



Whatcom County

COUNTY COURTHOUSE
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Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-420

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Department:	Planning and Development Services Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:	02/22/2022		
Agenda Date:	02/22/2022	Enactment #:	ORD 2022-014		

Primary Contact Email: jfleisch@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the Whatcom County Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest. The proposed map amendment will amend the Mineral Resource Lands Comprehensive Plan Designation to Rural Forestry, to match the zoning district. The zoning code amendment will include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone. The proposal affects approximately 66 acres of privately held lands on/near Wells Creek Road, off of State Route 542 - Mt. Baker Hwy, Assessor's Parcel Numbers 400831580150, 400831450200, 390806550550.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/27/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7	Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
		Nay: 0	
		Absent: 0	

Agenda Bill Master Report Continued (AB2021-420)

08/10/2021 Council

HEARD PUBLIC
TESTIMONY

08/10/2021 Council

FORWARDED FOR Council
CONCURRENT REVIEW

Aye: 7 Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
Nay: 0
Absent: 0

02/08/2022 Council

INTRODUCED

Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner
Nay: 0
Absent: 0

02/22/2022 Council

ADOPTED

Aye: 6 Buchanan, Donovan, Elenbaas, Frazey, Galloway, and Kershner
Nay: 0
Absent: 0
Abstain: 1 Byrd

Attachments: Agenda Bill Master Report, Staff Memo, Proposed Ordinance, Staff Report

SPONSORED BY: Planning
PROPOSED BY: Planning
INTRODUCTION DATE: 2/8/2022

ORDINANCE # 2022-014

AN AMENDMENT TO THE OFFICIAL COMPREHENSIVE PLAN MAP FOR THE APPROXIMATELY 66-ACRE NOOKSACK FALLS EXCLAVE WITHIN THE MOUNT BAKER SNOQUALMIE NATIONAL FOREST, AND AMENDMENT TO THE RURAL FORESTRY ZONING CODE TO INCLUDE THE NOOKSACK FALLS EXCLAVE AS AN AREA WHERE CERTAIN CONDITIONAL USE PERMIT APPLICATIONS MAY BE SUBMITTED.

WHEREAS, an application has been submitted by AVT Consulting to amend the Comprehensive Plan Map to change the Mineral Resource Land (MRL) designation to Rural Forestry for the approximately 66-acre Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest, and to amend the Rural Forestry zoning code to include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone.

WHEREAS, the site is located on Wells Creek Road, off Mt. Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. The proposal is situated within portions of Section 31, T40N, R8E and Section 6, T39N R8E W.M. Assessor's Parcel #'s 400831580150, 400831450200, and 390806550550; and

WHEREAS, the proposed amendment has been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, the proposed amendment meets the approval criteria for comprehensive plan amendments, as required by Whatcom County Code (WCC) 22.10.060; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald, mailed and posted; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony, and recommended approval; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the County Council held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the County Council has adopted the following findings of fact and conclusions:

FINDINGS

1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021.
3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.
6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
8. On May 25, 2011 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Whatcom County Comprehensive Plan does not contain specific criteria for de-designating Mineral Resource Lands.
10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been

demonstrated that this designation criterion has been met.

13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.
17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.
18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is

prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.
21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resource

It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available

through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims." The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.
30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

CONCLUSIONS

1. The proposed amendment is consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan map is hereby amended from Mineral

Resource Lands (MRL) to Rural Forestry as shown in Exhibit A.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit B.

BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.


ADOPTED this 22nd day of February, 2022

ATTEST:



Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Todd Donovan, Council Chair

APPROVED AS TO FORM:

/s/ Royce Buckingham, approved electronically

Royce Buckingham
Executive Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON



Satpal Sidhu, County

Approved () Denied

Date Signed: 2/25/22

Exhibit B

Title 20 Zoning Amendments

Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

20.42.150 Conditional Uses

.155 The operation of facilities intended to provide education related to forestry, natural resource and wildlife and the purpose of this district, including but not limited to demonstration forests and conservation laboratories, educational meeting facilities and related uses including rental cabins or other lodging structures, cooking and dining facilities, retail sales or meeting supplies and gifts, in the Foothills Subarea, South Fork Valley, the Newhalem Exclave, the Baker Lake Exclave, and the Nooksack Falls Exclave, provided the following standards are met:

- (1) Density shall not exceed one sleeping unit per one gross acre or a maximum for 50 beds for the entire development.
- (2) Each cabin shall have a maximum of three sleeping units.
- (3) Must be located with vehicular access fronting on paved county roads or private roads improved to county standards.
- (4) Front yard setback shall be 75 feet, with 100-foot side and rear yard setbacks to adjacent properties.
- (5) Lot coverage for all facilities, including the rental cabins, shall not exceed 20 percent, clustered on no more than 50 percent of the property.

Exhibit C

SEPA Threshold Determination
SEPA Distribution List

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

SEPA Determination of Nonsignificance (DNS)

File: SEP2021-00038

Project Description: Amend Whatcom County Comprehensive Plan Map designation from Mineral Resource Land to Rural Forestry, to match the zoning district. Amend Whatcom County Code WCC 20.42.155 to include the Nooksack Falls Area Exclave.

Proponent: Excelsior Properties LLC & Excelsior Properties II LLC

Address and Parcel #: 12251 Mt Baker Highway / 400831580150, 400831450200 & 390806550550

Lead Agency: Whatcom County Planning & Development Services

Zoning: RF

Comp Plan: MRL

Shoreline Jurisdiction: Conservation

The lead agency for this proposal has determined that no significant adverse environmental impacts are likely. This proposal will also be reviewed for compliance with all applicable Whatcom County Codes (WCC) which regulates development activities, including but not limited to: WCC 15 – Buildings and Construction, WCC 16.16 – Critical Areas, WCC 17 – Flood Damage Prevention, WCC 20 – Zoning, WCC 21 – Land Division Regulations, WCC 23 – Shoreline Management Program, the Whatcom County Development Standards and/or the Washington State Stormwater Manual. Mitigation may be a requirement of Whatcom County Code. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on May 7, 2021 and should be sent to: Josh Fleischmann via email at JFleisch@co.whatcom.wa.us

Responsible Official: Mark Personius, mpersoni@co.whatcom.wa.us

Title: Director

Telephone: 360-778-5937

Address: 5280 Northwest Drive
Bellingham, WA 98226

Date of Issuance: April 23, 2021

Signature: _____

A handwritten signature in black ink, appearing to read "M Personius", written over a horizontal line.

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding May 17, 2021.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

SEPA Distribution List
SEP2021-00038
Date of Issuance: April 23, 2021

Please review this determination. If you have further comments or questions, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

WA State Department of Archaeology and Historic Preservation via email
Stephanie Jolivette, stephanie.jolivette@dahp.wa.gov
SEPA@dahp.wa.gov

SEPA Unit, WA State Department of Ecology, Olympia via email
sepaunit@ecy.wa.gov

WA State Department of Fish and Wildlife
Wendy D. Cole via email wendy.cole@dfw.wa.gov

WA State Department of Natural Resources via email
Rochelle Goss, sepacenter@dnr.wa.gov
Brenda Werden, Brenda.werden@dnr.wa.gov

SEPA Unit, WA State Department of Transportation, Burlington via email
Roland Storme, stormer@wsdot.wa.gov
Judy Johnson, JohnsJu@wsdot.wa.gov

Lummi Nation Natural Resources
Merle Jefferson, Sr. via email - merlej@lummi-nsn.gov
Tamela Smart - tamelas@lummi-nsn.gov

Nooksack Indian Tribe
George Swanaset, JR via email - george.swanasetjr@nooksack-nsn.gov
Trevor Delgado via email - tdelgado@nooksack-nsn.gov

Skagit River System Cooperative
Nora Kammer via email - nkammer@skagitcoop.org

WCFD #19 - Glacier
Fire Chief Ben Thompson via email - ben@morewoohoo.org

Applicant
Ali Taysi via email - ali@avtplanning.com
Arch@westford.co

Other and/or Parties of Record
National Forest Service, Mt. Baker Snoqualmie National Forest c/o Greta Smith via
email - gretchen.v.smith@usda.gov