



PLANNING & DEVELOPMENT SERVICES

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MEMORANDUM

To: Skagit County Planning Commission Members
From: Betsy Stevenson, AICP, Senior Planner, Team Supervisor
Date: April 28, 2009
Re: Proposed amendments to Skagit County Code – wetland mitigation banks
Public hearing is scheduled for May 5, 2009 at 6:00 P.M.

Skagit County is proposing to amend its development regulations, more specifically Chapters 14.04, Definitions and 14.16.400 Zoning, Agricultural-Natural Resource Lands of the Skagit County Code.

The proposed amendments were anticipated with an interim ordinance adopted by the Skagit County Board of Commissioners on February 9, 2009 entitled An Interim Ordinance Declaring an Emergency and Adopting a Moratorium on the Acceptance of Applications for Wetland Mitigation Banks on Lands Zoned Ag-NRL, declaring a moratorium on the acceptance of new special use permit applications for wetland mitigation banks on Ag-NRL lands.

In accordance with the interim ordinance, the Commissioners have found that allowing wetland mitigation banks as a Hearing Examiner special use on Ag-NRL designated lands, under the regulations in effect, does not adequately protect the Ag-NRL designated lands as agricultural lands of long-term commercial significance in Skagit County.

Concerns have also been raised regarding the use of agricultural lands within Skagit County as wetland mitigation bank sites, to address impacts to wetlands within cities or their urban growth areas.

The Board of County Commissioners held a public hearing on the interim ordinance on March 17, 2009 and accepted comments until the close of business on March 20, 2009.

The moratorium is effective for six months, and will therefore expire on August 8 without additional action to renew it or adopt a permanent ordinance. The proposed amendments would prohibit private wetland mitigation banks on lands zoned Ag-NRL.

Existing Code

Wetland mitigation banks are currently allowed in Ag-NRL, as well as several other zones, as "habitat enhancement and/or restoration projects" as defined in Skagit County Code 14.04.020:

Habitat enhancement and/or restoration project: any project, including mitigation banks, private projects or public projects, designed to create, restore and/or enhance habitat for fish, birds and/or

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mammals and includes the alteration of the landscape by excavation or sculpting of soil and/or the alteration of hydrology. This does not include required on-site mitigation projects associated with permitted development activities pursuant to Chapter 14.24 SCC or projects consisting exclusively of planting vegetation.

"Mitigation bank" and "mitigation banking" are also defined in 14.04.020 and are limited by their definitions to banks that create or restore wetlands:

Mitigation bank: *a properly developed collection of existing, created, restored or enhanced wetlands and their protective buffers that are created or established using best available science to provide mitigation credits to offset future adverse impacts to wetlands from approved projects elsewhere pursuant to the requirements of Chapter 90.84 RCW and draft rule(Chapter 173-700 WAC).*

Mitigation banking: *an approved program including the creation, restoration, or enhancement of wetland or other aquatic habitats and their functions and values together with a program of administrative functions expressly for the purpose of providing compensatory mitigation in advance of proposed discharges into waters of the United States, including wetlands, where mitigation cannot be achieved at the site of the impact.*

In Ag-NRL, habitat enhancement and/or restoration projects are Hearing Examiner Special Uses. Such projects must therefore be approved by the Hearing Examiner after a public hearing and potentially lengthy process designed to ensure public participation.

Proposed Code Amendments

The proposed ordinance language accomplishes the goal of prohibiting private wetland mitigation banks on lands zoned Ag-NRL with minimal changes to Skagit County Code. In short, private mitigation banks would be specifically disallowed in the list of Ag-NRL uses, and a new definition of private mitigation banks would be added to distinguish from any banks owned and operated by government agencies. The proposed new language is underlined.

Skagit County Code 14.04.020, Definitions, is proposed to be amended to add the following term and definition:

Mitigation bank, private: a mitigation bank not owned and operated by a government agency.

Skagit County Code 14.16.400(4), Hearing Examiner Special Uses in Agricultural—Natural Resource Lands (Ag-NRL) is proposed to be amended to read as follows:

(4) Hearing Examiner Special Uses.

(a) – (b) [No Change.]

(c) Habitat enhancement and/or restoration projects, except “private mitigation banks” as defined by SCC 14.04.020.

(d) – (m) [No Change.]

The proposed amendments to Skagit County Code have been transmitted to the State Department of Community, Trade and Economic Development, in accordance with RCW 36.70A.106.

The Notice of Availability and Public Hearing has been published in accordance with SCC 14.08.080(3).

A SEPA environmental checklist was submitted for the proposal. A threshold determination was issued on April 9, 2009. The DNS was circulated to agencies with jurisdiction in accordance with WAC 197-11-340(2). The DNS was published in the Skagit Valley Herald, in accordance with SCC 14.12.160(2).

Recommendation

The Skagit County Department of Planning and Development Services would recommend for approval of the proposed amendments to the Skagit County Code, as presented.

Enclosures:

Memo Stevenson to PC members
Memo Walters to Christensen
Interim Ordinance O20090001
Record of Proceedings BCC 3/17/09
SEPA threshold determination
Notice of Availability and Public Hearing
Ecology Focus Sheet

If you have questions, please don't hesitate to contact me. 336-9410 ext 5879 or betsyds@co.skagit.wa.us