

PROPOSED BY: Planning and
Development Services
INTRODUCTION DATE: _____

**ORDINANCE NO. 2021-
AMENDING WHATCOM COUNTY CODE TITLE 20 AND THE COMPREHENSIVE
PLAN REGARDING SURFACE MINING APPLICATIONS WITHIN 500 FEET OF
GAS OR PETROLEUM PIPELINES.**

WHEREAS, Whatcom County Council docketed a proposal to amend the Whatcom County Comprehensive Plan and Whatcom County Zoning Code to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer; and

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

WHEREAS, in accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed zoning text and comprehensive plan amendments; and

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

WHEREAS, the Whatcom County Planning Commission held a work session on the proposed amendment; and

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

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

WHEREAS, the Whatcom County Council has reviewed the Planning Commission recommendation; and

WHEREAS, the Whatcom County Council held a work session in the Natural Resources Committee; and

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

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

FINDINGS

1. The proposed amendments were docketed by the Whatcom County Council on March 12, 2019.
2. The Surface Mining Advisory Committee recommended approval of the proposed amendments for approval on June 26, 2019.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 29, 2021. The associated comment period ended May 13, 2021, and the appeal period concluded May 24, 2021.
4. A comment was received by the Department of Ecology on May 13, 2021, recommending clarification on current issues with mineral extraction near pipelines, potential and actual incidents resulting in damage to pipelines or support structures due to mineral extraction, current restrictions on mineral extractions within the vicinity of pipelines, and suggesting consideration of additional safeguards.
5. A Revised DNS was issued on May 25, 2021, in response to Department of Ecology comments.
6. The Planning Commission held a duly noticed public hearing on the proposed amendments on June 10, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on April 21, 2021.
8. On April 21, 2021, 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 Growth Management Act (GMA) includes a planning goal that is relevant to the proposed comprehensive plan amendment.
10. GMA Planning Goal #10: Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the

likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

11. The Growth Management Act (GMA) includes comprehensive plan mandatory elements that are relevant to the proposed comprehensive plan amendment and ensure coordination between communities and jurisdictions to reconcile conflicts.
12. Comprehensive Plan Land Use Element states, in part: The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

13. Comprehensive Plan Rural Element shall, in part: "include measures that apply to rural development and protect the rural character of the area, as established by the county, by protecting critical areas...and surface water and ground water resources.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

14. Whatcom County's County-Wide Planning Policy N-2 states: The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

This amendment will require a site specific geotechnical analysis as part of the zoning regulations to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from petroleum pipelines to allow surface mining to be conducted, to ensure mining

operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

15. There are no interlocal agreements affecting the proposed amendments.
16. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
17. Goal 5M: Protect the citizens and the environment of Whatcom County through informational, educational, and regulatory measures.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

18. Policy 5N-8: Require expanded land uses and facilities located nearer than 500 feet from the centerline of a transmission pipeline to not increase the level of risk from a pipeline failure and use site design, building, technological, and/or operational techniques to reduce or minimize risk.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

19. Policy 8L-1: Avoid significant impacts on adjacent or nearby land uses, public health and safety, or natural resources from mineral extraction.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

20. Policy 8L-3: Avoid adversely impacting ground and surface water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse

impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

21. Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

22. Goal 10G: Protect and enhance Whatcom County's surface water and groundwater quality and quantity for current and future generations.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

23. Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

24. There have been no studies made or accepted by PDS that indicate changed conditions that show the need for the amendments. However, seismic events are known to impact the structural integrity of infrastructure. The proposal aims to determine the minimum safe distance from a petroleum pipeline to

allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

25. There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as anticipated in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
26. There is no appreciable anticipated effect upon the ability of the County and/or other services 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 as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
27. There is no appreciable anticipated impact upon designated agricultural or forest lands. The proposal requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The findings of the geotechnical analysis may require a larger area of separation between mining activities and pipelines than would presently be required. This may protect the public interest of uncontaminated aquifers, as intended by the proposal.
28. The amendment does not include nor facilitate illegal spot zoning.

CONCLUSIONS

1. The subject comprehensive plan amendments and zoning text amendments are consistent with the approval criteria of WCC 22.10.060.

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

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan is hereby amended as shown in Exhibit A

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 _____ day of _____, 2021

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

/s/ Royce Buckingham, approved via email / JL

Royce Buckingham
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied Date

Signed: _____

Exhibit A

Whatcom County Code

Chapter 20.73 Mineral Resource Lands Special District (MRL)

20.81.030

A. Land Divisions, High-Consequence Land Uses, ~~and~~ Essential Public Facilities and Surface Mining.

20.73.150 Conditional uses.

. **153** Surface mining subject to Washington State's Surface Mining Act (Chapter [78.44](#) RCW); provided, that:

(9) When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

Whatcom County Comprehensive Plan

Chapter 8 - Resource Lands

Goal 8L: Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8L-9: Through a site specific geotechnical analysis of potential impacts, ensure mineral extraction within 500 feet of gas or petroleum transmission pipelines will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake.