

Skagit County Board of County Commissioners
Discussion/Possible Action: Adoption of 2023 Docket
December 19, 2023

Commissioners: **Commissioner Ron Wesen, Chair (District 1)**
 Commissioner Peter Browning (District 2)
 Commissioner Lisa Janicki (District 3)

PDS Staff: **Jack Moore, Planning Director**
 Robby Eckroth, Long Range Planner

Other Staff: **Jason D’Avignon, Deputy Prosecuting Attorney**

Others: **Patrick Donnelly, Audience Commenter (C23-3)**

Chair Ron Wesen: (gavel) Good morning. I call this session of the Skagit County Commissioners to order. It’s a little after 9:30 on December 19th, 2023, and we are here for Planning and Development Services. And Robby, our senior planner, go ahead, please.

Robby Eckroth: My name is Robby Eckroth. As you said, I’m the senior planner with Planning and Development Services. We are here for the Board to deliberate and possibly take actions on the petitions in the 2023 Docket. This presentation will briefly summarize the list of petitions on the Docket and will provide more detail on some of the petitions. And just a quick note, I corrected slide 12, which had an incomplete sentence – my apologies for that – and then switched slides 10 and 11 to improve the flow of the presentation.

So the Docket is an annual process where citizens and staff can submit changes to the Comprehensive Plan and development code. We are having a second meeting today that the Board has hosted in the final evaluation stage of the Docket. The Board held a work session on December 4th to review the Planning Commission’s recommendations for each petition.

So this is the list of petitions that the Planning Commission recommended approval on, and I’m just going to quickly summarize those and get into a little bit more detail on a few of the petition on the Docket overall.

So the first petition is LR23-01, which is the Dunlap Rural Reserve Rezone. This petition requests rezoning of approximately 21 acres, a portion of five parcels from Ag-NRL to Rural Reserve. The portion of these parcels as requested to be rezoned are not farmable because they are on the upland side of a hill and the soils are not productive or agriculturally or commercially significant.

The next is the Port of Skagit Bayview Ridge Rezone. The petition requests to rezone part of one parcel, which is approximately 7.54 acres, from Bayview Ridge Residential to Bayview Ridge Light Industrial. And 6.9 of those acres are already zoned Industrial and approximately 1.7 acres is zoned Bayview Ridge Residential, which would be rezoned to Bayview Light Industrial.

C23-2 amends the definition of “qualified professionals” to ensure consistency with surrounding jurisdictions and increases the years of required experience from two to four years.

C23-4 amends code language to refer to a Master Planned Resort as a zone designation, not a special use, to remain consistent with the Comprehensive Plan. And this was an administrative error and this docket item corrects that error.

C23-5 removes the requirement for structures built outside of a fire district to have a foam applicator for firefighting hoses.

And C23-6 adds a new requirement for temporary manufactured homes to submit a title notice on the property.

C23-9 amends the definition of “primitive campground” to clarify minimal amenities should be shared amongst campsites.

And C23-10 is the Countywide Planning Policies Update, which this petition recommends changes to the Countywide Planning Policies by the Growth Management Steering Committee, which I’ll get into a little more detail on here soon.

And then C23-11, the General Code Language Cleanup. Here the Department updated the Skagit County stormwater, land disturbance, and wireless facilities code in 2022 and after the approved new code language was implemented staff found several inconsistencies which need to be fixed.

And then this is the list of petitions that the Planning Commission recommended denial on, which I’m going to get into more detail on here. So the first is C23-1, Seawater Intrusion. This petition would require County review before any well can be drilled in a sole source aquifer. The petition would add language to Skagit County Code 14.24.382 to require the following information to be submitted prior to drilling a well in the sole source aquifer, which includes a site plan; the estimated depth of well; estimated land elevation of the well; and depth and chloride levels of surrounding wells; and a drilling plan. And just a quick note: The following information is already a requirement for wells associated with a development permit.

So the Planning Commission recommended denial of this petition. They, in their Findings of Fact, found that the Department of Ecology is clearly recognized as the authority for permitting wells, and the Planning Commission found the petitioners’ request requiring applicants seeking a well permit from the County to provide information about their neighbors’ wells is unduly burdensome.

And just some quick staff notes about this petition. Ecology *is* recognized as the authority for permitting wells, but the Growth Management Act requires the County to protect critical areas, which includes aquifer recharge areas. And the proposed amendment is within the authority granted by the Growth Management Act requirement.

The next petition that the Planning Commission recommended denial on is – or amends the Open Space of Regional and State Importance zone to allow trails as an outright permitted use. Currently there is a conflict in code listing trails as both permitted outright and as an administrative special use.

The Planning Commission recommended denial with the following Findings of Fact and Reasons for Action: The Planning Commission found that with staff turnover there can be different policies over time regarding how the code is interpreted. The Planning Commission found that requiring a hearing examiner special use permit would put the proponent and public on a more even playing field as public notice and a public hearing would be required. And they noted that February 11, 2020, the Planning Commission had a thorough deliberation on docket petition C4, which would

have modified Skagit County Code 14.16.503, subsections (3) and (4) pertaining to trails in the OSRSI zone. And Planning Commission's recommendation is consistent with the previous findings.

So some staff notes regarding this petition: This issue was part of the 2019 docket and was remanded to the Department for further analysis and public review as part of the long range work program, per Ordinance O20202225. And I also wanted to note that trails do require a land disturbance permit. They're not just exempt if they don't require a SEPA or use permit. And a land disturbance permit is required if it exceeds 100 cubic yards of fill or excavation, or if it exceeds the other thresholds listed in Skagit County Code 14.22.020(3). And then land disturbance permits require public notice – or do *not* require public noticing unless SEPA or shoreline permitting is required.

So as I mentioned, there's conflicting code. Here I have listed both of those code sections, which show the language for trails as a permitted use and then trails as an administrative special use. And here the crossed out section in red is the petition that the Department brought.

So staff recommends that the Board amend the language to clear up the conflicting code, whether it's eliminate trails as a permitted use or trails as an administrative special use.

And then the last petition I wanted to touch on is the Countywide Planning Policies Update. This petition to adopt recommended changes to the Countywide Planning Policies by the Growth Management Steering Committee, the new language would direct the Board of County Commissioners to disband the Boundary Review Board by June 30th, 2025. And just some notes on this: This disbanding the Boundary Review Board is authorized by RCW 36.93.230, and Cities and the County are still required to have a comprehensive plan and development regulations consistent with the Growth Management Act, per RCW 36.70A. And annexations of land recently included in Urban Growth Areas shall not be final until any appeal periods or proceedings associated with the Urban Growth Area change have lapsed and concluded.

So some options for the Board regarding the Docket is to adopt the petition as proposed; adopt proposal of modifications; decline to adopt the proposal; you could remand the issue back to the Department or Planning Commission for further study; or defer action on the docket proposal.

And that is my presentation. I'd like to thank you for your time. And I'm available for questions.

Chair Wesen: Commissioner Browning, any questions?

Commissioner Peter Browning: No, I have none. That's very complete. You presented it well before. So thank you.

Mr. Eckroth: Thank you.

Chair Wesen: Commissioner Janicki, any questions?

Commissioner Lisa Janicki: Yeah, on C23-10 on the elimination of the Boundary Review Board. I thought I fully understood that issue but now am somewhat concerned that eliminating the BRB requirement for the *Cities* makes sense and is allowed, that there are special purpose districts that still rely on the Boundary Review Board. So if we take this action, does it just eliminate the BRB or just eliminates the requirements for Cities to *use* the BRB?

Mr. Eckroth: My understanding was it would fully eliminate the BRB.

Chair Wesen: So my understanding is the Anacortes pool, one of the things they want to do is expand their district and they have to go to the Boundary Review Board to make that happen. So my question is, if that Boundary Review Board is gone what's the process? Does that just mean there's nothing they can do, or how – what's the process? I'm trying to understand what would happen.

Mr. Eckroth: So Jason and I talked and it sounds like every special purpose district has a different process to follow. And I'm not exactly sure what the process would be for that specific special purpose district. However, the Board of County Commissioners would still have a process to approve any changes. There just wouldn't be a recommendation from the Boundary Review Board.

Chair Wesen: Jack, do you have anything to add to that?

Jack Moore: I do not.

Commissioner Browning: But that was my understanding. It would still come to us with recommendations from the Planning Department and we would make the decision.

Chair Wesen: But then all the research and everything would be up to the County Commissioners to do it instead of the Boundary Review Board.

Mr. Moore: Or your designee, whichever department would be most applicable to provide you, you know, recommendations based on the district's recommendation. So it would be similar to any other admin procedure that would run through a department on your behalf – likely.

Chair Wesen: And any appeal to our decision would go to who then?

Commissioner Browning: The hearing examiner.

Mr. Moore: The hearing examiner? ____.

Chair Wesen: There's always an appeal process. I'm just curious what the next step would be if somebody didn't agree with the County Commissioners.

Jason D'Avignon: I don't believe there's really an appeal process in the same way that there would be with the Boundary Review Board. Again, it really depends on the kind of special purpose district and what specific thing they're trying to do. Annexations may be treated differently than formations or a merger, et cetera. I think generally it would – you know, the appeal would go, I guess, if you approve it, to the voters to be voted on where applicable. Otherwise, I think it would probably just be a lawsuit in Superior Court by whoever, you know, felt like they were negatively impacted by that decision.

Chair Wesen: Any other questions on that one?

Commissioner Janicki: So our choice – so can we deal – we can deal with these petitions individually? I'm not ready to – I think I have more questions about the Boundary Review Board and what does happen with those smaller taxing districts, you know, and whether it's combinations of – you know, if certain districts decide to combine. That was a BRB activity. And

having – kind of skipping that step of advisor puts staff in that position or us in that position. I guess I just think of that as maybe being a bit of a safeguard for other – impacts on other jurisdictions, not just the – I was only focused on the Cities when this was all being deliberated. So if there's – so our choice – I mean, can we just remand that to next year's Docket?

Mr. Moore: Yeah. Mm-hmm, absolutely.

Commissioner Janicki: For that particular one as an option.

Mr. Moore: Right.

Commissioner Janicki: I would like to feel like we're more fully baked on our information stream and had played through some of those scenarios of what-ifs, even with, you know, members of some of those special purpose districts who may also have opinion.

Chair Wesen: And the issue is just not used that often and so people really don't know what it is until they look –

Commissioner Janicki: Until they need it.

Chair Wesen: Yeah. And according to this, we weren't going to eliminate it until June of 2025, so we do have definitely a year to do it. I mean, that's the recommendation. I would be in favor of having – put it on next year's Docket, so we defer it and get more information and have a better understanding on that. Commissioner Browning, any thoughts on that?

Commissioner Browning: No, I'm fine with that. That would be – so I could make a motion just to defer the discussion about the BRB?

Chair Wesen: Do you want to talk about the other two first or (do) you want to do one –

Commissioner Janicki: Yeah, what order of events are we going with?

Chair Wesen: Let's do the OSRSI, the trails. This one has been brought up several times and one of the issues that came up is we have required things if there's a trailhead but not if there's a trail. Staff has a recommendation just to strike trails off that. The way I understand what staff is saying is if that was done like that then – is clarity to the staff and that would be okay? Am I mistaken on that?

Mr. Eckroth: Yeah, so if you were to eliminate the portion of Skagit County Code 14.16.500(4)(m) that says "trails and" and then it goes into primary and secondary trailheads. It would just require that the trailheads be an administrative use, but if a trail were to be continued it would just be an outright permitted use.

Commissioner Janicki: Does a trailhead include the parking that goes with?

Mr. Eckroth: Right. That's the higher impact. I think that was the intent of the code when it was written.

Chair Wesen: Parking and garbage and maybe a restroom.

Mr. Eckroth: Restroom, yeah.

Commissioner Janicki: So administrative special use and then – so the trail itself would just go through a regular – I guess I thought I read somewhere that it would go before a hearing examiner for a trail.

Mr. Eckroth: That was the Planning Commission's recommendation the prior time that it went before the Board. And I believe, based on their Findings, they were – they said their Findings were consistent with the 2019 docket, so I believe that is what they were implying the recommendation was again, was to have more opportunity for public notification and possibly a hearing as well.

Commissioner Janicki: I just – anything – and maybe it's just where we are with hearing examiner process right now. It adds a year to a permitting process. It's just such a long process. Is hearing examiner – is that also staff recommendation?

Mr. Eckroth: Yeah, so staff recommends approval or denial with a hearing examiner, and we present our case to the hearing examiner who ultimately makes the decision – unless appealed to the Board, of course.

Commissioner Janicki: But is it staff's recommendation that all trails be a hearing examiner special?

Mr. Eckroth: No. Well, when we brought up this docket item, our recommendation was to eliminate trails as an administrative use and to make them a permitted use.

Commissioner Browning: What would trigger that permitted use?

Commissioner Janicki: More than 100 cubic yards of disturbance?

Mr. Eckroth: Well, so 100 cubic yards of land disturbance would require a land disturbance permit unless there were critical areas nearby. And then if you exceed 500 cubic yards or if you're in shoreline jurisdiction then that could potentially trigger public notification because of SEPA and shoreline permitting.

Chair Wesen: But of course it has to be publicly-owned property before – the OSRSI is publicly-owned property.

Mr. Eckroth: Yeah, I believe just about all of it is. I'm not aware of any privately-owned OSRSI property.

Mr. D'Avignon: There's one random, privately-owned OSRSI property outside of Sedro-Woolley, I believe.

Mr. Eckroth: Okay.

Mr. D'Avignon: But it's very odd.

Mr. Eckroth: Thank you.

Commissioner Janicki: Yeah, sometimes I think those overlays were a mistake. There were some that were corrected. I think further upriver where OSRSI was included some private inholdings across state lands. There're some private mining – 40-acre mining in holdings that were private.

So I think we had done some corrections at one point on that. Because I think – my understanding is OSRSI means it's public access to that property.

Mr. Eckroth: Right.

Chair Wesen: So, Commissioners, what are your thoughts on this one? I'm okay with just the administrative use, scratching the trails, and –

Commissioner Browning: I am too.

Commissioner Janicki: I agree.

Chair Wesen: Moving on to the –

Commissioner Browning? Are we allowed questions here?

Chair Wesen: Patrick, do you want to have a comment on this one?

(inaudible voice from audience)

Commissioner Janicki: You'll have to move to a microphone.

Patrick Donnelly: Hi, Patrick Donnelly. Robby, on secondary trailheads, is that different than primary trailheads and is there a different category or enlargement – tell me the difference between those two, if there is one.

Mr. Eckroth: I would have to look and see in Skagit County Code specifically what the definitions would be, and I don't know those off the top of my head. I apologize.

Commissioner Janicki: But all trailheads will be subject to a higher level of permitting.

Mr. Eckroth: Right.

Commissioner Janicki: Yep.

Chair Wesen: Okay, let's move on to the Seawater Intrusion, C23-1. Commissioner Browning, any thoughts on this one?

Commissioner Browning: I struggle with this just because of the potential for impacting the sole source aquifer. On the other hand, I understand the concerns of having all their surrounding neighbors give their well reports to look for salination. I'm okay with it. It's going to have to be little more of a good neighbor type thing that goes on and that's a concern because sometimes good neighbors don't work as well as having a rule. But on the other hand, we're talking about Guemes, because there's no other sole source aquifer in our county except for one down by Lake – not Cavanaugh but the other one. Lake McMurray has a perch dock over down there but it's been abandoned or partially abandoned so it doesn't matter. So I would be okay with it but with the recognition that we may have some people angry about impact on their wells. It's Ecology's issue though, and I've got to keep reminding myself: This is really Ecology's issue with the neighbors and with determining if the well can be drilled.

Chair Wesen: Commissioner Janicki?

Commissioner Janicki: So under your staff notes you highlighted that it is – GMA requires us to protect critical areas.

Chair Wesen: The first decision kind of says we have to.

Commissioner Janicki: So this is another one where I'm not – I would recommend perhaps we defer this one, run this up the flagpole to Ecology and see if they're willing to take on the protection of that sole source aquifer. I really believe that there's some enhanced requirements that have to happen on Guemes Island in drilling wells. The risk is just way too great to go. I mean, it's not the same as when you're, you know, on land inland. And if Ecology – if we can suggest, you know, protocol to Ecology that they accept as part of their permitting authority, that's great. But if they're not going to do that, I think it has to come back to us to take action. We *have* to protect that aquifer. So I don't know if that's just – it's a little frustrating because it's not timely, but, you know, maybe we should have run this up the flagpole to Ecology before we got to this point in the process. Jack, thoughts?

Mr. Moore: We can certainly do that. I'm not sure what – obviously – what their answer would be on how much time or expertise they would have to spend on that, but we could certainly ask.

Commissioner Janicki: Or even if they defer – if they remand it back to us – I don't know. It's a legal Ecology discussion that has to happen. But I don't want to just say we're ignoring it. We're not going to do anything about that aquifer.

Mr. Moore: It is – I will remind that we do have close contact with Ecology for any well permit that goes in Skagit County. So while there's not officially a requirement to stop with Skagit County and open the conversation with us first for wells that aren't associated with another development permit. Ecology does talk to us about those. So it goes both ways, no matter where they go first. So we are in close contact with them in all well-drilling out there.

Chair Wesen: So Robby, two slides before that you had “the following information is already” required “for wells associated with a development...”

Mr. Eckroth: Right.

Chair Wesen: So any development, do we require that same information? What your water source is? Where is that water source coming? If he says well, it's been a well. It's been there for 50 years. Do we go back and require this stuff? Or could we do that? If you come in to get a permit on the sole source aquifer on Guemes, or any kind of permit, and then we ask them where the water source is and if it's a 20-year-old or 50-year-old, fill out this information about that. I mean, could we do that? I'm just asking a question.

Mr. Eckroth: Yeah, I believe we do ask for that information for a new well that is associated with development that will utilize that well.

Chair Wesen: For a new one, yeah. But for an old one, I'm asking on that.

Commissioner Janicki: The replacement well issue.

Chair Wesen: Well, it's not even a replacement. You're expanding using an old source so that's what I'm getting at.

Mr. Eckroth: Right. I see. I don't know the answer to that. Jack, do you?

Mr. D'Avignon: The code says – this is what currently 14.24.380(2) says – subsection (a): “An application proposing use of a well must include all of the following” – which is that list – “which must be submitted for review prior to drilling any new well.”

Chair Wesen: So my question is: If it's sole source aquifer, we say *any* new construction, you have to give this information. Does that make sense what I'm asking? Even an old source of water or even an existing well.

Mr. D'Avignon: There may be critical areas review under a different – kind of the more general authority in terms of protecting the aquifer. But this particular section would not apply to an old well.

Chair Wesen: Yeah, that's what I was getting at. Just any new construction on a sole source aquifer you must do this.

Mr. D'Avignon: Yeah.

Chair Wesen: It doesn't care where your water source is, you have to provide this information on your water source, is what I was getting at.

Mr. D'Avignon: Only if it's a new well.

Chair Wesen: Could we change it so it has to be *any* source of water, because it 's a sole source aquifer?

Mr. D'Avignon: That's what this amendment would do.

Chair Wesen: But if they're not putting a new well in, is this going to –

(several people speaking inaudibly and at the same time)

Commissioner Janicki: There's a consult going on.

Unidentified Male Voice: Sorry!

Commissioner Janicki: That's okay.

Mr. D'Avignon: I take that back. It would not apply to an old well that was purely converted as part of that development _____.

Chair Wesen: That's what I was getting at, because this has this new classification of a sole source aquifer, should we look at everything on the new source aquifer different than a preexisting well? That's what I was getting at.

I think it needs more work. We're not there on this either. But that's what I was trying to get at because I know there have been some people that have had – staff has looked at some permits and found out that they had too many services hooked up to PUD, or those kind of things. And so I'm just asking: Is there a way to – when a permit comes in for construction on Guemes, because it's a sole source aquifer, that you will do all these thing just because it's on a sole source aquifer.

Because that's the triggering point, in my mind, because it's sole source aquifer. Not that it's an old well, but it's – now it's a sole source aquifer so we have to deal with it differently.

Commissioner Janicki: So the scenario you're talking about with multiple units hooked up to a PUD, so, like, out at the desalination – just?

(inaudible voice)

Commissioner Janicki: Oh, a different spot. Okay.

Chair Wesen: They had a private well and they had three or four trailers, trailers hooked up to their private well.

Commissioner Janicki: Imagine that! They got a different set of code.

Chair Wesen: So from my perspective, we need a little work there, but I'm just looking at because Guemes is a sole source, should there be a total different code section on water on a sole source aquifer? That's all I'm looking at _____.

Mr. Moore: I believe that – just to add to what's been discussed already – that this was the intent and that there are some wells that people could go directly to Ecology and have approved if they are not associated with, say, a house. And so then the critical areas impacts of those wells, even though they may be few, wouldn't be actively, necessarily looked at by Skagit County. So there it's a bit – you might say it's a bit of a loophole when it comes to the critical areas protection. So this in one way closes that loophole for the non – wells that would not be directly associated with a County development permit.

Chair Wesen: Right, and the concern was/is how much going to your neighbors and asking questions on that and so forth. That was the concern.

Mr. Moore: Yes.

Chair Wesen: And I'm just saying you live on a sole source aquifer. Anybody who wants any permits shall do this. And so it's across the board. It's not old well/new well, it's just everybody. That's what I was getting at. Because at some point somebody is going to have to have water for something.

Mr. Moore: Okay.

Chair Wesen: But that wasn't discussed so that wasn't brought up so we can't do that from the bench today.

Mr. Moore: Right. Hmm. That would definitely help collect a library of information. That would work for any permit for anywhere. Okay, got it.

Chair Wesen: Commissioner Browning, do you agree with something different on this, or do we need to go back?

Commissioner Browning: No, I would like more clarification.

Chair Wesen: Okay.

Commissioner Browning: So I could – I move to approve the ordinance adopting 2023 amendments to the Comprehensive Plan, zoning map, and development regulations with the following amendments:

Number one, on C23-1, some clarification on seawater intrusion and, as pointed out, just clarification on new and old wells. Old wells are not discussed, and let's bring it back with a clarification. And also C23-3 on the Boundary Review Board, we need clarification on what happens when it is a *County* decision and not a *City* decision. The Boundary Review Board historically would have been triggered and we need to know what – how the process would go if there's no Boundary Review Board.

Commissioner Janicki: For all the special purpose districts.

Chair Wesen: And C23-3, just we're going to scratch "trails and"?

Commissioner Browning: And scratch "trails and." I'm sorry, yes. And in C23-3, yes, scratch "trails" and we're comfortable with that.

Chair Wesen: Is there a second?

Commissioner Janicki: Did we get all the – so we're accepting all the recommendations that the Planning Commission made? Can you scroll it to your summary, the first – oh, yeah. Oops, that one.

Commissioner Browning: (unintelligible)

Mr. Eckroth: So this is all the approved recommendations. So the Countywide Planning Policies is the only one that was recommended that the Board has questions on.

Commissioner Janicki: Okay.

Mr. Eckroth: And then for denial, we have Seawater Intrusion, OSRSI.

Commissioner Janicki: Okay, so we covered everything in that motion.

Chair Wesen: I think we did.

Commissioner Janicki: All right, I second that motion.

Chair Wesen: It has been moved and seconded to approve the recommendations except for the Countywide – C23-10, the Countywide Planning Policy. We want more clarification on that one. Also C23-1, the Seawater Intrusion, more work on that. And C23-3, OSRS1 (sic), we would follow the staff's recommendation to scratch the "trails and" from our County Code.

Commissioner Browning: Yes.

Chair Wesen: Is that clear to staff?

Mr. Moore: Yes.

Chair Wesen: Any more discussion?

(silence)

Chair Wesen: All those in favor, say “aye.”

All Commissioners: Aye.

Chair Wesen: All those opposed?

(silence)

Chair Wesen: Motion passes (gavel). Thank you.

Commissioner Janicki: Jack, thank you. Jason, really appreciate just making sure that you’re covering our tails on this. And Robby, very good presentation.

Chair Wesen: Yep.

Mr. Eckroth: Thank you, Commissioners.

Chair Wesen: Very good. So with that, we are going to adjourn.... So with that, we’re adjourned. Thank you.