



Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

JACK MOORE, CBCO *Building Official*

Supplemental Staff Report #2 (Development Regulations)

To: Planning Commission
From: Kirk Johnson, AICP, Senior Planner, Team Supervisor, Project Manager
Re: 2016 Comprehensive Plan Update: Response to Public Comments
Date: May 13, 2016

This memo prepares for the Planning Commission deliberations on the 2016 Update development regulations scheduled for May 17 and addresses public comments received during the written comment period between March 3 and April 14, 2016, and testimony received at the public hearing on April 5.

The Proposal

Now that the comment period has concluded, the Planning Commission is charged with generating a recommendation on the proposal, i.e., proposed amendments to the:

- Countywide Planning Policies
- Comprehensive Plan
- Development Regulations, and
- Comprehensive Land Use and Zoning Map

The Planning Commission's recommendation takes the form of a Recorded Motion, including findings of fact, reasons for action, and recommendations. Planning Commissioners who are unfamiliar with the recorded motion format may wish to review the Planning Commission's recent Recorded Motions on [marijuana](#) and [stormwater](#).

Deliberations Process

The Planning Commission adopted a structured deliberation protocol for the 2016 Update at its May 10 meeting, including a list of issues to discuss.

At each meeting, the Planning Commission will:

1. **Take each concept one at a time.** The chair should require discussion to follow the outline and, on his or her own, rule out of order any member who strays from the topic on the floor. If the chair does not interrupt a member who strays from the topic, any planning commissioner can call for a point of order.

2. **Focus on the content of the recorded motion.** The PC’s objective is to generate a Recorded Motion that captures their recommendation and reasons for it. Staff has prepared a draft Recorded Motion to work from. As the discussion proceeds and coalesces into specific points, PC members should make motions using the following process:
 - a. Articulate, in general terms, and as many words as you need, what finding/reason or recommendation you want included in the Recorded Motion.
 - b. Staff will type that into a concise statement in Track Changes on the screen.
 - c. “I move that we add the [statement on the screen] to the Recorded Motion.”
 - d. If the motion is seconded, discuss only the motion, and then take a voice vote.
 - e. Move to the next recommendation or finding.

The Planning Commission should not walk through the entire 2016 Update section by section. That is not an efficient use of the Commission’s time. The Planning Commission’s recommendations should be relatively high level, and should not attempt to wordsmith or rewrite the document.

Responses to Public Comments, Part 2

Public comments are in bold marked with “P-#” and followed by the Department response. Where the Department agrees with a particular change, we have marked proposed language for the Planning Commission recommendation with “RC-#” (recommended change) in the margin.

Landslides (S-2)

Substantive comments on this subject were received from Tim Trohimovich (Futurewise).

P-1. Adopt better protections for people and property from landslides (SCC 14.24.400, .420, and .430).

The County will be evaluating its critical areas ordinance specifically to address geohazards by June of 2017 under the optional one-year deadline extension for critical area ordinance updates. (RCW 36.70A.130(7))

Essential public facilities approval criteria and water (C-10)

Substantive comments on this subject were received from Tim Trohimovich (Futurewise).

P-2. Approval criteria for SCC 14.16.600, Essential Public Facilities, should require an adequate and legal supply of water.

Essential Public Facilities already do require an adequate and legal supply of water. Per proposed SCC 14.16.600(4)(i), application requirements for an Essential Public Facility include “All application materials required by other provisions of Skagit County Code for components of the project not covered by this chapter.” That includes documentation of an adequate and legal supply of water required to obtain a building permit.

Natural Resource Lands protection (C-12, 13, 14, and 19)

Substantive comments on these items were received from Ellen Bynum (Friends of Skagit County), Randy Good, and Tim Trohimovich (Futurewise).

P-3. Create landowner email notification using website with map, zoning and parcel numbers. Advertise map URL on County tax statements, Skagit 21, etc.

We do not have the ability to provide notices electronically, as we lack email addresses for all property owners. The Department has drafted conceptual upgrades to the County's property information page that could provide this kind of information, but we are dependent on the Information Systems and Geographic Information Systems departments to implement the changes.

P-4. Have statement recorded on each deed of property, then would not have to refile at each sale and would serve as notice to buyer and seller. Essential notice is attached to deed for buyer's review.

This would be a substantial undertaking in terms of both staff time and recording fees. Because residential buyers generally do not order title reports before making an offer on a piece of property, this would largely be ineffective. Finally, this proposal does not constitute a development regulation.

P-5. A plan to notice all neighbors electronically or by website active map would benefit all. County could provide notice to all neighbors electronically or by active map that generates letters or emails, or provide website that shows active development proposals.

We do not have the ability to provide notices electronically, as we lack email addresses for all property owners.

P-6. Recommend county retain requirement that for a buffer reduction through a waiver, the neighboring resource landowner's approval is required (SCC 14.16.810(7)).

Current code established a 200-ft building setback for non-natural resource land property from adjacent Ag or Industrial Forest natural resource lands. But the setback may be eliminated by the non-NRL property owner if the NRL property owner agrees; or the Department may eliminate the setback even without the NRL property owner's agreement "where the lot's size and configuration would otherwise preclude reasonable development of the property." The draft strikes the requirement for the NRL property owner's agreement. The Department recommends no change from the proposal.

SEPA administrative appeals (C-18)

Substantive comments on this subject were received from Tim Trohimovich (Futurewise).

P-7. Please revise 14.06.110(13) to clarify that Hearing Examiner's decision on the SEPA threshold determination is the final county decision.

Comments on this subject were received from Tim Trohimovich (Futurewise) to clarify the proposed amendment. The County agrees that the proposed changes will help clarify that

no appeals to the Board of County Commissioners are allowed from the Hearing Examiner's decision on the SEPA threshold determination. That is not a new practice, and it is required by state law.

RC-1. Revise 14.06.110(13) to clarify that the Hearing Examiner's decision on the SEPA threshold determination is final and no appeals to the Board are allowed.

Guemes subarea plan implementation (C-26)

Substantive comments on this subject were received from Breen/Landefeld, Stuart and Arden Charles, Carol Ehlers, Tom and Juby Fouts, Nancy Fox (GIPAC), Kit Harma, Dyvon Havens, Mark Madden, Susan O'Donnell, Stephen Orsini, Joan Palmer, Howard and Carol Pellett, Sally Peyou, Hal Rooks (GIPAC), Patty Rose (GIPAC), Barbara Schnabel, Lorrie Steele, Tim Trohimovich (Futurewise), Carl Ullman, and Edith Walden.

P-8. Supports Guemes Island Zoning Overlay, which implements key provisions of Guemes Subarea Plan, including prohibition on ADUs in certain areas and limiting building heights and increasing side setbacks

The comment is supportive of the proposal.

P-9. Supports full implementation of Guemes Subarea Plan to protect groundwater, shorelines, habitat and critical areas, and overall rural character

The comment is supportive of the proposal.

P-10. There is significant support for ceiling height and side setback proposals among Guemes Island landowners. Assertions that the proposal would prevent open-concept homes and require overly narrow second-level rooms, and be too restrictive in floodplain areas, ignore many good design options such as post-and-beam construction and the use of trusses rather than load-bearing walls.

See response below.

P-11. Opposes proposed ceiling height limits and increases in side setbacks in Guemes Island Overlay, which will severely limit building options on narrow (e.g. 50 foot) lots in shoreline areas such as Indian Village.

Both of these proposals implement the [Guemes Island Subarea Plan](#), which the Board of County Commissioners adopted into the County's Comprehensive Plan after a unanimous recommendation from the County Planning Commission. The Guemes Subarea Plan was developed through a lengthy, island-wide planning process with substantial public participation.

Side setback issue: A lot as narrow as 50' in width can support a one-story structure under the proposed height and setback restrictions. For example, the 50' wide lot would have minimum 8' setbacks on each side. If the building is a typical 15' tall one-story structure, the 3' added height above the 12' would result in 11' setbacks on each side under the proposal. The width of the building envelope would therefore be 28' (50' - 11' - 11'), wide enough

unless the lot is also shallow. Other options are also available: if adjoining another narrow lot, lots can be aggregated to create a wider lot meeting proposed side setback and height restrictions; and buildings can be built with flat roofs. Staff recommends no change on this issue.

Building height issue: With the proposed height restriction, we agree that measurement of building height from the “. . . average elevation of the area occupied by the structure . . .” would result in the need for variances where structures are built in a floodplain. According to floodplain management regulations, buildings are required to be elevated with the lowest floor above the Base Flood Elevation (BFE); but with measurement of building height from a point perhaps far below the BFE, there may not be ample height available to build even a single story structure.

P-12. Staff recommends amending the proposed code so that the height of structures in the floodplain is measured from the BFE.

P-13. Supports codification of the seawater intrusion policy through SCC 14.24.380 of the Critical Areas Ordinance, which will implement several measures to protect the island’s Sole Source Aquifer.

The comment is supportive of the proposal. The Department strongly advocates codification of the seawater intrusion policy, which is an “interim” Health Department policy that the Planning Department is now implementing because Health no longer performs water availability review.

P-14. Under SCC 14.24.380, wells where the samples exceed the U.S. Environmental Protection Agency’s drinking water standard for chloride of 250 mg/l (milligrams per liter) for public water systems should not be used for any purpose, including individual homes.

Well water that exceeds this standard can still be treated and used. The proposed seawater intrusion code attempts to mitigate impacts on the aquifer from improper well placement, but does not prohibit a single house from adding a well that exceeds this standard. The proposed code does prohibit a land division, however, where chloride exceeds 200 mg/L.

P-15. Supports a study and comprehensive plan and zoning amendments to match allowed growth with safe and sustainable withdrawals in areas susceptible to sea water intrusion.

This is not a comment on a specific code section. This concern should be directed to the Board of County Commissioners so they can decide whether to dedicate resources to such a study.

P-16. Would like to see more support for use of rainwater collection systems, including a policy that "rainwater collection is the preferred water source on the north end of Guemes where seawater intrusion is a critical problem."

P-17. SCC 14.24.380 should also allow the use of rainwater catchment systems which are a viable option approved by the Department of Ecology.

This code section lacks specifics on rainwater catchment systems, because it is intended to prevent degradation of the groundwater aquifer from wells. It does provide that, "Where a known seawater intrusion problem exists, alternative sources of water are encouraged, but must comply with the requirements of SCC 12.48.250."

P-18. Modify definition of adequate water supply for Guemes Island from 350 gallons per day to 150 gallons per day.

This would be a change to the drinking water code in SCC 12.48. The Department is not proposing amendments to that title at this time, but would like to make changes in the future to address evolving water law and current conditions.

P-19. Wants to see implementation of Guemes Island subarea plan policy requiring permanent protection of open space created through CaRDs.

The proposed requirement for permanent CaRD open space protection through conservation easement is similar to what already exists in the CaRD code for natural resource lands. The Department has not proposed adding this requirement to implement the subarea plan policy at this time. It proposes to take up this matter as part of a future development code amendment project.

P-20. Concerned about Guemes Island Resort traffic, water use and septic. Believes they are at or beyond capacity.

The comment is not specific to any of the proposed code amendments to implement the Guemes Island Subarea Plan.

P-21. Strongly supports proposed amendments to SCC 14.18.100(5)(i) placing certain limits on the proposed use of wells for land divisions within ½ mile of a shoreline. However, the code provision should apply to the entirety of Guemes, Sinclair, Cypress, and Vendovi islands consistent with the Seawater Intrusion provisions of 14.24.380.

The Department agrees with the proposed comment and recommends the following:

RC-2. Revise SCC 14.18.100(5)(i) to ensure the 200 ppm chloride limit applies to all seawater intrusion areas as defined in SCC 14.24.380.

Storage of Junk (C-31) and Recreational Vehicles (C-32)

P-22. The definition of junk vehicles could include art installations.

P-23. The restrictions on RVs may prevent people from using RVs as temporary dwelling on a building site, or may preclude the use of RVs in state RV park sites.

These requirements are already in Skagit County Code and have been enforced for many years. The Department is attempting to make the prohibitions clearer by not having to refer to both permitted uses in various zoning districts and to definitions. That's not to say that the comment doesn't have some valid points, especially with respect to junk vs. art. It may be worthwhile at some time in the future to identify and codify the differences, but at this time there is no proposal to change from the status quo. The existing and proposed code exempts 500 sq ft of junk from the prohibition.

The proposal would add a new restriction on the number of occupied RVs that can be maintained on a property at any one time. RVs occupied as a fulltime use are a significant problem for the County's compliance with the FEMA Flood Insurance Program.

Rural Reserve lot coverage (NC-1)

Substantive comments on this subject were received from Ellen Bynum (Friends of Skagit County), Carol Ehlers, and Tim Trohimovich (Futurewise).

P-24. Supports maximum lot coverage amendments for Rural Reserve in SCC 14.16.320, which will help protect rural character and water quality.

"Lot coverage" is the amount of a lot covered in buildings. This proposal implements a suggestion for a lower limit than in existing code that was received from a member of the public and docketed by the Board of Commissioners. The concern was that the existing 35% lot coverage limit in a zone where lots may be 10 acres or more would allow 150,000 sq ft buildings in rural areas.

After further review of the limitations of using a table to define progressively smaller lot coverage maximums, the Department now believes a simpler statement would be preferred.

RC-3. Replace the maximum lot coverage table in SCC 14.16.320, for Rural Reserve with a limit of 5,000 sq ft or 20%, whichever is greater, not to exceed 25,000 square feet.

This language is similar to Whatcom County's language for its rural residential zone.

P-25. There should be an exemption from the proposed Rural Reserve lot coverage limit for agricultural buildings.

The Department agrees. The only buildings we believe could run up against the proposed lot coverage limit are agricultural buildings.

RC-4. Exempt agricultural accessory and processing uses from the Rural Reserve lot coverage maximum.