



# PLANNING & DEVELOPMENT SERVICES

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## MEMORANDUM

**To:** Planning Commission Members  
**From:** Carly Ruacho, Associate Planner  
**Date:** August 1, 2006  
**Re:** 2005 GMA Update Proposal Deliberations – Agriculture/Agricultural Lands

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Attached you will find a table of the more specific comments relating to the draft Comprehensive Plan and Development Regulations pertaining to Agriculture/Agricultural Lands. These more specific comments are in addition to the 'major themes' identified in the Response to Comments memo provided for your deliberations. Also attached are select revised Comprehensive Plan and/or Development Code sections based on the comments received.

Please feel free to contact staff if have any questions regarding these documents.

**Specific CP and Code Comments  
Agriculture/Agricultural Lands**

Comment	Page	Response
<b>COMP PLAN</b>		
Goal 4A-2.2 Clarify language, should be 'agricultural' strategic significance.	p. 1669	This policy relates to the County's Conservation Futures Program which includes preservation of farmland and critical areas. It would therefore be inappropriate to limit the policy to 'agricultural' land only when the program mission includes other lands.
Goal 4E-1.3 should require recording of title notice within 1 mile for consistency with code requirements.	p. 1669	The Department agrees that an inconsistency exists in the draft proposal between the Plan and the Code. An amendment to Goal 4E-1.3 is recommended to correct the discrepancy (see attached).
"Skagit County has placed wildlife protection and restoration in the same category as urban development by describing wildlife habitat areas as a "significant challenge" facing agriculture. [NRL profile, p. 2, para 3]"	p. 1685	<p>The exact language is as follows:            "there are some significant challenges facing agriculture, primarily in maintaining the land base and ensuring long-term viability. Pressures to convert agricultural lands to residential, wildlife habitat, and other uses, conflicts with neighboring non-resource uses, regulatory limitations on farming, and fluctuating economic conditions all add to the industry's challenges."</p> <p>This statement merely acknowledges that there are a variety of uses that permanently convert agricultural lands/soils – and that certain habitat projects are one form of those conversions.</p>
Recommend new policy encouraging organic and sustainable farming techniques.	p. 1685	<p>Guidelines and regulations already exist to define "organic" farming. "Organic" farming does not take precedence or preference over traditional agriculture.</p> <p>"Sustainable farming techniques" vary, and it seems unnecessary to make policy about a specific farming technique. The agricultural community believes that they already farm sustainably as it depends upon the renewal and health of the soil resource.</p>

**Specific CP and Code Comments  
Agriculture/Agricultural Lands**

Comment	Page	Response
<b>DEVELOPMENT CODE</b>		
14.06.150(1) and 14.08.070(10) should read 500' not 300' for consistency with RCW 36.70A.060(1)(b).	p. 1684	14.06.150(1) and 14.08.070(10) are not the code sections which implement RCW 36.70A.060(1)(b) (attached). Instead, it is 14.16.870, which currently requires a recorded title notice for all lands in or within 500' of designated NRL lands, consistent with the RCW. Although it may appear confusing that these code sections each require a different footage, once the purpose for each provision is understood, the logic for the difference can be seen. The provisions in 14.06 and 14.08 require notification to neighboring property owners within 300' of a project area for any land use permit. This requirement is for public notice purposes to inform neighbors that a project is occurring in their vicinity. RCW 36.70B.110(4)(g) (attached) governing public notice does not specify any required footage for notification. In contrast, the requirement that a title notice be recorded for all lands designated NRL or within 500' of designated NRL lands is to notify the owner of the parcel that resource activities may occur in the area that may be an inconvenience or incompatible with non-resource uses.
14.08.020(5)(v) New NRL de-designation criteria 'if provides overriding benefit to Ag industry' is too narrow.	p. 1577	The Department agrees with this comment and recommends that the proposed additional criteria be withdrawn.
14.16.400 Amendment requiring 'no conversion' for non-Ag uses conflicts with allowance in siting criteria for 1 acre homesites.	p. 1581	An amendment to the definition of 'conversion, agricultural land' is recommended to resolve the conflict (see attached).
14.16.400 Include 'off-road vehicle parks/trails' as use in Ag zone.	p. 1581	Use of agricultural property for an off-road vehicle park is not considered desirable or consistent with the purpose of the Ag-NRL zone.

**Specific CP and Code Comments  
Agriculture/Agricultural Lands**

<b>Comment</b>	<b>Page</b>	<b>Response</b>
14.16.400 Farm plans should be required for all new residences in the Ag zone.	p. 1668	This and other options for ensuring compliance with current requirement that residences be accessory to an agricultural operation are proposed to be considered as part of removed Environment Element policy A6.
14.16.400 Energy projects related to agriculture should be allowed as accessory uses in Ag-NRL.	p. 1672	More discussion is necessary to determine if such projects should or should not be allowed in the Ag zone or elsewhere. It is a topic worthy of discussion and consideration, but no community engagement has occurred to date.
Codes are needed to address farmworker housing (labor camps).	p. 1671	Farm worker housing, in excess of 1 temporary manufactured home, is achieved by invoking the Housing Cooperation Law (RCW 35.83). Such projects are managed by the Housing Authority of Skagit County. Policy/code language could be developed to further guide the parameters of farm worker housing projects.
More evaluation of potential adverse impacts of wetland mitigation banking projects is needed.	p. 1474	Mitigation banks on Ag-NRL lands will be one type of habitat enhancement/restoration project considered for new regulations under the new Special Use provisions recommended for further review.

1 **Chapter 4 Natural Resource Conservation**

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3 **Policy 4E-1.3 Recording with Property Deed**

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5 A standard disclosure form shall be recorded with deeds for all real estate transactions involving  
6 development on designated Natural Resource Lands, or within 1 mile of designated Agriculture-  
7 Natural Resource Lands, or within one-quarter (1/4) mile of other Natural Resource Lands. The  
8 disclosure form shall include recorded documentation of the residential owners'  
9 acknowledgment of the potential natural resource management activities and receipt of the  
10 Right-to-Manage Natural Resource Lands information.

1 **14.38.030 Disclosure.**

2 (1) No change.

3 (2) The following shall constitute the disclosure required by this Section:

4 “This disclosure applies to parcels ~~lies designated within an area~~ or within 1 mile of ~~an area~~  
5 ~~designated as agricultural land or~~ designated or within 1/4 mile of rural resource, forest or  
6 mineral resource lands of long-term commercial significance in Skagit County. A variety of  
7 Natural Resource Land commercial activities occur or may occur in the area that may not be  
8 compatible with non-resource uses and may be inconvenient or cause discomfort to area  
9 residents. This may arise from the use of chemicals; or from spraying, pruning, harvesting or  
10 mineral extraction with associated activities, which occasionally generates traffic, dust, smoke,  
11 noise, and odor. Skagit County has established natural resource management operations as a  
12 priority use on designated Natural Resource Lands, and area residents should be prepared to  
13 accept such incompatibilities, inconveniences or discomfort from normal, necessary Natural  
14 Resource Land operations when performed in compliance with Best Management Practices and  
15 local, State, and Federal law.” In the case of mineral lands, application might be made for  
16 mining-related activities including extraction, washing, crushing, stockpiling, blasting,  
17 transporting and recycling of minerals. If you are adjacent to designated NR Lands, you will  
18 have setback requirements from designated NR Lands. (Ord. 17938 Attch. F (part), 2000)

1 **14.04.020 Definitions.**

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3 **Conversion, agricultural land:** Any activity that alters the landscape so as to preclude a parcel  
4 or a portion of a parcel from the reasonable possibility of agricultural production. This includes  
5 the construction of structures or infrastructure or any other alteration which would make  
6 agricultural production of a parcel or portion of a parcel technically or economically infeasible.  
7 Locating structures within an existing developed area used as a home-site, or within an area not  
8 more than 1 acre in size on vacant parcels, shall not be considered conversion.

**RCW 36.70A.060****Natural resource lands and critical areas — Development regulations.**

(1)(a) Except as provided in \*RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

[2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

**Notes:**

\*Reviser's note: RCW 36.70A.1701 expired June 30, 2006.

Intent -- Effective date -- 2005 c 423: See notes following RCW 36.70A.030.



**RCW 36.70B.110**

**Notice of application — Required elements — Integration with other review procedures — Administrative appeals (as amended by 1997 c 396).**

(1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a threshold determination (~~(of significance)~~) under chapter 43.21C RCW concurrently with the notice of application, the notice of application (~~(shall)~~) may be combined with the threshold determination (~~(of significance)~~) and the scoping notice for a determination of significance. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or \*36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW 36.70B.040; and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless a public comment period or an open record predecision hearing is required.

(6) A local government shall integrate the permit procedures in this section with environmental review under chapter 43.21C RCW as follows:

(a) Except for a threshold determination (~~(of significance)~~), the local government may not issue (~~(its threshold determination, or issue)~~) a decision or a recommendation on a project permit until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required and the local government's threshold determination requires public notice under chapter 43.21C RCW, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(7) A local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency provided that the hearing is held within the geographic boundary of the local government. Hearings shall be combined if requested by an applicant, as long as the joint hearing can be held within the time periods specified in \*RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision, combined with any environmental determinations, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations.

[1997 c 396 § 1; 1995 c 347 § 415.]

#### Notes:

\*Reviser's note: RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

#### RCW 36.70B.110

### **Notice of application — Required elements — Integration with other review procedures — Administrative appeals (as amended by 1997 c 429).**

(1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a determination of significance under chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. Nothing in this section or this chapter prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a project permit application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and, except as limited by the provisions of subsection (4)(b) of this section, shall include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or \*36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW (~~36.70B.040~~) 36.70B.030(2); and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the notice of application required by subsection (2) of this section and the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless ~~((a public comment period or))~~ an open record predecision hearing is required or an open record appeal hearing is allowed on the project permit decision.

(6) A local government shall integrate the permit procedures in this section with its environmental review under chapter 43.21C RCW as follows:

(a) Except for a determination of significance and except as otherwise expressly allowed in this section, the local government may not issue its threshold determination ~~((or issue a decision or a recommendation on a project permit))~~ until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required ~~((and the local government's threshold determination requires public notice under chapter 43.21C RCW))~~, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(d) A local government is not required to provide for administrative appeals of its threshold determination. If provided, an administrative appeal shall be filed within fourteen days after notice that the determination has been made and is appealable. Except as otherwise expressly provided in this section, the appeal hearing on a determination of nonsignificance shall be consolidated with any open record hearing on the project permit.

(7) At the request of the applicant, a local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency ~~((provided that))~~, if:

(a) The hearing is held within the geographic boundary of the local government ~~((Hearings shall be combined if requested by an applicant, as long as))~~; and

(b) The joint hearing can be held within the time periods specified in \*RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision(~~or combined with~~) and of any environmental determination(~~or~~) issued at the same time as the project decision, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations.

[1997 c 429 § 48; 1995 c 347 § 415.]

#### Notes:

**Reviser's note:** \*(1) RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

(2) RCW 36.70B.110 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.