

Skagit County Planning & Development Services

Notice of Decision

Administrative Official Interpretation pertaining to Category I Aquifer Recharge Areas that are designated both as sole source aquifer and seawater intrusion area in unincorporated Skagit County under current Skagit County Code Title 14.

Notice is hereby given that on December 28, 2022, pursuant to Skagit County Code (SCC) 14.24.330, the Director of Skagit County Planning & Development Services issued an Administrative Official Interpretation to provide guidance on SCC 14.24.330 as it applies to Category I Aquifer Recharge Areas that are designated both a sole source aquifer and seawater intrusion area. When SCC 14.24.330 applies on Guemes Island, as sole source aquifer and Category I aquifer recharge area, SCC 14.24.330 requires a site assessment that includes all information required in subsections (3)(c) (i) and (l). The Department may reduce or not require such a site assessment if a licensed hydrogeologist approved by the County advises otherwise.

The full text of the Administrative Official Interpretation can be viewed online at www.skagitcounty.net or at the Planning & Development Services Department.

Aggrieved parties may appeal this Administrative Official Interpretation to the Skagit County Hearing Examiner following the procedures outlined in SCC 14.06.110(7)-(14). Parties must submit the appeal form and appeal fees to the Planning & Development Services Department within 14 calendar days of this notice.

Appeals must be submitted by the close of business January 19, 2023

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Administrative Official Interpretation 2022-01

To: Planning and Development Services staff and interested parties
From: Jennifer Johnson, Interim Director, Skagit County Planning and Development Services
Re: Administrative Interpretation pertaining to the procedures for implementation of Skagit County Code 14.24.330 in areas designated a sole source aquifer and seawater intrusion area.
Date: December 28, 2022

1. Introduction.

Section 14.24.330 of the Skagit County Code requires that development applications include a standard site assessment regarding possible impacts to groundwater. The Planning and Development Services Department (“Department”) may also order additional site assessment elements based on the proposed use, aquifer recharge area classification, hydrogeology, or impacts to neighboring wells.

However, SCC 14.24.330 does not provide a framework for when it is appropriate to require additional site assessment elements. For example, that the proposed project occurs in a Category I aquifer recharge area is a sufficient reason to require additional site assessment elements be considered, but the Code does not state what constitutes sufficiency.

This Administrative Official Interpretation (“AOI”) seeks to provide guidance on SCC 14.24.330 as it applies to Category I Aquifer Recharge Areas that are designated both a sole source aquifer and seawater intrusion area. The only location currently meeting these requirements is Guemes Island. Seawater intrusion, based on credible scientific evidence, has been a concern on Guemes Island for a long time. This concern is clearly stated in the Comprehensive Plan, the Guemes Island Subarea Plan, and in the development regulations.

As set out in detail below, this AOI determines that the Code requires all development applications on Guemes Island proposing the use of a well provide additional site assessment elements that specifically address the potential impact of the proposal on the aquifer.

2. Authority.

The Department is charged with creating appropriate and legally defensible procedural criteria. See SCC 14.06.040(3) (granting authority to the Administrative Official to make decisions “as to the meaning, application, or intent of any of the provisions of SCC Title 14.”). In determining the meaning, application, or intent the Administrative Official is to research the original intent of the provision and to consider other relevant provisions and policy documents. SCC 14.06.040(3)(b). The Comprehensive Plan also directs the Department to continually review and update the policies related to seawater intrusion. Comp. Plan, Policy 5A-5.1(b)(iii). To that end, the Department has been in lengthy discussions with legal counsel, Public Health Department staff, and others regarding the proper method of implementing this section of code. This AOI does not affect any authority or exercise of authority in Skagit County Code Chapter 12.48.

3. Discussion, Analysis and Conclusions.

The Growth Management Act, Chapter 36.70A RCW, requires Skagit County to develop comprehensive plans and development regulations to classify, designate, and protect critical areas. RCW 36.70A.060(2). Critical areas include areas with a critical recharging effect on aquifers used for potable water. RCW 36.70A.030(6).

In line with this mandate, the Skagit County Comprehensive Plan recognizes the importance of protecting groundwater resources and the risks of contamination of our drinking water:

Potable water is an essential life-sustaining element. Skagit County’s potable water comes from groundwater and surface water. Once the source of potable water is contaminated, it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.

Comp. Plan, p. 163. Goal 5A of the Comprehensive Plan directs the County to protect critical areas including aquifer recharge areas. This includes preventing the “continued loss and degradation” of critical areas and that avoiding such impacts is a priority. Comp. Plan, Policy 5A-5.1. The County is also directed to “review and update its Saltwater Intrusion Policy”. Comp. Plan, Policy 5A-5.1(b)(iii).

The Comprehensive Plan also incorporated the Guemes Island Subarea Plan. Comp. Plan, p. 7. One of the central objectives of the plan is to protect the quantity and quality of groundwater.¹ Aquifer recharge areas identification, evaluation and protection, seawater intrusion issues, and water conservation measures are all outlined in the Environment Element of the plan. Guemes Island Subarea Plan, Ch. 4. This includes recommendations by the County’s hydrogeologist to further the protection of the aquifer recharge areas by increasing the quantity, quality, and

¹ Guemes Island Subarea Plan, p. 1 (“The overall goal of this sub-area plan is to allow growth that will conserve the island’s groundwater resources, rural character, and sense of community”); *Id.* at p. 33 (Environment goals include: “enhance[ing] the environmental quality of Critical Areas” and “protect[ing] the quantity and quality of ground water.”).

accessibility of relevant data, and specific policy recommendations, including single family homes being subject to mitigation under the seawater intrusion policy/code. Guemes Island Subarea Plan, Policy 4.16.

The Skagit County Critical Areas Ordinance, Chapter 14.24 SCC, establishes development regulations and implementation procedures to protect aquifer recharge areas. Section 14.24.330(1) describes generally the site assessment process and what is needed to determine the scope of the assessment necessary to begin project review. Section 14.24.330(2) lists the requirements for what is included in the site assessment:

(a) A site plan acceptable to the Administrative Official or Health Officer, which indicates the approximate location of known or geologically representative wells (abandoned and active), springs, and surface watercourses within 1,000 feet of the project property.

(b) A description of the site-specific hydrogeological characteristics regarding potential impact(s) to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map; and

(c) Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient and within 1,000 feet of the project or as otherwise directed by the Administrative Official or Health Officer.

The Department may require a more in-depth site assessment “based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeological conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors.” SCC 14.24.330(3)

But the Code does not provide guidance on how this discretion is to be implemented. The Code does not describe the particular circumstances that would lead to additional site assessment elements being required. However, it is reasonable, given the Code’s clear intent on protecting groundwater, *see* SCC 14.24.320, that if there is evidence of degradation in a Category I aquifer recharge area, the Department must exercise its discretion to prevent any further decline in groundwater quality.

Applying what we know about seawater intrusion on Guemes Island to the reasons for requiring additional site assessment elements set forth in 14.24.330 we find:

- *Proposed Use*: Relevant information related to the proposed use would include the site plan and all other information required by SCC 14.24.380. This is application specific and thus outside the scope of the guidance this AOI seeks to provide. However, it must be noted that this AOI does not seek to limit the discretion of the Administrative Official to make well informed decisions allowed under the Code.

- *Classification:* The standard site assessment applies to every application and since the Code is clear that a Category I aquifer recharge area (“ARA”) requires heightened protection. The Administrative Official or their designee shall closely consider whether additional site assessment elements are needed when the proposal is in a Category I ARA. In their consideration the Department must take into account the reason the area is designated Category I ARA. Guemes Island is a sole source aquifer (i.e., almost 100% of the population relies on the aquifer for water and there is no viable alternative source); and a seawater intrusion area (i.e., additional consumption of the water and/or improper drilled or sited wells may cause contamination of the water by seawater). Based on the plain language and clear intent of the Code, Guemes Island is clearly the kind of place that “require[s] additional scrutiny of the potential impacts of a proposed land use, with consideration given to hydrogeological susceptibility and vulnerability.” SCC 14.24.310.
- *Hydrogeological Complexity:* The 1995 USGS Report found Guemes Island served by three aquifers that ultimately were interconnected enough to act as a single aquifer. There are many unknowns about the aquifer and how its operation has been and could be impacted by development. As such, this strongly suggests additional information will be useful to determine the likelihood of an impact.
- *Adverse Impact on Downgradient Receptors:* A well that could cause or accelerate seawater intrusion would adversely impact downgradient receptors.

From this analysis it is clear that Guemes Island is the kind of area—one very sensitive to adverse impacts—that requires additional site assessment elements be considered. Notably, some of the enumerated site assessment elements under SCC 14.24.330(3) are clearly relevant to evaluating possible impacts in an area designated as a sole source aquifer and seawater intrusion area. These would include:

(c) Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage coefficient, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).

* * *

(i) Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s).

* * *

(l) Assessment of the potential for pumping-induced seawater intrusion.

To *not* require the consideration of the additional site assessment elements set forth in SCC 14.24.330(3) above, assessments would require a determination by the County’s hydrogeologist that such analysis would clearly not provide additional useful information (based on staff review or as demonstrated by the applicant). Such determination would be based on credible scientific

information. Staff should consult with a licensed hydrogeologist to determine if any other site assessment elements need to be included.

4. Implementation Procedures.

When SCC 14.24.330 applies on Guemes Island, as a sole source aquifer and Category I aquifer recharge area, SCC 14.24.330 requires a site assessment that includes all the information required in subsection (2) and, at a minimum, the information required in subsections (3)(c), (i) and (l). The Department may reduce or not require such a site assessment if a licensed hydrogeologist (“LHG”) approved by the County advises otherwise.

ADMINISTRATIVE OFFICIAL


Jennifer Johnson

