WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2005-149

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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</thead>
<tbody>
<tr>
<td>Amy de Fera Pederson</td>
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<td>3/15/05</td>
<td>Introduction</td>
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<tr>
<td>Division Head:</td>
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<td>3/29/05</td>
<td>Planning &amp; Development</td>
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<tr>
<td>Sylvia Goodman</td>
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<td>4/12/05</td>
<td>Hearing</td>
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<td>Dept. Head:</td>
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<td>4/26/05</td>
<td>P&amp;D</td>
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<tr>
<td>Hal Hart</td>
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<td>5/10/2005</td>
<td>Intro</td>
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<td>Prosecutor:</td>
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<td>5/24/05</td>
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<td>Executive:</td>
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<tr>
<td>Pete Kremen</td>
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TITLE OF DOCUMENT:


ATTACHMENTS:

(1) Proposed Ordinance
(2) Agency Report with Recommended Text
(3) Staff Report

Note: Planning Commission Public Hearing Minutes will be forwarded to Council upon completion

SEPA review required?   (X) Yes   ( ) NO
SEPA review completed?  (X) Yes   ( ) NO

Should Clerk schedule a hearing? ( ) Yes   (X) No

Requested Date:
'The Council must hold a hearing if they want to change the Planning Commission’s recommendation (WCC 20.90.051).

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.)

An ordinance amending Whatcom County Code, Title 20, Chapter 20.37 - Point Roberts Transitional Zone (TZ) to address "STEP" and "community wastewater facility" requirements for minimum lot size and maximum density calculations for cluster divisions, cluster design standards, deleting provisions allowing reduction of the minimum open space reserve area requirement, and amending open space reserve area standards to require buffering, public shoreline access, and trail and open space area provisions; Chapter 20.71 - Water Resource Protection Overlay District to amend cluster design standards and open space reserve area provisions; and Chapter 20.97 to add definitions of "cluster subdivision", "parent parcel", and delete the definition of "STEP".

COMMITTEE ACTION:

3/29/2005: Recommended approval as amended per staff’s memo dated 3/29/05
4/26/2005: Amended version to be introduced May 10, public hearing to be held May 24

COUNCIL ACTION:

3/15/2005: Introduced
3/29/2005: Amended, hearing to be held
4/12/2005: Placed back in P&D Committee
5/10/2005: Introduced
5/24/2005: Amended and adopted 6-0 Caskey-Schreiber absent

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

File #ZON2004-00010 Ord. 2005-048

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.
AN ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, WCC TITLE 20, CHAPTERS 20.37 – POINT ROBERTS TRANSITIONAL ZONE (TZ) DISTRICT, 20.71 – WATER RESOURCE PROTECTION OVERLAY DISTRICT, AND 20.97 – DEFINITIONS TO CLARIFY REQUIREMENTS AND STANDARDS FOR CLUSTER SUBDIVISION AND OPEN SPACE RESERVE AREAS

WHEREAS, pursuant to WCC 20.90, proposed zoning amendments shall be docketed for consideration once per year; and

WHEREAS, a determination of non-significance was issued under the State Environmental Policy Act (SEPA) on February 7, 2005; and

WHEREAS, pursuant to RCW 36.70.390, legal notice was published in the Bellingham Herald on Thursday, January 30, 2005 and Monday, February 14, 2005; and

WHEREAS, the Planning Commission held public hearings on Thursday, February 10, 2005 and Thursday, February 24, 2005, considered all testimony, and recommended approval of the proposed text amendments; and

WHEREAS, the Whatcom County Council Planning and Development Committee held a work session on March 29, 2005; and

WHEREAS, the Whatcom County Council finds the amendments to be in the best interest of the public health, safety and welfare; and

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

WHEREAS, the County Council has adopted the following Findings and Conclusions:

FINDINGS OF FACT AND CONCLUSIONS

1. In December 2001, the Whatcom County Council adopted an updated 2001 Point Roberts Subarea Plan and associated zoning/comprehensive plan map amendments [ORD #2001-073]. The adopted plan included goals, policies and projects included direction and guidelines for the creation and adoption of a Transitional Zone (TZ) district that would incorporate the concept of cluster designed development in association with preservation of open space, critical areas, and recreational opportunities.

2. In March 2002, Whatcom County Code, Title 20 was amended to include a new Chapter 20.37 - Point Roberts Transitional Zone (TZ) District [ORD #2002-018]. As specified, the chapter
included provisions and design standards for "lot clustering" and "open space reserve tracts".


4. The Point Roberts Transitional Zone (TZ) District was adopted in March 2002 to implement the goals, policies and projects of the 2001 *Point Roberts Subarea Plan*.

5. On October 7, 2003, County Council adopted amendments to WCC 20.71 – *Water Resource Protection Overlay District* which included “cluster subdivision” and “open space reserve tract” requirements that were consistent with the cluster provisions of the Point Roberts TZ District [ORD #2003-049].


7. Whatcom County Comprehensive Plan Goal 11G identifies protection of water resources and natural drainage systems by controlling the quantity and quality of stormwater runoff as an objective of Whatcom County. Cluster subdivisions are an effective tool to protect natural drainage systems and provide an open space tract for stormwater filtration and infiltration.

8. Whatcom County Comprehensive Plan Policy 3C-1 supports cluster subdivision as a mechanism for development of affordable housing.


10. A determination of non-significance (DNS) was issued by the Whatcom County SEPA Official on February 7, 2005.

11. A Planning Commission public hearing was held on February 10, 2005 and all testimony was considered.

12. The text amendments presented in Exhibit A are consistent with the goals and policies of the Growth Management Act, *Whatcom County Comprehensive Plan*, the County-Wide Planning Policies, and the *Point Roberts Subarea Plan*.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1: Whatcom County Code, Title 20, Chapters 20.37 - *Point Roberts Transitional Zone District*, 20.71 – *Water Resource Protection Overlay District* and 20.97 - *Definitions* are hereby amended as indicated in Exhibit A of this ordinance.
ADOPTED this 24th day of May, 2005.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Laurie Caskey-Schreiber
Laurie Caskey-Schreiber, Council Chair

() Approved  () Denied

Pete Kremen, County Executive
Date: 6-7-05
Cluster Subdivision and "Open Space Reserve Tracts"  

EXHIBIT A

* WCC, Title 20 zoning text amendments adopted by County Council on May 24, 2005 are identified by single underline and single strikethrough.

WCC TITLE 20, Chapter 20.37 -  
Point Roberts Transitional Zone (TZ) District

20.37.251 Minimum lot size and maximum-density requirements.

For the purpose of creating new building lots within the Transitional Zone District, two options land use densities are provided for calculating land use densities. The minimum building lot size and maximum density requirements for new construction vary according to the method of subdivision and, as well as whether or not public water and/or sewer, STEP, or a community wastewater facility are available to serve the site.

(1) The conventional subdivision method shall be used, if public water or sewer, STEP, or a community wastewater facility are available. Where the conventional subdivision method is used to create new building lots, the minimum lot size shall be five acres.

(2) The cluster subdivision method shall only be used to create new building lots if: (a) public water and sewer, STEP, or a community wastewater facility are provided; and (b) an a permanent "open space reserve area tract" meeting the requirements of sections 20.37.321 and .322 is provided created as part of the subdivision. The minimum building lot size for a cluster subdivision with public water shall be 12,500 5,000 square feet and the minimum building lot size for a cluster subdivision with public water and public sewer shall be 5,000 square feet.

20.37.253 Minimum lot size and maximum density and minimum lot size.

<table>
<thead>
<tr>
<th>District</th>
<th>Gross Density</th>
<th>Minimum Lot Size</th>
<th>Min. Reserve Area (Cluster Subdivisions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TZ A conventional subdivision without public water; or sewer, STEP, or a community wastewater facility</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>N/A</td>
</tr>
<tr>
<td>A cluster subdivision with public water and a permanent open space reserve area</td>
<td>1 dwelling unit/1 acre</td>
<td>N/A</td>
<td>12,500 sq. ft.</td>
</tr>
<tr>
<td>TZ A cluster subdivision with public water, and public sewer, and a permanent open space reserve area; STEP, or a community wastewater facility</td>
<td>1 dwelling unit/1 acre</td>
<td>N/A</td>
<td>5,000 sq. ft.</td>
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20.37.254 Minimum lot width and depth.

<table>
<thead>
<tr>
<th>District</th>
<th>Width at Street Line</th>
<th>Minimum Mean Depth</th>
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<tbody>
<tr>
<td></td>
<td>Conventional</td>
<td>Cluster</td>
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</table>
Cluster Subdivision and “Open Space Reserve Tracts”

| TZ A conventional subdivision without public water or sewer, STEP, or a community wastewater facility | 300’ | N/A | 80’ | 100’ |
| TZ A cluster subdivision with public water, an open space reserve area, and/or public sewer, STEP, or a community wastewater facility | N/A | 30’ | 60’70’ | 100’ |

20.37.305 Lot clustering.

The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure efficiency. The clustering option is also intended to help preserve open space and the character of areas, as well as reduce total impervious surface area, and minimize development effects on critical areas and associated buffers, as defined in WCC 16.16, and resource lands. Reduction of total impervious surface area Preservation of open space is thereby intended to reduces potential stormwater runoff and associated impacts while assuring continued protection of viable, undeveloped, and naturally vegetated corridors for wildlife habitat, preservation of critical areas, protection of watersheds, preservation of aesthetic values including view corridors, and preservation of potential trail and/or recreation areas.

20.37.310 Cluster Design standards.

The creation of new building lots, pursuant to this section, shall be subject to the following design standards:

(1) Clustered building lots may be only be created through the subdivision process, short subdivision process, or binding site plan process pursuant to WCC Title 21.

(2) A cluster subdivision shall include a permanent open space reserve area consisting of at least 50% of the parent parcel. The open space reserve area shall meet the criteria established in WCC 20.37.322.

(32) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas, or other valuable or unique natural resource features or known archaeological sites, as well as physical constraints of the site.

(43) Building lots sites shall be arranged in a cluster/or concentrated pattern.

(5) The A cluster subdivision shall have no more than two common encroachments on existing county roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(64) Common access to clustered building lots should be provided by cul-de-sac or loop roads. In addition As applicable, interior streets shall be designed to allow future vehicular access to any portion of the “reserve tract” for the purpose of future approved development which may be divided into future building lots, provided that the minimum required permanent open space reserve area, pursuant to 20.37.320, shall not be further divided.

(75) In order to preserve rural character, the maximum number of lots in a lot cluster shall be 10 46. Any number of lot clusters may be used.

(8) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least eighty feet.
20.37.320 Open space reserve area tract.

.321 For the purposes of this title section, an “open space reserve area tract” is shall be defined as that portion of a the subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of “open space” pursuant to WCC 20.97.275.

.322 The minimum open space reserve area required by WCC 20.37.253 tract shall be subject to the following provisions:

1. A permanent protective mechanism shall be legally established to ensure that the required open space reserve area is preserved and protected in a manner sufficient to protect the open space reserve area in perpetuity in a form that is acceptable to both the applicant and the county and filed with the county auditor’s office. After a site is subdivided, an A permanent open space reserve area tract shall be protected using one of the following mechanisms: retained by the subdivider, conveyed to the homeowners’ association of the subdivision, or conveyed to a third party.

(a) Placement in a separate non-building tract owned in common by all lots within the subdivision;

(b) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required 50% open space reserve area;

(c) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (a) of this section as determined by the County Zoning Administrator or Hearing Examiner which applies to at least the minimum required 50% open space reserve area.

2. The 50% open space reserve area shall contain the following:

(a) A minimum 20-foot buffer along the perimeter of the parent parcel, exclusive of dedicated vehicular and non-vehicular site access; and

(b) Unique or known archaeologically significant sites, high value natural resource areas, and/or critical areas and associated buffers as defined in WCC 16.16.

32. The boundaries of the open space portion of the reserve area tract may be altered only if the county finds that in dedicating developing adjacent reserve areas tracts it would better further the objectives listed in WCC 20.37.305 above by altering the reserve area tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.

43. The definition of the open space reserve area tract, as stated above in this subsection 20.37.321, shall be recorded as a restriction on the face of the final plat or short plat.

5. The number of remaining unused development densities remaining on the parcel containing the open space reserve area (if any), based on the gross density of the parent parcel, may be assigned to that portion of on the reserve area tract not subject to the minimum reserve area requirements of subsection (1) of this section, based on the gross density of the parent parcel. The remaining density shall also be recorded on the face of the final plat or short plat.

64. The mechanism(s) implemented under subsection (1), as well as the above stated requirements of subsections (2) and (3) shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute an agreement between Whatcom County and the current/future owner(s) of record that shall run with the land. Said restrictions under subsections (2) and (3) may be amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.
The 50 percent reserve area requirement of WCC 20.37.253 may be reduced to 40 or 30 percent when the applicant dedicates or permanently protects open space or recreational amenities which foster the open space and recreation goals of the Whatcom County Comprehensive Plan, relative subarea plans, the Natural Heritage Plan and other related county plans.

(1) The open space requirement may be reduced to 40 percent by designating five percent of the total lot area as:
   (a) A granted public access easement, a dedicated trail right-of-way, or a dedicated bicycle lane adjacent to an existing public right-of-way or trail corridor, or
   (b) Protection of unique or culturally significant areas, wildlife habitat, and/or high value natural resource areas (using criteria established in Chapter 16.16 WCC) with a conservation easement or other restrictive covenant sufficient to protect the feature.

(2) The open space requirement may be reduced to 30 percent by designating ten percent of the total lot area as:
   (a) A granted public access easement, a dedicated trail right-of-way, or a dedicated bicycle lane adjacent to an existing public right-of-way or trail corridor, or
   (b) Protection of unique or culturally significant areas, wildlife habitat, and/or high value natural resource areas (using criteria established in Chapter 16.16 WCC) with a conservation easement or other restrictive covenant sufficient to protect the feature, or
   (c) Provision of public shoreline access.

(3) There shall be a mechanism in place to ensure that a permanent dedication takes place for each of the options listed above in subsections (1) and (2) of this section, including such items as maintenance agreements, easements, conservation easements, or other appropriate tools acceptable to both the applicant and the county which shall be filed with the county auditor’s office.

WCC TITLE 20, Chapter 20.71 - Water Resource Protection Overlay District

20.71.350 Cluster subdivisions.
The purpose of cluster subdivisions is to provide a method of for creating economical building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure energy efficiency. Clustering is also intended to help preserve open space and the character of areas, as well as reduce total impervious surface area, and minimize development effects on critical areas and associated buffers, as defined in WCC 16.16 and resource lands. Reduction of total impervious surface area Preservation of open space is thereby intended to reduces potential stormwater runoff and associated impacts while assuring continued protection of, viable, undeveloped and naturally vegetated corridors for wildlife habitat, protection of watersheds, preservation of critical areas, wetlands, protection of watersheds, preservation of aesthetic values including view corridors, and preservation of potential trail and/or recreation areas.

20.71.351 Cluster design standards.
The creation of new building lots within Water Resource Protection Overlay Districts shall be subject to the following design standards:

(1) Cluster subdivisions shall be required for all land divisions resulting in lots less than five acres in size, with the exception of boundary line adjustments.

(2) A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC 20.71.352.
(32) The minimum cluster lot size and reserve area requirements of the underlying zoning district shall apply unless otherwise stated in this chapter.

(43) The maximum number of building lots in a lot cluster shall be 10. 16.

(5) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least eighty feet.

(64) Clustered building lots may only be created through the subdivision, short subdivision or binding site plan process pursuant to WCC Title 21.

(75) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas or other valuable or unique natural resource features or known archaeological sites, as well as physical constraints of the site.

(86) Building lots sites shall be arranged in a cluster or concentrated pattern.

(9) A The cluster subdivision shall should have no more than two common encroachments on existing county roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid is intended to discourage development forms commonly known as linear, straight line or highway strip patterns.

(7) Common access to clustered building lots should be provided by cul-de-sac or loop roads that are designed to reduce impervious surfaces to the maximum extent allowed by the county fire marshal and county engineer.

(10) As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots, provided that the required permanent open space reserve area, pursuant to 20.71.352, shall not be further subdivided.

20.71.352 Open space reserve area tract.

(1) For purposes of this title section, an "open space reserve area tract" is shall be defined as that portion of the subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of "open space" pursuant to WCC 20.97.275.

(2) The open space reserve area tract shall be subject to the following provisions:

(a) The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.

(b) A permanent open space reserve area shall be protected using one of the following mechanisms:

(i) Placement in a separate non-building tract owned in common by all lots within the subdivision; or

(ii) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required cluster reserve area specified in the underlying zone district; or

(iii) Preserved through an appropriate permanent protective mechanism that provides the same level of protection as subsection (i) of this section as determined by the County Zoning Administrator or Hearing Examiner which applies to at least the minimum required cluster reserve area specified in the underlying zone district.

After a site is subdivided, an open space reserve tract shall be retained by the subdivider, conveyed to the homeowners' association of the subdivision, or conveyed to a third party.

(c2) The boundaries of the open space portion of the reserve area tract may be altered only if the county finds that in dedicating developing adjacent tracts reserve areas it would help further the objectives listed in WCC 20.71.350 by altering the reserve tract area and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.
(d3) The purpose of the open space reserve tract area as defined in this subsection 20.71.352(1) shall be recorded on the face of the final plat or short plat.

(e) The number of remaining unused development density (ies) and/or impervious surface allowances remaining on the parcel containing the open space reserve area (if any), based on the gross density of the parent parcel, may be assigned to that portion of on the reserve tract not subject to the minimum area requirements of 20.71.352(2)(b), based on the gross density of the parent parcel. The remaining density shall also be recorded on the fact of the final plat or short plat. The development rights assigned to the reserve tract in accordance with this subsection may not be transferred if the pervious surface area associated with the reserve tract has been transferred to the other building lots within the subdivision.

(f4) The requirements stated in subsections (c2) and (d3) of this section shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute an agreement between Whatcom County and the current/future owner(s) of record that shall run with the land. Said restriction(s) may be amended by mutual agreement between said parties after review for consistency and compliance with the official Whatcom County zoning ordinance, the Whatcom County subdivision ordinance, and the Whatcom County Comprehensive Plan.

(g5) For cluster subdivisions approved after December 7, 1999, that portion of the reserve tract which is kept in pervious open space may be counted toward pervious surface area requirements for the building lots in the subdivision on a prorated basis.

WCC TITLE 20, Chapter 20.97 -
Definitions

20.97.056 Cluster subdivision.
“Cluster subdivision” means a form of development that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision or increase in the overall density of development, and the remaining land area is devoted to open space, active or passive recreation, preservation of environmentally sensitive areas, or natural resource lands.

20.97.430 STEP.
“STEP” means a septic tank effluent pump (STEP) system consisting of a tank or tanks for settling and digesting wastewater solids and a pressure piping system for conveying the supernatant liquid into the municipal sewer system (when available). STEP systems permit only sanitary wastewater to be discharged into the tank. Roof drains and other stormwater sources shall be strictly excluded.

20.97.283
“Parent parcel” means a parcel that has been or is proposed to be further divided into additional lots, tracts, parcels or sites.