary to the public interest and will not create a hazard to air navigation.
- (6) No variance shall be granted that authorizes a use that is not allowed by the underlying zoning.
- (7) The variance criteria of WCC 20.84.100 shall not apply.

~~All structures located within any district shall be limited in height consistent with Federal Aviation Regulations (FAR) Part 77 for airport operations or the height limitations of the district, whichever is less. Nothing in this ordinance shall restrict the height of a structure to 15 1/2 feet or less.~~

*Rationale for proposed amendment:*

1. *Airports and Compatible Land Use – Volume I* (WSDOT, Feb. 1999, pp. 11 & 20) states the following relating to height hazards:

*The Airport Land Use Compatibility Program assists in long range and current planning decision-making. In Washington state, the state standard for height hazards accepts the national standard, 14 CFR Part 77 Objects Affecting Navigable Airspace. Any object which penetrates these imaginary surfaces is considered an obstruction . . .*

*. . . FAA has limited authority and scope to insure that imaginary surfaces are free of obstructions. Although FAA authority is limited in that their findings are advisory in nature only, they still have the ability to affect the status of a project. . .*

2. *Airports and Compatible Land Use – Volume I* (WSDOT, Feb. 1999, p. 12) concludes:

*Land use decisions are long-term decisions. Incorporating development regulations which fan obstructions outside of the imaginary surface help to preserve the integrity of the airport, preserve quality of life and protect the jurisdiction in the case of a challenge.*

3. Additionally, the *California Airport Land Use Planning Handbook* (Shutt Moen, January 2002, p. 9-6) states:

*When notified of a proposed construction, the FAA conducts an aeronautical study to determine whether the object would constitute an airspace hazard. Simply because an object would exceed an airport's airspace surfaces established in accordance with FAR Part 77 criteria does not mean that the object would be considered a hazard. Various factors, including the extent to which an object is shielded by nearby taller objects, are taken into account. The FAA may recommend marking and lighting of obstructions.*

*The FAA has no authority to remove or to prevent construction or growth of objects deemed to be obstructions. Local governments having jurisdiction over land use are typically responsible for establishing height limitation ordinances which prevent new, and enable removal of existing, obstructions to the FAR Part 77 surfaces. Federal action in response to new airspace obstructions is primarily limited to three possibilities:*

- *For airports with instrument approaches, an obstruction could necessitate modification to one or more of the approach*

*procedures (particularly greater visibility and/or cloud ceiling minimums) or even require elimination of an approach procedure.*

- Airfield changes such as displacement of a landing threshold could be required (especially at airports certificated for commercial air carrier service).*
  - The owner of an airport could be found in noncompliance with the conditions agreed to upon receipt of airport development or property acquisition grant funds and could become ineligible for future grants (or, in extreme cases, be required to repay part of a previous grant).*
4. *Blaine has adopted an ordinance prohibiting structures from penetrating the imaginary surfaces within the city of Blaine, unless a variance is granted (Blaine Municipal Code 15.32).*
  5. *Whatcom County should adopt a height limit that would apply within unincorporated Whatcom County to restrict structures from penetrating the imaginary surfaces (unless a variance is granted) in order to ensure protection of airspace around airports, make flying safer, and ultimately providing a greater measure of safety for people on the ground.*

## **B. PROPOSED NOTICE AMENDMENTS**

*Amend Whatcom County Code 2.33.060 as follows:*

### **2.33.060 Notice of application for a proposed land use action.**

- A. A notice of application shall be issued for project permit applications within 14 days after a determination of completeness and at least 15 days prior to the open record hearing.
- B. If the county has made a determination of significance concurrently with notice of application, the determination of significance and scoping notice shall be combined with the notice of application.
- C. Notice shall include:
  - 1. The date of application, the date of notice of completion for the application, and the date of the notice of application;
  - 2. The date, time, place and type of the hearing, if applicable, and scheduled at the date of notice of the application;
  - 3. A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the county;
  - 4. The identification of other permits not included in the application to the extent known by the county;
  - 5. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
  - 6. Any other information determined appropriate by the county;
  - 7. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;
  - 8. A statement of the limits of the public comment period, the right of any person to comment on the application within a 15-day time period (30 days for substantial development permits), receive notice of and participate in any hearings, request a copy of the decision once made and to appeal a decision when allowed by law. In addition, the statement shall indicate that any person wishing to receive personal notice of any hearings must notify the hearing examiner's

office within 15 days (30 days for substantial development permits) of the date of the notice of application.

D. A notice of application shall be issued in the following manner:

1. The notice shall be published once in the official county newspaper. The applicant shall bear the responsibility of paying for such notice;

2. Additional notice shall be given using the following method:

- a. For sites within urban growth areas: At least 12 days prior to the scheduled hearing date, application notice shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above referenced property owners;
- b. For sites outside urban growth area: At least 12 days prior to the scheduled hearing date, application notice shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above referenced property owners.
- c. For sites within 4,500' of the runway of Blaine Municipal Airport, Lynden Airport or Floathaven Sea Plane Base: At least 12 days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
- d. For sites within 10,000' of the runway of Bellingham International Airport: At least 12 days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.

3. All cost associated with providing notice shall be paid by the applicant.

E. Notices of application should be sent to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by the proposed development. (The county shall be responsible for such notification.)

F. With the exception of substantial development permit applications, a public comment period shall be 15 days following the date of notice of application. Substantial development permit applications require a 30-day period. All public comments received on the notice of application must be received in the department of planning

and development services by 4:30 p.m. on or before the last day of the comment period. The county may require the applicant to pay the cost of providing notice.

- G. No SEPA threshold determination shall be issued until the expiration of the public comment period established for the notice of application. This condition shall not apply if a determination of significance is made by the county.
- H. Public notice given for project permit applications, SEPA documents, project hearings, and appeals hearings as required by this chapter and other provisions of the county code may be combined when practical, where such combined notice will expedite the permit review process, and where provisions applicable to each individual notice are met through the combined notice. (Ord. 2003-039 Exh. A; Ord. 96-031 § 1).

*Rationale for proposed amendment:*

- 1. *The "Safety Compatibility Zones" from the California Airport Land Use Planning Handbook (Shutt Moen Associates, January 2002, p. 9-38) extend out approximately 4,500 from small airports including Lynden and Blaine Airports. Therefore, it is reasonable to provide these airports with notice of discretionary development permits (such as conditional use permits) within this area.*
- 2. *The Port of Bellingham representative to the Whatcom County Airport/Land Use Compatibility Advisory Committee indicated that the FAA has requested them to monitor land use activities within 10,000' of the Bellingham International Airport. Therefore, it is reasonable to provide the Port with notice of discretionary development permits within this area.*

*Amend Whatcom County Code 20.90.045 as follows:*

**20.90.045 Notice for Quasi-Judicial Rezones**

Notice of quasi-judicial hearings conducted by the Planning Commission for zoning map amendments shall be issued in accordance with all of the following provisions:

- 1. Notice shall be published once in the official county newspaper at least 10 days prior to the hearing. The County shall prepare the notice and the applicant shall pay for the notice.
- 2. Notice shall be mailed to property owners as follows:
  - a. For zoning map amendments within existing urban growth areas: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above referenced property owners.

- b. For zoning map amendments outside existing urban growth areas: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above referenced property owners.
  - c. For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above referenced property owners.
3. The County shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 days prior to the hearing.
4. The County shall send notice to the appropriate city, when the proposed rezone is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed rezone at least 10 days prior to the hearing.
5. For sites within 4,500' of the runway of Blaine Municipal Airport, Lynden Airport or Floathaven Sea Plane Base: At least 10 days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
6. For sites within 10,000' of the runway of Bellingham International Airport: At least 10 days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.
7. All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be invited to submit written comments and attend the hearing to provide oral comments.

## C. PROPOSED NEW DISCLOSURE REQUIREMENTS

*Add a new section to the Whatcom County Code as follows:*

### **Chapter 8.34** **AIRPORT DISCLOSURE**

Sections:

8.34.010 Policy and purpose.

8.34.020 Definitions.

8.34.030 Disclosure.

**8.34.010 Policy and purpose.**

- A. It is the declared policy of Whatcom County to protect the legal and customary operations of existing public use airports.
- B. The purpose of this chapter is to promote a good neighbor policy between public use airports and surrounding property owners. Through mandatory disclosures, purchasers and users of adjacent property will better understand the consequences of living near airports and be prepared to accept impacts associated with airport operations.

**8.34.020 Definitions.**

A. “Discretionary development permits” means permits which require discretionary review by the hearing examiner, including but not limited to subdivisions, binding site plans, planned unit developments, variances, shoreline substantial development permits and conditional use permits.

B. “Public use airports” means Bellingham International Airport, Blaine Municipal Airport, and the Lynden Airport.

C. “Person” means an individual, corporation, partnership, association or other legal entity.

**8.34.030 Disclosure.**

A. The disclosure set forth in subsection B shall be used as follows:

1. Upon the conveyance of a fee interest in real property, the seller shall require that the disclosure statement set forth in subsection B be signed by the purchaser and recorded in the county auditor's office in conjunction with the deed conveying the real property when the real property is within one mile of the runway of a public use airport. The duty of disclosure rests with the seller.

2. All building permits, short plats and discretionary development permits for land within one mile of the runway of a public use airport shall contain the disclosure statement set forth in subsection B.

3. Omission of the disclosure does not create liability for the county.

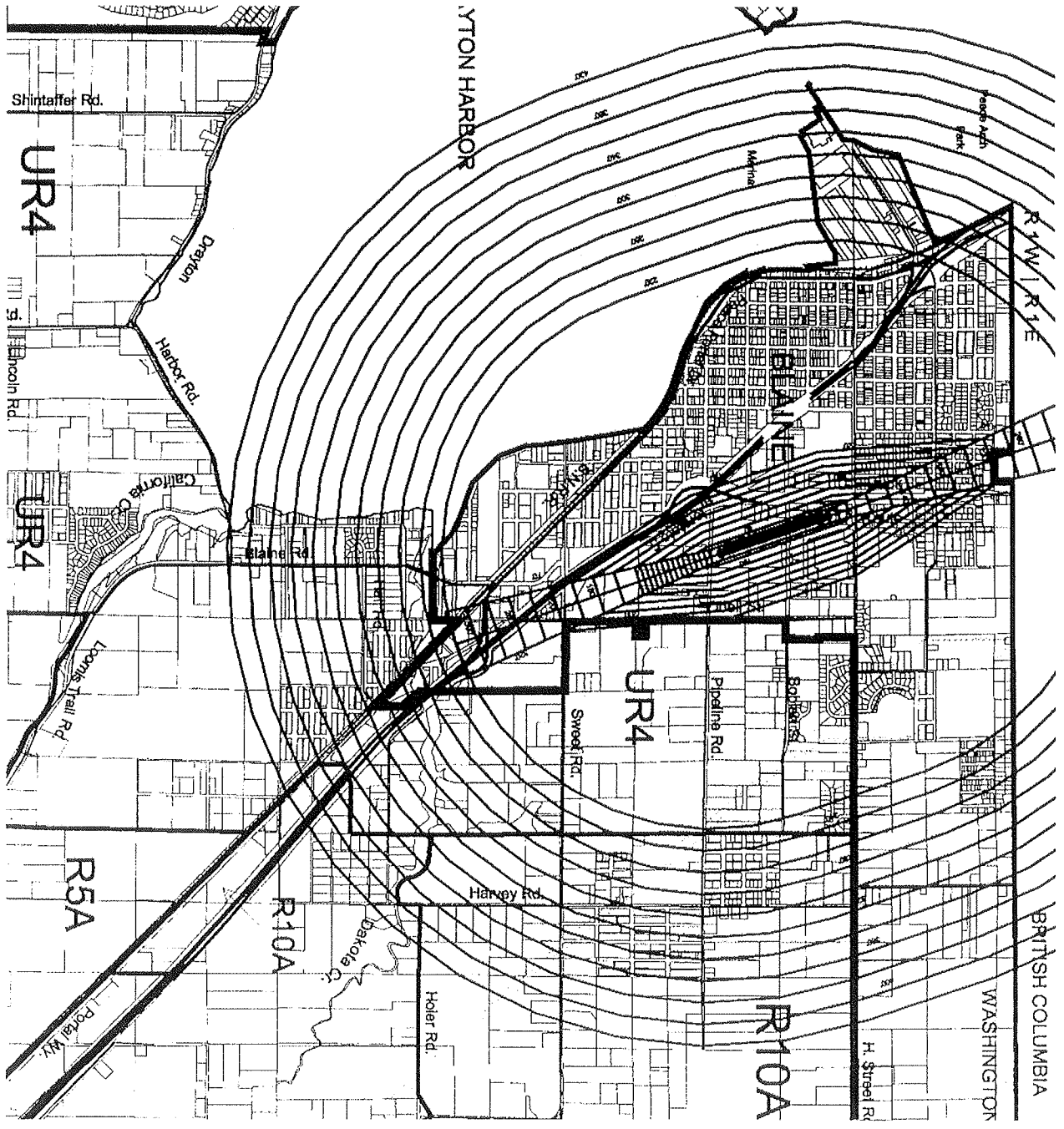
B. The following shall constitute the disclosure required by this section:

The subject property is near an airport. The amount of noise which may be generated by airport operations may exceed levels anticipated in a residential setting. Whatcom County will not consider airport operations and associated impacts to be a nuisance if such operations comply with applicable laws.

Note: Rationale statements are for explanatory purposes only and will not appear in the text of the Comprehensive Plan or Whatcom County Code.





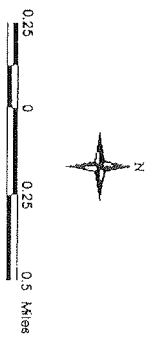


Blaine Municipal Airport  
 FAR Part - 77 Imaginary Surfaces  
 Appendix 1 - Map 2

Whitcomb Zoning  
 Rural - 1 Unit Acres  
 R10A - Rural - 1 Unit 10 Acres  
 URBAN RESIDENTIAL  
 UR4 - Urban Residential & University

**Legend:**

- PART 77 Zoning
- City of Blaine



USE OF WHITCOMB COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENTS:  
 Whitcomb County does not warrant any accuracy of manufacturing or assembly of the data. The user assumes all liability for any use of the data. The user agrees to indemnify and hold Whitcomb County harmless from and against any damages, loss of profits, or other expenses incurred by the user as a result of the use of the data.

