**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Continuing interim conditional use criteria adopted by Ord. 2004-053 composting

**ATTACHMENTS:**

**SEPA review required?**
- [ ] Yes
- [x] No

**SEPA review completed?**
- [ ] Yes
- [ ] No

**Should Clerk schedule a hearing?**
- [x] Yes
- [ ] No

**Requested Date:** 4/12/2005

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Continuing and amending the interim conditional use criteria adopted by Ordinance 2004-053 for the siting of mushroom composting as a conditional use within the agricultural zoning district.

**COMMITTEE ACTION:**

- 3/29/2005: Introduced
- 4/12/2005: Adopted 6-0, Nelson absent
  Ord. #2005-039

**COUNCIL ACTION:**

- Related County Contract #: 
- Related File Numbers: 
- Ordinance or Resolution Number: Ord. #2005-039

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
ORDINANCE NO. 2005-039

CONTINUING THE INTERIM CONDITIONAL USE CRITERIA ADOPTED BY ORDINANCE 2004-053 FOR THE SITING OF MUSHROOM COMPOSTING AS A CONDITIONAL USE WITHIN THE AGRICULTURAL ZONING DISTRICT

WHEREAS, on October 12, 2004, the Whatcom County Council adopted Ordinance 2004-053, temporarily amending Whatcom County Code 20.40, establishing additional criteria for siting mushroom composting as a conditional use within the agricultural zoning district; and

WHEREAS, the general health and welfare of many citizens of Whatcom County continue to be negatively impacted by nuisance level odors from mushroom composting; and

WHEREAS, the interim criteria established by Ordinance 2004-053 adequately protect water source aquifers and respond to nuisance level odor impacts from mushroom composting; and

WHEREAS, the County Council desires to continue to protect and enhance the general health and welfare of the public; and

WHEREAS, the County’s SEPA official issued a Determination of Non-Significance on November 8, 2002; and

WHEREAS, on March 25, 2005, the SEPA official determined that there are no significant impacts likely from the proposal contained herein, Exhibit A, and therefore, no new SEPA determination is necessary as this time; and

WHEREAS, RCW 36.70.790 and RCW 36.70.795 permits adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and

WHEREAS, RCW 36.70.795 requires the adoption of findings of fact which justify Council action; and

WHEREAS, the above recitals are findings of fact of the Council; and
WHEREAS, the Council hereby enters the following additional findings of fact:

1. This continuation of the temporary amendment to Title 20 WCC is necessary to avoid imminent harm to the health and welfare of the public from nuisances and health impacts that may arise due to the inadequate provisions of the pre-existing, non-interim zoning regulations as they pertain to mushroom composting operations.

2. Without the imposition of interim official controls, nuisances and health impacts from mushroom composting facilities may cause irreparable harm to the welfare of the public.

3. The Whatcom County Planning Commission has reviewed existing code and regulations regarding composting facilities and forwarded its recommendations to the County Council.

4. The Whatcom County Council is currently in the process of reviewing the recommendations of the Planning Commission and anticipates making a decision on permanent regulations in the near future.

5. The Whatcom County Council desires the opportunity to continue to review the Planning Commission's recommendations for permanent code amendments without allowing for the vesting of new uses under the existing code in the interim.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the interim conditional use criteria adopted by Ordinance 2004-053 and as amended by this ordinance for the siting of mushroom composting as a conditional use within the agricultural zoning district are hereby continued as provided in Exhibit A to this ordinance.

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 and 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.
BE IT FINALLY ORDAINED that this ordinance shall remain in effect for six months following its effective date, and may be renewed for one or more six-month periods if subsequent public hearings are held in accordance with law and findings of fact are made prior to each renewal.

APPROVED this 12 day of April, 2005.

ATTEST

Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY WASHINGTON

Laurie Caskey-Schreiber, Council Chair

( ) Approved  ( ) Denied

Pete Kremen, County Executive

Date: 4/14/05
EXHIBIT A

Section 1. Section 20.40.164 of the Whatcom County Code reads as follows:

Commercial composting, excluding commercial mushroom composting, which satisfy the conditional use criteria of WCC 20.84.220; provided that, commercial composting shall take place solely in areas zoned Agriculture, exclusive of the Agricultural Protection Overlay zone of Chapter 20.38 WCC. Commercial composting conditionally permitted in accordance herewith shall not constitute a nuisance.

Section 2. Text of WCC 20.40.159 (as adopted in Ord 2004-027) shall be amended as follows:

Mushroom composting (commercial and noncommercial). “Mushroom composting” includes the production or preparation of compost utilized in growing mushrooms. When the primary purpose of the mushroom composting is to service offsite locations, it shall not be considered a farm operation for the purposes of Chapter 14.02 WCC, Right to Farm Ordinance. In addition to the conditional use criteria of WCC 20.84.220, the applicant shall satisfy each of the following criteria:

(1) The activity shall take place solely in areas zoned for Agriculture, exclusive of the Agriculture Protection Overlay zone of chapter 20.38 WCC.

(2) New applications, and any applications for expansion, shall include:
   a) Plans prepared and certified by a professional engineer whose field of expertise includes this specialty; and
   b) A facility management plan that includes monitoring, maintenance and reporting measures. Reporting requirements shall require a periodic review and evaluation of the facility prepared by a professional engineer in the field and include:
      i. Submission of the report to Whatcom County Planning & Development Services and Whatcom County Health & Human Services within three months of commencement of operations, within three months after a material system or procedural revision, and annually, due three months after the year end, for the latest calendar year; and
      ii. A description of the facility and operating procedures; and
      iii. A statement whether the facility is operating as designed.

(3) The facility, and expansion of existing facilities, must be located, designed, constructed, and operated such that:
a) All compost shall be contained on an impermeable surface; and
b) Drainage shall prevent pooling, and any groundwater or surface water contamination; and
c) Organic materials, except straw, shall be kept under covered storage; and
d) All mixed organic ingredients, and straw that has been pre-wetted and nitrogenated, shall be transferred to an enclosed building on the same calendar day as mixing occurs; and
e) All composting, after the organic materials are mixed, shall only take place in an enclosed building with the following or equivalent technology:
   i: An aerated floor
   ii: A wet scrubber
   iii: A biofilter, or equivalent technology
   iv: Other system components, including but not limited to the fan and monitoring system, as required by a qualified professional engineer.

At minimum, these systems must maintain a negative pressure differential between the inside and outside of the building, maintain an aerobic compost, and provide for the collection and treatment of all air emissions and leachates. The biofilter, or equivalent technology, shall provide sufficient operating integrity and contact time with the contaminants to reduce them to a level that does not alter or impair the usefulness of the surrounding environment.

f) All mushroom composting facilities and operations shall maintain the following setbacks:
   i. 500’ from adjoining parcels other than those described in (3)f.iii. below; and
   ii. 100’ from a watercourse or well; and
   iii. 2640’ from adjoining parcels in any of the following zoning classifications: Urban Residential, Rural Residential, Residential-Island, Rural, Rural Forestry, Commercial, Gateway Industrial, Light Impact Industrial, Point Roberts Special District, Point Roberts Transitional Zoning.

(4) There shall be compliance with ordinances and laws regulating solid waste facilities and sites, including without limitation, WCC Title 24, the Whatcom County SEPA Ordinance, and all applicable state and federal regulations.

(5) A security deposit in the form of cash, bond, letter of credit, or assignment of savings shall be required as a condition of the permit for so long as the mushroom composting exists on the site. The security deposit must be in an amount calculated by multiplying the initial design annual production capacity in
cubic yards or the actual cubic yard production during the preceding calendar year by 75 cents per cubic yard. If following a public hearing the Hearing Examiner determines that the facility is operating in violation of the conditional use permit requirements, and the owner or operator does not cure the violation within 30 days of receipt of such notice, the security deposit shall be applied to remedy the non-compliance in the most expedient and effective manner.

(6) These requirements are minimum requirements and shall be in addition to any other requirements or project review process which applies in the underlying district in which the facility is located.

(7) In the event of a conflict between the provisions of this chapter, and WCC 24.12 – Mushroom Substrate Production Facility Rules, and the project review process, the most restrictive provision shall control.

Section 3. The text of WCC 20.40.159 (as adopted in Ordinance 2002-033) shall be amended to read as follows:

Transitory solid waste facilities for treatment, storage, or collection, including, but not limited to: recycle centers and drop boxes for household materials excluding large items such as automobiles or major appliances; noncommercial composting and mulching facilities, except for all mushroom composting facilities; and including but not limited to the types of facilities operated by neighborhood or public service organizations.

Section 4. The text of WCC 20.40.051 shall be amended to read as follows:

Dairying, raising of livestock, husbandry of small animals, raising of crops, and horticulture, except for mushroom composting, apiculture, and temporary portable equipment used for processing of locally harvested crops.

Section 5. The text of WCC 20.40.108 shall be amended as follows:

Composting and mulching facilities other than mushroom composting facilities, if the use is ancillary to the primary agriculture use, when in compliance with federal and state water quality standards. Mushroom composting as an accessory use shall only be permitted when in compliance with federal and state water quality standards and when conducted in compliance with WCC 20.40.165. When the primary purpose of the mushroom composting is to service offsite locations, it shall not be considered a farm operation for the purposes of Chapter 14.02 WCC, Right to Farm Ordinance.