



WHATCOM COUNTY

WASHINGTON

Planning & Development Services

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TO: Whatcom County Council – Committee of the Whole
FROM: Lucas Clark, Planner II
THROUGH: Mark Personius, Director
DATE: April 24th, 2026
RE: Comp Plan Update – Chapter 8 – Preliminary Council Draft for
4.28.2026 (Staff Comments)

Requested Action: Discussion at the Whatcom County Committee Council of the Whole- April 28th Meeting on Whatcom County Comprehensive Plan Chapter 8.

Agricultural Land Base, Land Use Conflicts, Water for Agriculture, Mineral Resources, - New Council Proposed Policies 8A-15, 8A-16, 8D-1, 8F-6, 8I-7, 8L, 8L-1.

Whatcom County Council- Committee of the Whole introduced new amendments related to the designation and de-designation of agricultural resource land, conflicts between agriculture and incompatible activities, water rights, buffers, and setbacks related to AG and Mineral Resource Lands, and the adverse impact of mineral extraction on neighbors on March 31st, with additional discussion on April 7th. Below are staff comments on the Council's proposed amendments.

Item #91 – Policy 8A-15

Require mitigation when lands designated as agricultural resource lands of long-term commercial significance under RCW 36.70A.170 are de-designated and converted to urban growth areas/urban growth area reserve, as applicable, on the Whatcom County Comprehensive Plan Land Use Map because they no longer meet the criteria for agricultural resource lands of long-term commercial significance that result in an overall net loss of agricultural designated lands.

Staff Response:

There are multiple designation/de-designation criteria in WAC 365-190-040. The State Supreme Court has held that de-designation of AG land under the GMA must meet the so-called “three-pronged test” for designating and de-designating agricultural Lands of long-term commercial significance. In order to de-designate agricultural lands of long-term commercial significance, it must be demonstrated that one of these three factors exists.

1. The land is characterized by urban growth. The GMA states that "characterized by urban growth" refers to "... land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth" (RCW 36.70A.030(19)).
2. The land is not primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics.
3. The land no longer has long term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.

The GMA also recognizes that "*land use planning is a dynamic process*" subject to "*changed circumstances*" under WAC 365-190-040(10) and that UGAs may only be allowed to expand into agricultural resource lands when it makes a finding that such lands no longer meet the designation criteria and that "*...no other option is available*" as specified in the UGA expansion criteria in WAC 365-196-310(5)(e)(v). Policy 8A-15, as proposed to be amended, fails to recognize the additional level of complexity and analysis required of the County to address these different criteria through the Agricultural Land Assessment (ALA) whenever UGA expansion comprehensive plan amendments are proposed into AG lands. PDS recommends not including the suggested changed language but retain Policy 8A-15 as originally proposed by staff.

Item #92 – Policy 8A-16

Evaluate the potential for designating additional agricultural natural resource lands of long-term commercial significance through creation of ~~an small lot agriculture zone that that protects agricultural land from non-agricultural uses through allowed uses and minimum lot sizes, and buffers and setbacks on adjacent non-resource lands allows for a maximum of one dwelling unit/20 acres (Ag-20)~~ within applicable Rural Study Areas. The evaluation should include the consideration of potential transfer of development rights to ~~urban growth areas. rural areas zoned R5A or R10 outside UGA with one or more of the following: 1) NON-APO soils 2) Access to public water 3) Less or lower wetlands 4) Better septic soils.~~

Staff Response:

The proposer seems to have mis-interpreted the intent of this proposed policy. The goal of the original PDS-proposed language is to evaluate whether some larger (e.g. 10-20 acre) currently Rural designated parcels with some high-quality agricultural characteristics may be able to transition to an AG designation under the GMA. Not to split up existing large lot AG-40 lands into

smaller parcels. The policy, as proposed to be changed, does not make sense, "adjacent non-resource lands unit/20 acres (Ag-20) within applicable Rural Study Areas." The AG-20 zone does not presently exist. In addition, it does not direct PDS to do anything it is not already doing; PDS has already adopted buffers and setbacks on non-resource lands adjacent to resource lands. The policy, as proposed, does not create a policy that would allow PDS to develop regulations to protect AG land by creating a new small-lot AG-20 zone in addition to—not instead of—the existing large lot AG-40 zone. Clearly if such a new AG-20 zone criteria were to be evaluated in the future under this policy it would have to apply to only Rural Study Area parcels—not existing parcels already designated AG. The goal of the original policy language was to increase the supply of AG designated lands to advance the 100,000 acre goal of the County—not to allow subdivision of existing 40 acre AG parcels. PDS recommends not including the suggested language and to retain the original staff-proposed language. Note that the Planning Commission added the last sentence in this proposed policy.

Item #94 – Policy 8D-1

Reduce potential conflicts between agriculture and incompatible activities by maintaining zoning regulations that protect productive agricultural lands of long-term commercial significance from conversion to non-agricultural and non-accessory compatible uses. Require at least 100-foot setbacks on adjacent nonagricultural uses from fields, agricultural buildings, and other agricultural uses, and require 100-foot buffers and fencing on adjacent non-natural resource lands.

Staff Response:

The amendment, as written, is prescriptive and not policy-driven. Whatcom County Code already requires setbacks from agricultural and forest resource lands for adjacent development. See WCC 20.36.652, 20.80.251, 20.80.252, 20.80.255, 20.80.256 and 20.38.060, all of which require setbacks and or right-to-practice notifications related to agricultural and forest resource lands on adjacent non-resource lands. In addition, as proposed to be amended, it would require the County to adopt new regulations requiring fences on all rural and UGA designated parcels that abut all natural resource lands (including all agricultural, forest and mineral lands) which seems unnecessary and imprudent. PDS recommends not including the suggested language change.

Item #95 – NEW Policy 8F-6

Policy 8F-6: Do not allow the transfer of agricultural water rights to rural development and match the development capacity of rural areas with available water resources to reduce competition with water rights for farms and ranches and salmon.

Staff Response:

Water rights are highly complex areas of law regulated by the State of Washington, Department of Ecology. The County does not have the statutory authority to regulate the transference of water rights. PDS recommends not adopting this proposed policy.

Item #96 – NEW Policy 8I-7

Policy 8I-7: Require at least 100-foot setbacks on adjacent non-forestry uses from forests, forestry buildings, and other non-natural resource uses, and require adequate buffers and fencing on adjacent non-natural resource lands.

Staff Response:

The amendment, as written, is prescriptive and not policy-driven. Whatcom County Code already requires setbacks from forest resource lands for adjacent development. See WCC 20.36.652, 20.80.251, 20.80.252, 20.80.255, 20.80.256 and 20.38.060, all of which require setbacks and right-to-practice notifications related to natural resource lands on adjacent non-resource lands. In addition, as proposed to be amended, it would require the County to adopt new regulations requiring fences on all rural and UGA designated parcels that abut all natural resource lands (including all agricultural, forest and mineral lands) which seems unnecessary and imprudent. PDS recommends not including the suggested language change.

Item #97 – Policy 8L

Minimize-Ensure any objective adverse impacts of mineral extraction industries on neighboring people and properties by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Staff Response:

PDS suggests maintaining the existing policy language since it may be impossible to *ensure* in all cases since adverse impacts are often of a perceived “subjective” nature and “objective” is not defined.

Item #98 – Policy 8L-1

Avoid significant impacts of mineral extraction on adjacent or nearby land uses, public health and safety, or natural resources. These measures must include buffers and setbacks on non-mineral resource lands for uses and land divisions approved after the designation of mineral resource lands.

Staff Response:

Current county code already requires right-to-practice mineral extraction notifications on all non-resource lands adjacent to mineral resource lands. See WCC 20.36.652. In addition, WCC 20.73.703 already authorizes PDS to require fencing on mineral resource land mining operations to protect public safety. In addition, WCC 20.73.153(3) also requires that buffers be established on the MRL parcel itself—not the adjacent non-MRL parcel—and that those *"buffers are established of sufficient size and with sufficient vegetation or berming to ensure that noise, dust, noxious weeds and other impacts to surrounding property owners are within applicable regulations and performance standards"*. The MRL code also includes noise performance standards under WCC 20.73.701 to ensure minimal impacts from mineral extraction activities on adjoining non-MRL properties. This proposed policy, if adopted by Council as proposed, would require the county to amend our regulations to now require "buffers and setbacks" on both the MRL designated parcel and the adjacent non-resource land parcel. This seems to be an excessive requirement and PDS does not recommend adopting this additional proposed language.