Planning & Development Services

1800 Continental Place ▪ Mount Vernon, Washington 98273
office 360-416-1320 ▪ pds@co.skagit.wa.us ▪ www.skagitcounty.net/planning

Memorandum: 2022 Planning Docket

To: Board of County Commissioners
From: Jenn Rogers, Assistant Long Range Planner
Date: May 5, 2022
Re: Docketing Proposed Annual Comprehensive Plan, Map, and Development Code Amendments

Background

The Growth Management Act (GMA) provides that "each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation"[1] and requires Skagit County to periodically accept petitions for amendments or revisions to the Comprehensive Plan policies or land use map. Skagit County implements this requirement through Skagit County Code Chapter 14.08, which describes the process for annual amendments.

The County also accepts suggestions for development regulation amendments. An analysis for each map and text proposal describes how each proposed amendment is either consistent or inconsistent with the annual amendment review criteria, and maps are included for each proposed zoning amendment.

The remainder of this memo describes the docketing criteria and process and briefly summarizes the amendment proposals.

Process Summary

SCC Chapter 14.08 provides the following criteria for analyzing petitions:

- Petitions for amendments are accepted until the last business day of July of each year.
- The Department analyzes the petitions against the docketing criteria in SCC 14.08.030 and issues a recommendation to the Board. (See Petitions and Department Recommendations section below.)
- The Board holds a public hearing to allow applicants and the public to comment on the recommendation.
- The Board decides which petitions to include in the docket at a subsequent meeting. The Board has three options with respect to any proposal:
    - include a proposal for docketing

[1] RCW 36.70A.130(1)(a).

- defer the proposal until the next annual amendment cycle
- exclude the proposal without prejudice

The Board's decision to include a proposed amendment in the docket is procedural and does not constitute a decision as to whether the amendment will ultimately be approved.

The petitions included in the docket move forward for SEPA analysis, Department of Commerce review, legal review, and subsequent review by the public, Planning Commission, and the Board through the process described in SCC 14.08.080-090.

Timeline of the Yearly Docketing Process.

Date	Hearing Body	Meeting Type	Actions
Spring 2022	BoCC	Public Hearing	Accept testimony on which proposals merit inclusion in the Docket.
Spring 2022	BoCC	Deliberations	Docket established via Resolution.
Summer 2022	Planning Commission	Workshop(s)	Discussion of upcoming Docket public hearing.
Summer 2022	Planning Commission	Public Hearing	Accept testimony on the proposals included in the Docket.
Fall 2022	Planning Commission	Deliberations	Recorded motion with recommendations to the BoCC.
Winter 2023	BoCC	Deliberations	Deliberate on whether to adopt, not adopt, or defer amendments on the Docket.

Table 1 *Summarizes the review process with approximate dates of each action. RCW 36.70A.130(2)(a) states that the Comprehensive Plan, with few exceptions, may not be amended more than once per year.*

Department Docketing Criteria

SCC 14.08.030 requires the Department to make a recommendation to the Board as to which of the petitions the Department should be included in the docket. The Department must consider each of the following factors ("the docketing criteria") in making its recommendation:

(a) The petition complies with the filing requirements;

(b) The proposed amendment, in light of all proposed amendments being considered for inclusion in the year's docket, can be reasonably reviewed within the staffing and operational budget allocated to the Department by the Board;

(c) A proposed amendment, to be adopted, would not require additional amendments to the Comprehensive Plan or development regulations not addressed in the petitioner's application, and is consistent with other goals, objectives and policies adopted by the Board;

(d) A proposed amendment raises policy, land use, or scheduling issues that would more appropriately be addressed as part of an ongoing or planned work program, or as part of a regular review cycle;

(e) Some legal or procedural flaw of the proposal would prevent its legal implementation;

(f) The proposal lacks sufficient information or adequate detail to review and assess whether or not the proposal meets the applicable Comprehensive Plan designation criteria. This does not preclude the Department from asking for additional information at a later date.

2022 Petitions and Department Recommendations

Skagit County received the following timely petitions and suggestions to amend the Comprehensive Plan or development regulations. For each proposal, the Department has provided a summary of the proposal, analysis against the docketing criteria, and a recommendation. The full text of each petition is available on the 2022 Docket webpage.

Proposal Naming Convention

The proposals are organized and identified as described below, depending on whether they are policy, code or map amendments submitted by members of the public, or were initiated by the County:

LR##-##: Proposal submitted by a member of the public or property owner for an amendment to Comprehensive Plan policies, development regulations, or a map amendment.

C##-#: Proposal initiated by the County to amend the Comprehensive Plan policies, map, or development regulations.

Citizen Petition Summary

The public has submitted five timely petitions for consideration in this year's docket.

Table 1. Citizen Petitions for the 2022 Docket

Table 2 summarizes each of the petitions and the Departments recommendations.

Number	Title & Petitioner	Description	Department Recommendation (Include, Exclude, or Defer
Comprehensive Plan/Development Code Amendments			
LR22-01	**Small Scale Recreation & Tourism Rezone**, Bertelsen Farms, LLC (Bertelsen)	Rezone four parcels from Rural Reserve zone to Small Scale Recreation & Tourism zone	**Include**
LR22-02	**Fully Contained Communities**, Skagit Partners LLC (Sygitowicz)	Amend the Countywide Planning Policies and Skagit County development regulations to establish a process for consideration and approval of a new fully contained community, consistent with RCW 36.70A.350	**Defer**

LR22-03	**Critical Areas Review Amendment**, (Wolden)	Amend SCC 14.24.070 (5) to allow existing single-family residences to be remodeled, reconstructed, or replaced without critical areas review if the use remains residential and the footprint does not change	**Exclude**
LR22-04	**Seawater Intrusion Protection Monitoring System,** Guemes Island Planning Advisory Committee (Rooks)	Add new sections to SCC 12.48 to require the County hydrogeologist to review applications for well approvals before the drilling of any new wells in a sole source aquifer	**Exclude**
LR22-05	**Agriculture Accessory Use Amendment**, Skagit Valley Farm, LLC (Wisdom)	Amend SCC 14.16.400, SCC 14.04.020, and Skagit County Comprehensive Plan goals and policies to allow for temporary/seasonal farmworker housing as an accessory use in Ag-NRL zone and other zones with agriculture as an allowed use.	**Include**

Department Amendments Summary

The Department has recommended three amendments for consideration in this year's docket.

Table 3. Department Amendments for the 2022 Docket.

Table 2 summarizes each of the county initiated proposals

Number	Title	Description	Petitioner
C22-1	Wind Turbine Use Amendment	Wind turbines are included in the definition for net metering systems, but they are not listed in the code as an allowed use in any zones. This amendment would add wind turbines as an allowed use.	Planning & Development Services
C22-2	Critical Areas Ordinance Correction	Code correction in SCC 14.24.080(4)(c)(vi). Reference to subsection (6) should be a reference to (5)(b).	Planning & Development Services
C22-3	Guemes Island Overlay Side Setback Amendment	Remove the preferential side setback requirements for the Guemes Island Overlay to be consistent with other areas of the county.	Planning & Development Services

Citizen Petitions and Department Recommendations

Skagit County received the following timely petitions and suggestions to amend the Comprehensive Plan policies, map, or development regulations. For each proposal, the Department has provided a summary of the proposal, analysis of the docketing criteria, and a recommendation. The full text of each petition is available on the Comprehensive Plan Amendment **webpage**.

LR22-01 Small Scale Recreation & Tourism Rezone (Quasi-Jurisdictional: 14.08.060 Petitions—Approval criteria for map amendments and rezones.)

Summary

This proposal seeks to rezone four parcels, a total of 69.02 acres, from its current zoning as Rural Reserve to Small Scale Recreation and Tourism. The parcels are part of the Bertelsen Winery in south Mount Vernon on Starbird Road just east of Interstate-5. On the south side of Starbird Road, two of the parcels, P17703 and P17715 are being used for a parking lot, buildings, outdoor use areas and grape vines. On the north side of Starbird Road, two more parcels of , P17700 and P17699, has one existing building and the rest as maintained pasture-grass condition. The petitioners will use the rezoned parcels on the southern side to construct additional buildings, expand the parking area, add overnight camping areas, and develop a dog park. The rezoned northern parcels will be used for a microbrewery in the existing building, build a general store, and use the remaining area to raise hops and bees to support amenities at the microbrewery and winery. The petitioners believe the rezone request would benefit Skagit County by increasing job and recreation opportunities in the community.

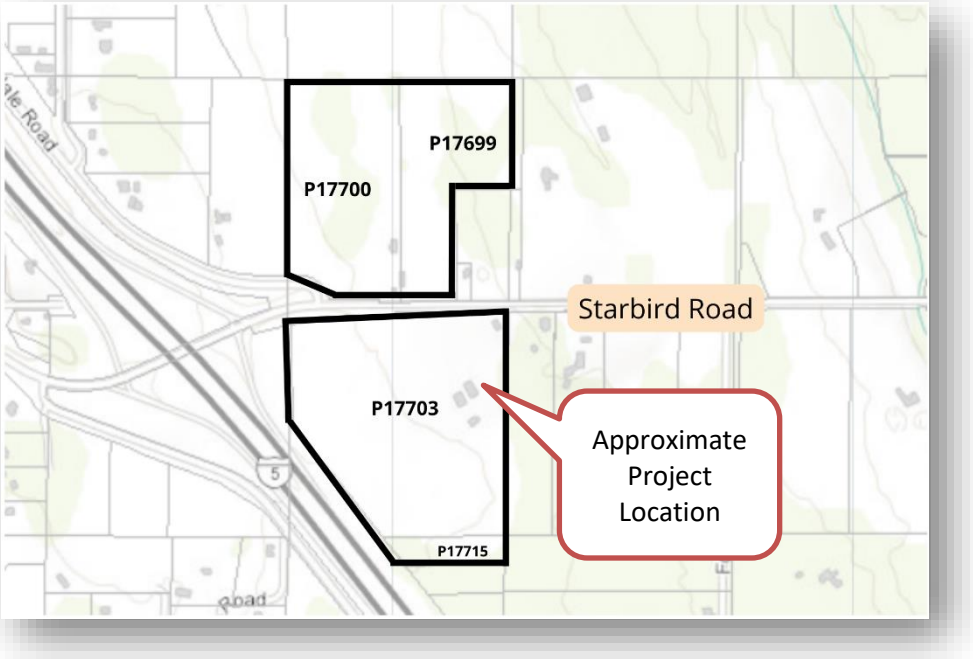


Figure 1: Bertelsen Winery rezone location, south of Mount Vernon

History

This is a new petition that has not been docketed in the recent past.

Recommendation

The Department recommends the Board **including** this petition in the Planning Docket.

Analysis

The southern plats of the property are currently being used as a winery. The northern two plats have one existing, unused structure the petitioners would like to used as a microbrewery. The plats are a part of the Skagit County PUD water system. The current uses are compatible with Rural Reserve but the petitioner has applied for a rezone to be eligible for uses allowed under Small Scale Recreation and Tourism such as: campgrounds, restaurants, and outdoor recreation facilities.

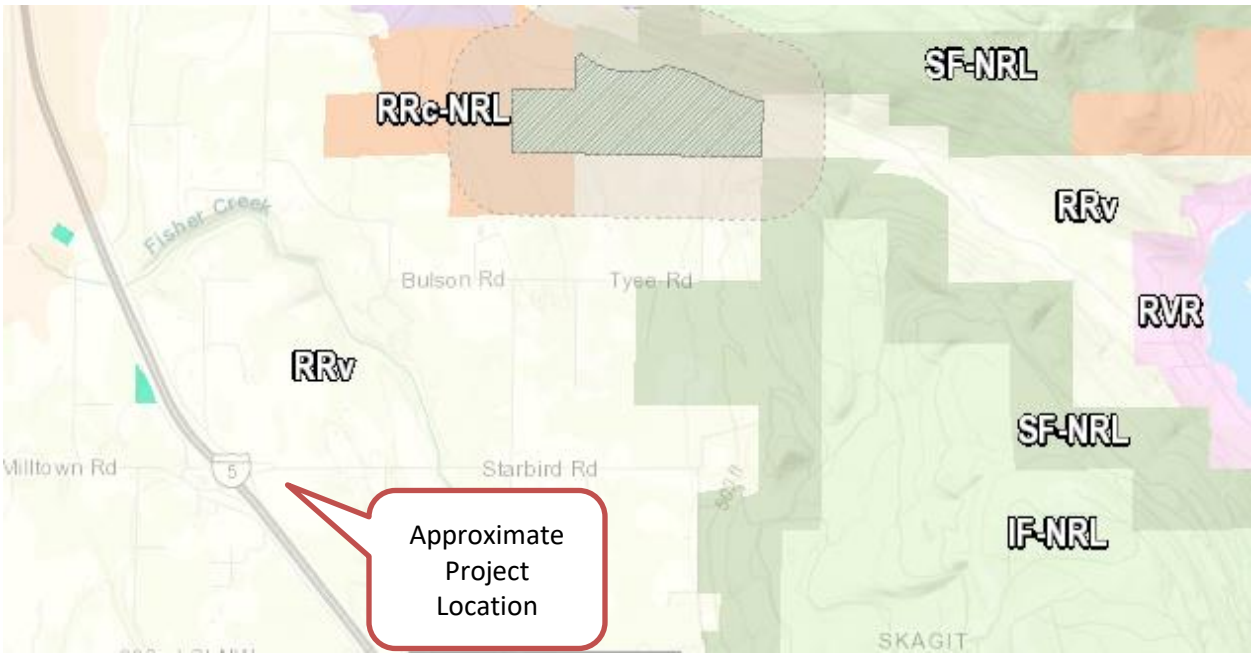


Figure 2 Zoning Map surrounding Bertelsen Farms

The Rural Reserve Zone purpose is to allow low-density development and to preserve the open space character of those areas not designated as resource lands or as urban growth areas (SCC 14.16.320). These areas are meant to be transitional between resource lands and non-resource lands for uses that require moderate acreage. Areas near Bertelesen farms include Industrial Forest-NRL, Secondary Forest-NRL, and Rural Resource-NRL zones. Property uses just east of Bertelsen Winery are residential.

The Growth Management Act allows for "limited areas of more intensive rural development" (LAMIRD), to allow for some development in a rural area, provided that certain limitations are maintained to retain rural character and prevent sprawl. There are two types of commercial LAMIRDs that can be used for new development if it is consistent with surrounding rural character: Small Scale Recreation and Tourism and Small Scale Business. The Comprehensive Plan requires the submittal of a development proposal consistent with the designation criteria to rezone to one of these two LAMIRDs. The Small Scale Recreation and Tourism designation is intended to provide diverse economic development that is recreational or tourist-related, which relies on a rural location and setting. Under RCW 36.70(A).070(5)(d)(ii), the County's Small Scale Recreation and Tourism designation allows:

a) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include residential development.
b) A small scale-recreation or tourist use is not required to be principally designed to serve the existing and projected population.

c) Public services and public facilities are limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl.[2]

LR22-02 Fully Contained Communities

Summary

This petition seeks to amend the Countywide Planning Policies and Skagit County development regulations to establish a process for consideration and approval of a new fully contained community, consistent with RCW 36.70A.350. A project specific Fully Contained Community (FCC) is not proposed by this petition.

History

There have been multiple proposals similar to LR22-02. The first was submitted in 2015 and the Board chose not to docket the petition for consideration through the 2016 Comprehensive Plan Update. The GMA Steering Committee (GMASC) was consulted at that time to amend the 20-year population allocation by an additional 10,000 people to establish a population reserve. The GMASC voted not to provide such an allocation in September 2015. The proposal was also deferred since it was associated with a specific project application, and the County did not have the policies, procedures, or reserve allocation to allow it to move forward. Subsequent petitions in 2017 and 2018 were not docketed because of lack of staff resources and failure to get a population "reserve" added to the Countywide Planning Policies through the GMA Steering Committee.

A non-project FCC petition was submitted in 2020 and the Board docketed the proposal. Before the Planning Commission deliberated on the petition, the Board voted to defer the proposal until the GMA Steering Committee could consider creating a population reserve. The current petition is a continuation of the 2020 petition. In 2020, the docketed proposal was specifically to change the Comprehensive Plan to establish project review procedures for FCCs. The 2022 petition would amend the Countywide Planning Policies and Skagit County development regulations.

Recommendation

The Department recommends **deferring** this petition in the Planning Docket.

Final approval of this proposal would be contingent on the GMA Steering Committee voting to amend the Countywide Planning Policies. Given that the Committee has not taken action on this request, Staff recommend deferring the 2022 petition.

LR22-03 Critical Areas Review Amendment

Summary

The proposed amendment aims to clarify when modification to an existing single-family residence would require a critical areas review. The current code states "modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint and does not adversely impact critical areas or their buffers." The petitioner would like to change the code

[2] Skagit County Comprehensive Plan Policy 3B-1.6

to state, “Modification of an existing single-family residences. Legally constructed existing single-family residences may be remodeled, reconstructed, or replaced; provided that the use does not change the from residential, the footprint does not expand, and the new construction or related activity does not adversely impact the critical area or buffer as a result of the proposed modification.” The new code language would allow residents to make more significant changes, including complete replacement, of a single-family residence without a critical areas review.

Recommendation

The Department recommends **excluding** this petition from the Planning Docket.

History

This is a new petition that has not been docketed in the recent past.

Analysis

The Skagit County Critical Areas Ordinance (CAO) was developed in 1996 as a result of the Growth Management Act and is designed to designate and protect critical areas defined as, “wetlands, aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.” SCC 14.24.010.

Critical Areas Ordinance review and site assessments are necessary because it allows the County to both designate previously unknown critical areas on the property or ensure ongoing activity is not actively harming a critical area. As the CAO is a relatively recent ordinance, there are numerous nonconforming structures in the County. Property owners are allowed to maintain and repair nonconforming structures, but a request for complete replacement of the structure is likely to have impacts related to disturbance from construction equipment and materials. A critical areas review allows staff to determine if a site assessment is needed and a chance to inform new land owners about critical areas protection. A critical areas review and site assessment also helps determine if the structure could be moved to mitigate impacts.

The petition seeks to specify and expand the allowed actions by a property owner to a residential structure without a critical areas review. The current code states modification to an existing structure can be allowed without a critical areas review, if the existing footprint does not change. Modification allows for repair and remodel of the structure without a critical area review, but replacement is not permitted. Definitions of these three terms from SCC 14.04 are below:

- **Remodel**: to renew, renovate or make over a part of an existing building for the purpose of its appearance or layout. Remodel may include repair or relocation of interior walls but does not include repair, replacement or relocation of any of the exterior floors, walls or roof.
- **Repair**: the reconstruction of a part of an existing building for the purpose of its maintenance or as a result of damage. Repair may include replacement of individual components of an assembly, such as components of a wall or a roof, but does not include replacement of the entire assembly. Where repair is required to more than 75% of the assembly, the assembly is considered to be replaced.
- **Replacement**: to put something new in place of something existing as a substitute, such as a building or structure, or part of a building or structure. When the value or extent of the work proposed, as determined by the Department, exceeds 75% of the preconstruction value or extent of the building, structure or assembly, the building, structure or assembly is deemed to be completely replaced.

The Growth Management Act allows for exemptions of Critical Areas Ordinance review, such as those listed in SCC 14.24.070, but the exempt activities must not reasonably increase the potential for ongoing harm to protected areas. Given the impacts of the proposed code change to unknown critical areas or nonconforming structures, the Department staff recommend to exclude this petition from the docket. A full staff response to LR22-03 memorandum is included as Attachment A.

LR22-04 Seawater Intrusion Protection Monitoring System

Summary

This petition seeks to amend Skagit County health code to implement a seawater intrusion protection monitoring system on Guemes Island. When considering a new well in a sole source aquifer, the new regulations would require the county health department to determine if the proposed well would be likely to have chlorides higher than 100 ppm, or to cause chlorides higher than 100 ppm on the aquifer and/or neighboring wells. If the county determines the well would meet the 100 ppm threshold, the request for a new well would be denied. The petitioner modeled the suggested code amendments after Island County Code 8.09.099 Seawater Intrusion Protection.

Recommendation

The Department recommends **excluding** this petition from the docket. The proposed amendments would be for health department codes, not development code or the county comprehensive plan. The docketing process does not allow for changes to be made to health department code.

History

The County has been and continues to be concerned about areas subject to Seawater Intrusion. This concern was clearly articulated by the Board when they adopted an Interim Seawater Intrusion Policy in 1994, it was reaffirmed when the Board adopted the Guemes Island Subarea Plan in 2011, and it was again reaffirmed in 2016 when the Board formally adopted section 14.24.380 into the Skagit County Code. Goal 5A of the Comprehensive Plan directs the County to protect aquifers, provide economic incentives to facilitate the protection of aquifers, and to regulate uses that could adversely affect water quality or quantity. Goal 5 also directs the County to "maintain aquifer recharge and protection" through the development of performance standards that would apply to both future and existing development.

A similar petition was docketed in 2018 as P-2 Guemes Island Wells. The 2018 petition intent was to ensure that new wells do not undermine the senior water rights of the existing wells on Guemes Island. The petitioners specifically requested three changes:

1. Require the county to review and approve of all new wells prior to drilling, not just new wells that are linked to a development permit;
2. Require assessment of hydrogeological impacts of any new well as part of the review process; and
3. Clarify that rainwater catchment can be permitted on Guemes Island without first drilling a well to prove that using a well is not feasible.

The Planning Commission recommended P-2 be denied at least in part due to questions of authority over well drilling. Staff is currently working to development guidance on using rainwater catchment as an alternative to wells, without the need for drilling a new well first.

Analysis

Skagit County Code ("SCC") 14.24.380(2)(a) regarding seawater intrusion areas currently requires "an application proposing use of a well" to be "submitted for review prior to drilling any new well." These requirements were adopted to protect critical areas and limit impacts to aquifer recharge areas as required under the Growth Management Act.

Additionally, domestic water supply well sites in Category I aquifer recharge areas that are designated sole source aquifers must have a well site approval through Skagit County or a licensed hydrogeologist and a critical areas site assessment.[3] If drilled by a licensed hydrogeologist, a site visit[4] by Skagit County and a hydrogeologic site assessment is still required prior to drilling.

RCW 18.104.043 also requires a property owner or the owner's agent to notify the Washington Department of Ecology of their intent to begin well construction, reconstruction, or decommissioning procedures at least 72 hours prior to commencing work. At this time, Ecology does not share this information with the County. Furthermore, SCC 12.48.090 requires "well site approval for an individual water system." Pursuant to SCC 12.48.110(5), "connecting an individual water system to another water system or water source without approval is prohibited." Therefore, if a well runs dry and a replacement well is proposed for an existing development, the property owner must obtain approval from Skagit County to use a new well for drinking water.

While a code change within the Department of Health code is not appropriate through this process, further work by the County is needed to address seawater intrusion on Guemes Island. More outreach and education to residents and well drillers and if necessary, an Administrative Official Interpretation could be written to clarify the requirements on Guemes Island.

LR22-05 Agriculture Accessory Use Amendment

Summary

This citizen-initiated request proposes adding permanent and/or seasonal farmworker housing as an allowed accessory use in zones which allow agricultural activity. The petitioner states the agricultural community is in need of affordable farmworker housing in Skagit County. Skagit County and surrounding communities lack both available and affordable housing. This amendment could provide the necessary housing for farm workers in Skagit county.

History

This is a new petition that has not been docketed in the recent past.

Recommendation

The Department recommends **including** this petition in the Planning Docket.

Analysis

The petitioner has requested a broad allowance for either permanent or seasonal farmworker housing for any employee which supports agricultural activity on the farm. This request implies that they would like to house workers beyond just farmworkers to include any worker which supports the agricultural activity. Currently, the Ag-NRL and Rural Reserve zones allow one temporary manufactured unit as an

[3] SCC 14.24.330 Aquifer recharge areas site assessment requirements.

[4] SCC 12.48.090(1) Individual well site approval.

administrative special use. A manufactured unit is defined as "the temporary placement of 1 manufacture home on a parcel with an existing residence to accommodate the housing needs or disable or elderly family members or to house 1 farm worker and his/her immediate family […] The second temporary dwelling unit must be removed from the property when the family member or farm employee is no longer using the manufactured home."

Farmworker housing is regulated by both the state and federal government. Washington state law preempts local regulation on temporary farmworker housing. RCW 70.114A states, "applies to temporary housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants." Temporary housing is defined as "a place, area or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy." (RCW 70.114A.020(10)). RCW 70.114A.050 goes on to state, "temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone.

The Skagit County Prosecuting Attorney's office believes Washington state law preempts any local zoning ordinances to restrict onsite farmworker housing beyond building heights, including health and safety requirements, except for requirements related to the height, setback, and road access. The Department is supportive of docketing this proposal to evaluate how onsite housing might be regulated and its impacts to land use in the County.

County-Initiated – Comprehensive Plan or Code

C22-1 Wind Turbine Use Amendment

Summary

The petition would add wind turbines as an allowed use in the code. Wind turbines are included by reference in the definition for net metering systems; however, wind turbines are not an allowed use in any zone in the code. Wind turbines would be an accessory use to a residential property, with only one wind turbine allowed per property. The wind energy consumed would only be for personal use by the property owner.

History

This is a new petition that has not been docketed in the recent past.

Recommendation

The department recommends **including** this petition in the planning docket.

Analysis

Skagit County currently has wind turbines defined in SCC14.04 as a net metering system that uses wind energy to generate power. Net metering system is defined in RCW 80.60.010, "a facility for production of electrical energy that generates renewable energy, and that: […] (4) is intended primarily to offset part or all of the customer-generator's requirements for electricity." Skagit County also permits solar net metering systems to generate electrical power. While the definition of net metering for wind is included in SCC14.04, there is no zone in Skagit County where wind turbines are listed as allowed use. Up until

2008, renewable energy systems of any size were considered a “major utility development” which required a special use permit that would cost more than $3,000. An Administrative Official Interpretation was released on July 1, 2008, to change Planning & Development Services policy to no longer consider such renewable energy systems to be Major Utility Developments, rather net metering systems would be considered an accessory use as defined in SCC 14.04, “a use, building or structure, which is dependent on and subordinate or incidental to, and located on the same lot with, a principal use, building, or structure.” A copy of the AOI is included in this memo as Attachment B.

In a corresponding press release with the AOI, included as Attachment C, the Department stated its intent to amend the development code to allow for net metering renewable energy systems in the next few months. The Department intended to use the ongoing Whatcom County study on net metering renewable energy systems to guide the new code regulations in Skagit County. In 2013, Skagit County received a grant from the Department of Energy via the Windpowering America program to study approaches to regulation of wind power in Skagit County. The study produced two alternatives for implementing wind turbines, which is included as Attachment D.

C22-2 Critical Areas Ordinance Correction

Summary

This amendment would correct a reference in Skagit County Code 14.24.080(4)(c)(vi). Currently, the code section refers to subsection (6)(b), the correct reference would be (5)(b).

History

This is a new petition that has not been docketed in the recent past.

Recommendation

The Department recommends **including** this petition in the Planning Docket.

Analysis

SCC 14.24.080(4)(c)(vi) states, “A description of efforts made to apply mitigation sequencing pursuant to Subsection (6)(b) of this Section; and.” There is no subsection (6)(b) under SCC 14.24.080. The correct reference should be to subsection (5)(b) which states, “Mitigation Sequence. The sequence of mitigation is defined below:” and goes on to explain the description of efforts made to apply mitigation sequencing.

C22-3 Guemes Island Overlay Side Setback Amendment

Summary

The petition would change the side setback requirements within the Guemes Island Overlay. The amendment would change the requirements for the Guemes Island Overlay to keep the side setbacks consistent with the rest of the county, at eight feet.

History

This is a new petition that has not been docketed in the recent past.

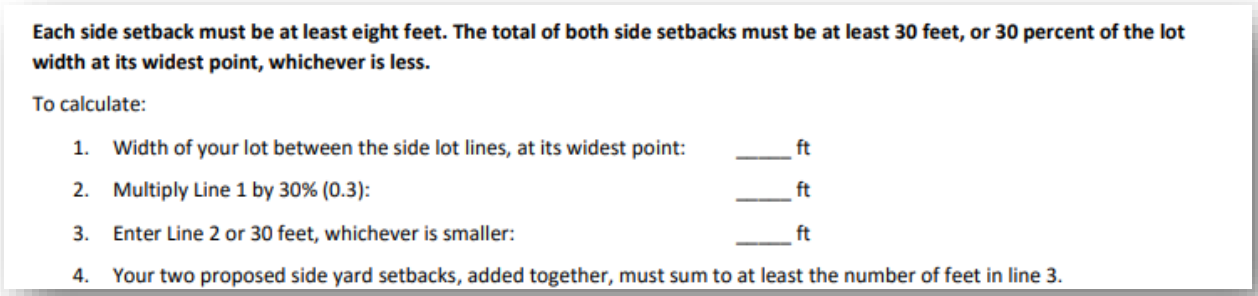
Recommendation

The Department recommends **including** this petition in the Planning Docket.

Analysis

The Guemes Island Overlay was adopted by the Skagit County Board of Commissioners in January 2011 with the purpose of regulating growth and protection of natural resources such as groundwater, shorelines, and wildlife. The entire island is considered a critical area due to its designation as both an aquifer recharge area and a sweater intrusion area. When the Skagit County Comprehensive Plan was updated in 2016, the Guemes Island Planning Advisory Committee (GIPAC) submitted several proposals for development code and shoreline protection in the Guemes Island Overlay. One of these proposals was for the current side setback requirements in the overlay:

> (ii) Side. Each side setback must be at least eight feet. The total of both side setbacks must be at least 30 feet, or 30 percent of the lot width at its widest point, whichever is less. SCC14.16.360(7)(a)(ii)



Each side setback must be at least eight feet. The total of both side setbacks must be at least 30 feet, or 30 percent of the lot width at its widest point, whichever is less.

To calculate:

1. Width of your lot between the side lot lines, at its widest point: _____ ft
2. Multiply Line 1 by 30% (0.3): _____ ft
3. Enter Line 2 or 30 feet, whichever is smaller: _____ ft
4. Your two proposed side yard setbacks, added together, must sum to at least the number of feet in line 3.

Figure 3 Guemes Island Setback Calculations from the Skagit County Dimensional Standards Worksheet

GIPAC noted, "the proposed setbacks and building envelope are intended to keep views open, avoid tall walls close to the property line and generally reduce incompatibility between smaller existing homes and larger new homes, particularly on small lots."[5] Other dimensional standards and requirements have also been implemented to maintain the rural character and landscape of Guemes Island.

Skagit County PDS staff have requested to change the overlay side setback requirements to "at least eight feet" to be consistent with other rural residential zones in the County such as Rural Intermediate, Rural Village Residential, Rural Reserve, and Urban Reserve Residential. The current side setback requirements on Guemes Island are burdensome for County planning staff to regulate, which is why the Department is supportive of docketing this petition to evaluate the potential impacts of changing the side setback requirements.

Attachments:

Attachment A LR22-03 Natural Resource Staff Response
Attachment B AOI Wind Turbine Use
Attachment C AOI Wind Turbine Press Release
Attachment D Draft Wind Turbine Use Code Amendments

[5] "GIPAC Finalizes Comments on Skagit County Comprehensive Plan 2016 Update" http://gipac.octopia.us/pages/44866/GIPAC-Finalizes-Comments-on-Skagit-County-Comprehensive-Plan-2016-Update/

Planning & Development Services

1800 Continental Place ▪ Mount Vernon, Washington 98273
office 360-416-1320 ▪ pds@co.skagit.wa.us ▪ www.skagitcounty.net/planning

Memorandum

To: Peter Gill, Long Range Planning Manager

From: Natural Resources Team

Re: Staff response to LR22-03

Date: February 18, 2022

After reviewing the proposed code modification submitted by Harvey Wolden (LR22-03), Natural Resources staff requests that the proposed change not be docketed.

Similar to other County land use regulations, the initial Critical Areas Ordinance (CAO) adopted under O16156 has been modified a number of times due to Growth Management Hearings Board decisions, changes in Best Available Science, and staff experience.

For example, when the original CAO was adopted in 1996, the County did not have the staff or resources available to map all critical areas. It was determined by the Board of County Commissioners (BoCC) that critical areas would be designated and protected at the time of development utilizing a site assessment. Applications for development were reviewed with a checklist prepared by the applicant. Together with maps and other critical areas resources identified in the code, staff would determine if there were any critical area indicators present such that critical areas or their required buffers might possibly be affected by the proposed activity.

During the initial years of CAO implementation, staff discovered that a number of regulated critical areas within the County were not mapped and, since no site visit was completed, they were being negatively impacted at the time of site development. Under O17522, a change was made to require a site visit for all activities that did not clearly meet SCC 14.06.090 "Activities Allowed Without Standard Review".

The current request points to another example of a change made to the CAO review requirements based on Best Available Science and staff experience. During many years of review, staff found numerous cases where a nonconforming structure could be relocated onsite in order to preserve the landowner's continued, reasonable use of the property while providing protection of critical area functions and values.

The code does and will continue to acknowledge that pre-existing nonconforming structures may continue and may be repaired and maintained. However, replacement of existing nonconforming structures without complete critical areas review, and when necessary, a site assessment, can result in nearby critical areas not being identified/designated and their functions and values adequately protected as required by GMA. The intent of the additional review is not to require removal/discontinuance …. of the nonconforming structure but rather to ensure that the proposal will have the least possible impact on the critical areas and provide for adequate protection of the functions and values.

As noted below in Hazen, et al v. Yakima County, 08-1-0008c, "*although exemptions are not prohibited under the GMA, all development regulations, even those for exempt activities, are to be based on BAS and tailored so as to reasonably ameliorate potential harm and address cumulative impacts*."

The GMHB noted in WEAN/CARE v. Island County, 08-2-0026c that "*permitting uses based upon uses that were established, albeit legally, prior to the adoption of ordinances that required the protection of critical areas cannot be considered a regulation that includes BAS. Instead, such a regulation improperly employs existing uses as the benchmark of what is appropriate in the vicinity of critical areas and merely perpetuates the establishment of uses that are incompatible with BAS*."

The change in how this exemption to the requirements of the CAO is applied was made during the update adopted under O20080014. It was discussed with both a Citizen Advisory Committee and the Planning Commission before being presented to the BoCC. The BoCC at that time adopted this ordinance with the knowledge that this change would occur as part of the standard review process.

The code change as written proposes to do exactly what the GMHB has determined to be insufficient in the protection of critical areas, potentially perpetuating uses that are incompatible with best available science.

GMHB Decisions:

Hazen, et al v. Yakima County, 08-1-0008c, FDO at 29 (April 5, 2010). [In responding to petitioner's issue contending CAO exemptions violated the GMA, the Board, relying on Clallam County v. WWGMHB, 130 Wn. App. 127, 140 (2005) held] **Although exemptions are not prohibited under the GMA, all development regulations, even those for exempt activities, are to be based on BAS and tailored so as to reasonably ameliorate potential harm and address cumulative impacts.**

[In regards to CAO exemptions, the Board noted] The County contends the administrative review process of YCC 16C.03.06 will assure the functions and values of the critical area will be protected. However, it is not the review process but the inclusion of BAS that is imperative when it comes to critical areas. FDO at 30. Western Washington Whidbey Environmental Action Network v. Island County, 14-2-0009: **[The County failed to protect critical areas as it allowed] "grandfathered non-conforming uses" which no longer comply with more recently enacted and, presumably, more protective land use laws, [to be] be considered a "reasonable use" when determining whether a proposed use met the reasonable use criteria.** Final Decision and Order, June 26, 2015, p. 8.

Friends of the San Juans, et al. v. San Juan County, 13-2-0012c: [Petitioners challenged an exception from the CAO's for public agencies and public/private utilities when such an entity "has difficulty" meeting protection regulations resulting in preclusion of the proposal, to which the Board responded] "The clause 'would preclude a development proposal' does not include a qualifier that places the initial burden on the agency to show the location of the proposed development is necessary. . . **the initial determination under the County's system, the location of the 'development proposal', is left solely to the proponent, notwithstanding the possibility the proposal could be located in an area with fewer negative impacts to a critical area. The County has the obligation to protect critical areas and leaving the choice of location to the proponent is in effect a delegation of authority, would abrogate the duty to protect critical areas and fails to assure no net loss of ecological functions. Furthermore, there are no standards by which to determine that a project proponent would "have difficulty" meeting standard critical area regulations."** FDO (September 6, 2013), at 33, 34.

WEAN/CARE v. Island County, 08-2-0026c, FDO at 23 (Nov. 17, 2008). The Board recognizes that although they may actually permit impacts to a critical area, reasonable use provisions are an indispensable component of critical area regulations because they address the issue of regulatory takings claims. Regulatory takings have been an element of American jurisprudence since the 1920s and are founded on constitutional principles, seeking to provide a remedy when a regulation takes all reasonable use of a parcel of land. Given this grounding in constitutional law, the Board has no jurisdiction to determine Petitioners' claims as to whether the County's regulations exceed what is necessary to protect the County from a constitutionally-based takings claim as this is a question for the courts. However, although reasonable use provisions are necessary to prevent a constitutional takings claim, that does not mean such provisions should not prevent the protection of all the functions and values of wetlands and do not need to be supported by BAS. **Permitting uses based upon uses that were established, albeit legally, prior to the adoption of ordinances that required the protection of critical areas cannot be considered a regulation that includes BAS. Instead such a regulation improperly employs existing uses as the benchmark of what is appropriate in the vicinity of critical areas and merely perpetuates the establishment of uses that are incompatible with BAS.** FDO at 26.

PLANNING & DEVELOPMENT SERVICES

GARY R. CHRISTENSEN, AICP, DIRECTOR
BILL DOWE, CBO, DEPUTY DIRECTOR

PATTI CHAMBERS
Administrative Coordinator

TIM DEVRIES, CBO
Building Official

AOI Regarding Renewable Energy Systems and Major Utility Developments

July 1, 2008

This document serves as an Administrative Official Interpretation[1] for renewable energy systems, including solar panels and windmills, that the Department currently considers "major utility developments" under Skagit County Code 14.04.

BACKGROUND

In past years, Skagit County Planning & Development Services has issued permits for several windmills and "power towers" that serve individual homes and businesses. In processing applications for those permits, the Department determined that Skagit County Code classifies those installations that would feed electricity back to the electrical grid as Major Utility Developments. The Department based that determination on the definition of Major Utility Development found in SCC 14.04:

> **Major utility development:** utility developments designed to serve a broader community area, or are manned.
>
> …
>
> **Utilities:** include, but are not necessarily limited to, facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products.

Recently, several landowners have complained that the classification of windmills as Major Utility Developments is not justified by the language of the code, and unfair given that such developments require a special use permit in all zones. A special use permit in a residential zone currently requires a $3,000 non-refundable application fee. Additional related fees might raise the applicant's expense to more than $5,000. Moreover, under the Department's current interpretation, simple roof-attached solar panels could also require a $3,000 special use permit.

DISCUSSION

Many state-level policies support renewable energy. In 2006, Washington voters approved Initiative 937, which requires large utilities to obtain 15% of their electricity from renewable resources, not

[1] Administrative Official Interpretations are authorized by Skagit County Code 14.06.040(3).

including hydropower, by 2020.[2] Other states in our regional electrical grid, including California and Montana, passed similar legislation that will create additional demand for renewable energy sources in Washington State.

Most renewable energy generation systems appropriate for single-family homes generate much less energy than a normal home consumes. Even the largest such Skagit County installation, a 160-foot windmill tower recently installed by Highland Energy Systems at its facility north of Burlington, generates about 25 kWh of electricity per day, or 9,125 kWh per year.[3] A typical single-family dwelling in Washington State requires about 12,736 kWh per year.[4]

The goal of most household renewable energy systems is to be able to send electricity back to the grid, even though on average the household will still need to draw significant amounts from the grid. Renewable energy systems do not always generate electricity at the same time it is needed for household use, and battery systems are expensive. Most renewable energy customer-generators therefore use the "net-metering" provisions of RCW 80.60 to send the electricity to the electrical grid, where it can be used by other consumers and reduce demand on coal and other non-renewable systems. Washington State provides for a significant incentive payment for renewable electricity sent to the grid of up to 15¢ per kilowatt-hour, nearly double what a typical household pays for electricity from Puget Sound Energy.

CONCLUSION

There appears to be little justification, either as a matter of policy or as a matter of existing code, for considering renewable energy systems to be Major Utility Developments simply because they connect to the grid. A renewable energy system designed to generate less electricity than a typical single-family dwelling requires is not "designed to serve a broader community area," even if it is connected to the regional power grid. Therefore, this AOI changes Planning & Development Services policy to no longer consider such renewable energy systems to be Major Utility Developments.

A windmill, photovoltaic array, or other renewable energy system that constitutes a "net metering system" under RCW 80.60 shall be considered an Accessory Use. An Accessory Use is defined in SCC 14.04 as "a use, building or structure, which is dependent on and subordinate or incidental to, and located on the same lot with, a principal use, building, or structure." A special use permit will not be required.

---

[2] Washington Secretary of State, Text of Initiative 937, at 3-5, http://www.secstate.wa.gov/elections/initiatives/text/I937.pdf.

[3] The first line on the Highland Energy Systems website indicates that "…our 'Power Tower' is now on-line at our shop facility in Burlington, Washington, and is currently delivering about 25 kWH of carbon-free energy per day to the local utility grid." http://www.highlandenergysystems.com (last visited Apr. 30, 2008).

[4] U.S. Department of Energy, Average Residential Monthly Use, Electricity Basic Statistics, http://www.eia.doe.gov/neic/quickfacts/quickelectric.html (last modified Nov. 2007).

RIGHT TO APPEAL

A notice of this Administrative Official Interpretation will be published in the *Skagit Valley Herald* on July 3, 2008. Administrative Interpretations may be appealed to the Skagit County Hearing Examiner, following the procedures of SCC 14.06.110(7)-(14). Standing to bring an appeal is limited to aggrieved parties. Parties with standing to appeal must submit the appeal form and appeal fees to the Planning & Development Services department within 14 calendar days of the publication of the notice of decision.

Gary R. Christensen, AICP
Director

July 1st, 2008

Skagit County Eliminates Special Use Permit Requirement for Renewable Energy Systems

SKAGIT COUNTY—Installing a windmill or solar electricity array in Skagit County just got a little bit easier.

Until today, renewable energy systems of any size that returned some of their energy to the electrical grid were deemed "major utility developments," which require a special use permit that can cost more than $3,000. In response to complaints about the cost of that fee, Skagit County Planning Director Gary Christensen today issued an Administrative Official Interpretation ("AOI") of the county development code.

That interpretation, which takes effect immediately, re-designates windmills, solar arrays, and other such small-scale systems as "accessory uses," which do not require special use permits. Small-scale renewable energy systems will still require a building permit and evaluation under the State Environmental Policy Act.

"We had a situation where some older provisions of our code weren't clear about how we should treat new technology," Director Christensen said. "Through the AOI process, we can formalize our revised interpretation of that code until we can update it."

The county intends to comprehensively amend the development code to specifically provide for renewable energy systems in the coming months. Whatcom County is currently engaged in a similar process and Skagit County expects to be able to learn from their experience. "We want to use our development code to support renewable energy and other environmentally-responsible land uses," Commissioner Ken Dahlstedt said. "As energy prices go through the roof, we want to reward innovation."

For more information, contact:

Gary Christensen
Director, Planning and Development Services
1700 E. College Way
Mount Vernon WA 98273

email: pds@co.skagit.wa.us
360-336-9410

Related documents:(Pdf)

- AOI Regarding Renewable Energy Systems and Major Utility Developments
- Administrative Official Interpretation Regarding Renewable Energy Systems and Major Utility Developments
- Chapter 80.60 RCW Net metering of electricity

Draft: Potential Amendments to Skagit County Code to Streamline Permitting Requirements for Small Wind Energy Systems

Note: *This document has been prepared through a Windpowering America Grant. Windpowering America is a US Department of Energy program to advance wind development throughout America. This grant will be used to develop a model permitting ordinance for small wind projects in Skagit County that could be adopted for use by other Washington State Jurisdictions. Nothing in the grant may be construed to require Skagit County to adopt wind power regulations. (Grant – DE-FG36-08G048039)*

The following discussion should be reviewed in conjunction with the report associated with Task 1 of the Windpowering America Grant: Small Wind Energy Systems: A Review of Alternative Approaches to Regulation in Skagit County, WA (June 10, 2013. Task 1 resulted in identification of the following assumptions for improved small wind regulations.

- Federal and state incentives for development of alternative energy systems should be reflected in straightforward and practical regulations for would be developers of small wind systems.
- Interpreting small wind energy systems (when connected to the regional power grid) as a "major utility development" imposed an unreasonable burden on alterative energy developers by requiring a special use permit under the County Zoning Code (SCC 14.16).
- The review/processing time and expense associated with the special use permit requirement represented and obstacle to small wind energy system development which thwarted such efforts and undermined federal and state incentives.
- Skagit County issued an Administrative Official Interpretation (AOI) on July 1, 2008 that established windmills, photovoltaic arrays and other renewable energy systems that constitute a "net metering system" under RCW 80.60 as an accessory use, effectively removing the requirement of a special use permit.
- While the AOI removed the special use requirement it did not address a number of important considerations inherent in small wind development including "off grid"

systems, defining thresholds/dimensional standards, the safety of adjacent property owners and identification and mitigation of environmental impacts.
- The two potential approaches to regulation that follow are attempts to further federal and state policy incentives while addressing the deficiencies of the AOI.

Rationale: The guiding rationale for improved county regulations is elimination of ineffective and redundant permit requirements, reduction of artificial dimensional standards relating to total height and setbacks while providing sufficient consideration of impacts to the natural and built environment and assuring public notification and appeal procedures.

Approach 1

Develop a new section to the Zoning Code that would address small wind as a stand-alone section including: 1) key definitions, 2) thresholds and dimensional standards, 3) performance standards and 4) applicability by zoning district.

1) Key Definitions: Amend Definitions (SCC 14.04) to include the following terms:

Small wind energy system – a wind turbine with a nameplate capacity rating of up to 100 kW along with tower, supporting members and necessary electrical components. Small wind energy systems may be either "net metering systems" as defined in this chapter or off grid systems.

Wind turbine – the components of a wind generating system that convert the energy of wind into electrical power including the blades, generator and tail.

Tower (including meteorological tower) – the vertical structure that supports generator, rotor blades and tail assembly and/or equipment utilized to gather and assess wind energy resource data. Tower types include, but are not necessarily limited to lattice, freestanding, guy wired or monopole.

(**Note:** It may be possible to utilize the existing definition of tower included in SCC 14.04 definitions with minor modifications. Existing Definition is included below in italics)

Tower: any structure that is designed and constructed primarily for the purpose of supporting 1 or more antennas, including self supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities towers, microwave towers, common carrier towers, cellular telephone towers, personal communications services towers, alternative tower structures, and the like.

Total height – the total height of the small wind energy system inclusive of the tower, turbine and highest arc of the rotor blades.

Rotor – a system of airfoils or blades that rotates around an axis or hub.

Rotor diameter – the diameter of the circle described by the outer tip of the rotating rotor blades.

Generator nameplate capacity – the maximum rated output of electrical power production of a generator under specified conditions designated by the manufacturer on a nameplate that is attached to the generator.

2) Establish Power Threshold, Dimensional Standard(s)/Setback Requirement

Power threshold for small wind energy systems: All small wind energy systems must maintain as maximum generator nameplate capacity of 100 kW or less.

Total height limit/setback requirement: All small wind energy systems must be set back a minimum of 1.2 times the total height measured from grade to top of blade arc provided that total height may not exceed 160 feet. Variances or administrative reductions from the total height/setback requirement are not permitted.

3) Performance Standards – Establish performance standards addressing visual, sound levels, safety and structural standards. These standards would be specific to small wind energy systems.

Visual Appearances, Lighting and Powerlines

- Turbines are required to be painted a non reflective non obtrusive color
- Towers are to be maintained in galvanized steel, brushed aluminum, white or gray finish
- All structures or components related to the facility must blend with natural setting
- Facilities are not to be artificially lighted
- Towers are not to be utilized for advertising except for identification of manufacturer
- Electrical controls, control wiring and power lines shall be wireless or underground

Sound Levels and Measurement

- Sound emanating from the facility must not exceed (50 – 60 dBA)
- Measured at closest property line (inhabited dwelling or parcel)
- Standard may be exceeded during short term events

Safety

- The rotor blade tip must maintain a minimum ground clearance of 15 feet
- Towers shall not be climbable up to 15 feet above ground level
- All electrical equipment must be protected from unintentional access
- All doors providing access to electrical equipment must be locked
- Appropriate warning signage must be provided
- Turbines must be equipped with overspeed controls to maintain blade speed within design standards

Other adopted Local Codes, State and Federal Regulations

- Locally adopted ordinances including building code (IBC), zoning, critical areas, shoreline management and environmental review (SEPA)
- Federal Aviation Administration (FAA) requirements including siting requirements for locations near airports
- National Electrical Code (NEC) requirements including permit requirements administered by the WA State Department of Labor and Industries
- Compliance with RCW 80.60 for small wind energy systems connected to utility grid

Abandonment and Remediation

- Provisions for abandonment of projects no longer in use
- Provisions for remediating hazardous conditions

4) Identify zoning designations in which small wind energy systems are allowed outright as a permitted use.

Approach 2
Develop a definition which encompasses the defining characteristics of small wind energy systems and key code amendments while utilizing existing code provisions to the maximum extent.

Amend Definitions (SCC 14.04) to include the following definition of "small wind energy system"

Small wind energy system - a wind turbine with a nameplate capacity rating not exceeding 100 kW along with tower, supporting members and necessary electrical components with a setback of not less than 1.2 times the total height measured from grade to top of blade arc provided that total height may not exceed 160 feet. Variances or administrative reductions from the total height/setback requirement are not permitted. Small wind energy systems may be either Net metering systems as defined in this chapter or off grid systems.

Amend Zoning Code (SCC 14.16) to allow small wind energy systems, defined above, as a permitted use in all zoning districts subject to:

Addition of small wind energy systems to height exemption in each zone
Compliance with Performance standards listed under (SCC 14.16.840)
Compliance with requirements of Critical Areas Ordinance (SCC 14.24)
Compliance with Shoreline Master Program (SCC 14.26)
Compliance with State Environmental Policy Act (SCC 14.12)

Comparison and Digest of Alternative Approaches 1 and 2
Overall, Approach 1 is similar to the methods other local jurisdictions in Washington State have utilized. This approach relies to a large degree upon demonstrated compliance with specific performance standards. The primary distinction between Approach 1 as described above and codes adopted by other jurisdictions is that the height limit is not limited to 60 feet. Instead, Approach 1 provides for a total height up to 160 feet provided that a setback of 1.2 times total height is maintained from property boundaries. As discussed in the background document (Small Wind Energy Systems: A Review of Alternative Approaches to Regulation in Skagit County, WA), height is the key to efficient power production. Limiting height to an arbitrary level may act as a de-facto prohibition to efficient small wind development. The fundamental benefits of Approach 1 are:

- Definition of small wind energy system is de-linked to definition of "major utility development"
- Special use permit requirement is eliminated in specified zoning designations
- Dimensional standards (setbacks) are tied to total tower height and height limit is increased to 160 feet

Approach 2 provides a definition that contains the defining elements of a small wind energy system including power threshold, height limit and setback requirements. The definition also specifies that a variance from the dimensional standards is not permitted. Approach 2 incorporates the existing performance standards contained in the Zoning Code. Provided that a proposed small wind project is consistent with the definition of "small wind energy system" and

is compliant with established performance standards it would be allowed outright in each zoning district. Submittal Requirements would include Critical Area/Shoreline Review, Building Permit Application and Environmental Checklist as required under SEPA. In addition to the fundamental benefits of Approach 1 Approach 2 includes the following benefits:

- Economizes on amendatory language which requires administrative interpretation
- Relies on existing provisions already utilized in conjunction with the zoning code
- Places the responsibility of compliance on the developer and encourages efficient utilization of wind resources

While both approaches would correct the deficiencies of past practices and the limitations of the AOI, Approach 2 would remove significant obstacles from permitting the development of efficient small wind projects while providing opportunities for agency and public involvement through environmental review, shoreline management and critical area requirements. Additionally Approach 2 would require little amendatory work on the existing code. It is important to recognize the limited scale of small wind and the need to provide a measured approach to future evaluation of community and utility scale wind projects.