



STATE OF WASHINGTON  
DEPARTMENT OF AGRICULTURE  
P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

May 31, 2019

Skagit County Board of County Commissioners  
1800 Continental Place, Suite 100  
Mount Vernon, WA 98273

RE: Skagit County Brassicaceae Ordinance

Thank you for your interest in having Washington State Department of Agriculture (WSDA) provide feedback regarding Skagit County's brassicaceae ordinance. Washington State is one of the world's premier brassica vegetable seed production areas. Washington growers produce 50-100% of U.S. supply and 10-50% of the world's supply. This high value crop returns \$1000 to \$8,000 per acre with a total estimate value of \$65 million annually.

WSDA recognizes that while there are mechanisms in place to protect commercial brassica seed producers from producers who do not participate in the pinning process, WSDA regulatory authority does not provide protection for commercial seed growers from crosspollination from non-commercial growers such as residential homeowners. Skagit County's brassicaceae ordinance is a positive step towards establishing additional protection for commercial brassica growers.

As Paula Moore, Acting Seed Program Manager discussed at the public hearing on May 7, 2019, WSDA does have concerns that the ordinance, while intended to provide a mechanism for commercial and non-commercial growers to resolve conflict arising from proximate brassica crops, actually places additional restrictions on commercial growers before they are able to seek an injunction creating a venerable seed industry. Please see the attached document that provides detailed feedback regarding the ordinance.

Sincerely,

Derek I. Sandison  
Director

Enclosure: Skagit County Brassicaceae Ordinance- WSDA Feedback

cc: Jessica Allenton, Commodity Inspection Division Assistant Director  
Paula Moore, Acting Seed Program Manager  
Brandon Roozen, Executive Director, Western Washington Agricultural Association  
Don McMoran, County Extension Director, WSU Skagit County Extension



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1. 9.56.020 - Definitions:

The "Nuisance Flowering Brassica" definition states a Flowering Brassica grown and maintained outside the Brassica Regulatory Scheme in a property immediately adjacent to a property planted in accordance with the Brassica Regulatory Scheme. By stating "immediately adjacent" only non-commercial property that touch the property of a commercial grower would be eligible for the proposed mitigation plan. According to OSU resources, crosspollination could occur anywhere from 0.9 miles to 2.4 miles.

WSDA suggests Skagit County Board of Commissioners to consider changing the definition of "Nuisance Flowering Brassica" to "Non-commercially Grown Brassica Crop" that has bolted or flowered outside the Brassica Regulatory Scheme.

If a boundary requirement is necessary, WSDA would suggest a change to include all property up to 2.5 miles (as the crow-flies) to the border of a commercial grown brassica crop as eligible for the proposed mitigation plan and included in the ordinance. As mentioned, increasing the Notice area to include 2.5 miles of surrounding property increases the possibility to prevent wind cross pollination from land not physically touching the commercial property.

2. 9.56.040 (1) Notice:

No Flowering Brassica on a property shall be deemed a nuisance unless Notice has been furnished "prior to the planting of the Commercial Brassica Seed Crop". This assumes the commercial producer knows about the possibility of a cross contamination. Topography of land or short full bloom or flowering may impede a producer from identify the Nuisance Flowering Brassica. The ordinance deems a declaration of service for a Notice is sufficient by posting on the door of the main residence at the property or place in the U.S. Mail addressed to the property to be charged. The burden is on the commercial grower to know the crop owner and know the landowner or tenant. There is no mention of remedy for misidentified landowners when the true owner is not known or located. The ordinance makes only flowering brassica a

nuisance. If a bolted but non-flowering crop is identified, technically per the ordinance this is not a nuisance until flowered.

Giving Notice after flowering is potentially too late and may have already damaged the commercial crop by cross-pollination and reduce purity. WSDA suggests Skagit County Board of Commissioners to consider amending the ordinance to include that a Notice can occur prior to the crop bolt or flower period to the landowner or tenant. Also, it may be beneficial to define what minimal information is needed in the Notice to the landowner or tenant.

Additionally, the Commissioners may want to consider adding language for provisions if the wrong landowner or tenant is given Notice. The burden of knowing what crop is grown by a landowner or tenant and identifying the owner is on the commercial grower. There are no provisions or adjustments if the wrong household or landowner was given Notice. If housing density or the brassica crop is between two residence and the wrong resident is given Notice, there are currently no provision as to the next steps for abatement.

### 3. 9.56.040 (2) Opportunity to Cure:

Under the ordinance a commercial brassica grower must offer an estimated fair market value in exchange for a non-commercial grower to remove the nuisance flowering brassica prior to being able to file for an injunction. Currently, commercial growers can preliminarily file an injunction on non-commercial flowering brassica to-be cut down or removed.

Additionally, the ordinance does not specify who determines the estimated fair market value. Market value price can change during the period from the date of Notice to the landowner or tenant and the time of abatement. The value of a commercial seed does not necessarily equate to the same value as an non-commercial or heirloom crop of the same kind. A method for resolution or determination of value is needed to clarify for all parties the fair market value source.

### 4. 9.56.040 (2)(b) Injunctive relief:

Under the ordinance, before a commercial seed grower can seek and potentially obtain injunctive relief against an "immediately adjacent" non-commercial grower of "Flowering Brassica" plants, the commercial seed grower must have given notice prior to planting the seed crop and must have given "opportunity to cure" prior to seeking injunctive relief in court. Following a failed opportunity to cure step, it could take at least three weeks before a motion for injunctive relief could be noted and heard in Skagit County Superior Court. The three week time frame is an estimated "fast track" taking into account the seed grower's need to work with legal counsel to draft a summons, complaint, motion for injunctive relief and supporting declarations/exhibits, a proposed order, ensuring the availability of the Court to hear the motion under an expedited time frame, and obtaining service on the non-commercial grower. During this time period, the seed grower's crops could have been exposed to cross-pollination from the non-commercial flowering Brassica before court-ordered injunctive relief is available—making an injunctive order too late to prevent the cross-pollination.