PLANNING & DEVELOPMENT SERVICES

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MEMORANDUM

To: Planning and Development Services staff and interested parties

From: Gary R. Christensen, AICP, Director

Date: August 25, 2009 *REVISED* May 14, 2010

Re: Administrative Interpretation pertaining to the procedures for implementation of Skagit County Code (SCC) 14.16.400(2) Permitted uses, specifically subsection (o) "Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses."

I. Introduction.

SCC 14.16.400(2)(o) as amended in 2007[1] provides that single family residential building permits on land zoned Ag-NRL may be issued only where the occupancy and use of the proposed structure is "accessory" to an agricultural use, and the site plan may not permissibly convert the entire parcel of land out of agricultural production.

SCC 14.16.400(2)(o) does not set forth specific procedural measures for ensuring its criteria are met when an applicant seeks a residential building permit pursuant to SCC 14.16.400(2)(o). Accordingly, the Skagit County Planning and Development Services Department ("Department") is charged with creating appropriate and legally defensible procedural criteria. To that end, the Department has been in lengthy discussions with legal counsel and others regarding the proper method of implementing this ordinance over the course of the past several years, and has not started implementation until this process was finalized.

On June 10, 2009, the Skagit County Agricultural Advisory Board ("AAB") wrote to the Skagit County Board of Commissioners, requesting that the County step up implementation of SCC 14.16.400(2)(o). The AAB is an advisory committee comprised of local agricultural leaders, and is authorized by Resolution with providing advice to the Board of Commissioners, Planning Commission and the Department regarding land use matters impacting the agricultural industry in Skagit County. A copy of the AAB's June 10, 2009 correspondence is attached hereto as **Exhibit A**. This Memorandum and Administrative Interpretation ("Policy") establishes procedures to implement

[1] Skagit County Ordinance No. 20070009

SCC 14.16.400(2)(o) that are consistent with those proposed by the AAB and as further discussed. On August 12, 2009, the AAB voted unanimously to recommend approval of the procedures adopted by this Policy.

II. Discussion, Analysis and Conclusions.

SCC 14.16.400(2)(o) includes as a "Permitted Use" in the agricultural (Ag-NRL) zone the following:

> *Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses.*

When interpreting ordinances and seeking to give them procedural effect, there is an obligation to follow a series of basic interpretive rules established by Washington law. Cited below are some of the most applicable rules by way of a starting point in the analysis.

When interpreting municipal ordinances, the same rules of construction apply as those to state statutes. *Sadona v. City of Cle Elum*, 37 Wn.2d 831, 836-37 (1951 Zoning ordinances are construed as a whole, and any unreasonable construction is rejected. *Bartz v. Bd. of Adjustment,* 80 Wn.2d 209, 218 (1972). The primary purpose when interpreting a zoning ordinance is to ascertain the legislative intent, and give that intent effect. See, *East v. King County,* 22 Wn. App. 247, 253 (1978). If the language of the ordinance is unambiguous, the plain language of the ordinance is relied upon to discern legislative intent. *State v. Roggenkamp,* 153 Wash.2d 614, 621 (2005). One must remain wary of "unlikely, absurd or strained results" when interpreting an ordinance on its face. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590 (2005). Laws "on the same subject matter must be read together to give each effect and to harmonize with each other." *U.S. West Communications, Inc. v. Washington UTC*, 134 Wn.2d 74, 118 (1997). In the process of interpreting SCC 14.16.400(2)(o) and establishing procedures for its implementation, one must be ever mindful of these well-established legal principles.

Reading the plain language of the ordinance and relevant code definitions, the unambiguous intent of the ordinance, generally speaking, is to limit new residential dwellings on agricultural land to housing units proposed by those actually engaged in commercial production of crops and livestock, with an emphasis on preventing the conversion of productive agricultural land in the process. SCC 14.16.400(2)(o) is a lawfully adopted and unappealled development regulation, and it is therefore presumed valid. As the AAB has correctly pointed out, as long as SCC 14.16.400(2)(o) remains in effect the ordinance must be implemented and enforced in accordance with its terms.

With the foregoing in mind, the principal task of this Policy is to establish legally sound procedures that will ensure, consistent with code, that a proposed single family residential dwelling:

- In fact, will be an "Accessory Use" to "Agriculture"; and

- Will not convert a parcel of agricultural land to non-agricultural purposes.

Each is analyzed below and followed with procedural steps the Department will implement going forward to give effect to the ordinance's plain language.

A. Accessory Use to Agriculture

1. Accessory Use – Definition.

SCC 14.04.020 defines "Accessory Use" 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." SCC 14.16.400(2)(o) permits a residence only when accessory to an "Agricultural" use. The language of this code definition, when coupled with SCC 14.16.400(2)(o), plainly envisions that new single family residential dwelling units on land zoned Ag-NRL are a permitted use only when aimed at providing housing for those engaged in agriculture. This requires analyzing the definition of "Agriculture" under the County's relevant code.

2. Agriculture - Definition.

In relevant part, SCC 14.04.020 defines "Agriculture" as:

> *[T]he use of land for **commercial production** of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, cottonwood trees, Christmas trees (not subject to excise tax imposed by RCW 84.33.100 through 84.33.140), or livestock, including those activities directly pertaining to the production of crops or livestock, including, but not limited to, cultivation, harvest, grazing, on-site animal waste storage and disposal, fertilization, the operation and maintenance of farm or stock ponds, drainage ditches, irrigation systems, and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities or improved areas. Activities that bring an area into agricultural use are not considered agricultural activities.*

Bolding added.

In light of the foregoing, a permit applicant proposing a single family residential dwelling on land zoned Ag-NRL must be engaged in the **ongoing commercial production of crops or livestock** in order to qualify under SCC 14.16.400(2)(o).

My interpretation is that the language in the foregoing definition that follows "including, but not limited to" is meant to reference activities that are in service of ongoing commercial production

of crops and livestock, and these activities do not, standing alone, bring an applicant within the definition of agriculture.[2]

I considered and rejected an interpretation of this code section that would treat the applicant's proposed residential use to be accessory to agriculture where the applicant simply announces a prospective intention to begin engaging in agriculture. Because any permit applicant seeking a residential building permit on Ag-NRL is likely to prospectively announce such a future intention if it leads to permit issuance, this interpretation would provide no meaningful limitation to non-agricultural residential construction on Ag-NRL land. Accordingly, such an interpretation would defeat the basic intent of the ordinance. The AAB has recommended against such an interpretation, and I agree.

Consistent with the AAB's recommendations, the Department will require an affidavit (discussed in detail in Section II) in which the applicant must represent under oath that they have earned at least $100 per acre per year on average over the past three years in gross revenue derived from the commercial production of crops or livestock on the parcel in question. This dollar amount is derived from RCW 84.34.020's definition of "farm and agricultural land" as land that derives a certain level "gross income from agricultural uses," part of the statute's larger function of determining when a property used for agriculture legitimately qualifies for reduced property taxation rates.

Because RCW 84.34.020's definition is a state law and is aimed at determining whether a parcel of land is truly being utilized for agricultural purposes by reference to its gross revenue, I conclude that this constitutes a legally and economically rational basis on which to determine whether land is actually being used for agricultural purposes in the context of Skagit County's zoning code. In an abundance of caution, we have adopted the lower, pre-1993 threshold established by RCW 84.34.020(2)(b)(i)(A) of $100 per acre per year.

The AAB recommended the Department adopt a flat threshold of $10,000 per year by the applicant, but this would not make any allowance for the size of the parcel on which the single family residence is proposed. A threshold showing of $100 per acre per year would equate to $4,000 on a 40 acre parcel. In establishing the threshold level substantially below the level recommended by the AAB, the Department is mindful of the increase to small, local and organic producers operating on low gross receipts and overhead, activity that the County seeks to encourage. In order to avoid a situation where an otherwise bona fide agricultural producer is foreclosed from qualifying under SCC 14.16.400(2)(o) by a single poor year of production, the affidavit focuses on the applicant's average for the prior three years.[3]

The Department extensively discussed and analyzed whether the act of leasing land to another for agricultural purposes constitutes "Agriculture" such that a proposed residential structure would

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[2] For example, maintenance of a farm road in service of agriculture is activity that would normally require a grading permit, but is exempted in service of commercial agricultural production. This is consistent with Skagit County Code's generally preferential treatment for agricultural activities on Ag-NRL lands.

[3] The Department reserves the right to adjust this threshold amount upward or downward consistent with future fluctuations in the economy and the U.S. dollar's value, after obtaining appropriate input from the AAB.

qualify as an accessory use. But under such an interpretation of the code, a party could buy a parcel of agricultural land, lease it to a commercial farmer for several years, and on that basis claim a proposed residence qualifies as an accessory use to agriculture. Such an outcome is inconsistent with the code's basic intent, i.e., limiting residential conversion of agricultural land to housing units needed by those actually engaged in ongoing commercial production of crops and livestock. The Department also considered that the financial act of leasing land is not defined as "agriculture" by SCC 14.04.020; rather, the "*use*" of land is the code's operative verb. For these reasons, I conclude that the code's focus on actual use of the land for agricultural production by the applicant precludes a landowner from falling within SCC 14.16.400(2)(o) ambit simply by leasing land to another engaged in ongoing commercial agricultural production.

B. Non-Conversion.

In addition to the requirement that a proposed residence be accessory to an agricultural use, SCC 14.16.400(2)(o) also provides that "no conversion of agricultural land is allowed for accessory uses." In short, the proposed residential use cannot permissibly subsume the existing principal use of the land for agriculture.

SCC 14.04.020 further illuminates the scope and intent of this provision, defining "Conversion, agricultural land" as follows:

> *[A]ny activity that alters the landscape so as to preclude a parcel or a portion of a parcel from the reasonable possibility of agricultural production. This includes the construction of structures or infrastructure or any other alteration which would make agricultural production of a parcel or portion of a parcel technically or economically infeasible. Locating structures within an existing developed area used as a home-site, or within an area not more than 1 acre in size on vacant parcels, shall not be considered conversion.*

Given SCC 14.16.400(2)(o)'s focus on preventing the conversion of agricultural land to non-farm residential use, I conclude that SCC 14.16.400(2)(o) does not apply to any existing home site or a parcel of land less than one acre. Therefore, a permit applicant seeking to rebuild or remodel an existing residence within an existing converted footprint is not required to comply with the procedures established in Section II of this memorandum, and tax parcels less than one acre in size are similarly exempt.

Much of the intent behind this provision has already been implemented by the siting criteria set forth in SCC 14.16.400(6), a copy of which is attached hereto and published as **Exhibit B**, and incorporated herein by reference. In general terms, these siting criteria apply to all applications for non-agricultural uses and structures on land zoned Ag-NRL.

Because they squarely comport with the regulatory constraints on conversion established by SCC 14.16.400(2)(o) and the definition of "Conversion, agricultural land" established by code, I conclude that the SCC 14.16.400(6) siting criteria for "non-agricultural uses and structures" apply to

applications processed pursuant to SCC 14.16.400(2)(o), including the administrative interpretation attached hereto as Exhibit B.

With respect to accessory dwelling units (ADUs) allowed under SCC 14.16.710, I conclude that ADUs are a subsidiary development right that exists independent of SCC 14.16.400(2)(o), and are, as the code discusses, an accessory to the existence of a properly permitted single family dwelling unit. Therefore, applicants proposing an ADU on land zoned Ag-NRL are not required to meet the SCC 14.16.400(2)(o) procedures established in Section III of this memorandum if the ADU is accessory to a residential dwelling unit exempt from the SCC 14.16.400(2)(o) criteria, as set forth by this Administrative Interpretation. However, ADU applicants on Ag-NRL land must still meet the SCC 14.16.400(6) siting criteria as set forth above.

III. Implementation Procedures.

[Implementation Procedures section and reference in preceding paragraph renumbered to "III" to correct numbering error 5/14/10]

Where SCC 14.16.400(2)(o) applies, it is my conclusion that SCC 14.16.400(2)(o) requires a showing by the applicant that:

- The applicant (or their agricultural business) are engaged in ongoing commercial production of crops or livestock on the parcel of land zoned Ag-NRL where the single family residential dwelling is proposed;

- The use of the structure will be accessory to (dependent upon and subordinate to) ongoing commercial agricultural production of crops or livestock after the structure is completed and occupied.[4]

The procedures by which permit applicants are expected to accomplish these showings are set forth in this section of the policy memorandum.

In establishing procedures to implement SCC 14.16.400(2)(o)'s requirements, the Department attempted to establish procedures that can be easily administered, at minimum cost and burden to applicants. In summary, the Department will require that applicants submit an affidavit that they are engaged in ongoing commercial agricultural production on the parcel where the structure is proposed, and a notice to those later acquiring an interest in the parcel that the use of the structure is accessory to agriculture, consistent with code.

1. Affidavit

[4] It is a routine feature of zoning laws that a structure is permitted for one form of use, but not another – despite the structure's obvious physical compatibility with both uses. For example, a barn on land zoned Ag-NRL could be used for agricultural purposes or it could theoretically be used as a nightclub. While the former is a permitted use on land zoned Ag-NRL, the latter is not. Here as well, the focus of the code is on the *use* of the structure.

Each individual applicant to whom SCC 14.16.400(2)(o) applies must submit, prior to issuance of a building permit, a signed affidavit verifying that they are the owner of the parcel, and that they have generated gross income derived from commercial agricultural production on the parcel, averaging at least $100 per acre per year for the previous three years. If the permit applicant is an agricultural business, the company's authorized representative must submit the affidavit.

Copies of affidavits will be provided to the Agricultural Advisory Board as a courtesy. The applicant may be asked to provide backup documentation at the Director's discretion if there is doubt regarding the accuracy of the applicant's affidavit. This is disclosed to the applicant via a footnote on the form.

The form of affidavit is attached hereto as **Exhibit C**.

2. Title Notification.

Each individual and/or corporate applicant to whom the SCC 14.16.400(2)(o) showings apply must submit a Title Notification in the form attached hereto as **Exhibit D**. The Title Notification does not serve as a restriction on title, but rather will simply provide notice of the permissible use of the structure permitted under SCC 14.16.400(2)(o), with a caveat that parties considering acquiring an interest in the property check development regulations to ensure that SCC 14.16.400(2)(o) has not been subsequently amended.

The Department's residential building permit application form and checklist will be amended to include these items.

Because these are implementing procedures that give effect to a lawfully-adopted development regulation, it is not necessary for the Department to publish these procedures in the form of an Administrative Interpretation. This Policy is issued and published solely as an effort to formalize the Department's basis for its implementing procedures, and to transparently set forth the analysis, discussion and rational basis underpinning the Department's implementation of this ordinance, a step seen as necessary given the high degree of interest in the agricultural community concerning this ordinance. Notice of this Policy will published in the newspaper of record, will be posted on Skagit County's public website, and will be transmitted to the Agricultural Advisory Board and other agricultural industry and advocacy groups. This Administrative Interpretation may be appealed within 14 days of its publication in the newspaper of record. See SCC 14.06.040 and .110 for further information.

ADMINISTRATIVE OFFICIAL

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Gary R. Christensen, AICP