PLANNING & DEVELOPMENT SERVICES

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

PATTI CHAMBERS
Administrative Coordinator

TIM DEVRIES, CBO
Building Official

Conservation Subdivisions

Follow-Up to May 6 Natural Resources Workshop
May 20, 2010

At the Planning and Development Services (PDS) May 6 workshop, members of the natural resources community and county staff from Public Works, Planning, and the Prosecutor's Office engaged in a useful discussion about the county's nascent proposal to change the development code to allow and facilitate property purchases for conservation and restoration. Based on that discussion and others, staff has prepared this discussion paper for review in advance of the follow-up workshop scheduled for May 20. We hope to provide a background in the subject matter and answer many of the questions participants had at the last workshop, as well as lay out bulleted code amendment options for discussion.

Background: Subdivisions

What is a Subdivision?

Although colloquial use associates the word **subdivision** with a housing development, in the technical sense, any division of a piece of land from an adjoining piece for separate ownership is known as a subdivision or short subdivision. A **short subdivision** is division into four or fewer lots, while a **long subdivision** is division into five or more lots. Divisions of property for conservation or restoration would only result in two lots, therefore would be considered short subdivisions.

Requirement for Short Subdivisions

State statute and Skagit County Code create many different requirements and procedures for subdivisions. The policy basis for subdivision regulation has multiple prongs.

- First, we generally do not allow division of land below the minimum lot size allowed for development (meaning, generally, construction of a house) because to do so would make it difficult to determine (a) which resulting substandard parcel has the right to construct a house, and (b) what uses may or may not be allowed on the other parcel given acreage and setback requirements. More discussion on this topic on page 3.
- Second, we require review of water and septic/sewer availability, as well as other physical characteristics of the land, such as drainage and presence of critical areas, in order to determine whether a house could be constructed within the boundaries of the proposed new divided lots. If not, we require the new lot lines be drawn differently to accommodate development.
- Whenever possible, we want to ensure development is possible under our regulations without a variance because (a) we have the regulations to protect human health and safety or natural

resources, and (b) the takings clause of the United States Constitution prohibits regulation of property to the extent that no economically beneficial use is possible.

The PDS application for a subdivision is 15 pages long. While long subdivisions have even more requirements, Skagit County Code requires short subdivisions applications include at least the following:[1]

- A complete application form
- A title report
- A critical areas assessment
- A drainage plan that conforms to county drainage regulations
- A sewage disposal plan, including soils assessment for on-site sewage or letter of approval for public sewer
- Approved access to a road that meets county road standards
- Evidence of an adequate water supply[2]

Finally, although state law does not require it,[3] Skagit County Code requires short subdivisions to go through the same two-stage approval process that long subdivisions require; first a **preliminary subdivision** must receive approval and is valid for 36 months, then the applicant must request a **final subdivision** and receive approval. Both steps are approved by the Administrative Official.

Short Subdivision Fees

The base fee for a short subdivision is $3,500. Additional fees accrue for critical areas review ($600), publication of public notices ($100), review by the Health and Public Works departments, etc. The survey work and required studies add significant additional expense for the applicant. PDS processing and review takes several months.

PDS is hesitant to waive fees for organizations or projects, for several reasons. Perhaps most importantly, permit processing within the Department is funded by fees—if fees are reduced, then the level of permit review associated with that fee must be reduced accordingly to continue funding the Department. Instead of waiving fees, a better solution is to reduce the Department's cost of processing an application by eliminating processes unnecessary for the project, and then pass that savings onto the applicant as a reduced fee.

Issues at the May 6 Workshop

The May 6 workshop seemed to reveal two distinct issues related to conservation land purchases:

1. Should we eliminate subdivision code requirements that don't logically apply to lots that are encumbered by permanent conservation easements?
2. Should we allow carving off land to be encumbered by a permanent conservation easement when that would result in a parcel smaller than the minimum lot size?

[1] Skagit County Code 14.18.100
[2] Skagit County Code 12.48.240
[3] RCW 58.17.060

Issue 1: Application & Review Requirements

We understood the feeling of the room to largely agree that we should eliminate code requirements that would not logically apply to encumbered parcels. We therefore propose something akin to one or more of the following options:

1. Lots resulting from a division that includes encumbrance by a permanent conservation easement could be required to comply only with a specified list of requirements, e.g. access to a county road.
2. The Administrative Official could be authorized to waive any such requirements that are made unnecessary by a permanent conservation easement.

Staff believes that the application and review must not be waived for the resulting lot that would retain any existing development right. To do so would be to eliminate review that is serving a useful purpose, i.e. preventing the creation of lots that would only have room for development in inappropriate locations.

Issue 2: Minimum Lot Size

As discussed above, the rationale for the minimum lot size requirement in most zones is to maintain rural areas, as directed by the Growth Management Act for a variety of reasons, by not allowing the division of property into multiple chunks that might each demand a permit to build a house or construct other development. When one part of a lot is proposed to be carved off for a permanent conservation easement, however, this rationale does not seem to drive the regulation. Similarly, in the county's longstanding CaRD program, which is designated in the code as the preferred method of land division, the county waives minimum lot size requirements in exchange for placing a majority of the land in open space protection.

Staff understands that there are other rationales for the minimum lot size requirements, especially in certain zones, such as Agriculture-NRL. However, staff also sees significant potential benefit to allowing division below the minimum lot size. For example, under the Tidegate-Fish Initiative, the agricultural community is preparing to commit to conversion of 2700 acres of farmland to estuary in exchange for regulatory certainty with respect to tidegates. If that agreement moves forward, Skagit County would like to see both the maximum amount of farmland retained, and the maximum amount of effective estuarine habitat created. But if state agencies or conservation organizations must purchase a complete parcel of land with an arbitrary boundary, rather than just the portion nearest the shoreline that would make effective estuary, neither fans of farmland nor fans of estuary are winners. Similar outcomes would arise associated with property purchase for levee setbacks, or for regulatory relief associated with the purchase and restoration of critical areas buffers.

We did not find that this second issue was explored in any significant depth in our first workshop. We would like to focus the May 20 workshop on this issue.

Staff has developed the following list of options, and is eager to receive and consider further ideas to address this issue.

1. We could outright allow the division of lots below the minimum lot size when the one of the two resulting new lots is encumbered by a permanent conservation easement.
2. We could allow such division when approved though a variance process.
3. We could allow such division when the circumstances meet certain performance standards, as discussed below.

Performance standards might include:

1. Allow such division within only certain zones.
2. Allow such divisions in certain zones only in combination with one or more of the following performance standards.
3. Allow such division within *x* feet of a riparian area or current wetland.
4. Allow such division when the conservation parcel results in credit under the TFI or similar program.
5. Allow such division when the conservation parcel meets some minimum or maximum acreage limits.
6. Allow such division for levee setbacks.
7. Allow such division for purchase of critical area buffers.
8. Allow such division in Ag-NRL when the non-conservation lot receives an agricultural-use easement.
9. Allow such division when a certain type of non-profit organization is to own the resulting conservation lot.