



WHATCOM COUNTY

WASHINGTON

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Memorandum

TO: The Whatcom County Council

FROM: Amy Keenan, Special Projects Manager & Lucas Clark, Planner II

THROUGH: Mark Personius, Director

DATE: December 5, 2025

SUBJECT: AB2025-810—2025 Misc Code Amendments #3, Wells Serving Clustered Lots

We appreciate the opportunity to review and comment on the proposal by Councilmember Elenbaas to amend Whatcom County Code (WCC) 20.38.060(6) to allow wells for *cluster lots* on the agricultural reserve tract. This item is scheduled for discussion under AB2025-810 at the Council Planning & Development Committee meeting on 12/9/2025.

PDS has been approving cluster subdivisions subject to the requirements of the Agricultural Protection Overlay (APO) code since 1997. All parcels held in 20 acres or larger zoned R5A or R10A are subject to the APO requirements of clustering unless determined exempt pursuant to the criteria in WCC 20.38.050 and require that any subdivision meet the APO cluster requirements in WCC 20.36 and development and use standards in WCC 20.38.

While there are examples of agricultural reserve tracts with wells, they may predate the subdivision, predate the final APO ordinance, predate the Washington State Growth Management Act (GMA), be irrigation wells, or the well on the reserve tract serves the reserve tract allowed dwelling unit. If the will of the Council is to allow wells for *cluster lots* on the agricultural reserve tract, PDS requests that this specific item be removed from the 2025 Code Scrub and docketed as a separate, more substantial code update next year.

In general, the APO requires that:

- Cluster lots may not exceed 25% of the parent parcel acreage;
- Agricultural reserve tract must be a minimum of 75% of the parent parcel acreage;
- Cluster lots shall be located so as not to interfere with resource productivity and agricultural uses;
- Drainfields serving the cluster lots shall be located within the cluster lots or a separate tract, but not within the reserve tract;
- Wells serving the cluster lots must be kept a minimum of 100 feet from any line of the agricultural reserve tract;
- Habitable structures must be 100 feet from any line of the agricultural reserve tract;
- Nonhabitable accessory structures (garages, shops, etc.) can be 30 feet from any line of the agricultural reserve tract.

With regard to potable water for cluster lots, WCC 20.38.060(6) states:

(6) All wells for potable water within the cluster subdivision shall be kept a minimum of 100 feet from the property line of an existing farm or any parcel or portion thereof which is designated as the agricultural reserve tract; and

For reference, the Private Water Supply Well - Two Party Users Agreement is routinely used in subdivision scenarios where two parties share the well. The agreement specifically states the following is prohibited:

PROHIBITED PRACTICES The parties herein, their heirs, successors and/or assigns, will not construct, maintain or suffer to be constructed or maintained upon the said land and within 100 feet of the well herein described, so long as the same is operated to furnish water for public consumption, any of the following: septic tanks and drain fields, sewer lines, underground storage tanks, county or state roads, railroad tracks, structures, barns, feeding stations, grazing animals, enclosures for maintaining fowl or animal manure, liquid or dry chemical storage, herbicides, insecticides, hazardous waste or garbage of any kind. The parties will not cross connect any portion or segment of the water system with any other water source without prior written approval of the Whatcom County Health and Community Services (WCHCS) and/or other appropriate governmental agency.

In a scenario where wells are not shared but are located on a lot separate from the lot they serve, a declaration of covenant is required. The declaration of covenant has equivalent language regarding prohibited activities within the well's sanitary control area (wellhead protection area) as in the shared well agreement.

If the cluster lot wells were allowed on the agricultural reserve tract, agricultural uses, including feeding stations, grazing animals, enclosures for maintaining fowl or animal manure, herbicides, and pesticides, would not be allowed within the 100-foot well protection radius. This area could not be used for many agricultural practices. Practically speaking, this may require additional fencing/signage and associated property owner costs to protect the 100-foot wellhead protection radius from agricultural practices that could contaminate the well water (e.g., application of herbicides, fertilizers, etc.).

The alternative language proposed at the November 18, 2025, Council meeting does not include guidance and standards for determining when lot creation results in enhanced or more functional agricultural use. With the protective mechanisms required by WCHCS to protect public health, well-head protection area covenants would prohibit agricultural uses. If the Council's direction is to allow cluster lot wells in the agricultural tract, PDS requests additional time to review additional sections of WCC 20.38.060 (Development and use standards) and 20.36 (Rural zone), Title 21 (Subdivisions), and WCC 24.11 Drinking Water to ensure consistency with those requirements.