

ORDINANCE NO. 12815

AN ORDINANCE ADOPTING A NEW CHAPTER TO TITLE 14 SKAGIT COUNTY CODE, SKAGIT COUNTY RIGHT TO FARM ORDINANCE.

WHEREAS, Skagit County has experienced population growth which has resulted in greater demands for housing and other developmental pressures on agricultural land; and,

WHEREAS, per Skagit County Codes 14.04.110 and 14.04.115, the purpose of the Agricultural and Agricultural Reserve districts is "to establish and preserve land set aside for the production of crops, livestock, or agricultural products requiring large areas of land..." and to "recognize and preserve those lands considered farmlands of local importance for the production of crops, livestock or agricultural products"; and,

WHEREAS, the Washington State Growth Management Act (RCW 36.70A.020(8)) states in its Planning Goals that local planning efforts should "Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries" and "Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses"; and,

WHEREAS, agriculture contributed over 120 million dollars in 1988 and is a major industry in Skagit County; and,

WHEREAS, a number of individuals and groups in the agricultural community have requested that the Planning Agency develop a Right to Farm Ordinance; and

WHEREAS, the Skagit County Planning Commission, in response to requests to develop a Right to Farm, directed staff to develop a Right to Farm Ordinance; and

WHEREAS, Skagit County currently lacks any systematic method to evaluate and respond to agricultural nuisance complaints; and,

WHEREAS, the Skagit County Planning Commission has considered, deliberated and modified the Right to Farm Ordinance brought forth by staff during several study sessions and conducted a public hearing, has recommended the Right to Farm Ordinance as proposed and by staff and as amended by the Planning Commission be approved; and

WHEREAS, the Board of County Commissioners, at two public meetings, January 8, and January 15, 1991, reviewed the application, findings and recommendation of the Planning Commission and discussed and deliberated the action to be taken in open session; and

NOW THEREFORE BE IT ORDAINED that the Skagit County Board of Commissioners hereby adopts the attached findings and recommendation of the Planning Commission and approves the proposed Right to Farm Ordinance which addresses Skagit County's support of Agriculture and further defines what will be considered an agricultural nuisance (ordinance language attached); and,

BE IT FURTHER ORDAINED that the Right to Farm Ordinance will be in effect as of the date of adoption.

IN TESTIMONY WHEREOF, we hereunto set our hands and affix the official seal of our office this 28th day of January, 1991.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

W. W. Vary

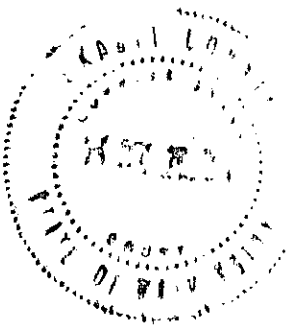
Chairperson

Robby Robinson

Commissioner

Ruth Wylie

Commissioner



Stephanie Wood

Stephanie Wood, Clerk
Board of County Commissioners

APPROVED AS TO FORM:

John Moffat

John Moffat, Chief Civil Deputy
Prosecuting Attorney's Office

APPROVED AS TO CONTENT:

Scott Kirkpatrick

Scott Kirkpatrick, Director
Planning and Community Development

Adding a New Chapter to Title 14 Skagit County Code**SKAGIT COUNTY
RIGHT TO FARM ORDINANCE**14. .010 Policy and Purposes.

- (1) (a) It is the declared policy of this County to enhance and encourage agricultural operations within the County. It is the further intent of this County to provide to the residents of this County proper notification of the County's recognition and support through this ordinance of those persons' and/or entities right to farm.
 - (b) State planning goals encourage the conservation of productive agricultural lands and discourage incompatible uses. This goal can be fulfilled by assuring that the use of lands adjacent to agricultural lands do not interfere with the continued use, in the accustomed manner, for the production of food and agricultural products.
- (2) Where non-agricultural land uses extend into agricultural areas or exist side by side, agricultural operations are frequently the subjects of nuisance complaints and on occasion have been forced to cease or curtail operations. Such nuisance complaints discourage investments in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the County's agricultural industry as a whole. It is the purpose and intent of this ordinance to reduce the loss to the County of its agricultural resources by limiting the circumstances under which agricultural operations may be considered a nuisance. This ordinance is not to be construed as in any way modifying or abridging County, State or Federal laws; rather it is only to be utilized in the interpretation and enforcement of the provisions of this code and County regulations.
 - (3) An additional purpose of this ordinance is to promote a good neighbor policy between agricultural and non-agricultural property owners by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residence, including but not limited to the NOISES, ODORS, DUST, CHEMICALS, SMOKE, AND HOURS OF OPERATION that may accompany

agricultural operations. It is intended that through mandatory disclosures purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

- (4) An additional purpose of this ordinance is to provide notice, through a disclosure statement, of the potential inconveniences and discomforts which may arise from agricultural activities.

14. .020 Definitions.

- (1) Discretionary Development Permits - Permit applications requiring discretionary review, including but not limited to subdivision permits, planned unit developments, special use permits, variances, and shoreline substantial development/conditional use/variance permits.
- (2) "Farm" means that land, buildings and machinery used in the commercial production of land based farm products.
- (3) "Farm Operation" means condition or activity which occurs on a farm in connection with the commercial production of land based farm products, and includes but is not limited to: market produce at roadside stands or farm markets; preparation for market, delivery to storage or to market, or to carriers for transportation to market; transportation of equipment; noise, dust, fumes, operation of machinery and irrigation pumps; ground and aerial seeding or spraying; the application of chemical and organic fertilizers, conditioners, insecticides, pesticides and herbicides and associated drift of such materials; and the employment and use of labor.
- (4) "Farm Products" means those land based plants and animals useful to human beings, and including, but not limited to: forage and sod crops, grains and feed crops, dairy and dairy products, livestock - including breeding and grazing, fruits, vegetables, flower seeds, grasses, trees, fish, apiaries and horticultural products, or any other product which incorporates the use of food, feed and fiber, or fur.
- (5) "Good Management Practices" means current, economically feasible, management practices available as defined by the American Society of Agronomy, the United States Department of Agriculture Soil Conservation Service, the Washington State University Cooperative Extension Service in Skagit County, and other land based professional or industrial agricultural organizations.
- (6) "Person" means an individual, corporation, partnership, association, or other legal entity.

14. .030 Nuisance.

No land based agricultural activity, operation, facility or appurtenances thereof, regardless of past or future changes in the surrounding area's land use or zoning designation, conducted or maintained for commercial purposes, and in a manner consistent with current good management practices, not superseding local, State or Federal regulations and involving permitted uses allowed under Skagit County Code 14.04.110 and 14.04.115 shall be or become a nuisance as defined in Skagit County Code 14.04.030.

14. .040 Disclosure.

- (1) The statement set forth in subsection (2) ("Disclosure") shall be used under the following circumstances and in the following manners:
 - (a) Skagit County shall mail a copy of the Disclosure, with an explanatory informational attachment to all owners of real property in Skagit County with the annual tax bill; provided that no liability shall attach to Skagit County for any actions or omissions under this subsection.
 - (b) Upon transfer of real property by sale, exchange, gift, real estate contract, lease with an option to purchase, any other option to purchase, ground lease coupled with improvements, or any other means, **THE SELLER SHALL REQUIRE THAT** a statement containing the language set forth in subsection (2) shall be signed by the purchaser and recorded in the County Auditor's office in conjunction with the deed conveying the real property; provided, however, that the real property is within one mile of real property upon which agricultural operations are conducted, or if said real property is within the Agricultural (A) or Agricultural Reserve (AR) districts or within one mile of the Agricultural (A) or Agricultural Reserve (AR) districts as set forth in Skagit County Code 14.04.110 and 14.04.115; respectively.
 - (c) Upon the issuance of a discretionary development permit, including but not limited to subdivision permits and use permits, for use on or adjacent to lands zoned for agricultural operations or conducting agricultural operations, the discretionary development permit shall include a condition that the owners of the property shall be required to sign a statement of acknowledgement containing the Disclosure (2) on forms provided by the Skagit County Department of Planning and Community Development, which form shall then be recorded in the County Auditor's Office.

- (2) The following shall constitute the disclosure required by this section:

If your real property is adjacent to property used for agricultural operations or included within an area zoned for agricultural purposes, you may be subject to inconveniences or discomforts arising from such operations, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FLIES, FUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. Skagit County has determined that the use of real property for agricultural operations is a high priority and favored use to the County and will not consider to be a nuisance those inconveniences or discomforts arising from agricultural operations, if such operations are consistent with commonly accepted good management practices and comply with local, State and Federal laws.

14. .050 Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.

14. .060 Precedence.

This ordinance shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith and to the extent they do conflict with this ordinance they are hereby repealed with the respect to the conflict and no more.

RECORDED MOTION REGARDING THE ADDITION OF A NEW CHAPTER TO
TITLE 14 SKAGIT COUNTY CODE, SKAGIT COUNTY RIGHT TO FARM
ORDINANCE.

WHEREAS, a number of individuals and groups in the agricultural community have requested that the Planning Agency develop a Right to Farm Ordinance; and

WHEREAS, the Skagit County Planning Commission, in response to requests to develop a Right to Farm, directed staff to develop a Right to Farm Ordinance; and

WHEREAS, the Skagit County Planning Commission has considered, deliberated and modified the Right to Farm Ordinance brought forth by staff during several study sessions; and

WHEREAS, the Skagit County Planning Commission, which held a Public Hearing at its regular session wherein staff findings and recommendations were reviewed as attached and public testimony was received, hereby, RECOMMENDS ADOPTION of the proposed Skagit County Right to Farm Ordinance, a copy of which is attached hereto and incorporated by reference, based upon the following findings of fact:

1. The public hearing has been advertised in accordance with the requirements of RCW 36.70, the Planning Enabling Act.
2. The nonproject proposal was reviewed in accordance with S.E.P.A. Guidelines. A Determination of Non-Significance (DNS) was issued on October 29, 1990. Comment period expired November 13, 1990.
3. The Planning Commission held numerous policy study sessions and a Public Hearing on December 17, 1990 to review staff's Right to Farm Proposal, and to take comment from members of the community.
4. Skagit County has experienced population growth which has resulted in greater demands for housing and other developmental pressures on agricultural land.
5. Skagit County currently lacks any systematic method to evaluate and respond to agricultural nuisance complaints.
6. Agriculture contributed over 120 million dollars in 1988 and is a major industry in Skagit County.

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7. Per Skagit County Codes 14.04.110 and 14.04.115, the purpose of the Agricultural and Agricultural Reserve districts is "to establish and preserve land set aside for the production of crops, livestock, or agricultural products requiring large areas of land..." and to "recognize and preserve those lands considered farmlands of local importance for the production of crops, livestock or agricultural products."
8. Collectively, the policies of the comprehensive plans:
 - Prohibit urban or non-compatible uses from expanding into agricultural lands for economic, safety, and aesthetic reasons.
 - Encourage the use of Open Space Taxation Laws as a useful method of land use control and resource preservation.
 - Encourage agricultural practices which contribute to more efficient agricultural production with minimal environmental impact.
 - Encourage the use of buffers between agricultural and potentially conflicting uses.
 - Encourage the promotion of public awareness regarding agricultural land resource contribution to the County.
 - Restrict land reclassification to non-agricultural use.
 - Prohibit further residential development from occurring in the 100 year flood plain.
9. The Washington State Growth Management Act (RCW 36.70A.020(8)) states in its Planning Goals that local planning efforts should "Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries" and "Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses."
10. The Washington State Growth Management Act (RCW 36.70A.060(1)) further states that local planning efforts, "shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral

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resource lands designated under section 17 of this act" and that, "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, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals."

Motion for APPROVAL made by Norm Schaaf

Motion SECONDED by Morris Nilson

Vote: (7-0)



Dan Peth, Chairman



Scott Kirkpatrick, Secretary

STAFF REPORT: Right to Farm Ordinance for Skagit County.

PUBLIC HEARING DATE: December 17, 1990

PURPOSE OF REPORT:

A number of individuals in the agricultural community have expressed a desire to develop a Right to Farm Ordinance. In response to these requests of the Planning Agency, the Planning Commission instructed staff to develop a Right to Farm Ordinance.

BACKGROUND:

Rural character, provided in part by the requirements for relatively large tracts of land for farming purposes, is also highly valued by individuals seeking home sites. An undetermined number of substandard pre-existing legal lots are available for residential development within the agricultural districts.

Many new home owners within or adjacent to the agricultural districts, or existing agricultural operations are unaware of the types and nature of activities conducted by agricultural operations. This can lead to conflicts between farmers and their nonfarm neighbors over normal agricultural practices. Though newcomers may have moved to farm areas in order to live in a rural environment, they often become upset by such unanticipated realities as dust, animal odors, flies, use of pesticides, and machinery noise from farm operations. Nuisance suits which seek to restrict the farming operation's options and practices can result.

To protect farmers from these situations the State of Washington adopted a Right to Farm Law. Many counties in Washington State have recently adopted local right to farm ordinances. The State Right to Farm Law and adopted local right to farm ordinances seek to protect farmers from liability claims based on their use of agricultural technology in rural areas where suburban sprawl, or increased residential density has encroached on farming operations. The right to farm ordinance makes it more difficult for homeowners to claim their property rights are being infringed upon by nearby farming operations.

To make homeowners more aware of typical farm operation activities, information is mailed out with the annual tax statement, and a disclosure which outlines the typical kinds of inconveniences experienced within a farming area is required of the seller at the time of sale.

STAFF ANALYSIS AND FINDINGS:

1. The public hearing has been advertised in accordance with the requirements of RCW 36.70, the Planning Enabling Act.
2. The nonproject proposal was reviewed in accordance with S.E.P.A. Guidelines. A Determination of Non-Significance (DNS) was issued on October 29, 1990. Comment period expired November 13, 1990.
3. The Planning Commission held numerous policy study sessions to review staff's Right to Farm Proposal.
4. At the November 26, policy study session the Planning Commission called for a public hearing for December 17, 1990 to take formal public testimony regarding staff recommendations.
5. Skagit County has experienced population growth which has resulted in greater demands for housing and other developmental pressures on agricultural land.
6. Skagit County currently lacks any systematic method to evaluate and respond to agricultural nuisance complaints.
7. Agriculture contributed over 120 million dollars in 1988 and is a major industry in Skagit County.
8. Per Skagit County Codes 14.04.110 and 14.04.115, the purpose of the Agricultural and Agricultural Reserve districts "to establish and preserve land set aside for the production of crops, livestock, or agricultural products requiring large areas of land..." and to "recognize and preserve those lands considered farmlands of local importance for the production of crops, livestock or agricultural products."
9. Collectively, the policies of the comprehensive plans:
 - Prohibit urban or non-compatible uses from expanding into agricultural lands for economic, safety, and aesthetic reasons.
 - Encourage the use of Open Space Taxation Laws as a useful method of land use control and resource preservation.
 - Encourage agricultural practices which contribute to more efficient agricultural production with minimal environmental impact.

- Use of buffers between agricultural and potentially conflicting uses.
 - Promotion of public awareness regarding agricultural land resource contribution to the County.
 - Restrict land reclassification to non-agricultural use.
 - Prohibit further residential development from occurring in the 100 year flood plain.
10. The Washington State Growth Management Act (RCW 36.70A.020(8)) states in its Planning Goals that local planning efforts should "Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
 11. The Washington State Growth Management Act (RCW 36.70A.060(1)) further states that local planning efforts "shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under section 17 of this act." And that "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, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals."

STAFF RECOMMENDATIONS:

1. Based upon the information contained within this file, this staff report and the aforementioned analysis and findings, the Department of Planning and Community Development recommends that the proposed Skagit County Right to Farm Ordinance be APPROVED.