

Skagit County Planning & Development Services Notice of Decision

Administrative Official Interpretation pertaining to the siting of solid waste handling facilities in unincorporated Skagit County under current Skagit County Code Title 14.

Notice is hereby given that on March 16, 2010, pursuant to Skagit County Code (SCC) 14.06.040(3), the director of Skagit County Planning & Development Services issued an Administrative Official Interpretation of Skagit County Code Title 14 regarding solid waste handling facilities, minor/major utility developments, and unclassified uses. Solid waste handling facilities are a separate and distinct use from major and minor utility developments. Unless a specific type of solid waste handling facility is categorized as a permitted or special use in a given zoning district it shall only be permitted as an unclassified use pursuant to the terms outlined in SCC 14.16.600.

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 the date of this notice.

Appeals must be submitted by the close of business on March 30, 2010

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PLANNING & DEVELOPMENT SERVICES

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MEMORANDUM

To: Planning and Development Services Staff and Interested Parties

From: Gary R. Christensen, AICP, Director

Date: March 16, 2010

Subj: Administrative Official Interpretation pertaining to the siting of solid waste handling facilities (SWHF) in unincorporated Skagit County under current Skagit County Code Title 14.

I. Summary.

Under the Skagit County Unified Development Code, Title 14 (SCC), solid waste handling facilities (SWHF) are defined as a “utility development.” Specifically, SWHFs are included as a class of uses under the definition of a “major regional utility development.” Further, SCC 14.16.600(2) generally defines SWHFs as an unclassified use that may only be permitted in four specific zoning districts while certain types of SWHFs are explicitly designated as permitted, special, and accessory uses in several zoning districts. SCC 14.16.020(3), which applies to the interpretation of uses, states in part that “in no instance shall a use specifically identified in any zoning district be allowed in another zoning district where that use is not specifically listed.” It is therefore the interpretation of the Administrative Official that SWHFs are a separate and distinct use from major and minor utility developments. Unless a specific type of SWHF is designated as a permitted or special use in a given zoning district it shall only be permitted as an unclassified use pursuant to the requirements outlined in SCC 14.16.600.

II. Introduction.

In early 2009, the Skagit County Board of Commissioners determined that there was a potential for permitting errors that arose from an apparent conflict between the definitions for utility developments and SCC 14.16.600, which specifically applied to SWHFs and required that SWHFs be permitted as unclassified uses. In response to the apparent conflict, the Board of County Commissioners adopted Skagit County Ordinance no. O20090002, which imposed a moratorium on the acceptance of applications for SWHFs for special use permits. The moratorium did not affect the ability of developers to apply for an unclassified use permit for a SWHF under SCC 14.16.600.

The preamble to Ordinance no. O20090002 provided in pertinent part:

WHEREAS the location of a utility such as a SWHF on lands zoned for residential, specialty commercial uses, and natural resource uses presents obvious conflicts with the intended uses of those zoning districts; and

WHEREAS a degradation of Skagit County's resource and residential land base by conversion of such lands to incompatible commercial uses would have far-reaching effects on the stability and viability of Skagit County's economy; and

WHEREAS the permitting of a SWHF as a minor or major utility development as an administrative or Hearing Examiner special use permitting process would also bypass the more specific intent of SCC 14.16.600 that SWHFs be restricted to four commercial zoning districts and be processed as a Comprehensive Plan amendment; and

WHEREAS this conflict arises from a conflict between the broad definitions of "utility," "minor utility development," and "major utility development" and the more specific intent of the county legislature, as expressed in SCC 14.16.600, that utilities defined as unclassified special uses, such as SWHFs, be restricted to specifically designated commercial and industrial zoning districts and processed as a Comprehensive Plan amendment, under SCC 14.08.020; and

WHEREAS whether the county's definitions for major and minor utilities adequately define the size and scope of a utility project has been called into question in other land use matters; and

WHEREAS the unintended ability to locate a SWHF, of potentially unlimited scope, size and intensity, in a non-commercial zoning district does not fully effect the intent of the Skagit County Comprehensive Plan and creates a conflict between the county's development regulations and the Skagit County Comprehensive Plan; and

Ordinance no. O20090002 was challenged before the Western Washington Growth Management Hearings Board (Hearings Board). The Hearings Board upheld the moratorium. *Skagit Hill Recycling v. Skagit County*, WWGMHB cause no. 09-2-0011, Order on Motions (September 22, 2009).

Before the moratorium expired, the county amended the definitions for utility developments. The current code now provides the following definitions for utility developments:

Utility development: includes, but is not limited to, facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical

energy, communications and pipelines for fuel, oil, natural gas, and petroleum products. A utility development is one of the following types:

(1) Minor utility development: an unmanned utility development designed to serve a small local community that would be considered a normal utility service for the area.

(2) Major utility development: a utility development that does not meet the definition of minor utility development or major regional utility development.

(3) Major regional utility development: a utility development that meets the definition of an essential public facility, including, but not limited to, power generation facilities, SWHFs, and regional wastewater treatment facilities.

Major regional utility developments require unclassified use permits.

SCC 14.04.010 (Ordinance no. O20090010, adopted September 15, 2009). This amendment was not intended to affect the explicit requirements set forth under unamended SCC 14.16.600, which still requires an unclassified use permit for SWHFs that are not specifically designated as permitted or special uses.

Ordinance no. O20090010 was also challenged before the Hearings Board. One issue in that appeal is pertinent to this administrative opinion:

Issue 1:¹

Does Ordinance number O20090010 redefine all recycling facilities, regardless of their difficulty to site, as “major regional utility developments” requiring Unclassified Use Permits under SCC 14.16.600?

While discussing Issue 1, the Hearings Board stated:

Only major regional utility developments require Unclassified Use Permits under the Skagit County code. SCC 14.16.600(1): “The purpose of the unclassified use permit is to provide a siting and review process for *major regional facilities* with potential significant built and natural environmental impacts on the surrounding area. Unclassified uses are typically major facilities with a presence that may impact or alter the character of the community. They include most of the more intensive uses considered to be “essential public facilities” in RCW 36.70A.200.” **The Board cannot agree with the County’s argument that under the County’s Code all SWHFs must be reviewed and permitted as an “Unclassified Use.”** Unlike the previous ordinance, the Ordinance now includes a separate, distinct definition for “major regional utility

¹ The Hearings Board decided all of the issues, Issues 1 through 9, in the county’s favor and dismissed the challenge to Ordinance no. O20090010. Issues 2 through 7 were dependent on issue 1. When issue 1 was dismissed, they were dismissed also. See *Skagit Hill Recycling v. Skagit County*, WWGMHB no. 09-2-0016, Order on Dispositive Motions at 2 (January 8, 2010) (“The county’s first motion asks for dismissal of Issues 1 through 7. Issue 1 is the predicate issue for issues 2 through 7. If it is answered in the negative, issues 2 through 7 need not be addressed.”) (footnotes omitted.) Issues 8 and 9 concerned compliance with the GMA’s public participation requirements and RCW 36.70A.470, respectively.

developments.” That fact when combined with SCC 14.16.600 mandates that major regional utility developments that are SWHFs and which meet all of the requirements of SCC 14.16.600 are subject to the Unclassified Use process.

Skagit Hill Recycling v. Skagit County, WWGMHB cause no. 09-2-0016, Order on Respondent’s Dispositive Motions at 7-8 (January 8, 2010) (footnotes omitted, italics in original, bolding added.)

The Hearings Board then concluded:

Therefore, the Board finds and concludes that Issue 1 must be answered in the negative: Ordinance No. O20090010 does not redefine **all** recycling facilities, regardless of their difficulty to site, as “major regional utility developments” requiring Unclassified Use Permits under SCC 14.16.600. Furthermore, that decision involves no factual disputes. Rather is it based solely on the interpretation of the SCC, Washington state law and regulations. Having reached that conclusion, the Board does not need to consider Issues 2 through 7. The county’s motion to dismiss Issues 1 through 7 is granted.

Skagit Hill Recycling v. Skagit County, WWGMHB cause no. 09-2-0016, Order on Respondent’s Dispositive Motions at 8 (January 8, 2010) (footnotes omitted, emphasis in original.)²

The Hearings Board’s opinion that “[t]he Board cannot agree with the County’s argument that under the County’s Code *all* SWHFs must be reviewed and permitted as an ‘Unclassified Use’” is dicta. The issue before the Hearings Board concerned the “redefinition” of “recycling facilities” not the redefinition of “SWHFs.” Ordinance no. O20090010 did not define recycling facilities, let alone “redefine” them. However, the Hearings Board’s observation is sound: several sub-types of SWHFs are specifically designated as permitted and special uses in several zoning districts:

Natural Resource Industrial (NRI): SCC 14.16.160(5)(d) (“Permanent or temporary asphalt or concrete batching and **recycling**” permitted as a Hearing Examiner special use.)³

Hamilton Industrial (H-I): SCC 14.16.175(5)(d) (“Permanent or temporary asphalt or concrete batching and recycling” permitted as Hearing Examiner special use.)

Bayview Ridge Heavy Industrial (BR-HI): SCC 14.16.190(3)(d) (Outdoor storage of waste materials permitted as an accessory use to a permitted use.)

² An appeal of *Skagit Hill Recycling v. Skagit County*, WWGMHB cause no. 09-2-0016 was filed, but recently abandoned.

³ Uncontaminated asphalt and concrete are solid wastes. See WAC 173-350-990(2)(a), (b). If it is contaminated, it would be classified as a hazardous waste.

Bayview Ridge-Heavy Industrial (BR-HI): SCC 14.16.190(6)(b) (“The following additional uses shall be permitted, subject to a Hearing Examiner review and recommendation . . . [s]olid waste processing, recycling and transfer facilities.”)

Hamilton Urban Reserve (H-URv): SCC 14.16.385(2)(g) (“Individual or multiple farm composting” is a permitted use.)

Agricultural – Natural Resource Lands (Ag-NRL): SCC 14.16.400(2)(f) (“Individual or multiple farm composting” is a permitted use.)

Rural Resource – Natural Resource Lands (RRc-NRL): SCC 14.16.400(2)(f) (“Individual or multiple farm composting” is a permitted use.)

Mineral Resource Overlay (MRO): SCC 14.16.440(7)(b)(ii) (“On-site processing including asphalt or concrete batching and asphalt or concrete recycling” permitted as a Hearing Examiner special use.)⁴

Thus, the Hearings Board’s finding that it “cannot agree with the County’s argument that under the County’s Code *all* SWHF’s must be reviewed and permitted as an ‘Unclassified Use’” appropriately followed from the obvious fact that numerous sub-types of SWHF’s are specifically designated as permitted and special uses in several zoning districts.

The final sentence of the Hearings Board’s analysis provides a useful standard to determine whether SWHF’s that are not specifically identified as permitted or special uses need to be permitted as unclassified uses:

. . . major regional utility developments that are SWHF’s and which meet all of the requirements of SCC 14.16.600 are subject to the Unclassified Use process.

Because the applicability subsection of SCC 14.16.600 specifically defines SWHF’s as an unclassified use, if a sub-type of SWHF use is not elsewhere explicitly designated as a permitted or special use, the SWHF is a “major regional utility development” regardless of size and must be permitted as an unclassified use. See SCC 14.16.600(2)(d) (“Applicability. Unclassified uses include but are not limited to the following list. Included in parentheses are the zones in which a specific unclassified use may be considered: . . . (d) Solid waste handling facility (SF-NRL, RRc-NRL, BR-HI, BR-LI).”)

⁴ Because it is an overlay and not a discrete zoning district, the development regulations for the MRO can apply to the county’s several Natural Resource Land (NRL) zoning districts.

III. Discussion and Analysis.

A. Applicable laws, regulations, and ordinances:

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 Wn.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).

Rules of construction:

(1) Construction. This Chapter shall be liberally construed to secure and protect the public health, safety, and welfare of the people and the land. When interpreting this Code, the minimum requirement necessary to achieve the intent shall prevail. Wherever the requirements of the Chapter conflict with other laws in effect, that which imposes the higher standard while meeting the intent of the codes shall prevail.

(2) Administrative Official. It shall be the responsibility of the Administrative Official, or designated representative, to interpret and apply the provisions of this Chapter pursuant to SCC 14.06.040.

(3) Interpretation of Uses. **Only those uses listed within a given zoning district shall be allowed; provided, that an allowance for a substantially similar use may be granted. However, in no instance shall a use specifically identified in any zoning district be allowed in another zoning district where that use is not specifically listed.** When a use is not specifically listed in this Chapter, it shall be understood that the use may be allowed if it is determined by the Administrative Official that the use is similar to other uses listed. It is further recognized that not every conceivable use can be identified. In anticipation that new uses will evolve over time, this Section establishes the Administrative Official’s authority to compare a proposed use and measure it against those listed in this Chapter for determining similarity. In determining similarity, the Administrative Official shall make all of the following findings:

...

SCC 14.16.020 (emphasis added.)⁵

Definition of essential public facilities:

Essential public facilities: those facilities that are typically difficult to site, such as airports, State education facilities and State or regional transportation facilities as defined in RCW 47.06.140, State and local correctional facilities, solid waste handling facilities, and inpatient facilities, including substance abuse facilities, mental health facilities, and group homes.

SCC 14.04.010 (emphasis added.) The county's definition of an essential public facility closely follows the GMA's definition:

The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

RCW 36.70A.120(1) (emphasis added.)

Definition of unclassified use:

Unclassified use: major, regional facilities with potentially significant built and natural environmental impacts on the surrounding area. Unclassified uses are typically major facilities with a presence which may impact or alter the character of the community. They include most of the more intensive uses considered to be essential public facilities in RCW 36.70A.200.

SCC 14.04.020.

Definition of utility development:

Utility development: includes, but is not limited to, facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products. A utility development is one of the following types:

⁵ Also see SCC 14.10.010 (“ . . . Generally, variances shall only be considered for dimensional standards, unless otherwise specified in this Title. Under no circumstances shall a variance be granted that allows a use not permissible under the terms of this Chapter in the district involved, or any use expressly or by implication prohibited by the terms of this Chapter in the district.”)

- (1) Minor utility development: an unmanned utility development designed to serve a small local community that would be considered a normal utility service for the area.
- (2) Major utility development: a utility development that does not meet the definition of minor utility development or major regional utility development.
- (3) Major regional utility development: a utility development that meets the definition of **an essential public facility, including, but not limited to, power generation facilities, solid waste handling facilities,** and regional wastewater treatment facilities. Major regional utility developments require unclassified use permits.

SCC 14.04.010 (emphasis added).

Definition of solid waste handling facility (SWHF). The county code does not include a definition for a "SWHF." However, solid waste and solid waste handling and recycling facilities are broadly defined by statute and regulation:

"Solid waste" or "wastes" means all putrescible and non-putrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

RCW 70.95.030(22).

"Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

RCW 70.95.030(23).

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land used for solid waste handling.

"Material recovery facility" means any facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.)

WAC 173-350-100.

Unclassified uses:

(1) **Purpose.** The purpose of the unclassified use permit is to provide a siting and review process for major, regional facilities with potential significant built and natural environmental impacts on the surrounding area. Unclassified uses are typically major facilities with a presence that may impact or alter the character of the community. They include most of the more intensive uses considered to be "essential public facilities" in RCW 36.70A.200. The intent of the unclassified use permit is to not only review potential impacts of a proposal and apply appropriate conditions, but also to evaluate on a more fundamental level whether the proposed use is appropriate at a given location, based on conformance with the applicable criteria. The listing of possible zones for unclassified uses to be located in, as in Subsection (2) of this Section, does not presume that a specific use in a given location will be determined to be appropriate through the unclassified use permit process.

(2) Applicability. Unclassified uses include but are not limited to the following list. Included in parentheses are the zones in which a specific unclassified use may be considered:

...

(b) Power generation facilities (If-NRL, SF-NRL, RRc-NRL, BR-HI)

...

(d) Solid waste handling facility (SF-NRL, RRc-NRL, BR-HI, BR-LI).

(e) Regional wastewater treatment facilities (SF-NRL, RRc-NRL, RRv, BR-HI)

...

SCC 14.16.600 (emphasis added).

B. By definition, a SWHF is a “major regional utility development” that must be permitted as an unclassified use unless the use is specifically identified as a permitted or special use.

The purpose statement for SCC 14.16.600 provides that it serves as the review process for “major, regional facilities,” which have the following characteristics:

- a. the potential for significant built and natural environmental impacts on the surrounding area,
- b. that may impact or alter the character of the community, and
- c. are essential public facilities.

The characteristics of a “major regional facility” that are set forth under SCC 14.16.600(1) are the same as those for an “unclassified use.” See SCC 14.04.020.

In addition to the use of the same definition for “major regional facilities” and “unclassified uses,” there is a correlation between essential public uses and major, regional facilities:

| <u>USE</u> | <u>SCC 14.04.020</u> | <u>RCW 36.70A.200</u> | <u>SCC 14.16.600</u> |
|---|----------------------|-----------------------|----------------------|
| Airports | x | x | |
| State education facilities | x | x | x |
| State or regional transportation facilities | x | x | x |
| State and local correctional facilities | x | x | x |
| Solid waste handling facilities | x | x | x |
| Inpatient facilities | x | x | x |
| Substance abuse facilities | x | x | x |
| Mental health facilities | x | x | x |
| Group homes | x | x | |

Significantly, when the county intended that a use defined as an essential public facility did not need to be permitted as an unclassified use, it specifically excepted such uses in the development regulations for the applicable zoning district. For example, airports and group homes are essential public facilities, but are permitted as special uses in several zoning districts. Similarly, the county specifically excepted (1) concrete and asphalt recycling; (2) solid waste processing, recycling and transfer facilities; (3) outdoor storage of waste materials; and (4) farm composting, which are subtypes of SWHFs as uses that would be permitted or special uses in specific zoning districts.

The conclusion from the county’s use of these exceptions is that, with the exception of enumerated uses in specified zoning districts, SWHFs need to be permitted as unclassified uses.

This conclusion follows from standard rules for statutory interpretation.

First, the plain language of SCC 14.16.600 provides that the unclassified review process applies to SWHFs. The applicability section does not distinguish between different types of SWHFs and designates them as major regional facilities. There are several good reasons for this general classification:

1. An unmanned dump for municipal waste, for example, has the same potential to adversely impact the natural environmental and community character as a manned dump, no matter what its size may be.
2. Waste is waste. Once it has been dumped, there is no practical way to tell if it came from an adjacent property or from Seattle. This means that the distinction between local and regional waste is ephemeral and impossible to police.
3. Solid waste is a regional issue. The Skagit County Comprehensive Solid Waste Management Plan is a countywide document, incorporating the interests of the county's several cities. Similarly, the legislature has made solid waste management a state-wide program. See RCW 70.95.020.

Second, the development regulations in all but one zoning district⁶ provide that “[a]dditional requirements related to this zone are found in SCC 14.16.600. . .” Thus, the requirement that SWHFs be permitted as unclassified uses and their restriction to four zoning districts is a part of the development regulations for all but one zoning district.

Third, the county legislature has provided that certain types of SWHFs are allowed as permitted and special uses in several zoning districts. These same zoning districts also allow major and minor utility developments. For example:

In the NRI zoning district, minor utility developments, major utility developments and asphalt or concrete recycling are permitted as special uses.

In the BR-HI zoning district, minor utility developments, major utility developments solid waste processing, recycling and transfer facilities are permitted as special uses. Outdoor storage of waste materials, another SWHF use, in conjunction with a permitted, accessory, or special use, is an accessory use.

In the H-I zoning district, minor utility developments, major utility developments and asphalt or concrete recycling are permitted as special uses.

When a Mineral Resource Overlay (MRO) overlays area zoned RRc-NRL, Ag-NRL, SF-NRL, or IF-NRL, minor utility developments, major utility developments and asphalt or concrete recycling are permitted as special uses.

In the H-URv, Ag-NRL, and RRc-NRL zoning districts, “farm composting” is a permitted use and minor utility developments and major utility developments are special uses.

⁶ The exception is the Residential (R) zoning district. SCC 14.16.330.

The county legislature obviously decided to distinguish between SWHFs and major and minor utility developments. See *State v. Flores*, 164 Wn.2d 1, 14, 186 P.3d 1038 (2008) (“Another fundamental principle of statutory interpretation is that when the legislature uses different words in statutes relating to a similar subject matter, it intends different meanings.”) There would be no need to specifically identify types of SWHFs that could be permitted as special uses if the county legislature had wanted such uses to be permitted as major or minor utility developments. For example, in the BR-HI zoning district, outdoor storage of waste materials that are “used in conjunction with a permitted, accessory, or special use” is identified as a use distinct from a major utility development. Farm composting “as an incidental agricultural operation to a working farm with no net loss of soil” is identified as a use distinct from a major utility development in the Ag-NRL zoning district.

Following the rule that an interpretation of an ordinance must give effect to the plain meaning of the words used in the ordinance, SWHFs are not subsets of major and minor utility developments because certain types of SWHFs are permitted and special uses in zoning districts that also permit major and minor utility developments. Also see SCC 14.06.020(3) (“Only those uses listed within a given zoning district shall be allowed; provided, that an allowance for a substantially similar use may be granted. However, in no instance shall a use specifically identified in any zoning district be allowed in another zoning district where that use is not specifically listed.”)

Fourth, the common principle of statutory interpretation that more specific ordinances control over general ordinances provides a framework for ranking the definitions, SCC 14.16.600, and specific exceptions to SCC 14.16.600. The specific exceptions for the permitting of designated types of SWHF in certain zoning districts would be the most specific ordinances. If a subtype of SWHF is designated as a permitted or special use in a particular zoning district, then that would control in the event of any conflict with SCC 14.16.600, another use, or a definition. SCC 14.16.600 would be more general than the specific development regulations that designate certain types of SWHFs as permitted and special uses, but more specific than the definitions. If a subtype of SWHF is not designated as a permitted or special use, then it must be permitted under SCC 14.16.600. On the other hand, the definitions for major and minor utility developments, which are a type of use but do not include SWHFs in their definitions, would be the most general. If it were possible to conclude that a SWHF could be a major or minor utility development, then the conflict would be resolved by deferring to the more specific SCC 14.16.600 or specific development regulations for designated SWHF subtypes.

Fifth, the legislative history for the adoption of the Skagit County Unified Development Code, Title 14 SCC, (Ordinance no. 17938, July 24, 2000) clearly establishes that the county legislature intended that, except for specific exceptions, SWHFs be considered as “more substantial public uses [that] will be reviewed through the unclassified permit process in SCC 14.16.600, following the same process as a Comprehensive Plan amendment.” The county legislature expressly intended that such a process “will ensure these more intensive uses are subject to a more thorough scrutiny and review.”

Public Utilities and Uses.

347. A public comment was received that allowing public uses everywhere by special use is not planning, and that at a minimum, public uses should be shown on the Comprehensive Plan map by circles. Major and minor public utilities and facilities are allowed in nearly every zone, with varying levels of review. Most require a special use permit. The Planning Commission does not believe this is an issue of concern.

348. The County has traditionally allowed these uses throughout the County. The fundamental reason for this is that service and operational issues typically demand that public facilities (such as a fire station) or utilities (such as a substation) be located in a particular area. A fire district may need a station at a particular crossroads, and a utility may need a substation at the crossing of utility corridors. Limiting the number of zones in which these types of uses can occur may seriously impair the ability of government agencies to provide required public services, potentially preventing their meeting level of service goals. In some cases, a given utility or government service district may contain only rural or resource zoned areas, without a City or rural business area in which to locate a needed facility. There are so many variables affecting the required locations for various public utilities and facilities that adding a severe location-zoning constraint may cripple the County's ability to provide adequate public facilities. The Planning Commission is not convinced that limiting the number of zones in which these uses can occur will improve rural character or protect rural residences from intrusive uses. The current UDC allows for public uses through the public use zone. Currently, if a public use is desired, a rezone to the public use zone is made. Typically, these rezones are granted where public uses are needed and are conditioned as part of the approval. The end result is not significantly different than through the newly proposed process of utilizing the special use process.

349. As stated above, the existing code allows these uses in all zones with a special use permit, meaning that these uses currently exist throughout the County and are a part of its existing rural character. **Fire stations, substations, schools, and water treatment facilities are part of the everyday rural environment. The Planning Commission acknowledges that the special use process will provide the opportunity to place conditions on these uses to ensure they are compatible with adjacent residences. In the case of more substantial public uses, these uses will be reviewed through the unclassified use permit process in SCC 14.16.600, following the same process as a Comprehensive Plan amendment. This will ensure these more intensive uses are subject to more thorough scrutiny and review.**

Unclassified Uses.

350. A new land use permit category, unclassified uses, is being created through this action. This category addresses more intensive uses that are the special use review process, which is inadequate to cover. There is an identifiable need for this sort of process. Based on GMA, counties must now plan for “essential public facilities.” While some of these facilities are not particularly intensive in nature (such as group homes), and will be regulated through the special use process; others are very large and intense (such as a regional landfill, college, or a correctional facility). In addition to the more intense essential public facilities, there are other types of uses (such as regional race tracks or stadiums), which may be appropriate in a certain context, but only if certain criteria and issues are addressed. These types of uses have the potential for quite significant impacts, and in many cases, may not be appropriate in a given location or even within Skagit County. Because of this, a more thorough review process is needed to address these issues with stringent criteria and more extensive public input.

351. A number of the listed unclassified uses are currently allowed as special uses within the existing code, including correctional facilities, power generation facilities, solid waste disposal sites, and race tracks. These uses will now have to be considered based on the more thorough process required for unclassified uses.

352. The approval criteria are quite extensive and will ensure these major uses are evaluated in the most thorough fashion. For example: compatibility, health, safety and welfare, traffic, facilities and services must be addressed; in addition, there must be no better feasible alternative site; and for state-owned facilities, there must be a demonstrable need for the facility. These criteria and others will ensure that the facilities are fully reviewed for their possible impacts on the rural environment and whether they are, in fact, appropriate to the rural area. In addition, facilities within Natural Resource Lands will have to meet the criteria requiring that impacts on Natural Resource Lands are minimized. The requirement that these uses be reviewed pursuant to a Comprehensive Plan amendment review process will ensure that the public is fully involved and that the review process is open to complete review by all applicable parties.

Ordinance no. 17938 (Attachment A at 63-64)⁷ (emphasis added.)

⁷ Attachment A to Ordinance no. 17938 is the Recorded Motion and Supplemental Findings of the Skagit County Planning Commission. With some exceptions and additions not pertinent here, the Recorded Motion was adopted by the county legislature as its Findings of Fact in support of the amendments to the county’s development code. See Ordinance no. 17938 at 2 (“Whereas, the Board of County Commissioners, after review and deliberations, adopts the Findings of Fact of the Planning Commission’s Recorded Motion [*Attachment A*], except for Findings 65, 66, 341 and 394, and further, after review and deliberations, adopts additional Findings [*Attachment B*] and supplemental findings [*Attachment C*], addressing the final adoption of these actions by the Board of County Commissioners[.]”)

In Ordinance no. O20090002, the county legislature confirmed that the classification of SWHFs as major or minor utility developments “bypass[ed] the more specific intent of SCC 14.16.600 that SWHFs be restricted to four commercial zoning districts and be processed as a Comprehensive Plan amendment.” (A later legal interpretation found that the definitions for major and minor utility developments were general ordinances when compared to SCC 14.16.600’s more specific intent that SWHFs be treated as unclassified uses.) Thus, Ordinance no. O20090002 stands as a county interpretation that major and minor utility developments did not encompass SWHFs. Nothing in the amendments adopted under Ordinance no. O20090010 changes the longstanding intent of the county legislature that, unless a category of SWHF is specifically identified as a permitted or special use, a SWHF must be permitted as an unclassified use.

Persons may be able to point to examples where the development regulations for SWHFs have been misapplied in the past. A manure digester permitted as a special use under PL08-0075 may be one example. It does not appear that anyone considered SCC 14.16.600 when reviewing that application and the manure digester was erroneously deemed to be a major utility development. However, with respect to SWHFs, the manure digester may have qualified to be permitted outright as a manure composter. See SCC 14.16.400(2)(f) (“Individual or multiple farm composting as an incidental agricultural operation to a working farm with no net loss of soil.”) If not, the county is not bound to repeat permitting errors.

IV. Conclusion.

The development regulations addressing the permitting of SWHFs are not ambiguous. The plain language of the definitions, development regulations for the several zoning districts, and SCC 14.16.600 establish that SWHFs must be permitted as unclassified uses unless specifically designated by a development regulation as a permitted or special use. This finding tracks fully with common principles of statutory interpretation, SCC 14.16.020(3), the cited GMA decisions, and legislative history.

It may be that SWHFs should be broken down into additional subtypes that could be permitted as permitted or special uses in additional zoning districts. If so, amendments to the permitting requirements for SWHFs will be addressed, if necessary, by a more comprehensive review of needs, compatibilities, siting requirements, etc. If necessary, this more comprehensive review is expected to be undertaken and completed by the date of the county’s next GMA update under RCW 36.70A.130, if not sooner. However, until the code is amended, all SWHFs, other than those specifically identified as permitted or special uses in specific zoning districts, shall be permitted as unclassified uses.

Based on the above, applications for SWHFs will be reviewed as follows:

1. If the proposed SWHF is identified as a permitted use for the zoning district where it will be developed, the developer need not submit an application for or obtain a land use permit for the use⁸.

⁸ Other permits through the Planning and Development Services Department or other County Departments may still be required.

2. If the proposed SWHF is identified as a special use for the zoning district where it is proposed, the developer shall apply for and obtain the appropriate special use permit⁹ prior to any site development or operations.

3. If the proposed SWHF is not identified as a permitted or special use for the zoning district where it is proposed, but is to be located in a zoning district listed under SCC 14.16.600(2)(d), the developer shall apply for and obtain an unclassified use permit under SCC 14.16.600¹⁰ prior to any site development or operations.

See Attachment A for a current list of types of SWHFs and permissible zoning districts.

Given the legislative history and clear language of the relevant development regulations, a blanket exception for all types of SWHFs is not appropriate. However, developers may request an administrative interpretation that their proposed development is similar to a permitted or special type of SWHF in the zoning districts listed in Attachment A. See SCC 14.16.020(3), SCC 14.06.040.

In the absence of an administrative interpretation under SCC 14.06.040 that a use is substantially similar to a listed use, if a proposed SWHF is not identified as a permitted, special, or unclassified use in the proposed zoning district, permitting staff will not accept an application to permit the SWHF.

This administrative interpretation 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 processing of applications for SWHFs.

Notice of this administrative interpretation will be provided to permitting staff, published in a newspaper of record, will be posted on Skagit County's public website. 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



Gary R. Christensen, AICP

⁹ Additional permits through the Planning and Development Services Department or other County Departments may also be required.

¹⁰ Additional permits through the Planning and Development Services Department or other County Departments may also be required.

Attachment A:

Permitting levels and zoning districts for SWHFs:

| <u>SCC</u> | <u>District</u> | <u>permitted use types</u> | <u>special use types</u> | <u>unclassified use</u> |
|------------|------------------|------------------------------|---|-------------------------|
| 14.16.160 | NRI | | Asphalt/concrete recycling | |
| 14.16.175 | H-I | | Asphalt/concrete recycling | |
| 14.16.180 | BR-LI | | | SWHF |
| 14.16.190 | BR-HI | Outdoor storage ¹ | Processing/recycling/transfer | SWHF ² |
| 14.16.385 | H-URv | Farm composting | Asphalt/concrete recycling ³ | |
| 14.16.400 | Ag-NRL | Farm composting | Asphalt/concrete recycling | |
| 14.16.410 | IF-NRL | | Asphalt/concrete recycling | |
| 14.16.420 | SF-NRL | | Asphalt/concrete recycling | SWHF |
| 14.16.430 | RRc-NRL | Farm composting | | SWHF ⁴ |
| 14.16.440 | MRO ⁵ | | Asphalt/concrete recycling | |

Zoning districts where SWHFs are not permitted:

| <u>SCC</u> | <u>District</u> |
|------------|-----------------|
| 14.16.100 | RVC |
| 14.16.120 | RFS |
| 14.16.140 | SSB |
| 14.16.155 | BR-CC |
| 14.16.195 | URC-I |
| 14.16.210 | AEO |
| 14.16.220 | A-UD |
| 14.16.240 | LC-UD |
| 14.16.310 | RVR |
| 14.16.330 | R |
| 14.16.350 | BR-URv |
| 14.16.380 | HR |
| 14.16.500 | OSRSI |
| 14.16.110 | RC |
| 14.16.130 | SRT |
| 14.16.150 | RB |
| 14.16.170 | RMI |
| 14.16.200 | AVR |
| 14.16.215 | BR-UGA |
| 14.16.230 | MV-UD |
| 14.16.300 | RI |
| 14.16.320 | RRv |
| 14.16.340 | BR-R |
| 14.16.370 | URR |
| 14.16.450 | URP-OS |

¹ Outdoor storage of waste materials must be related to a permitted, accessory, or special use.

² Uses identified as permitted, accessory, or special use in this zoning district would not need an unclassified use.

³ Asphalt/concrete recycling is a special use in the RRc-NRL, Ag-NRL, SF-NRL, and IF-NRL zoning districts when the zone has been designated MRO.

⁴ Uses identified as permitted or special uses in this zoning district would not need an unclassified use.

⁵ The MRO only applies when allowed in the RRc-NRL, Ag-NRL, SF-NRL, and IF-NRL zoning districts.