**TITLE OF DOCUMENT:** Ordinance adopting amendments to the Whatcom County Comprehensive Plan and zoning maps to remove a Mineral Resource Lands (MRL) zoning overlay from the existing Rural (R10) zone and change the MRL designation to Rural for approximately 90 acres on Aldrich Rd, just south of King Tut Rd.

**ATTACHMENTS:**

(1) Proposed ordinance

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Robert Sorensen Jr. is requesting to amend the Comprehensive Plan Map and Zoning Map to remove a Mineral Resource Land (MRL) zoning overlay from the existing Rural (R10) zone and change the MRL designation to Rural for approximately 90 acres on Aldrich Rd, just south of King Tut Rd. The proposal located within the NE ¼ of Section 14, T39N, R2E, W.M. Assessor’s Parcel #’s 390214400339 and 390214468400.

**COMMITTEE ACTION:**

1/10/2012: Withdrawn from the agenda
1/24/2012: Amended to remove findings 13, 19, 20, 41 and amend language in finding 32 and forwarded to Council for approval.

**COUNCIL ACTION:**

12/06/2011: Introduced
1/10/2012: Withdrawn from the agenda
1/24/2012: Council Approved to forward as amended in Committee to concurrent review 7-0.
2/14/2012: Council Adopted 6-1, Weimer opposed

Ord. 2012-006

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:** Ord. 2012-006

**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 COMPREHENSIVE PLAN MAP AND ZONING MAP TO REMOVE A MINERAL RESOURCE LANDS (MRL) ZONING OVERLAY FROM THE EXISTING RURAL (R10) ZONE AND CHANGE THE MRL DESIGNATION TO RURAL FOR APPROXIMATELY 90 ACRES ON ALDRICH RD, JUST SOUTH OF KING TUT RD.

WHEREAS, an application has been submitted by Robert Sorensen Jr to amend the Comprehensive Plan Map and Zoning Map to remove a Mineral Resource Lands (MRL) zoning overlay from the existing Rural (R10) zone and change the MRL designation to Rural for approximately 90 acres on Aldrich Rd, just south of King Tut Rd.; and

WHEREAS, the site is located east of Aldrich Rd, south of King Tut Rd, North of W. Hemmi Rd. The proposal is situated within the NE ¼ of Section 14, T39N, R2E, W.M. Assessor's Parcel #'s 390214400339 and 390214468400; and

WHEREAS, the proposed amendment has been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, the proposed amendment meets the approval criteria for comprehensive plan amendments, as required by Whatcom County Code (WCC) 2.160.080; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald, mailed and posted; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony, and recommended approval, provided, however, the applicant will submit an application to re-designate Parcel C as Open Space Agriculture prior to the Comprehensive Plan docket vote by the County Council; and

WHEREAS, the applicant has submitted both a Current Use Application Farm and Agricultural Land Classification Parcels with Same Ownershipform, and an Application for Transfer of Designated Forest Land to Current Use Classificationform to the Whatcom County Assessor's office; and

WHEREAS, the applicant has applied to have Parcel C re-designated as Open Space Agriculture; and
WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the County Council has adopted the following findings of fact and conclusions:

FINDINGS

1. Notice of the Planning Commission hearing was mailed to surrounding property owners within 1,000’ of the proposed site on October 14, 2011.

2. Notice of the Planning Commission hearing was posted at the subject site on October 17, 2011.

3. Notice of the Planning Commission hearing was published in the Bellingham Herald on October 14, 2011.

4. The Planning Commission held a public hearing relating to the subject amendment on October 27, 2011.

5. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 22, 2011.


8. Mineral resource designation criterion # 1 state, “Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL designation.”

This proposal affects an existing MRL designation, therefore the volume requirements are not applicable.

9. Mineral resource designation criterion #2 states, “Minimum MRL Designation size is twenty acres.”

The present MRL designation is greater than 20 acres.

10. Mineral resource designation criterion #3 states, “Expansion of an existing MRL does not need to meet criteria 1 or 2.”

This proposal is for removal of the roughly 90 acre MRL designation. As it is not an expansion, this criterion does not apply and criteria 1 and 2 are
applicable

11. Mineral resource designation criterion #4 states, “MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.”

The subject site does not contain a surface mine permitted for agricultural or forestry operations. Therefore, this criterion does not apply.

12. Mineral resource designation criterion #5 states, “All pre-existing legal permitted sites meeting the above criteria (criteria 1-4) will be designated.”

There is not an existing permitted mine on the subject site. Therefore, the subject site would not qualify under this criterion and must meet criteria 6-10.

13. Mineral resource designation criterion #7 states, “MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.”

The subject site is zoned R(10) with an MRL zoning overlay. The subject site is not within, nor does it abut, developed residential zones or subdivisions platted at urban densities. The areas to the north, west, and south, are designated Rural and zoned R(10). The area to the east is zoned and designated Agriculture.

14. Mineral resource designation criterion #8 states, “MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor.”

According to GIS mapping, a portion of the MRL is within the 10 year zone of contribution of the James L. Calman Community Water System. Additionally, there are numerous private wells in the region.
15. Mineral resource designation criterion # 9 states, “MRL Designation should not enclose by more than 50% non-designated parcels.”

The MRL designation does not enclose by more than 50% non-designated parcels.

16. In addition to the nine specific criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.

17. Policy 2H-1: Review and retain regulations that serve to protect the public welfare, health, and safety.

Future activities would still be subject to Whatcom County Code (WCC) Title 20 – Zoning. The objective of Title 20 is to “...assure the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation; and to assure maximum economies in order to conserve the highest degree of public health, safety, morals and welfare.”

18. Policy 7H-5: Support mining, which is compatible with other land use and environmental policies, including surface mining of sand, gravel, and rock and subsurface mining of other minerals found in Whatcom County such as gold and silver.

The proposal would not support mining, as it would remove the protection of the sand deposits as a material of long term commercial significance.

19. Policy 8A-6: Prioritize agricultural activity in land use decisions when land is composed of prime and/or productive agricultural soils and agriculture is the highest value resource use.

This proposal affects 2 lots of record for use or for sale. The applicant’s proposal to remove the MRL designation on Parcel B would allow the applicant the potential to utilize all seven densities on their 71 acre parcel. Currently, they most likely could not utilize all seven for the purpose of division. The removal of the MRL designation Parcel C would most likely have no impact on the applicant’s ability to utilize all four densities other than design features and configuration.

20. Policy 8J-1: Conserve for mineral extraction designated mineral resource lands of long-term commercial significance. The use of adjacent lands should not interfere with the continued use of designated mining sites that are being operated in accordance with applicable best management practices and other laws and regulations.

The proposal would remove the protection of the underlying mineral resources for the purpose of commercial extraction.

21. Policy 8K-1: Avoid significant mineral extraction impacts on adjacent or nearby land uses, public health and safety, or natural resources.
The proposal would eliminate any potential commercial mineral extraction impacts to nearby land uses, health, safety, or natural resources.

22. Policy 8K-2: Consider the maintenance and upgrade of public roads. Address all truck traffic on county roads in a fair and equitable fashion.

The proposal would eliminate truck traffic and potential impacts to public roads related to commercial mineral extraction.

23. Policy 8K-3: Avoid adversely impacting water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using uncontaminated material for reclamation or on-site storage.

The proposal would eliminate the potential for commercial mineral resource extraction and any associated impacts to aquifers.

24. Policy 8K-4: Require, where there exists County jurisdiction, the reclamation of mineral resource lands on an ongoing basis as mineral deposits are depleted. Best Management Practices should be used to achieve this.

This proposal would eliminate the potential for commercial mineral extraction. Outside of MRLs, if minerals are extracted for non-commercial and non-building purposes, any volume greater than 10,000 cubic yards is considered surface mining by Whatcom County and would require a conditional use permit. This extraction can take place on up to 3 acres, with anything larger being prohibited outside of MRLs.

25. Policy 8K-5: Have an ultimate use for land used for mineral extraction which will complement and preserve the value of adjoining land.

This proposal would eliminate the potential for commercial mineral resource extraction. The zoning and designation would be consistent with the lands to the north, south, and west.

26. Policy8L-1: Discourage new residential uses from locating near designated mineral deposit sites until mineral extraction is completed unless adequate buffering is provided by the residential developer.

This proposal would eliminate the potential for commercial mineral resource extraction. There would be no reason to discourage residential uses from locating nearby, as this site would no longer be designated as mineral resource land of long-term commercial significance.

27. Policy 8L-3: Allow accessory uses to locate near or on the site of the mineral extraction source when appropriate. Authorize crushing equipment to locate near the mineral extraction sources as a conditional use provided that all pertinent regulatory standards are maintained. Site asphalt and concrete batch plants as a conditional use, addressing potential impacts for the site.
If the MRL designation and zoning overlay are removed, commercial mineral extraction and processing would be prohibited. In addition to commercial mineral extraction, any accessory uses and conditional uses provided under WCC 20.73 Mineral Resource Lands Special District (MRL) would be prohibited by removing the MRL designation and zoning overlay.

28. Policy 8L-4: Buffer mineral resource areas adjacent to existing residential areas. Buffers preferably should consist of berms and vegetation to minimize impacts to adjacent property owners. Buffers should be reduced for a limited period of time during reclamation if quality minerals are contained therein.

This proposal would eliminate the potential for commercial mineral resource extraction, as well as the requirement of WCC 20.73.131(3) to buffer mining.

29. Goal 8P: Designate Mineral Resource Lands (MRLs) containing commercially significant deposits throughout the county in proximity to markets in order to avoid construction aggregate shortages, higher transport costs, future land use conflicts and environmental degradation. Balance MRL designations with other competing land uses and resources.

The subject site is:

- Approximately 3.5 miles northeast of the concrete batch plant on W Creighton Ave, Ferndale;
- Approximately 3.25 miles south-southwest of the concrete batch plant on River Rd, Lynden;
- Approximately 6.5 miles north-northwest of the concrete batch plants on Hannegan Rd and Bakerview Spur, Bellingham;
- Approximately 9.5 miles west-northwest of the concrete batch plant on Cedarville Rd, Bellingham
- Note: These are straight-line distances, not driving distances.

Designating a proven mineral resource in proximity to these and other markets would further several of the objectives of Comprehensive Plan Goal 8P.

30. Policy 8P-1: Seek to designate a 50 year supply of commercially significant construction aggregate supply to the extent of compatible with protection of water resources, agricultural lands, and forest lands.

This site contains no mineral resources of long-term commercial significance. A letter from Adam Prince, of Alissi Consulting Inc. states that the sand on site is no longer suitable for septic systems.

31. Policy 8P-2: Ensure that at least 50% of the total areas designated for construction aggregate is within 10 miles from cities and urban growth areas where feasible.

Under this proposal, greater than 50% of the total areas designated for
construction aggregate are within 10 miles of cities and/or UGAs.

32. Policy 8P-4: Allow mining within designated MRLs through an administrative approval use permit process requiring:
   1. On-site environmental review, with county as lead agency, and
   2. Application of appropriate site specific conditions, and
   3. Notification to neighboring property owners within 1,000 feet to insure opportunity for written input and/or appeal, and
   4. Access to de novo review by the Hearing Examiner if administrative approval or denial is appealed.

This proposal would eliminate the potential for commercial mineral resource extraction.


The GeoEngineers publication “Report Engineering Geology Evaluation Aggregate Resource Inventory Study Whatcom County, Washington” does not identify the Aldrich Rd MRL as 1 of the 24 Whatcom County MRL areas.

34. Policy 8Q-2: Ensure proper treatment of wastewater prior to discharge.

Under this proposal, the stormwater would be regulated through Chapter 2 of the Whatcom County Development Standards.

35. Policy 8Q-3: Provide and maintain best management practices for erosion control to prevent sedimentation.

Under this proposal, best management practices or erosion and sediment control are regulated by Whatcom County Code (WCC) Title 20. Additionally, permit conditions require proper erosion control and that sedimentation shall be controlled and kept on site.

36. Policy 11G-1: Manage stormwater runoff to minimize surface water quality and quantity impacts and downstream impacts on channel morphology, property owners, and aquatic habitats.

Under this proposal, the stormwater would be regulated through Chapter 2 of the Whatcom County Development Standards.

37. The DNR completed a study entitled Reconnaissance Investigation of Sand, Gravel, and Quarried Bedrock Resources in the Bellingham 1:100,000 Quadrangle, Washington (Jan. 2001). This study indicates that the working lifetime of most of the significant pits in the county is 10 to 20 years (p. 5).

38. The Whatcom County Surface Mining Advisory Committee Final Report and
Recommendations (October 20, 2004) states:

... Theoretically, there is enough total supply in existing MRLs to satisfy demand over the first 20 years of the planning period. However, there is an imbalance in the demand and supply of sand and gravel. There is a greater need for gravel resources than sand and, as we approach the end of the 20-year planning period, we can anticipate a shortage of gravel. Additionally, shortly after the 20-year planning period, we will run out of sand and gravel resources if existing MRLs are not expanded. ... (p. 7).

CONCLUSIONS

The proposed amendment is consistent with the approval criteria of WCC2.160.080.

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

Section 1. The Whatcom County Comprehensive Plan map is hereby amended from Mineral Resources Lands (MRL) to Rural designation and the Official Whatcom County Zoning Ordinance map is hereby amended to remove the existing MRL zoning overlay from roughly 90 acres over the R(10) zone for subject properties shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this ______ day of February, 2012

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Kathy Kershner, Council Chair

( ) Approved ( ) Denied

Jack Louws, County Executive

Date: 2/16/12

P. 8
File #PLN2011-00010
MRL - Aldrich Rd. - Removal of existing MRL Designation and zoning overlay: from MRL to Rural, R10A

Existing MRL