

Sno Valley Tilth statement on the Future of Agriculture

Sno-Valley Tilth Public Testimony on “The Future of Farming in King County.” March 12, 2009

[Two notes about Sno-Valley’s Tilth’s testimony:

- a. For the sake of readability, we have written this testimony using first-person plural; when we say “we,” we refer to the Board of Directors of Sno-Valley Tilth that has approved this statement.
- b. Our testimony applies only to agriculture as it occurs in designated “Agricultural Production Districts,” or APDs. This is because in creating the APDs, legislative bodies have provided some very specific guidelines about what APDs should be; in areas outside the APDs, we do not see that degree of clear, legislative direction.]

We would like to focus our comments concerning the “future of agriculture” on two questions that emerged from public testimony before the King County Council last summer. The first of these questions stems from contradictory public testimony about what agriculture in King County is. The second question relates to conditions that should apply to the granting of permits for new agricultural structures in our Agricultural Production District floodways.

1. **In the future, what should be considered as “agricultural practices” on King County lands designated as Agricultural Production Districts (or APDs)?**

To clarify the future of agriculture in King County’s APDs, we believe that Council should establish a working definition of what activities should be considered agricultural. We hear a great deal about “preserving agriculture,” “enhancing agriculture,” and “supporting agriculture.” But how can we speak responsibly about the future of agriculture unless we know what we mean by the word “agriculture”? We believe that such a definition is clearly operative in existing State laws and County codes. But confusion still exists, and we urge the Agricultural Commission to recommend to Council that it adopt a clear and explicit definition of agriculture in our designated APDs.

Our recommendation for the specific language of this definition is this: “agriculture is either (1) the commercial production of food and forage products which are grown for the end-use of human consumption, or (2) the commercial production of fiber products.”

Based on this definition, the litmus test as to whether a proposed land-use, in designated King County APDs, is “agricultural or not” would be this: “does this activity generate a product that is being grown commercially (directly or indirectly) for human consumption, or that is grown as a commercial fiber product?” If such a product can be identified, the proposed land-use should be considered agricultural; if such a product cannot be identified, this use should not be considered agriculture.

In support of our vision of the future of farming in King County APDs, we would like to reference the recently published *Future of Farming in Washington* report. This document, with one exception, does not specify any activity deemed “agricultural” that does not meet the criteria of our proposed definition. The one exception is the inclusion of “fuel” as an end-use. Beyond biofuels, every reference to agricultural production in this nearly 100 page document is a reference to land-use activities that fall within our proposed definition of agriculture. This research project was a year-long, well-funded, study, which, of course, was aided by our own Agricultural Commission. Clearly we don’t have to determine that the “Future of Farming in King County” is exactly the same as the “Future of Farming in Washington State.” But in recognizing that our proposed recommendation for a definition of agriculture so closely coincides

with the operative definition of the state-wide study, we see strong validation of the relevance and appropriateness of our proposed definition.

Of more significance are the reasons for the similarity between our proposed definition and the report of the “Future of Farming in Washington State.” Certainly this definition is reflective of the common understanding of what agriculture is. More importantly, however, is that this understanding is supported by clear, abundant, and compelling documentation within Federal, State, and King County Codes, as well as many public ancillary statements and pronouncements. We won’t take time to cite the relevant codes, but we have had an attorney collate some of these documents which we are submitting today to the commission as a written addendum to our public testimony.

At the present time, land uses such as gun ranges, sports fields, equestrian facilities, golf courses, dog kennels (etc.) exist on land designated for agricultural production. Although we do not believe these kinds of land-uses are agricultural, we see these existing facilities to continue on both now and in the future. But we also believe that as we look to the future of agriculture in King County, new endeavors on lands that have been designated specifically for agricultural production should be land-uses that result in the commercial production of agricultural products.

2. What conditions should be applied to new agricultural structures in the APD floodways?

Last summer when the recommendations of the Snoqualmie Valley Flooding and Farming Task Force were presented to Council for approval, we objected to one of the sixteen recommendations—the one that allowed new agricultural accessory structures in the APD floodways.

It will be remembered that the Snoqualmie Valley Flooding and Farming Task Force was initiated by Councilmember Kathy Lambert at the request of members of SVT. It was SVT representatives to this Task Force that introduced and argued persuasively that new accessory, agricultural structures should be allowed in the floodways. So it was extremely difficult and, frankly, awkward, for us to end up having to repeatedly speak in opposition to the ordinance we initiated, we had argued strongly in favor of, and that we wanted so badly.

The reason for our opposition to this ordinance was that we feared (and still fear) that without a clear and operative definition of “agriculture,” new buildings in the future could be constructed to support non-agricultural activities in the floodways of the APDs.

We are thankful that Council responded to our concerns last summer by amending the legislation regarding those structures to a limit of 5000 square feet in size. We are even more thankful that Council has asked the Agricultural Commission to try to sort out these issues, and that the commission has established the process we’re involved in today to find ways to address our concerns.

Our recommendation to the Agricultural Commission regarding new agricultural accessory buildings in the APD floodways is this: First, we ask the Agricultural Commission to recommend that Council adopt our proposed definition of agriculture in the APDs of King County. Second, we ask that, predicated on that definition, the Agricultural Commission recommend further that Council amend the ordinance allowing these structures by adding these words: “the use of all new agricultural accessory structures in the floodways of the APDs be shall be for agricultural purposes.”

If for some reason Council does not adopt a definition of agriculture along the lines of our proposal, that is, if we fall short of a definition of agriculture that states something consistent with “agriculture is either (1) the commercial production of food and forage products which are grown for the end-use of human consumption, or (2) the commercial production of fiber products,” then

we would strongly urge the Agricultural Commission to recommend to Council that it extend the 5000 square foot limit on the size of future agricultural accessory structures in the floodways of the APDs that now expires on January 1, 2010 to January 1, 2012.

This is not a recommendation we make lightly. Farmers desperately need accessory agricultural buildings. But we are neither desperate enough nor short-sighted enough to recommend that agricultural accessory buildings be constructed in our APDs that could serve what we, and most others, believe to be non-agricultural purposes.

It is these non-agricultural land-uses that drive the cost of land up; they have historically displaced existing farming operations, and have inflated land values to the level that land becomes unaffordable for farming. We do not want to have any part in making this happen, and we are willing to scale back our farming operations by imposing this size limit on our own accessory structures, if that is what it takes to prevent new non-agricultural structures from being constructed on APD floodway land.

Conclusion

In conclusion, we want to point out that our understanding of what agriculture should be in the future is not only supported by common understanding, laws and codes at all levels of government, findings of the *Future of Farming in Washington* research project, the only local agricultural organization in King County, and the vast majority of the residents of this County, but we believe it is also the one and only understanding of “Agricultural Production Districts” that is coherent.

What we mean is this: The land in our APDs has been designated to be preserved for agriculture. In naming these lands “Agricultural Production Districts” legislators have, by the very choice of this specific name, said these districts are established for the purpose of “agricultural production”—the name says what it is, and what it’s for. But if we grant agricultural production, then there must be agricultural products.

Each of the non-agricultural uses of land we mentioned earlier—sports fields, dog kennels, horse facilities, golf courses, shooting ranges, etc.—have this in common: none of them produce an “agricultural product.” What agricultural product could possibly be named in any of these worthy, but non-agricultural, endeavors? On the other hand, each of the agricultural uses that fall within our proposed definition of agriculture does have a nameable, agricultural product. Our question is, “how does one make sense of having an ‘Agricultural Production District’ if it doesn’t mean that this area is a ‘district’ in which there is ‘agricultural production’?”

It seems to us that we should either dissolve the APDs, or let them be what they were designed and named to be—places that commercially produce agricultural products. What we should not do is alter the unquestionable intent of the legislators who established our APDs.

We want to conclude our testimony by reiterating that our proposal regarding an operative definition of agriculture has no bearing on endeavors that now occur in designated APDs—whether they are agricultural or not. Our proposal is most certainly not a suggestion about closing down any *existing* activities in our APDs, now or ever. Our recommendations look to the “future of agriculture,” which is what the Agricultural Commission has enjoined us to do. We also want to emphasize that our recommendations regarding agricultural accessory buildings are only relevant to lands within those areas of designated APDs that are also designated as FEMA “floodways.” Our recommendation regarding agricultural accessory buildings has no bearing, for example, in the majority of the Enumclaw APD, which lies outside the FEMA floodway, nor has it any bearing in other APD lands that are not in the FEMA floodway.

Summary of actions requested by SVT

We are asking that the Agriculture Commission recommend:

1. That Council adopt a working definition of agriculture that uses (or is consistent with) the following language: “agriculture is either (1) the commercial production of food and forage products which are grown for the end-use of human consumption, or (2) the commercial production of fiber products.”
2. That assuming Council adopts a definition of agriculture consistent with our proposal, Council should also amend the current ordinance allowing agricultural accessory structures in the FEMA floodways of APDs to say “the use of all new agricultural accessory structures in the floodways of the APDs shall be for agricultural purposes.”
3. That in the absence of a working definition of agriculture similar or consistent with #1 above, Council amend the current ordinance allowing agricultural accessory structures in the FEMA floodways of the APDs to extend the 5000 square foot limit on agricultural accessory structures in the floodways of APDs for two more years, until January 1 of 2012.

Defining of Agriculture in King County – Snoqualmie Valley Tilth

1. Goals

- Snoqualmie Valley Tilth requests that the King County Council define agriculture as the production of food, forage, or fiber for end-use human consumption.
- Snoqualmie Valley Tilth requests that the King County Council ensure that “agricultural accessory structures” are only permitted when the structure is directly related to the production of food, forage, or fiber for end-use human consumption.

2. Synopsis

- Washington State and King County law imply that agriculture is defined as the production of food, forage, or fiber for end-use human consumption.
- Because this definition is only implied, it is subject to interpretation by state and county agencies. Snoqualmie Valley Tilth believes that state and county agencies currently include many non-agricultural uses in their interpretation of agriculture in contravention of the intent of laws and regulations such as the Growth Management Act and the 2006 King County Comprehensive Plan.
- It is the position of Snoqualmie Valley Tilth that agriculture in King County should be specifically defined as the production of food, forage, or fiber for end-use human consumption.
- By creating a specific legal definition of agriculture, the County will help achieve the goals of past legislation, including the 2006 Comprehensive Plan, by specifically limiting new construction in the Agriculture Production Districts to structures specifically intended to assist in agriculture production.

3. Why is it important to define agriculture?

Late in 2008, the Washington State Department of Revenue passed an emergency rule intended to address discrepancies in its assessment of what qualifies as “farm and agricultural use” land. WAC 458-30-200. Specific to this question was whether hobby equestrian operations qualify as an agricultural use. The Department of Revenue concluded that because hay sold off the farm is an agricultural product, equestrian operations that board and pasture horses are selling an agricultural product, per RCW 84.34.020(2), i.e. living grass. Horse farms that either

do not board horses or do not pasture boarded horses do not qualify.¹ This interpretation by the Department of Revenue seems to comport with State laws regulating agriculture. However, the effect of such an interpretation may prove disastrous to food production in the Agricultural Production Districts. It also goes against the clear legislative intent of the state Growth Management Act as well as the King County Comprehensive Plan.

What worries Snoqualmie Valley Tilth is that code changes enacted to help farmers and encourage farming in King County will have the unintended consequence of creating loopholes that will lead to the construction of non-farming related structures and homes. In the opinion of Snoqualmie Valley Tilth, the most effective way to ensure that APDs like the Snoqualmie Valley maintain their agricultural character is to create a strict legal definition of agriculture. In this way, the County can be sure that all laws and codes enacted to promote farming will have the intended effect.

Currently, there is no legal definition of “agriculture” in King County or in the State of Washington. Legislative vagueness often results in unintended consequences and improper or inconsistent enforcement of the law. A brief tour of the Snoqualmie Valley Agricultural Production District will reveal that the incredibly rich, prime agricultural soil of the valley is being put to a variety of uses that are neither agricultural nor production. There are two golf courses, dozens of equestrian operations, shooting clubs, and sports fields. Snoqualmie Valley Tilth is not asking the County to retroactively prohibit these current uses. However, if the County is serious about ensuring that agricultural production occurs in the Agricultural Production District, more safeguards are required to ensure that these rich resource lands are put to their most productive use.

Permitting non-farming uses in agricultural production districts, ultimately, has the effect of driving farmers out of the APDs. See e.g. KCC 26.04.010(E) and (F). See also *Van Buren v. Miller*, 22 Wn. App. 836, 837, 592 P.2d 671 (1979) (“The purpose of chapter 84.34 RCW is to encourage owners to retain their land for farm use and to resist the trend to sell agricultural land for urban subdivision.”) It is the opinion of Snoqualmie Valley Tilth that a clear definition of agriculture should ensure that all new construction in the APD is strictly limited to structures that are directly related the production of agricultural products. To allow structures intended for purposes other than agricultural production in the Agricultural Production District will have the effect of driving agricultural production out of the APD entirely, replacing it with equestrian estates and other non-farm related uses.

4. The political environment today supports a strict definition of agriculture

It is the expressly stated policy of the state of Washington and King County to protect, preserve and enhance agricultural and open space lands. This policy is clearly spelled out in laws and ordinances such as the King County comprehensive plan of 1964, as amended by Ordinance 1096, establishing open space policies in King County; RCW Chapter 84.34 and Ordinance 2537, authorizing current use taxation of agricultural and open space land; Chapter 84 Laws of 1979 limiting and deferring road and utility assessments on farm land and open space land; Ordinance 3064, as amended, establishing King County's agricultural lands policy and county and city ordinances regulating land use by zoning; and the 2006 King County Comprehensive Plan. As the County Council wrote in its 2006 King County Comprehensive Plan:

“with the county’s emphasis on preserving agricultural and

¹ See

<http://dor.wa.gov/Content/GetAFormOrPublication/PublicationBySubject/TaxTopics/WAC458RuleChange.aspx> (last visited March 10, 2009).

forestry lands within the Agricultural and Forest Productions Districts, the development of large equestrian facilities of a size and scale that would be incompatible with agricultural and forestry practices within these districts should be discouraged.”

2006 King County Comprehensive Plan Ch. 3 pg. 13.

These State and County laws reflect the growing demand in the region for healthy, non-toxic, locally produced food. For instance, KCC 26.04.010(C), “Acquisition of Interests”, lists protection of farmland used for growing food as its primary purpose in its declaration of intent.

Unfortunately, there are not enough farms in the area to meet current demand. The good news is that, as a result of effective open-space preservation programs, there is a good deal of potentially farmable land in the County. Likewise, due to an increasing interest in low-impact, non-toxic farming, there is also a surplus of potential farmers who, given the opportunity, could help meet our burgeoning regional demand for locally produced food. Unfortunately, much of the potential farmland in our County is un-farmable because current zoning laws and building codes prohibit or inhibit the construction of farming necessities such as barns, worker housing, accessory buildings, and wells.

5. There is an implied legal definition of agriculture in Washington State

The Merriam-Webster Dictionary defines “agriculture” as: “the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products.” While there is no specific legal definition of agriculture at either the county or state level, state and county laws regulating farming reflect this dictionary definition. Viewed as a whole, state and county laws regulating agriculture are clearly based on the premise that producing and selling agricultural products are what constitutes agriculture. That is to say, “agriculture” is composed of two specific elements – (1) raising a crop, animal, or product derived thereof and (2) selling that crop, animal, or product.

For instance, under RCW 82.04.213(1), an “agricultural product” is defined, in relevant part, as “any product of plant cultivation or animal husbandry.” RCW 82.04.213(2) goes on to define “farmer” as “any person engaged in the business of growing, raising, or producing... any agricultural product *to be sold*.” King County code 12.87.040 mirrors this State law, defining “commercial agriculture” as the production of livestock or agricultural commodities on agricultural lands and the offering of the livestock and agricultural commodities for *sale*. Under RCW 7.48.310(1), the “Right-to-Farm law,” an “agricultural activity” is “a condition or activity which occurs on a farm in connection with the *commercial production of farm products*.”

Likewise, RCW 84.34.020(2) “Farm and Agricultural Land” defines “agricultural land” as land that is “devoted primarily to the *production* of livestock or agricultural commodities for commercial purposes.” King County Code 21A.04.030, “Agricultural Zone”, also closely mirrors the state definition of agricultural land. KCC 21A.04.030(2) permits “uses related to agricultural *production*” and “limit(s) nonagricultural uses to those compatible with farming or requiring close proximity for the support of agriculture.”

The Growth Management Act also defines agricultural land. The GMA defines agricultural land as “land primarily devoted to the *commercial production* of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees . . . or livestock, and that has long-term commercial significance for agricultural production.” RCW 36.70A.030(2). Under the GMA, the legislature established that agricultural lands are those which (1) are “primarily devoted to” commercial agricultural production and (2) have “long-term commercial significance” for such production. RCW

36.70A.030 (2). The Supreme Court addressed the meaning of the term "primarily devoted to" in *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 959 P.2d 1091 (1998), a case in which landowners challenged designation of their land as agricultural. In that case, the court held that land is primarily "devoted to" commercial agricultural production "if it is in an area where the land is actually used or capable of being used for agricultural production." *Id.* at 53. The court went on to say that that a landowner's intended use of the land is irrelevant. *Id.* What this means is that the characteristics of the land, i.e. soil quality, location, topography, etc., are most important in determining its appropriate uses.

In *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.* 502²157 Wn. 2d. 488 (2006), the Supreme Court addressed the meaning of the term "long-term commercial significance." In that case, the Court held that "agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. *Id.* at 497.

The product-based definition of agriculture suggested by the complex web of state and county laws is also reflected in federal law. The Fair Labor Standards Act defines agriculture in this way. The FLSA provides in pertinent part: "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, and production, cultivation, growing and harvesting of any agricultural or horticultural commodities ... and any practices ... performed by a farmer or on a farm as an incident to or in conjunction with such farming operations... 29 U.S.C. Sec. 203(f).

6. Conclusion

Local and sustainable farming today is hailed as the solution to many of today's environmental, health, and sociological problems. Yet it is also under threat from many sides – development, land use laws, flooding, climate change. Foremost is reality that farm income is not necessarily sufficient to carry the mortgage on prime agricultural land when demand for farmland increases among those who earn more money than farmers. Many state and local statutes and codes have addressed this issue by both increasing farm income through incentive programs and by reducing demand for prime agricultural land through zoning restrictions. The creation of the Snoqualmie Valley Agricultural Production District is one such zoning change enacted for the purpose of preserving farmland.

King County is devoting a good deal of energy to preserving farmland in Snoqualmie Valley Agricultural Production District in particular and promoting local and sustainable farming. Snoqualmie Valley Tilth shares this goal. Unfortunately, it is the opinion of Snoqualmie Valley Tilth that certain vagaries in the code as it exists may have the unintended consequence of encouraging non-farming land use in the Agricultural Production District and pushing out those who are engaging in actual agricultural production.

Specifically, the County Council has recently passed a code change allowing for 5000 square-foot "agricultural accessory buildings." Snoqualmie Valley Tilth worries that, in light of a recent Department of Revenue decision interpreting pasturing horses as agriculture, the Council's recent code change will allow landowners in the APD to build non-farming related structures and thereby raise demand for land in the APD among people who will not farm. For this reason, the Snoqualmie Valley Tilth encourages the King County Council to enact legislation that defines agriculture such that all future legislation intended to promote agriculture in the APD has the intended effect. To that end, Snoqualmie Valley Tilth suggests that agriculture be defined as the production of food, forage, or fiber for end-use human consumption