



# Skagit County Planning & Development Services

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## Supplemental Staff Report

From: Dale Pernula, AICP, Director

Re: Skagit County’s 2014 Proposed Amendments to the Comprehensive Plan, and Land Use and Zoning Map

Date: September 8, 2015

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## Background

On August 13, 2015, the Department issued a Staff Report on proposed comprehensive plan and zoning map amendments by Wilfred Voigt (Birdsview Brewing Company), to redesignate an approximate 12 acre parcel from Rural Reserve (RRv) to Small-Scale Recreation and Tourism (SRT), or as an alternative, Small-Scale Business (SSB) (PL12-0268). This Supplemental Staff Report augments the earlier Department [Staff Report](#) and the two should be read in tandem.

On September 1, 2015, the Skagit County Planning Commission held a public hearing. Based on public testimony and other matters of record, the Planning Commission continued the public hearing to September 15, 2015, so that staff could conduct additional analysis and address the following issues:

1. Protection of rural character
2. Wide variety of uses allowed under a rural commercial zone
3. Noise impacts from pub/restaurant, and live music
4. Spot zoning, other rural commercial uses along SR 20, and
5. Contract rezoning (or concomitant agreements)

The Department's research and findings are described below in order to assist the Planning Commission in its deliberations.

### 1. Protection of Rural Character

Protecting rural character is a fundamental requirement of the Growth Management Act and Skagit County addresses this issue through comprehensive plan goals, policies and development regulations. The Growth Management Act has 13 statewide goals.<sup>1</sup> They are not ranked in any order of preference, in other words - one goal is not more important than the other. They are to be considered collectively, in their whole.

In 2002, the legislature amended the Growth Management Act by addressing more specifically rural lands and rural character, and in doing so adopted the following findings:

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

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<sup>1</sup> RCW 36.70A.020 Planning goals. (1) Urban growth. (2) Reduce sprawl. (3) Transportation. (4) Housing. (5) Economic development. (6) Property rights. (7) Permits. (8) Natural resource industries. (9) Open space and recreation. (10) Environment. (11) Citizen participation and coordination. (12) Public facilities and services. (13) Historic preservation. In addition to the 13 original GMA goals, the legislature added the goals and policies of the shoreline management act as the fourteenth GMA goal. (See [RCW 36.70A.480](#)) The shoreline goals may be found at [RCW 90.58.020](#).

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will:

Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.<sup>2</sup>

When proposed comprehensive plan map amendments are considered they are reviewed and considered according to their compatibility with adjoining land uses, and comprehensive plan goals, policies and designation criteria.

## **2. Wide Variety of Uses Allowed Under a Rural Commercial Zone**

A change to a rural commercial zone, either Small-Scale Recreation and Tourism (SRT) or Small-Scale Business (SSB), would allow for more intensive use of the land, and possibly unknown future rural commercial uses and their associated potential impacts. The proposed comprehensive plan map amendment/rezone requests that 12 acres be redesignated to a rural commercial use.

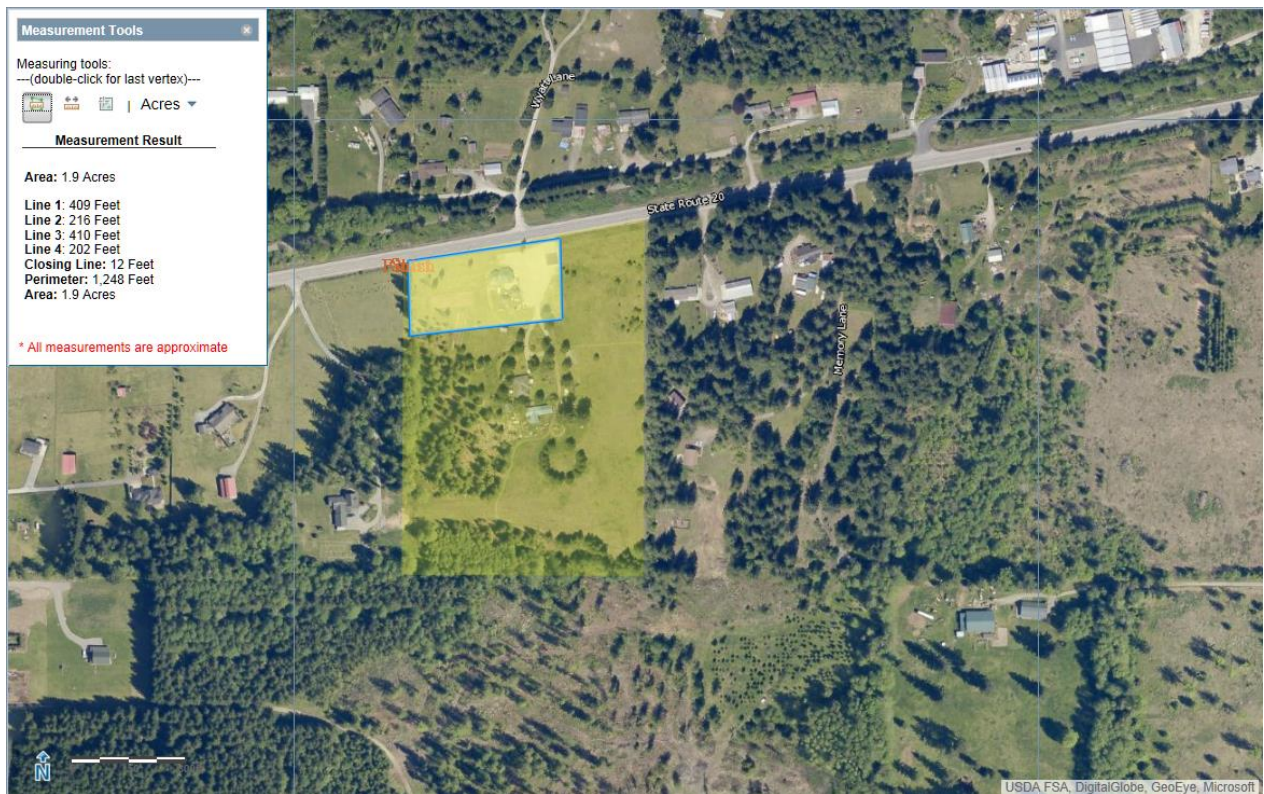
By reducing the 12 acre proposal to 2 acres, a number of public as well as private interests are served.

- Redesignating only 2 acres legitimizes the footprint of the existing business, Birdsvew Brewery, and removes the balance of the property from unknown future rural commercial uses.
- The existing residential dwelling and commercial retail business can be separated from each other through a land division. This is preferable and maintains flexibility should there be a change in property and business ownership, and also provides for better commercial financing options should they be desired.
- A Rural Reserve designation provides two residential development rights when a CaRD land division is proposed. One residential development has already been utilized for the existing dwelling, and another one is preserved.
- The 2 acre modified proposal should be limited to the existing rural business, and be located adjacent to SR 20.

See following aerial map with proposed location of the approximately 2 acre rural commercial designation.

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<sup>2</sup> RCW **36.70A.011** Findings -- Rural lands.



### 3. Noise Impacts from Pub/Restaurant, and Live Music

An existing business and any future businesses must operate under development standards that minimize noise.

Pursuant to Skagit County Code, there are several provisions which regulate noise emissions. Under public nuisance standards “it is County policy to minimize the exposure of citizens to the harmful nuisance, physiological, and psychological effects of excessive noise and to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment.”<sup>3</sup>

In addition, noise control standards regulate noise levels through Chapter 173 WAC (maximum environmental noise levels), identify the types of public disturbance noises, and establish times when noise levels must be met (SCC Chapter 9.5(2)).

Noise emissions are also regulated through Skagit County Code Chapter 14.16.840(2), Performance Standards. The maximum permissible environmental noise levels to be emitted to adjacent properties are not to exceed levels of the environmental designations for noise abatement (EDNA) as established by the State of Washington, Department of Ecology as now exists in Chapter 173-60 WAC.<sup>4</sup> The EDNA classes are based on residential, commercial, and industrial zones and their land uses.

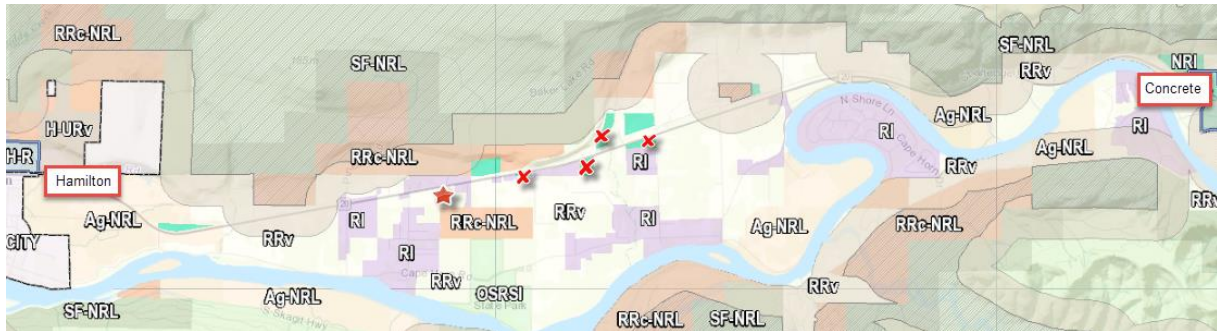
<sup>3</sup> Skagit County Code Chapter 9.50, Noise Control

<sup>4</sup> Skagit County Code Chapter 14.16.840(2), Performance standards

Skagit County does not regulate outright music, other than noise emissions, within permitted rural commercial businesses.<sup>5</sup> If occasionally music festivals or charitable events are held outside, then in zones where it may be allowed a Special Use permit is required for Temporary Events.<sup>6</sup> Special Use permits address how many events may be allowed in a year, parking, nuisances, and lighting. Additional conditions may be required through the permit and environmental review process to address potential impacts.

#### 4. Spot zoning, other rural commercial uses along SR 20

Between the towns of Hamilton and Concrete there are currently 4 commercial businesses located in a rural commercial zoning district. They are located within a 2 mile stretch of SR 20, roughly halfway between the towns.<sup>7</sup> See below comprehensive plan and zoning maps.



<sup>5</sup> Existing rural commercial business that provide live entertainment and music, for example are: Corner Tavern, Edison Inn, Longhorn, Conway Muse, Big Lake Bar and Grill, and Big Rock Café and Grocery.

<sup>6</sup> **Temporary Events.** Special use permits for **temporary events** are also subject to the following criteria: (i) Events may occur on no more than 24 calendar **days** per year, (ii) Parking for all events shall be fully contained on the **subject property** and shall not include the **use** of any **road** right-of-way, (iii) Does not create a detrimental level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic or other environmental **impacts** on the surrounding area, and (iv) All lighting is directed away from neighboring residences or businesses. (Skagit County Code 14.16.900 (2)(h), **Special use permit requirements**)

<sup>7</sup> Denotes location of exiting rural commercial business; Denotes location of Birdsvew Brewery

“Spot zoning” is the application of zoning to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with a comprehensive plan and current zoning restrictions. Spot zoning may be ruled invalid as an “arbitrary, capricious and unreasonable treatment” of a limited parcel of land. While development standards regulate the land use in zoning districts, spot zoning makes unjustified exceptions for a parcel or parcels within a district<sup>8</sup>. Spot zoning is basically disfavored in Washington. The basic definition of spot zoning in Washington was outlined in *Narrowview Preservation Association v. City of Tacoma*, 84 Wn.2d 416 (1974), in which the court said:

We have recently stated that illegal spot zoning is arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for use classification totally different from and inconsistent with the classification of the surrounding land, not in accordance with a comprehensive plan.

The reasons for invalidating a rezone as an illegal spot zone usually include one or more of the following: (1) the rezone primarily serves a private interest, (2) the rezone is inconsistent with a comprehensive plan or the surrounding territory, or (3) the rezone constitutes arbitrary and capricious action. Each situation must be determined on its own facts and it is not always easy to determine conclusively whether a rezone would constitute an illegal spot zone.<sup>9</sup>

According to Richard Settle in *Washington Land Use and Environmental Law and Practice*, the issue with spot zoning is not the differential regulation of adjacent land but the lack of public interest justification for such discrimination. Where differential zoning merely accommodates some private interest and bears no rational relationship to promoting legitimate public interest, it is “arbitrary and capricious” and hence “spot zoning.” The term “spot zoning” is not really a distinct legal doctrine. It is really a “misleading term for the application of the constitutional requirements of equal protection and substantive due process.” See Settle at section 2.11(c). Courts will overturn a rezone if it grants a “discriminatory benefit to one or a group of owners to the detriment of their neighbors or the community at large without adequate public advantage or justification. . . .” *Bassani v. County Commissioners*, 70 Wn. App. 389 (1993).<sup>10</sup>

## **5. Contract rezoning (or concomitant agreements)**

A “contract rezone” is a standard map amendment or a site-specific rezone which uses a concomitant agreement to impose conditions on, or limitations on uses and may also require performance by the applicant(s) which is/are directly related to mitigation of probable on- and off-site impacts to adjacent uses, public services and the environment. The agreement may be in the form of a covenant running with the land.

Skagit County has not utilized “contract rezoning” for 20 plus years. Legal counsel over the years has advised against the use of “contract rezones” for a number of reasons. Their use makes a comprehensive plan amendment, which is a “legislative” action, more “quasi-judicial” in nature. Also, a more widely used practice, although limited in its application, is utilizing “development agreements” (RCW 36.70B.170) to condition or mitigate land use development proposals.

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<sup>8</sup> [https://en.wikipedia.org/wiki/Spot\\_zoning](https://en.wikipedia.org/wiki/Spot_zoning)

<sup>9</sup> Municipal Research Service Center, **What is spot zoning (particularly in the case of a rezone) and is it always illegal?**

<sup>10</sup> Ibid

# Exhibits

## Chapter 9.50 NOISE CONTROL

Sections:

- 9.50.010 Purpose.**
- 9.50.020 Definitions.**
- 9.50.030 Administration.**
- 9.50.040 Public disturbance noises.**
- 9.50.050 Penalties.**
- 9.50.060 Provisions not exclusive.**
- 9.50.070 Disclaimer of liability.**
- 9.50.080 Severability.**

### **9.50.010 Purpose.**

It is County policy to minimize the exposure of citizens to the harmful nuisance, physiological, and psychological effects of excessive noise and to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment.

This Chapter supplements existing regulations for the control of public disturbance noise. It is expressly the purpose of this Chapter to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefited by the terms of this Chapter. (Ord. 020080001 (part))

### **9.50.020 Definitions.**

- (1) "Board" means the Board of Commissioners of Skagit County.
- (2) "County" and "Skagit County" mean the unincorporated areas of Skagit County.
- (3) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (4) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever.
- (5) "Public disturbance" means sources of sound when they unreasonably disturb or interfere with the peace, comfort and repose of property owners or possessors. (Ord. 020080001 (part))

### **9.50.030 Administration.**

- (1) Administration and enforcement of this Chapter is the responsibility of the Skagit County Sheriff, his designee and/or other entity designated by the Board.
- (2) Complaints of violations of the Unified Development Code, SCC Title [14](#), including complaints stemming from uses or activities permitted as a special use under a permit issued by the Skagit County Planning and Development Services or the Skagit County Hearing Examiner, may be referred to Skagit County Planning and Development Services for investigation and enforcement under SCC [14.16.840](#)(5). (Ord. 020080001 (part))

**9.50.040 Public disturbance noises.**

(1) It is unlawful for any person to cause, or for any person in possession or control of property to allow, sound to originate from the property that exceeds the noise levels permitted by Chapter [173-60](#) WAC (Maximum Environmental Noise Levels), as that chapter now exists or as it may hereafter be amended. The provisions of this subsection shall not apply to sounds exempted under Chapter [173-60](#) WAC, as that chapter now exists or as it may hereafter be amended.

(2) It is unlawful for any person to cause, or for any person in possession or control of property to allow, sound, which unreasonably disturbs or interferes with the peace, comfort, and repose of other property owners or possessors, to originate from the property. When they unreasonably disturb or interfere with the peace, comfort and repose of property owners or possessors, the following sounds or sources of sound, which by their volume or frequent, repetitive, or continuous sounding, are prohibited public disturbance noises:

(a) Horns or sirens attached to a motor vehicle between the hours of 10:00 p.m. and 7:00 a.m. except when used as a warning of danger or as specifically permitted or required by law.

(b) Yelling, shouting, hooting, or whistling between the hours of midnight and 7:00 a.m.

(c) Sound from audio systems, including but not limited to radios and tape and compact disc players, amplifiers, and speakers, which emanate from:

(i) Any building, structure, apartment or condominium that is audible at a distance of greater than one hundred fifty (150) feet from the property that the building is on;

(ii) Portable audio equipment used on private property when operated at a volume that is audible at a distance greater than one hundred fifty (150) feet from the property; and

(iii) Portable audio equipment used on public property when operated at a volume that is audible at a distance greater than one hundred fifty (150) feet from the portable audio equipment.

(d) Sound from social gatherings or unamplified musical instruments that emanates from any building, structure, apartment or condominium when audible at a distance greater than one hundred fifty (150) feet from the property that the building is on.

(e) Sound from the discharge of firearms during evening and nighttime hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise.

(f) Sound from a propane cannon, cherry gun, or similar sound-producing device.

(g) Sound from a refrigeration unit on a commercial vehicle or from a commercial vehicle's engine when used to operate a refrigeration unit when the vehicle is stationary for longer than thirty (30) minutes and the sound is audible on residential property at a distance greater than one hundred fifty (150) feet.

(3) The provisions of Subsection (2) of this Section shall not apply to sounds related to:

(a) Commercial agricultural, fishery, and forestry management activities and operations on land zoned as Natural Resource Lands (Agriculture—Natural Resource Lands, Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, and Rural Resource—Natural Resource Lands) when conducted in compliance with Chapter [14.38](#) SCC.



(b) Regularly scheduled events at public parks, including the use of public address systems for baseball games, concerts or other authorized activities in parks.

(c) Officially sanctioned parades and other public events.

(d) The use of emergency equipment and work necessary in the interests of law enforcement or for health, safety or welfare of the community.

(e) Warning devices not operating continuously for more than five (5) minutes, and safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible.

(f) Church bells, chimes, and carillons.

(g) Sounds created by the installation or repair of essential utility services.

(h) Surface carriers engaged in interstate commerce by railroad.

(i) Aircraft in flight or flight operations, including aircraft engine testing and maintenance, from airports and airfields.

(j) Motor vehicle racing events at existing permitted facilities.

(k) The operation of motor vehicles on highways which are regulated under Chapter [173-62](#) WAC.

(l) Temporary projects for the emergency maintenance or repair of residential homes, grounds and appurtenances between the hours of 7:00 a.m. and 10:00 p.m.

(m) The discharge of firearms at a permitted shooting range or in the course of a lawful activity or lawful hunting.

(n) Portable generators during periods when there is no electrical service available from the primary supplier due to natural disaster or power outage.

(o) Unamplified sounds created by domestic animals as regulated by Chapter [7.01](#) SCC.

(p) Operation of existing electrical substations and stationary equipment used to convey water, wastewater or natural gas by a utility.

(q) Amplified sounds that comply with a permit issued by the State, Skagit County or other municipal authority.

(r) Unamplified use of public parks, playgrounds, and recreation areas during the hours the parks, playgrounds or recreation areas are open for public use.

(s) The operation of ice cream trucks at levels commonly associated with such vehicles.

(4) It shall be a defense to a violation of this Chapter that a sound does not exceed the noise levels set forth by Chapter [173-60](#) WAC (Maximum Environmental Noise Levels), as that chapter now exists or as it may hereafter be amended. (Ord. O20100001; Ord. O20080001 (part))

**9.50.050 Penalties.**

(1) Any violation of this section shall be punished as follows:

(a) The first violation by a person within the preceding year shall be a warning.

(b) The second violation by a person within a one (1) year period shall be a Class 2 civil infraction carrying a monetary penalty of one hundred twenty-five dollars (\$125.00) plus statutory assessments.

(c) A third or subsequent violation by a person within a one (1) year period shall be a criminal misdemeanor punishable by a fine of up to one thousand dollars (\$1,000), ninety (90) days in jail, or both.

(2) In any prosecution for a civil infraction or criminal misdemeanor, evidence of a sound's level through use of a sound-level meter reading shall not be necessary to establish the commission of the offense.

(3) Civil infractions under this Chapter shall be enforced pursuant to Chapter [7.80](#) RCW and the court rules. (Ord. O20080001 (part))

**9.50.060 Provisions not exclusive.**

The provisions of this Chapter shall be cumulative and nonexclusive, and shall not affect any other claim, cause of action or remedy and do not repeal, amend or modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing statutes, regulations and ordinances, including the provisions of SCC 14.16.840, on noise. (Ord. O20080001 (part))

**9.50.070 Disclaimer of liability.**

Nothing contained in this Chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the county, its officers, employees or agents, for any injury or damage resulting from the failure of anyone to comply with the provisions of this Chapter, or by reason or in consequence of the implementation or enforcement pursuant to this Chapter, or by reason of any action or inaction on the part of the county related in any manner to the enforcement of this Chapter by its officers, employees or agents. (Ord. O20080001 (part))

**9.50.080 Severability.**

This Chapter shall be liberally construed to carry out its broad purposes. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances, is not affected. (Ord. O20080001 (part))

#### **14.16.840 (5) Performance standards.**

Noise. Unless additional regulations are adopted by Skagit [County](#) pertaining to noise emissions, the maximum permissible environmental noise levels to be emitted to adjacent properties are not to exceed levels of the environmental designations for noise abatement (EDNA) as established by the [State](#) of Washington, [Department](#) of [Ecology](#) as now exist in Chapter [173-60](#) WAC, or as hereafter amended; provided, that EDNA classifications will conform to certain [zone](#) designations established under this Title as follows:

- (a) Class A EDNA: Residential [Use](#) Zones (RI, RVR, RRv, R, URR);
- (b) Class B EDNA: Commercial [Zones](#) (RVC, RC, RFS, SRT, SSB, RB, BR-LI, AVR, URC-I), [Public Use](#) Zones OSRSI and URP-OS; and
- (c) Class C EDNA: Industrial [Zones](#) (NRI, RMI, BR-HI), Forestry [Zones](#) (IF-NRL, SF-NRL, RRc-NRL), Agricultural [Zone](#) (Ag-NRL). (Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)