



## Memorandum

**TO:** Whatcom County Planning Commission

**FROM:** Samya Lutz, Planner

**THROUGH:** Mark Personius, Long Range Planning Manager

**DATE:** November 7, 2012

**SUBJECT:** Whatcom County Agricultural Strategic Plan Implementation  
(PLN2012-00007): Agricultural Parcel Reconfiguration

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The Planning Commission is scheduled to discuss the draft ordinance addressing Agricultural Parcel Reconfiguration during the November 15 upcoming meeting. This discussion follows a public hearing held on October 25, and discussion held on both August 9 and July 12, 2012.

The Ag Parcel Reconfiguration tool is under consideration as an optional tool for agricultural landowners, as recommended in the Agricultural Strategic Plan developed by the county Agricultural Advisory Committee and endorsed by the County Executive and Council.

This memo will respond to public comments and planning commission comments received at the October 25<sup>th</sup> meeting, as well as written comments from Lesa Starkenburg-Kroontje. Staff is aware of no other comments submitted as of the date of this writing.

Planning Commissioners and audience members pointed out several wording errors in the code:

- Section 20.40.251(3) and (4)(b) both contain language that should be changed as follows: "...upon review ~~of~~ by the Whatcom County zoning administrator."
- Section 20.40.252(6)(c) should be changed as follows: "...on lots which have been created through the division or modified by a boundary line adjustment."
- Section 20.80.255(3) was discussed as having confusing wording. One suggestion for this is as follows: "...established through WCC 20.40.252 if the ~~applicant can demonstrate better~~ proposed placement of structures ~~in relation to~~ will result a better fit with critical areas or prime soils..."

Other more substantive issues were discussed at the meeting, including the idea of transferring development rights (TDR) and incorporating other zoning districts into

this proposal (Rural, specifically). Staff recommends that these issues be addressed on the heels of the Parcel Reconfiguration modifications; passing the current amendments forward when the Planning Commission is ready to do so, and then looking at changes specific to TDR. Incorporating changes to the Rural areas prior to a final determination in the ongoing challenges of the county's Rural element would likely prove challenging and delay the proposed modifications unnecessarily.

Staff met with Mr. Stoner at his request and discussed his concerns. He stated he may still put things in writing for the Planning Commission, but was no longer concerned about the consolidation issue. He did point out that the standards in Section 20.40.250(1)(b) may be unnecessary and addressed simply through the standards in 20.40.252.

Ms. Starckenberg-Kroontje's comments are addressed individually here:

- **Code Re-organization.** The request that the various agricultural division/modification types be separated into separate sections was brought up during the November 15 meeting, with the following issues discussed:
  - The desire to minimize red-lining (code changes) to actual changes made, rather than re-organization of unchanged code sections;
  - A code scrub process is upcoming that will allow for streamlining and re-formatting;
  - A table was presented as a handout that clarified the various division or modification options, specifying which were new or existing, and the code sections applying to each; prior to re-organization of the code itself, a table such as this could be provided to the public to help understand the various options.
- **Code section 20.40.252 Lot Size Exceptions – consistency issues between (2) Farmstead Parcel (b) Maximum Lot Size and Exceptions; and (2)(c) Separation of the Farmstead Parcel (i).** Sections 20.40.252(2)(b)(i)-(iv) and (c)(i)-(ix) all address farmstead parcel standards. The size is to be one acre, with allowance for up to three acres in certain circumstances. While many farmstead parcels will be close to three acres in size with consideration of the standards and criteria listed under .252(b) and (c), the code is written with one acre as the starting point, as may be appropriate in circumstances with no existing structures and few to no other constraints. Smaller farmstead parcels equate to larger agricultural parcels, which is in keeping with the objectives of the tool, and the purpose of the code section as written in 20.40.010.
- **Consistency of terms.** Staff agrees that the following code section should be changed:
  - 20.40.252(2)(b)(iii) – two instances where 'farmstead home site' should be changed to 'farmstead parcel.'
- **Division for agricultural purposes only (20.40.252(6)).** Comments 3-5 all pertain to this section of code.

- This section pertains to divisions and boundary line adjustments. Staff concurs that the term modification should be changed, but only to 'boundary line adjustments.'
- Staff concurs with the suggestion for re-writing of (6)(a): The parent parcel does not contain a residence unless said residence will remain on a parcel over 40 acres in size.
- The deed restriction specifications in 6(c) pertain to agriculture use and restrict *future* residential density. If the change above is made to allow for this division in circumstances where a residence exists on a parcel over 40 acres, sections 6(c)(i)-(iv) need to be modified for consistency, and modified to acknowledge the residence on parcels over the minimum lot size of 40 acres.
- **Siting criteria.** Comments 6 and 7 pertain to siting criteria in 20.40.650. This section pertains to vacant parcels "or parcels arranged through agricultural parcel reconfiguration" which may or may not contain an existing farmstead home site. Staff concurs with the modification of (2)(g): All development shall ~~avoid critical areas and their buffers~~ be consistent with WCC Chapter 16.16.

In addition to this memo, staff has prepared a preliminary draft of an application for Agricultural Parcel Reconfiguration in order to provide a sample of the information a landowner would need to provide if pursuing this optional tool. For comparison purposes, you may wish to view the existing applications for [boundary line adjustments](#) or [agricultural short subdivisions](#), available online through <http://www.whatcomcounty.us/pds/forms/index.jsp>.

Please feel free to contact me with any questions at x51072.



## Agricultural Parcel Reconfiguration Supplemental Information

The purpose of Agricultural Parcel Reconfiguration (APR) is to allow a land owner in the Agricultural zone the ability to reconfigure existing lots of record in such a way to allow one or more (1 to 3 acre) lots to recognize either new or existing single family residences. The following criteria are applicable to Agricultural Parcel Reconfiguration:

- The reconfiguration will not result in the creation of an additional lot.
- The reconfiguration shall result in lots that contain sufficient area and dimensions to meet minimum width and area requirements for a building site (except when recognizing an existing single family residence).
- The reconfiguration shall be consistent with any restrictions, depictions or conditions regarding the overall area in a plat or short plat devoted to open space, environmental mitigation or conservation.
- The reconfiguration shall be consistent with any restrictions or conditions of approval for a recorded plat, short plat, zoning permit, or development permit.
- The reconfiguration shall not cause boundary lines to cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, or prevent adequate access to water supplies.
- The reconfiguration will not create a new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road geometry or other safety concerns, as specified in adopted Whatcom County road development standards.
- If there are residential lots with no existing single family residences, the reconfiguration shall demonstrate adequate septic and potable water suitability.

**Minimum Lot Size** – The lots created through the APR process shall either meet minimum lot size (40 acres) or the base maximum for the farmstead parcel shall be no greater than 1.0 acre in size, however a lot may be greater than one acre (but not more than three (3) acres) if a greater area is needed to accommodate:

- the septic system,
- a driveway,
- wells and well head protection zones, and/or
- existing structures within 150 feet of the residence to be included within the parcel, provided: the structure is not used for agriculture, there is low potential for use of the structure for agricultural purposes, or water is not available to the structure.

**Siting Criteria** – Vacant parcels created through the reconfiguration process shall be located to provide the maximum protection for agriculture and shall be subject to the following siting criteria. Please see WCC 20.40.650 or contact a Planner for more details regarding these criteria.

- The residential parcels shall be configured so that property lines are immediately adjacent and physically contiguous to each other. A maximum of two development

areas containing no more than four (4) lots may be allowed. The two development areas shall contain no more than a total of six lots, and shall be separated by a minimum of 500 feet to minimize the visibility of the future development and reinforce the purposes of the zone; provided that reductions in the separation standard by up to 10% are allowed if an applicant can demonstrate that the future development visibility from the public right of way or from neighboring properties is minimized and the purposes of the parcel reconfiguration in Section 252(4)(b) are met; and

- Residential parcels shall be located as close as possible to existing public roads, or if none abut the property then to existing access roads. New road or driveway development shall be avoided to the maximum extent feasible; and
- Except for parcels that recognize existing farmsteads, residential parcels shall be located in the corners of the parent properties to the extent feasible to maximize the remainder lot configuration and farmable area; and
- Except for reconfigured parcels that recognize existing farmsteads, each reconfigured parcel shall be limited to one single family residence and residential accessory structures; and
- Residential building sites and access drive shall maintain sufficient separation from on-site and off-site agricultural resources and exterior property lines. The setback, lot coverage, and height standards for reconfigured lots shall be as established in WCC 20.40.350 to 450; and
- Applicants shall verify that reconfigured parcels or farmstead parcels do not prohibit access to a point of withdrawal for any irrigation water rights certificates, claims, permits, or applications on the affected parcels; and
- All development shall be consistent with WCC Chapter 16.16 (Environment: Critical Areas); and
- The farmstead parcel or reconfigured parcels avoid prime soils to the extent feasible. Where the site is predominantly in prime soils and such cannot be avoided, the applicant shall demonstrate that:
  - (i) the parcels are sized to be as small as feasible pursuant to WCC 20.40.252(2); and
  - (ii) located to maximize the agricultural use of the remainder lot; and
  - (iii) achieve the most suitable locations for parcels in terms of minimizing roads, allowing for water availability, and septic suitability.

If the applicant is unable to meet the above criteria the applicant may propose a substitute performance standard in place of a listed standard (WCC 20.40.650 New or Modified Parcel Siting Criteria) provided that the applicant submits a written justification demonstrating the substitute standard better or equally meets the purposes of the zone in WCC 20.40.010 and the agricultural-related purposes described in WCC 20.40.252(4)(b)(iv); except under no condition shall more than the maximum of six (6) residential parcels with no more than four (4) lots in one development area be allowed. Such substitution shall be considered at the Administrator's discretion.

**Please note a deed restriction will be required for the non-buildable agricultural lot stating that no residential development will be allowed.**



## Agricultural Parcel Reconfiguration Application

### How do I apply for an Agricultural Parcel Reconfiguration?

After you have completed all applicable application materials you may submit the application to the Subdivision Counter Monday through Friday between 8:30 AM and 12 Noon. The applications will be taken in at the front counter and considered vested upon receipt of the applicable fees and when a Determination of Completeness letter has been issued or as provided for in WCC 2.33.050(H).

### Agricultural Parcel Reconfiguration Processing Sequence

- 1) Once the application and fees are submitted, staff will review the project and if all items have been submitted a Determination of Completeness letter will be issued to the applicant, or the application will be determined complete as provided for in WCC 2.33.050(H). The project will be routed to the **TECHNICAL REVIEW COMMITTEE** (engineering, critical areas, shorelines, and the Health Department), as applicable.
- 2) When the basic requirements of WCC 21.03.060 appear to be reasonably satisfied, the Technical Review Committee will issue a **NOTICE OF PRELIMINARY APPROVAL** pursuant to WCC 21.03.060(1)(c). This authorizes you to prepare your deed(s) and/or maps.
- 3) If there are still items that need to be addressed by the applicant, the Technical Review Committee will issue a **NOTICE OF ADDITIONAL REQUIREMENTS (NOAR)**. The applicant shall have 180 days from issuance of the NOAR to submit requested items.
- 4) An **Agricultural Parcel Reconfiguration** is not considered approved until certified legal descriptions of the area to be conveyed and a final boundary line map, prepared by a surveyor have been stamped as exempt by Whatcom County PDS **AND** filed for record with the Whatcom County Auditor. The instrument of conveyance or deed and map must be stamped and recorded within **TWELVE MONTHS** of pre-approval by the Whatcom County PDS.
- 5) Failure to record the **Agricultural Parcel Reconfiguration** within twelve months of approval results in an expired application and the application must be resubmitted for review and approval (WCC 21.03.060).



### Application for Agricultural Parcel Reconfiguration

File #Exe: \_\_\_\_\_ Date \_\_\_\_\_

#### Applicant

Name \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

#### Contact

Name \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

#### Parcels Being Adjusted

**Parcel (A)** Assessor's Parcel Tax Number \_\_\_\_\_

Current Zoning \_\_\_\_\_

Size (Prior To Adjustment) \_\_\_\_\_ (After Adjustment) \_\_\_\_\_

Site Address \_\_\_\_\_

Legal Property Owner(s) \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

**Parcel (B)** Assessor's Parcel Tax Number \_\_\_\_\_

Current Zoning \_\_\_\_\_

Size (Prior To Adjustment) \_\_\_\_\_ (After Adjustment) \_\_\_\_\_

Site Address \_\_\_\_\_

Legal Property Owner(s) \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

**Parcel (C)** Assessor's Parcel Tax Number \_\_\_\_\_

Current Zoning \_\_\_\_\_

Size (Prior To Adjustment) \_\_\_\_\_ (After Adjustment) \_\_\_\_\_

Site Address \_\_\_\_\_

Legal Property Owner(s) \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

***Please use additional paper if there are more than 3 parcels involved.***

Water Source & Sewage Disposal Method for:

Lot 1: \_\_\_\_\_

Lot 2: \_\_\_\_\_

Lot 3: \_\_\_\_\_

Watershed  Yes  No If so, which watershed \_\_\_\_\_

Shoreline  Yes  No Platted  Yes  No

Will any road be altered, vacated, or dedicated?  Yes  No

Will any new access (ingress/egress) to a public right-of-way be created?  
 Yes  No

Are there any structures on any of the properties involved in the reconfiguration?  
 Yes  No



I/we \_\_\_\_\_ hereby certify that the above statements and the information contained in any papers or plans submitted herewith are true and accurate to the best of my knowledge.

\_\_\_\_\_  
Signature of Applicant/Owner

\_\_\_\_\_  
Date

PRELIMINARY DRAFT



### **Materials Required Prior To Submittal**

Applicant  
Checklist

PDS  
Checklist

1. Written Data and Fees- **Six (6) sets** of the information (listed below) shall be submitted- **unless otherwise indicated.**

Application which shall contain:

- a) Name, address and phone number of land owner, applicant, and contact person
- b) Intended Uses
- c) A current title report or update of title report issued no more than 60 calendar days prior to application
- d) An [Endangered Species Act \(ESA\) Checklist](#) will be required to be filled out and submitted for any development permit located within the following areas:
  - ◆ The FEMA designated floodplain and/or floodway
  - ◆ The Riparian Buffer Zone (RBZ) as described by the Department of Natural Resources 2007 stream typing system and WDFW's 1997 stream buffer guidelines
  - ◆ Channel Migration Zone (CMZ) plus 50' as identified according to Department of Ecology 2003  
**(3 Copies)**
- e) Assessor's parcel numbers of existing parcels
- f) Fees as specified in the Unified Fee Schedule
- g) Signature of all owners as shown on Title report, and authorization for any agent to act on behalf of owners

2. Map Data

- a) Names of land owners
- b) Name of proposed Boundary Adjustment or Reconfiguration
- c) Common language description of the general location of the land division
- d) Map at a common engineering scale of boundaries of existing parcels that are contributing to or receiving land from the proposed adjustment
- e) Appropriate location and labeling of any disputed or undetermined property lines proposing to be resolved by the adjustment
- f) Clear depiction of property lines proposed for adjustment which identifies existing property lines and proposed property lines
- g) Legal description and area of original parcels

- h) Legal description and area of proposed adjusted parcels
- i) Approximate location and names of existing roads identified as either public or private
- j) Approximate location of existing buildings and existing on-site septic systems and wells
- k) Approximate locations of existing utilities and infrastructure
- l) Approximate locations of any irrigation points of withdrawal
- m) Vicinity map
- n) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map)
- o) Section, township, range, and municipal and county lines in the vicinity
- p) General boundaries of the site with general dimensions shown
- q) If the proposed Boundary Line Adjustment is located in the Agricultural zone and the proposed farmstead site exceeds 1 acre in size, provide written evidence that the proposal fulfills the requirements of WCC 20.40.252

PRELIMINARY DRAFT

**STARKENBURG – KROONTJE**  
**Attorney at Law, P.S.**  
**313 4<sup>th</sup> Street**  
**P.O. Box 231**  
**Lynden, WA 98264**  
**(360) 354-7822**  
**Fax: (360) 354-6929**  
**Email: starkenburgkroontje@msn.com**

October 23, 2012

Whatcom County Planning Commission  
5280 Northwest Drive  
Bellingham, WA 98226

**Re: Whatcom County Agricultural Strategic Plan Implementation  
(PLN2012-00007): Agricultural Parcel Reconfiguration**

Dear Commissioners:

I am writing this letter to provide comment for the public hearing regarding the above referenced draft changes to Whatcom County Code Title 20 and 21. I have been involved in the review and discussion of previous versions of these changes and appreciate the time and energy the Planning Staff and consultants have devoted to this effort. The concepts involved will assist in providing useful tools for farmers and agricultural land owners to maximize the agricultural use of their property.

At this point, I have focused my review on the ease of use of the proposed changes and on whether there is conflicting language or requirements between the existing and proposed sections of the Code.

I previously discussed with Planning Staff a recommendation that each type of AG division have its own section within Title 20. I again renew that recommendation. It will be useful to property owners and to Staff to have a separate section dealing with each of the following:

1. Separation of farmstead with house.
2. Separation of farmstead without house.
3. Boundary line adjustments unrelated to separation of farmstead.

Providing a separate section for each division or reconfiguration makes it clear which covenants apply in which circumstances and also what various steps must be followed in the lot creation.

In addition to the above recommendation, there are some language changes necessary to provide a clear regulatory path. The questions or issues raised below are not exhaustive as I have read

the proposed changes but not studied all aspects of the ordinances. My comments are meant to be helpful to staff and the Commission in beginning a more detailed review of the proposal.

1. Sections .252(2)(b) and (2)(c)(1) should be made consistent. There are two separate standards provided for the size of the "Farmstead Parcel". The standard provided in .252(2)(c)(1) is consistent with the definition of "Farmstead Home Site" and should be used.
2. The "Farmstead Home Site" and "Farmstead Parcel" should be reviewed for consistency. There are several places where they appear to be used interchangeably.
3. .252(6) applies to division or modification. The term modification should be changed to Boundary Line Adjustment and Reconfiguration.
4. .252(6)(a) should be re-written as follows:

(a) The parent parcel does not contain a residence unless said residence will remain on a parcel over 40 acres in size.

This change will be consistent with underlying planning that allows a residence on a 40 acre parcel. There are several situations where a parcel smaller than 40 acres with an encroachment issue or no access to a portion of the field should be adjusted to facilitate agriculture. However, I do not have proposed language to suggest at this time that could address these situations without allowing overlay broad divisions.

5. .252(6)(c) contains several contradicting statements. The first section states that no residential uses will be allowed. However, several of the statements following talk about the acreage and calculation of residential uses.

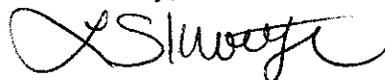
6. 20.40.650 states that the siting criteria only applies to vacant parcels but then goes on in several of the design criteria to exempt lots that have existing residential units. This creates an inconsistency by implying there are certain siting criteria that may apply to built out parcels.

7. 20.40.650(2)(g) should be re-written as follows:

All development shall ~~avoid be consistent~~ be consistent ~~critical areas and their buffers consistent~~ with WCC Chapter 16.16; and

I look forward to continuing to work with you during the code review process. Should you have any questions or require any additional information, please feel free to contact my office.

Sincerely,



Lesla Starkenburg-Kroontje

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# Whatcom County Agricultural Advisory Committee

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November 13, 2012

Whatcom County Planning Commission  
Whatcom County Planning & Development Services  
5280 Northwest Drive  
Bellingham, Washington 98226

**RE: Agricultural Parcel Reconfiguration proposal (PLN2012-00007)**

Honorable Commissioners,

The Whatcom County Agricultural Advisory Committee (AAC) met for a regular business meeting on November 7, 2012 and voted to send a letter to you related to the Agricultural Parcel Reconfiguration tool. They voted that a letter be written by the AAC to the Planning Commission stating the following:

**The AAC is interested in and supportive of the Agricultural Parcel Reconfiguration tool, and would like the Parcel Reconfiguration changes to go forward. If substantial changes are made to what is being considered, the committee would appreciate the opportunity to review the final draft before it is presented to the County Council.**

Discussion included acknowledgement that this tool originated with the AAC. No members voted against this.

The Whatcom County Agricultural Advisory Committee respectfully asks you to keep their perspective in mind as you deliberate on the Agricultural Parcel Reconfiguration proposal. Thank you for your consideration.

Sincerely,



Samya Lutz, Long Range Planner  
Staff to Whatcom County Agricultural Advisory Committee

cc: Whatcom County Agricultural Advisory Committee files

**Committee Members:**

Ed Blok - Chair, Dave Buys - Vice Chair, John Bayer, Lesa Boxx, Brian Cieslar, Vicki Hawley, Larry Helm, Mike Finger, Wesley Kentch, Todd Jones, Leroy Plagerman, Debbie Vander Veen, Richard Yoder

Staff Contact: Samya Lutz (360) 676-6707 x 51072 - Whatcom County Planning and Development Services  
5280 Northwest Drive Bellingham, WA 98226-9099 slklutz@co.whatcom.wa.us



November 14, 2012

Michelle Luke, Chair  
c/o Becky Boxx  
Whatcom County Planning Commission  
Whatcom County  
5280 NW Drive  
Bellingham, Washington 98226

Dear Ms. Luke:

**Subject: Comments on the proposed agricultural parcel reconfiguration tool in Agricultural zones (PLN2012-00007)**

Emailed to [PDS\\_Planning\\_Commission@co.whatcom.wa.us](mailto:PDS_Planning_Commission@co.whatcom.wa.us)

Thank you for the opportunity to comment on the agricultural parcel reconfiguration tool in front of you for recommendation to the County Council. As you may know, Futurewise Whatcom is the local chapter of Futurewise, a statewide organization that works to build livable communities and preserve farmland throughout Washington State. We have more than 600 local supporters in Whatcom County.

While we understand the purpose of this tool and find that many of the siting criteria within it are innovative, we do not believe that it will help the county achieve its goal of protecting 100,000 acres of farmland. From our experience across the state, cluster tools such as this do not protect farmland but create greater conflicts between farmers and non-farm-related residential uses in agricultural lands. Further, we are concerned that reconfiguring larger lots into smaller lots will increase residences on farmland because smaller lots are easier to sell than the existing larger lots are in their current configurations. They are also harder to farm; making it more likely the small parcels will be used for residences. So we urge the Planning Commission to recommend denial of this amendment.

**Language is needed to ensure continuity between parcels in agricultural production beyond the reconfigured site.**

According to the Farmland Preservation Trust, clustering generally does not support commercial agriculture due to the inherent conflict between the noise, dust and odors caused by cultivating the reserve parcel. Further, the Trust states that “undeveloped portions of cluster subdivisions may not be large enough for farmers to operate efficiently.” For these reasons, the Trust suggests clustering should be used to “preserve open space or create transitional areas between farms and residential areas” and not to protect farmland.<sup>1</sup>

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<sup>1</sup> Source: Fact Sheet, The Farmland Protection Toolbox, Farmland Preservation Trust, October 2002, located at [http://www.farmlandinfo.org/documents/27761/FS\\_Toolbox\\_10-02.pdf](http://www.farmlandinfo.org/documents/27761/FS_Toolbox_10-02.pdf). Accessed November 13, 2012 and a copy is enclosed with this letter.

To this point, the proposal the planning commission is considering does not include siting language that considers the characteristics of the surrounding parcels. There is no requirement that the reserve tract be arranged adjacent to existing farmland to ensure contiguous farming uses. Without such siting criteria for the remainder parcel, there is no guarantee that the remainder tract will be contiguous with other large tracts of farmland. We encourage the planning commission to ask staff to add siting criteria that would place the remainder parcel adjacent to other large farm lots. As written, this proposal only serves to create small lots adjacent to farmland instead of protecting farmland.

### **The new lots should not be allowed to transfer water from agriculture to residential development.**

Most of Whatcom County is closed to the appropriate of surface water and ground water in continuity to surface water including many of its agricultural areas.<sup>2</sup> Given the lack of water to support new residential development, we are concerned that lots with agricultural water rights will be bought up, reconfigured, and the irrigation water then transferred to residential uses. Agricultural water is used for stock watering, facility washdown, and irrigation.<sup>3</sup> Maintaining this water for the agricultural industry is very important for the future of agriculture in Whatcom County. When agricultural water is transferred to residential uses the agricultural potential of the remaining land is significantly reduced. By allowing the reconfiguration of agricultural parcels, the county will make the conversion of lots with agricultural water rights more attractive because there are few or no other sources for water to serve the residential development in both rural Whatcom County and in natural resource lands. So we recommend the transfer of agricultural water rights to other uses be prohibited allowed on the reconfigured lots.

### **The Growth Management Act, in RCW 36.70A.177, requires that techniques such as lot reconfigurations can only be allowed on lots with poor soils or that are otherwise not suitable for agriculture.**

To be allowed on agricultural lands, provisions such as the lot reconfiguration regulations must be “innovative techniques” that comply with RCW 36.70A.177(2)(b). In the *Soccer Fields* decision, the Washington Supreme Court held that innovative zoning techniques may only be allowed on land where the soils are poor or the land is unsuitable for agriculture. As the Supreme Court wrote:

In order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.

The trial court erroneously found that the County's amendments qualified as an “innovative zoning technique” under RCW 36.70A.177. The statute encourages counties to limit innovative techniques “to lands with poor soils or otherwise not suitable for agricultural purposes.” The trial court found this requirement “discretionary” rather than “mandatory” because the statute uses the word

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<sup>2</sup> WRIA 1 Watershed Management Plan Phase 1 Section 2 Assessments, Problem Identification, and Findings p. 58 of 160 (March 25, 2005) accessed on May 17, 2012 at: <http://wria1project.whatcomcounty.org/Plan-Implementation-4.aspx> Please click on “Section 2.” A copy of Section 2 is being emailed with this letter.

<sup>3</sup> Colleen Burrows and Drew Betz *Whatcom County Community Food Assessment: A snapshot of the Whatcom County food system from 2008 to 2009* p. 63 (WSU Whatcom County Extension: March 2011) accessed on Nov. 14, 2012 at: [http://whatcom.wsu.edu/ag/cfa/docs/CFA\\_Chapter\\_6.pdf](http://whatcom.wsu.edu/ag/cfa/docs/CFA_Chapter_6.pdf). A copy of Chapter 6 is being enclosed with this letter.

“should.” This interpretation misplaces the discretion. The word “should” applies to “encourage nonagricultural uses.” The phrase “limited to lands with poor soils” is a qualifying phrase for “nonagricultural uses.” The discretion is applied to “encouraging nonagricultural uses,” not to the land eligible for such encouraged uses. Read logically, this phrase means that the County *may* encourage nonagricultural uses where the soils are poor or the land is unsuitable for agriculture. It should not be read that the County may encourage nonagricultural uses *whether or not* the soils are poor or unsuitable for agriculture. The evidence does not support a finding that the subject properties have poor soils or are otherwise not suitable for agricultural purposes. Therefore, the properties in this case do not qualify for “innovative zoning techniques.”<sup>4</sup>

So to comply with RCW 36.70A.177, the lot reconfigurations can only be allowed on lots with poor soils or that are otherwise not suitable for agriculture. So the lot reconfiguration regulations must include a standard that limits its use to lots with poor soils or that are otherwise not suitable for agriculture.

#### **Smaller lots will increase the potential for residential development in agricultural land.**

While we agree with the county’s analysis that lots of record are entitled to develop, we believe that smaller lots are easier to sell and develop than the larger, nonconforming lots as they exist today. Smaller lots in the agricultural zone are less expensive than larger lots and creating these lots will increase their salability. That’s not to say, of course, that the larger lots will not develop should significant development pressures occur in the future. But creating a provision that would allow smaller lots encourages these lots to develop. The smaller lots are also harder to farm, making it more likely that new small lots will be used for incompatible residential development rather than continue in agricultural production.

We suggest the planning commission recommend to the county council that should the proposed agricultural parcel reconfiguration tool be adopted that it should also be made contingent on adoption of a transfer development rights program to move development rights out of agricultural land and into Urban Growth Areas (UGAs).

#### **The County should only implement this tool in conjunction with a Transfer of Development Rights program.**

We believe that rather than focusing on reconfiguring lots, the County should turn its attention to removing these development rights from agricultural land completely. We urge the planning commission to only recommend a version of this tool in conjunction with a Transfer of Development Rights (TDR) program.

We understand that over the years the County has studied the feasibility of a TDR program many times and each study reveals that there isn’t a market for TDRs here. We suggest that rather than asking if there’s a market, the county should be asking what it would take to create a market in Whatcom County.

Clearly, TDR programs are working in other parts of Washington State. None of these programs is more successful than King County’s program which has successfully protected 141,392 acres of

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<sup>4</sup> *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 560 – 61, 14 P.3d 133, 142 (2000) (footnote omitted).

Ms. Michelle Luke, Chair Whatcom County Planning Commission

November 14, 2012

Page 4

rural and resource land through the TDR program since 2000.<sup>5</sup> In the King County program, developers can use TDRs to meet some development requirements in urban areas such as transportation concurrency and they are allowed additional density or floor area with the purchase of TDRs.

We strongly support County staff's efforts to obtain a grant to study how to create a market for TDRs here in Whatcom County. Further, we encourage open communication on the issue of TDRs between the cities and the County so that a creative and collaborative solution may be discovered. For example, the cities could agree to extend services into UGAs if the County agrees to adopt the cities' development standards and allow for increased density with the purchase of TDRs. In this way, development that cannot currently occur at urban densities in UGAs would be allowed to occur in a manner consistent with the cities' own regulations and the County would be able to remove development rights from their agricultural areas. The result would be real, long-term protection for agricultural land. We understand that the County is already beginning conversations with some cities about adoption of urban development standards for UGAs. This would be a natural progression for those conversations.

In closing, we urge the planning commission to consider whether this tool will lead to accomplishing the County's goal of 100,000 of productive agricultural land or if it will, as we suggest, create more potential for conflicts between new residences and farming. We further suggest the planning commission insert a provision that would prevent this tool from being accessed without a TDR program to transfer development rights from agricultural land to UGAs.

Sincerely,



Kate Blystone  
Whatcom Chapter Director

Enclosures

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<sup>5</sup> Source: King County Transfer of Development Rights Program Overview, located at <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/overview.aspx>, accessed on November 13, 2012.



# FACT SHEET

## THE FARMLAND PROTECTION TOOLBOX

*American Farmland Trust*

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Northampton, MA 01060  
Tel: (413) 586-4593  
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October 2002

### DESCRIPTION

This fact sheet provides a brief description of the tools and techniques that state and local governments are using to protect farmland and ensure the economic viability of agriculture. Some of the techniques result in programs that are enacted and administered at the state level, others are used primarily by local governments. Sometimes, municipal governments adapt and strengthen state laws to meet unique local needs. Many of the most effective farmland protection programs combine regulatory and incentive-based strategies.

### PROGRAMS THAT ARE GENERALLY ENACTED AT THE STATE LEVEL

#### **Agricultural District Programs**

Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. They stabilize the land base and support the business of farming by providing farmers with an attractive package of incentives. Typically, programs are authorized by state law and implemented at the local level. An exception is Calvert County, Md., which has its own independent agricultural district program.

There are a total of 18 state agricultural district laws in 16 states. Minnesota and Virginia authorize statewide and local agricultural district programs. Provisions vary widely, but most agricultural district laws are intended to be comprehensive responses to the challenges facing farmers in developing communities.

To maintain a land base for agriculture, some agricultural district laws protect farmland from annexation and eminent domain. Many laws also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts. Three states offer participants eligibility for purchase of agricultural conservation easement programs, and two states include a right of first refusal in district agreements to ensure that land will continue to be available for agriculture.

Agricultural district laws help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices, and by providing enhanced protection from private nuisance lawsuits.

To reduce farm operating expenses, seven programs offer either automatic eligibility for differential tax assessment or property tax credits to farmers who enroll in agricultural districts.

Some states encourage local planning by limiting district authorization to jurisdictions with comprehensive or farmland protection plans; requiring the adoption of land use regulations to protect farmland; involving planning bodies in the development and approval of districts; and limiting non-farm development in and around agricultural districts.

#### **Conservation Easements**

Every state in the nation has a law pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act was designed to serve as a model for state legislation to allow qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee-simple interests in land for the purposes of conservation and preservation. Since the Uniform Act was approved, 21 states have adopted conservation easement-enabling legislation based on this model and 23 states have drafted and enacted their own conservation easement-enabling laws. In Pennsylvania, conservation easements are authorized by common law. Oklahoma and Wyoming do not have separate provisions of state law authorizing the conveyance of conservation easements, but state agencies are given the power to hold title to easements in their authorizing legislation.<sup>#</sup>

<sup>#</sup> Stefan Nagel, State Conservation Easement Legislation (Washington, D.C.: National Trust for Historic Preservation, 1995).

# THE FARMLAND PROTECTION TOOLBOX

Agricultural conservation easements are designed specifically to protect farmland. Grantors retain the right to use their land for farming, ranching and other purposes that do not interfere with or reduce agricultural viability. They continue to hold title to their properties and may restrict public access, sell, give or transfer their property as they desire. Producers also remain eligible for any state or federal farm program for which they qualified before entering into the conservation agreement.

Conservation easements limit land to specific uses and thus protect it from development. These voluntary legal agreements are created between private landowners (grantors) and qualified land trusts, conservation organizations or government agencies (grantees). Grantors can receive federal tax benefits as a result of donating easements. Grantees are responsible for monitoring the land and enforcing the terms of the easements.

Easements may apply to entire parcels of land or to specific parts of a property. Most easements are permanent; term easements impose restrictions for a limited number of years. All conservation easements legally bind future landowners. Land protected by conservation easements remains on the tax rolls and is privately owned and managed. While conservation easements limit development, they do not affect other private property rights.

Agricultural conservation easements are a flexible farmland protection tool. Private land trusts and other conservation organizations educate farmers about the tax benefits of donating easements, and state and local governments have developed programs to purchase agricultural conservation easements from landowners. In addition, agricultural conservation easements can be designed to protect other natural resources, such as wetlands and wildlife habitat.

## **Executive Orders**

Governors of at least 10 states have issued executive orders that document the importance of

agriculture and farmland to their states' economy, environment and culture. Some executive orders direct state agencies to withhold funding from projects that would result in farmland conversion. Others have created task forces to investigate farmland conversion. State executive orders have the potential to build public and institutional support for other farmland protection programs. By restricting the use of state funds for projects that would result in the loss of agricultural land, executive orders also can influence the actions of local governments. To the extent that they call attention to the problem of farmland conversion and facilitate discussion about solutions, executive orders can serve as a building block of a comprehensive farmland protection program.

## **Growth Management Laws**

Growth management laws are designed to control the timing and phasing of urban growth and to determine the types of land use that will be permitted at the local and regional levels. At least 12 states have laws that control development or set planning standards for local governments, but only seven - Hawaii, Maryland, Minnesota, New Jersey, Oregon, Vermont and Washington - address the issue of farmland conversion. These seven laws vary in the controls that they impose on state and local governments and in the extent to which they protect agricultural land from development.

Growth management laws take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within designated urban growth areas or boundaries (UGBs). They direct local governments to identify lands with high resource value and protect them from development. Some growth management laws require that public services such as water and sewer lines, roads and schools be in place before new development is approved. Others direct local governments to make decisions in accordance with comprehensive plans that are consistent with plans for adjoining areas.

Oregon has one of the nation's strongest growth management laws. As a result of the state's 1972 Land Conservation and Development Act, every county in Oregon has implemented agricultural protection zoning, protecting more than 16 million acres of agricultural land. Washington's Growth Management Act (GMA), passed in 1990 and strengthened in 1991, also is proving to be an effective farmland protection tool. Most of Washington's counties have developed inventories of important agricultural land, and several have implemented farmland protection techniques, such as agricultural protection zoning, purchase of agricultural conservation easement programs and transfer of development rights programs since the enactment of the GMA. Growth management laws in Hawaii, Vermont, New Jersey and Maryland have been somewhat less effective in preventing farmland conversion and promoting the development of local farmland protection programs.

### **Purchase of Agricultural Conservation Easement Programs**

Purchase of agricultural conservation easement (PACE) programs pay property owners to protect their land from development. PACE is known by a variety of other terms, the most common being purchase of development rights. Landowners sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land for agriculture and the value of the land for its "highest and best use," which is generally residential or commercial development. Easement value is most often determined by professional appraisals, but may also be established through the use of a numerical scoring system that evaluates the suitability for agriculture of a piece of property.

State and local governments can play a variety of roles in the creation and implementation of PACE programs. Some states have passed legislation that allows local governments to create

PACE programs. Others have enacted PACE programs that are implemented, funded and administered by state agencies. Several states work cooperatively with local governments to purchase easements. A few states have appropriated money for use by local governments and private nonprofit organizations. Finally, some local governments have created independent PACE programs in the absence of any state action.

Cooperative state-local PACE programs have some advantages over independent state or local programs. Cooperative programs allow states to set broad policies and criteria for protecting agricultural land, while county or township governments select the farms that they believe are most critical to the viability of local agricultural economies, and monitor the land once the easements are in place. Involving two levels of government generally increases the funding available for PACE. Finally, cooperative programs increase local government investment in farmland protection.

PACE programs allow farmers to cash in a fair percentage of the equity in their land, thus creating a financially competitive alternative to selling land for non-agricultural uses. Permanent easements prevent development that would effectively foreclose the possibility of farming. Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. Finally, PACE gives communities a way to share the costs of protecting agricultural land with farmers.

### **Right-to-Farm Laws**

State right-to-farm laws are intended to protect farmers and ranchers from nuisance lawsuits. Every state in the nation has at least one

# THE FARMLAND PROTECTION TOOLBOX

right-to-farm law. Some statutes protect farms and ranches from lawsuits filed by neighbors who moved in after the agricultural operation was established. Others protect farmers who use generally accepted agricultural and management practices and comply with federal and state laws. Twenty-three right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

Right-to-farm laws are a state policy assertion that commercial agriculture is an important activity. The statutes also help support the economic viability of farming by discouraging neighbors from filing lawsuits against agricultural operations. Beyond these protections, it is unclear whether right-to-farm laws help maintain the land base.

## **Tax Relief**

### ***Circuit Breaker Tax Relief Credits***

Circuit breaker tax programs offer tax credits to offset farmers' property tax bills. Four states have circuit breaker programs. In Michigan, Wisconsin and New York, farmers may receive state income tax credits based on the amount of their real property tax bill and their income.

In Iowa, farmers receive school tax credits from their local governments when school taxes exceed a statutory limit. The counties and municipalities are then reimbursed from a state fund. In Michigan, landowners that wish to receive circuit breaker credits must sign 10-year restrictive agreements with their local governments to prevent farmland conversion. In Wisconsin, counties and towns must adopt plans and enact agricultural protection zoning to ensure that tax credits are targeted to productive agricultural land. The Wisconsin program has facilitated the adoption of agricultural protection zoning in more than 400 local jurisdictions.

Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are

required to pay in taxes. The key differences between the programs are that most circuit breaker programs are based on farmer income and are funded by state governments.

### ***Differential Assessment Laws***

Differential assessment laws direct local governments to assess agricultural land at its value for agriculture, instead of its full fair market value, which is generally higher. Differential assessment laws are enacted by states and implemented at the local level. With a few exceptions, the cost of the programs is borne at the local level.

Every state except Michigan has a differential assessment law. Differential assessment is also known as current use assessment, current use valuation, farm use valuation, use assessment and use value assessment.

Differential assessment programs help ensure the economic viability of agriculture. Since high taxes reduce profits, and lack of profitability is a major motivation for farmers to sell land for development, differential assessment laws also protect the land base. Finally, these laws help correct inequities in the property tax system. Owners of farmland demand fewer local public services than residential landowners, but they pay a disproportionately high share of local property taxes. Differential assessment helps bring farmers' property taxes in line with what it actually costs local governments to provide services to the land.

## **PROGRAMS THAT ARE ENACTED AT THE LOCAL LEVEL**

### **Agricultural Protection Zoning**

Zoning is a form of local government land use control. Zoning ordinances segment counties, cities, townships and towns into areas devoted to specific land uses and establish standards and densities for development.

Agricultural protection zoning (APZ) ordinances designate areas where farming is the

primary land use and discourage other land uses in those areas. APZ limits the activities that are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming.

APZ ordinances also restrict the density of residential development in agricultural zones. Maximum densities range from one house per 20 acres in the eastern United States to one house per 640 acres in the West. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farmstands, that enhance farm profitability. Occasionally, farmers in an agricultural zone are required to prepare farm management plans.

In most states, APZ is implemented at the county level, although towns and townships may also have APZ ordinances. Zoning can be modified through the local political process. Generally, the enactment of an APZ ordinance results in a reduction of permitted residential densities in the new zone. This reduction in density, also called downzoning, is generally controversial because it can reduce the market value of land. A change in zoning that increases permitted residential densities is known as upzoning. A change in the zoning designation of an area—from agricultural to commercial, for example—is known as rezoning. Successful petitions for upzoning and rezoning in agricultural protection zones often result in farmland conversion.

APZ stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. This can reduce the likelihood of conflicts between farmers and their non-farming neighbors. Communities can use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land can ensure that there will be enough farms to support local

agricultural service businesses. By restricting the development potential of large properties, APZ limits land speculation and helps keep land affordable to farmers and ranchers. Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

### **Cluster Zoning**

Cluster zoning ordinances allow or require houses to be grouped close together on small lots to protect open land. The portion of the parcel that is not developed may be restricted by a conservation easement. Cluster developments are also known as cluster subdivisions, open space or open land subdivisions.

Cluster subdivisions can keep land available for agricultural use, but generally they are not designed to support commercial agriculture. The protected land is typically owned by developers or homeowners’ associations. Homeowners may object to renting their property to farmers and ranchers because of the noise, dust and odors associated with commercial agricultural production. Even if the owners are willing to let the land be used for agriculture, undeveloped portions of cluster subdivisions may not be large enough for farmers to operate efficiently, and access can also be a problem. For these reasons, cluster zoning has been used more successfully to preserve open space or to create transitional areas between farms and residential areas than to protect farmland.

### **Comprehensive Planning**

Comprehensive planning allows counties, cities, towns and townships to create a vision for their joint future. Comprehensive plans, which are also known as master or general plans, outline local government policies, objectives and decision guidelines, and serve as blueprints for development. They typically identify areas targeted for a variety of different land uses, including agriculture, forestry, residential, commercial, industrial

# THE FARMLAND PROTECTION TOOLBOX

*For additional information on farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance. To order AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at [www.farmlandinfo.org](http://www.farmlandinfo.org). For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

and recreational activities. Comprehensive plans provide a rationale for zoning and promote the orderly development of public services.

A comprehensive plan can form the foundation of a local farmland protection strategy by identifying areas to be protected for agricultural use and areas where growth will be encouraged. It may include policies designed to conserve natural resources and provide affordable housing and adequate public services. Some counties have used the comprehensive planning process to encourage their cities and towns to develop urban growth boundaries and adopt agricultural protection zoning. Others have incorporated the use of PACE and transfer of development rights into their master plans.

## **Mitigation Ordinances and Policies**

Mitigation ordinances are a new farmland protection technique. In 1995, city officials in Davis, Calif., enacted an ordinance that requires developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Developers can place an agricultural conservation easement on farmland in another part of the city or pay a fee to satisfy mitigation. While most of the regulatory farmland protection techniques restrict the property rights of farmers, the Davis mitigation ordinance makes developers pay for farmland protection.

In 2000, Yolo County, Calif., where the City of Davis is located, adopted an agricultural land mitigation program that is modeled on the 1995 City of Davis ordinance.

In Massachusetts, Executive Order 193 seeks to lessen the extent to which state activities contribute to the conversion of agricultural land. The Massachusetts Department of Food and Agriculture, based on its interpretation of EO 193, seeks mitigation for projects involving state funds. It has negotiated the removal of top soil from development sites for use by local farmers and funds for agricultural land protection.

King County, Wash. has a “no net loss of farmland” policy in its comprehensive plan. The policy prohibits removal of land from the agricultural production district (APD) unless an equal amount of agricultural land of the same or better quality, adjacent to the APD, is added.

## **Right-To-Farm Ordinances**

Local governments around the nation are enacting their own right-to-farm laws to strengthen and clarify weak language in state laws. Local right-to-farm laws are most widespread in California, where the state farm bureau developed and distributed a model right-to-farm ordinance during the 1980s.

A local right-to-farm ordinance can serve as a formal policy statement that agriculture is a valuable part of the county or town economy and culture. Some require that a notice be placed on the deed to all properties in agricultural areas, cautioning potential buyers that they may experience noise, dust, odors and other inconveniences due to farming and ranching operations. Local ordinances help educate residents about the needs of commercial agriculture and reassure farmers that their communities support them.

## **Transfer of Development Rights**

Transfer of development rights (TDR) programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally, TDR programs are established by local zoning ordinances. In the context of farmland protection, TDR is used to shift development from agricultural areas to designated growth zones closer to municipal services. The parcel of land where the rights originate is called the “sending” parcel. When the rights are transferred from a sending parcel, the land is restricted with a permanent conservation easement. The parcel of land to which the rights are transferred is called the “receiving” parcel. Buying these rights generally allows the owner

to build at a higher density than ordinarily permitted by the base zoning. TDR is known as transfer of development credits (TDC) in California and in some regions of New Jersey.

TDR is used by counties, cities, towns and townships. Two regional TDR programs for farmland protection were developed to protect New Jersey's Pinelands and the pine barrens of Long Island, N.Y. TDR programs are distinct from PACE programs because they involve the private market. Most TDR transactions are between private landowners and developers. Local governments approve transactions and monitor easements. A few jurisdictions have created "TDR banks" that buy development rights with public funds and sell them to developers and other private landowners.

Some states, such as New Jersey, have enacted special legislation authorizing local governments to create TDR programs. Other states have consistently refused to give local governments such authorization. Counties and towns have created TDR programs without specific state authorizing legislation; municipal governments must work with their attorneys to determine whether other provisions of state law allow them to use TDR.

TDR programs can be designed to accomplish multiple goals including farmland protection, conservation of environmentally sensitive areas and the preservation of historic landmarks. They prevent non-agricultural development of farmland, reduce the market value of protected farms and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners often oppose agricultural protection zoning (APZ) and other land use regulations because they can reduce equity. APZ can benefit farmers by preventing urbanization, but it may also reduce the fair

market value of their land. When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

While dozens of local jurisdictions around the country allow the use of TDR, only a few of them have used the technique successfully to protect farmland. TDR programs are complex and must be carefully designed to achieve their goal. Communities that have been most successful in using TDR are characterized by steady growth, with the political will to maintain and implement strong zoning ordinances and planning departments that have the time, knowledge and resources to administer complex land use regulations.

#### OTHER STRATEGIES TO PROTECT FARMLAND AND SUPPORT AGRICULTURE

Most farmers say the best way to protect farmland is to keep farming profitable. State and local governments have created a variety of initiatives to support the economics of agriculture.

For example, the Massachusetts Farm Viability Enhancement program was created in 1994 to improve farm income and environmental stewardship. The program has two phases. In Phase I, participating farmers work with a team of consultants to evaluate the current operation and develop a plan. Plans may call for product diversification, direct marketing, value-added products and/or agri-tourism. They also may recommend conservation practices. In Phase II, funding is available to implement the plan. Farmers may apply for grants of \$20,000 or \$40,000 in exchange for five or ten year term easements.

The Massachusetts program has served as a model for initiatives in Connecticut, New Jersey and New York.

FARMLAND PROTECTION ACTIVITIES BY STATE

State	Agricultural Districts	Agricultural Protection Zoning	Circuit Breaker	Differential Assessment	PACE	Right-to-Farm*	TDR
Alabama				▲		▲	
Alaska				▲		▲	
Arizona				▲	▲	▲	
Arkansas				▲		▲	
California	▲	❖		▲	▲❖	▲	❖
Colorado		❖		▲	▲❖	▲	❖
Connecticut				▲	▲	▲	❖
Delaware	▲			▲	▲	▲	
Florida		❖		▲	▲	▲	❖
Georgia				▲		▲	
Hawaii		▲		▲		▲	
Idaho		❖		▲		▲	❖
Illinois	▲	❖		▲	❖	▲	
Indiana		❖		▲		▲	
Iowa	▲	❖	▲	▲		▲	
Kansas		❖		▲		▲	
Kentucky	▲	❖		▲	▲❖	▲	
Louisiana				▲		▲	
Maine				▲	▲	▲	❖
Maryland	▲❖	❖		▲	▲❖	▲	❖
Massachusetts	▲			▲	▲	▲	❖
Michigan		❖	▲		▲❖	▲	
Minnesota	▲❖	❖		▲		▲	❖
Mississippi				▲		▲	
Missouri				▲		▲	
Montana		❖		▲	▲❖	▲	❖
Nebraska		❖		▲		▲	
Nevada				▲		▲	
New Hampshire				▲	▲❖	▲	
New Jersey	▲			▲	▲❖	▲	❖
New Mexico				▲		▲	
New York	▲		▲	▲	▲❖	▲	❖
North Carolina	▲			▲	▲❖	▲	
North Dakota		❖		▲		▲	
Ohio	▲	❖		▲	▲	▲	
Oklahoma				▲		▲	
Oregon		❖		▲		▲	
Pennsylvania	▲	❖		▲	▲❖	▲	❖
Rhode Island				▲	▲	▲	
South Carolina				▲		▲	
South Dakota		❖		▲		▲	
Tennessee	▲			▲		▲	
Texas				▲		▲	
Utah	▲	❖		▲	▲	▲	❖
Vermont				▲	▲	▲	❖
Virginia	▲❖	❖		▲	▲❖	▲	❖
Washington		❖		▲	▲❖	▲	❖
West Virginia				▲	▲	▲	
Wisconsin		❖	▲	▲	❖	▲	
Wyoming		❖		▲		▲	
<b>TOTAL</b>	<b>16</b>	<b>25</b>	<b>4</b>	<b>49</b>	<b>26</b>	<b>50</b>	<b>17</b>

▲ State program

❖ Local program

\*A number of local jurisdictions also have enacted right-to-farm ordinances. We do not have a complete inventory.

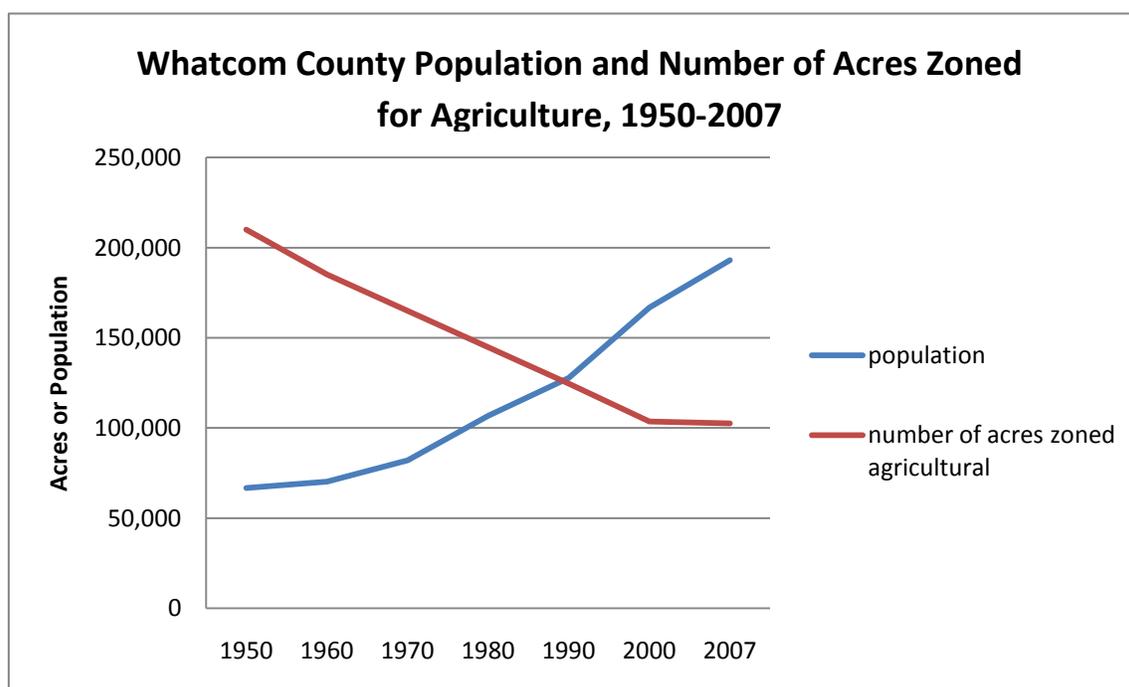
## Chapter 6

### What are the Threats and Opportunities for Agriculture in Whatcom County?

Over the course of Whatcom County's agricultural history, certain factors, such as the need to clear land, outside disturbances, such as WWII, and an increasingly global food system have played a strong role in defining the direction that farming has followed. Today, land development, fragmentation of Whatcom County's agricultural economy, and access to water each pose a threat to the future of viable farming here. Increasing costs of fuel and the energy consumption inherent in agricultural practices and products are also threats to farming in the County and elsewhere. However, some threats can also be construed as opportunities; challenges such as high energy demand can lead to innovation and the substitution of on-farm energy for that previously purchased from external sources. Agricultural land development presents an opportunity for better management and planning, thereby maximizing the use of natural resources and actively laying the foundation for the kind of community that satisfies citizens' desires.

#### Land

The amount of land that is zoned for agriculture in Whatcom County has decreased steadily since the late 1950s. Whatcom County's growing population has increased pressure to develop that agricultural land.



In order for agriculture to remain productive and profitable in a region, a stable, minimum agricultural land base must be maintained. This allows for the retention and health of essential efficiencies, services, and products. Contiguous farmland must be available for efficient siting and use of outbuildings, transport between farm fields, and livestock feeding areas. To allow for efficient transportation of agricultural goods, farmland must be

concentrated without the interspersal of too many non-agricultural residences and uses; an abundance of roads and non-agricultural infrastructure can impair the work of a farm.

The County's comprehensive plan states a goal of keeping a base minimum of 100,000 acres in agricultural land.<sup>ii</sup> County zoning regulations around farmland can dictate what is done with land and can help to keep farmland connected in economically and ecologically viable pieces. Land zoned agricultural (AG – permitted uses in agriculture only) covers about 68,000 acres in Whatcom County. Rural-zoned land designated as R10 (one dwelling per 10 acres) or R5 (one dwelling per 5 acres) accounts for approximately 30,000 acres that are currently being used for agricultural activities. An Agricultural Protection Overlay district has been designated to a total of about 98,000 acres (comprised of land zoned AG, R10, and R5) and is used to protect farmland in the long term by restricting use exclusively to agriculture. Protections made through the Agricultural Protection Overlay are initiated when a property is subdivided.

A regional agricultural base must maintain a threshold size to sustain related labor, industries, and businesses. These businesses include processors of raw agricultural products (farms), implement suppliers, fertilizer and chemical suppliers, and trucking firms. Without a large enough agricultural economy, these businesses can no longer be profitable and will leave the community, leading to further loss in farming activities.

Conflicts can arise between farmers and non-farmers who reside in areas of agricultural production; the noise, odors, dust, spraying, and heavy machinery commonly found in agricultural areas can be at odds with the notions of rural living held by non-agricultural homeowners.

Farm land prices have increased greatly over the past few decades and currently range from \$10-30K per acre, depending on soil type, location, and availability of water rights.<sup>iii</sup> These high costs are due to two factors: non-agricultural development opportunities on farm land and land purchases made by farmers who sell higher valued land in British Columbia to purchase Whatcom County farmland.<sup>iv</sup> These increases in land price make it difficult for new farmers to purchase land and require the land be used to produce high value crops.

### ***Farmland Preservation Programs***

In the last decade, Whatcom County has explored two programs that could be used to manage development pressures on farmland. The feasibility and details of these programs are still being evaluated.

The Purchase of Development Rights program (PDR) was initiated in 2001 as a voluntary tool for farmland owners to sell their rights to develop land to the Whatcom County government. As part of the program, once the development rights are owned by the County, a conservation easement is placed on the land deed to allow farming but restrict other development. This allows the land owner to gain financial benefits from the development rights and to preserve the land as farmland. As of the end of 2008, 11 PDR purchases had been made, encompassing 641 acres and the retirement of 84 development rights. The PDR program has targeted about 7,034 acres in both agricultural and rural zoned land. The program is moving forward, but with limited funding and its voluntary nature, the conservation of farmland by this means is slow and scattered.<sup>v</sup>

Working at a slightly different angle on the issue of farmland preservation is the Transfer of Development Rights (TDR) program. TDR allows developers to purchase development rights from areas such as agriculture or open

space and transfer them to areas where more development is desirable, such as closer to city centers. Once development rights on farmland have been sold, that land may no longer be developed.<sup>vi</sup>

Two recent surveys indicate that Whatcom County residents value farmland and want to see it conserved. In one survey, conducted by the Whatcom Legacy Project, 72% of respondents thought that protecting working farmland should be an urgent or high priority for government planning, and 49% thought that farmland was the most important land to conserve over the next 50 years.<sup>vii</sup> In the other survey, conducted by the Whatcom County Agricultural Land Program, the majority of respondents were in favor of using regulation to preserve farmland, and a strong majority was in favor of using regulations to ensure any development adjacent to farmland was compatible with agricultural practices.<sup>viii</sup>

## **Water**

Water is essential for 3 major activities associated with agriculture – stock watering, facility washdown, and irrigation. Stock watering and facility washdown demands are year-round with irrigation required during the dry summer months. Irrigation demands are by far the largest agricultural water need.<sup>ix</sup> 2001 estimates indicate just over 29,000 acres of crops are irrigated, with hay/pasture, berries, corn, and potatoes being the dominant crops. Both surface and groundwater are used to meet these needs, with groundwater filling approximately 75% of demand.

There are a number of significant challenges associated with ensuring current and long-term supplies of water for agriculture. These challenges are related to both the physical and legal availability of the resource, with legal issues currently being foremost. From a physical availability perspective, there is no current mechanism to objectively evaluate if/when water sources drop below well levels or stream/river intakes. Limited evaluation of well levels as part of the WRIA 1 Project does not indicate a decreasing trend in annual aquifer levels over time. However, evaluation of climate change impacts by the University of Washington Climate Impacts Group indicates that existing baseflows of streams in the Puget Sound area are expected to decrease by 50% or more due to longer, dryer summer periods. These lower baseflows may also lead to lower groundwater levels; the extent to which this could pose a problem is unclear.

From a legal perspective, the agricultural community faces significant challenges. It is beyond the scope of this document to provide more than a cursory overview of the challenges. Refer to the WRIA 1 Watershed Management Plan Phase I for a more detailed analysis of legal issues associated with water use. An abbreviated snapshot of some of the key challenges is provided below:

- *Unpermitted Users.* With few exceptions, agricultural water use requires authorization from the State Department of Ecology. The authorization is in the form of a permit/certificate/claim which specifies when, where, how much, and for what purpose the water will be used. A significant number of agricultural users either do not have authorization to use water or are not in compliance with the requirements.
- *Inability to Obtain New Authorizations.* In Whatcom County, the Department of Ecology is not currently processing applications for new water, and over 700 applications are on file; moreover, most of these filed applications would be denied if they were processed. All sub-basins are closed for new water rights, and water from the Nooksack River is limited at times of low flow.<sup>x</sup> Water rights can be transferred within the same body of water (lake, river, etc.); such changes of water rights *are* being processed currently and can give farmers a legal way to get water to crops.

- *“Use It or Lose It.”* Current water law dictates that water rights are relinquished if not used to their full potential when checked over a period of five years. As a result, if a farmer uses water-saving techniques such as drip irrigation and uses less water than the maximum allotted, the farmer may lose some water rights.<sup>xi</sup>
- *“First in Time, First in Rights.”* Water rights are issued associated with a particular date. This date becomes important in times when inadequate supplies exist; users with an earlier date take precedence in use over more recently permitted users.
- *Tribal/Federal Reserved Rights Undetermined.* In general, a federal reserved right has a priority as of the date the land was withdrawn and the reservation created. However, for tribal lands, uses that predate the reservation (e.g., fishing) have a “time immemorial” date and uses that originated with the reservation have a priority date of when the reservation was created. Because of this, most Indian communities have very senior priority dates compared to state water rights holders. Tribal rights in Whatcom County have not yet been legally determined and uncertainty regarding the outcome of such a determination further exacerbates agricultural supply predictability.

In summary, water in Whatcom County is used in varying degrees of legal compliance. Some farmers are using it without water rights, some are using less of it than they are allowed with their water rights, and some are using more of it and on a larger acreage than is allowed by their water rights. The vital role that water has in agriculture and problems with the current system of managing water rights creates a disincentive for farmers to even talk about how much water they use, lest they be found out of compliance.

Farmers who are using water without a water right can be investigated by the Department of Ecology if an outside party complains. Such a complaint may come from an agricultural neighbor who is losing some water, a concerned citizen, or another agency that is working in the area. A complaint may lead to the farmer being required to stop using the water.

Finding solutions to water supply challenges has been the subject of many different management efforts and substantial resource allocations over the last 20 years, the most recent being the WRIA 1 Watershed Management Project. Actions emanating from the WRIA 1 Project aimed at helping solve the supply challenges include the Instream Flow Pilot Project and efforts to establish a Natural Resources Marketplace. Both actions are currently in progress and it is not yet clear the extent to which their implementation will prove successful.

### **Food Safety**

With recent outbreaks of food-borne illness from agricultural products such as peanuts and peppers, the public is becoming more aware of food safety issues. Many farmers are changing their farming and processing practices to lower risks of food-borne pathogens. Two recently created national third-party certification programs, USDA’s Good Agricultural Practices (GAP) and Good Handling Practices (GHP), are designed so that farms can assure buyers that their products are safe; WSDA performs these certifications. Other US based and international certifications are available for those producing for markets that require them.<sup>xii</sup>

### **Opportunities for Agriculture in Whatcom County**

Several opportunities are developing for agricultural producers, especially with the public’s focus on food and health.

Residents of Whatcom County and the surrounding region are becoming more aware of the concept of differentiating locally produced food and are seeing value in buying from local producers. Results from a “Think Local First” survey completed for Sustainable Connections in 2006 indicates that 55% of Whatcom County residents think that purchasing food produced locally is extremely or very important.<sup>xiii</sup>

Many agricultural crops are only available during certain months of the growing season. With the increase in demand for locally produced food, growers can extend the season on many of their farm products by using protective structures, such as greenhouses or hoop-houses. Products grown in early or late season can be marketed at a premium price due to their relative scarcity in the marketplace.

Many certification programs exist for farmers to differentiate themselves so that they can charge more for a product or enter into certain marketplaces. Programs such as WSDA Certified Organic, Salmon Safe, USDA Good Agricultural/Handling Practices (GAP/GHP), and Food Alliance can certify farms for following certain practices. These farm and product certifications (as outlined in Chapter 6 of this CFA) can give an edge to one product over another.

In the coming years, energy production from farm waste or products grown on marginal farmland could encourage maximum use of available land and zero-waste use of products. A growing number of energy conversion facilities are being developed around the world that can make use of such inputs. As fossil fuel costs increase, these may offer viable and economical ways to power our communities.

## **Energy on the Farm**

Direct energy from the sun allows market and feed crops to grow, but farmers also use energy in the form of electricity and fuel to power heaters, coolers, tractors, and other farm equipment. Indirectly, they are consumers of fossil fuel energy embodied in the manufacture of the fertilizers and chemicals that they use. Energy consumption, both direct and indirect, can be a significant portion of costs of farm production. According to the 2007 Census of Agriculture, fuel, fertilizers, and chemicals accounted for 7.6% of Whatcom County farmers’ production expenses. A 2007 cost of production study for red raspberries suggests that fertilizers (indirect energy) make up over 28% of the total variable production cost.<sup>xiv</sup> Nationally, the energy portion of the cost of production was 19% for vegetables and fruits and 6.7% for dairy cattle and milk (2002).<sup>xv</sup>

There are three ways in which farms can increase on-farm energy efficiency and thereby become more financially sustainable:

### **1. *Increasing energy captured by the sun***

Protective structures, such as greenhouses, hoop-houses, high-tunnels, and cold frames can be used to capture heat energy from the sun and thereby produce crops that require higher temperatures for maturation, such as tomatoes, eggplant, cucumbers, and melons. They can also be used to achieve higher prices for high-value crops before and after peak season. Such structures are being used more frequently in Whatcom County, but there is opportunity for further development. Protective structures are used extensively in other regions of the United States and the world, with a diverse range of crop types and methods of growing.<sup>xvi</sup>

## **2. Increasing efficiency of energy use on the farm**

Farmers can reduce their energy costs by increasing efficiency of current energy consumption practices. Efficiency can be gained in almost every aspect of farming, from tractor use to heating and cooling to transportation.<sup>xvii</sup>

Fuel consumption by tractors may be reduced by employing reduced tillage practices and by matching tractors to the use that best suits them; for example, using low horse-power tractors for low horse-power needs.<sup>xviii</sup>

Heating and cooling are often important components of Whatcom County agriculture, and they can consume a great deal of energy. Greenhouses, work spaces, and animal confinement facilities are often heated; these can be optimized by using efficient heating sources, insulating properly, using programmable thermostats, and minimizing air leaks. Refrigeration facilities are used to cool products after harvest, such as vegetables, fruits, dairy, and meat. Refrigeration motors and compressors should be sized correctly for the unit they cool. A three-phase electric motor for a cooler can be the most efficient and economical way to supply power. Reducing heat loss from coolers increases efficiency; insulation can also be increased, and drop curtains can be used when people are frequently entering and leaving a cooler.

Most farmers in Whatcom County irrigate fields. Irrigation practices can be evaluated for efficiency; type of irrigation, amount of irrigation required, and pump motor efficiency can be tailored to farm needs to reduce energy used to supply water.

Synthetic fertilizers are dependent on natural gas feed-stocks; the cost of these products varies with fuel prices and is closely tied to the energy efficiency of their production. To reduce the amount of synthetic fertilizers required on a farm—no matter how they were produced—farmers can use precision agriculture methods. For example, using global information systems (GIS), a harvest can be automated, and a farmer can determine areas of a field that have the highest productivity zones (presumably due to optimal soil or environmental conditions). Fertilizer use can then be optimized to target high productivity zones, thus reducing costs. Tensiometers and other soil moisture monitoring devices can be used to irrigate efficiently and avoid fertilizer run-off and waste.

Farmers can also look for alternative means of fertilizing to replace some or all synthetic fertilizer. This may come from neighboring farms, in the form of manure or composts, or from products grown on the farm, such as cover crops.

Transportation of products, services, crops, etc., to and from the farm can have a high energy cost. Trucks should be energy efficient and sized to the load that they are carrying. Tires should be properly inflated, and the truck should be maintained to increase energy efficiency.

## **3. Producing energy on the farm**

The first anaerobic digester in Washington was located in Whatcom County at the Vander Haak Dairy in Lynden. It converts dairy waste to energy and other bioproducts that may be re-used in agriculture systems. The energy produced is used as electricity on the farm and sold to utility companies.<sup>xix</sup>

On-farm energy production can make sense but must be carefully considered. A waste processing facility is well suited to animal-based agriculture, but many facilities are capital intensive and may be difficult for smaller farms to afford. Grants and low-interest loans may be available. There may also be greater economy in multiple farms

supplying feed-stock to a single digester. Transporting the material has high energy costs if the farms are located a significant distance from the digester, so proximity and general access to appropriate infrastructure must be available.<sup>xx</sup>

Energy producing facilities must be sited near other facilities that transport power; for example, methane producers need to be near a large transport pipeline, and electricity producers need to be near a grid that has capacity for the electricity. Before starting an energy producing project, a power purchase agreement must be made to ensure that the power can be sold for a known time for a known price; this allows the project to qualify for capital loans.

The Pacific Northwest is one of the largest biomass-producing regions in the world, so it may be economical to grow and use biomass for energy. Technologies are rapidly developing that enable the conversion of biomass to energy. Under-producing or marginal agricultural land might be used to produce high biomass plants, such as hybrid poplar or willow, which can be used for energy production. In Northern Europe, it is common for short-rotation timber, sugar beets, and grains to be used in CHP (combined heat and power) facilities.

Another option for on-farm energy production or substitution is the use of ground-based heat pumps, which convert in-ground heat energy to energy that can power refrigeration needs for milk tanks and other cold storage. This system of conversion requires a large land base from which to draw heat. Fortunately for Whatcom County, many dairy farmers own or have access to such a land base.

Waste materials from farms and other nearby industry may be good sources of “free” energy. Such waste materials may be used as substitutes for synthetic fertilizer or they may be used in the conversion of biomass to energy.

Creative ways to use energy efficiently and to produce energy on a farm are being developed in Whatcom County and around the world. These technologies will continue to develop and make energy production from biomass a more viable option for local farmers.

## **Conclusion**

The future viability of farming in Whatcom County will depend upon the ways in which threats to agricultural land, agricultural service providers, and water are construed as opportunities for sound resource planning, the support of changing market strategies, and a shift in the way farms think about energy use. Several major threats currently face Whatcom County’s agricultural viability:

- The amount of land that is zoned for agriculture in Whatcom County has decreased steadily since the late 1950s. Whatcom County’s population has increased since this time, creating pressure to develop that agricultural land.
- A regional agricultural base must maintain a threshold size in order to sustain an agriculturally related labor force, industries, and businesses. This base is threatened by the fragmentation of farmland and farming service providers.
- The vital role that water has in agriculture and the regulatory system of managing water rights creates a disincentive for farmers to discuss how much water they use. No new water rights applications are being reviewed, making it difficult for new farms to establish themselves legally.

These threats are being met by some who see challenges to agriculture as an opportunity for innovation:

- Residents of Whatcom County are becoming more aware of the concept of differentiating locally produced food and are seeing value in buying from local producers, thus gaining awareness of the issues facing local farms.
- Numerous farms are extending their growing season to satisfy local demand.
- With rising fuel costs, farms are increasing the energy efficiency of their operations and are beginning to look at energy production on their own or nearby farms, thus protecting themselves from external fluctuations in costs.

It is clear from recent surveys that citizens of Whatcom County care about the region's agricultural tradition and the viability of its agricultural economy. These and other sentiments have lent themselves to the adoption of farmland preservation programs such as PDR and TDR. However, serious challenges to the widespread effectiveness of these programs require further attention. Similarly, water challenges necessitate re-thinking the ways in which water use is regulated and made available to agriculture. Great technological strides are necessary in order for farms to use energy more efficiently and increase the amount of energy that can be produced locally.

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