



Planning & Development Services

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office 360-416-1320 ▪ pds@co.skagit.wa.us ▪ www.skagitcounty.net/planning

Supplemental Staff Report

From: Stacie Pratschner, AICP - Senior Planner

Re: Permitting of Non-Motorized Trails in the Industrial Forest – Natural Resource Lands (IF-NRL)
Zoning Designation

Date: July 25, 2017

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Summary

Skagit County Planning & Development Services (PDS) proposes to modify Skagit County Code (SCC) Chapter 14.16.410: Industrial Forest – Natural Resource Lands (IF-NRL) to allow the construction of non-motorized trails to be an outright permitted use (no County permit required). SCC 14.16.410(4)(g) currently designates trails as being allowed in that zone pursuant to a Level I administrative special use development permit. This proposed change would only apply to non-motorized trails within the IF-NRL zoning designation. Proposals for primary and secondary trailheads will still be processed as Level I administrative special uses requiring a Notice of Application and public comment period pursuant to SCC 14.06.150.

PDS issued a staff report and proposed changes to Title 14 on July 17, 2017 (**Attachments 1 and 2**). The supporting SEPA materials including the SEPA checklist are available at <https://fortress.wa.gov/ecy/separ/Main/SEPA/Record.aspx?SEPANumber=201703739>. This supplemental staff report is being issued in advance of the August 1, 2017 public hearing in order to present the public comments received to date. Only one public comment letter has been received as of the writing of this staff report (**Attachment 3**) and is discussed in the following section. Comments received after the issuance of this report and prior to the public hearing on August 1, 2017, will be submitted into the record at the hearing for the Planning Commission’s consideration.

Public Comment

The following list provides a summary of concerns submitted by the single commenter concerning this proposed code amendment (**Attachment 2**):

- The appropriateness of a code amendment versus a site-specific variance;
- The cumulative impact on working forest land due to the installation of non-motorized trails;
- Fire danger, emergency services, and property-owner liability;
- Conversion activities versus forest practices.

SCC 14.08.020(6) authorizes the Board of County Commissioners (BOCC) to initiate the process of amending development regulations at any time. On July 11, 2017, the BOCC authorized PDS to initiate the subject code amendment and add it to the 2017 Work Program. The proposed amendments to the code are in response to a mountain bike trail system project on North Mountain that crosses over the Snohomish County line into Skagit County. The Washington State Department of Natural Resources (DNR), the City of Darrington, and Snohomish County have been coordinating the installation of trails for the project since 2015. The first portion of the trail system in Snohomish County is now open to the public (<http://www.dnr.wa.gov/DarringtonMTB>).

SCC 14.24.110(4) requires that a six-year development moratorium as defined by RCW 76.09 be placed on a property that has been granted a Class I, II, III or IV-special forest practices permit by the DNR. SCC 14.16.410(4) states that an administrative special use development permit is required to install a trail in the IF-NRL zone. The code is currently constructed so that a landowner engaged in timber management may not be granted a development permit for six years after beginning forest practices. Because the construction of a trail is not defined as an act of forest conversion (a Class IV-General Forest Practices Application) by the DNR pursuant to the WAC 222-16-050, the goal of the proposed amendment to allow trails as an outright permitted use in the IF-NRL zone is to provide a property owner the opportunity to offer public recreation on their land while not precluding their ability to conduct timber harvesting.

RCW 4.24.410 states that public and private landowners who allow members of the public to use their property for outdoor recreation (without a fee) are not liable for injuries to such users.

Findings and Conclusions

1. Compliance with the State Environmental Policy Act (Chapter 97-11 WAC and SCC Title 16):

- Staff prepared an environmental checklist for the proposed code revisions, dated July 14, 2017.
- The SEPA official issued a threshold Determination of Non-Significance (DNS) on July 17, 2017.
- No agency comments have been received as of the writing of this report. One public comment has been received as of the writing of this report.

Conclusions – The proposed code amendment will meet local and State SEPA requirements at the conclusion of the comment period on August 1, 2017.

2. *Procedural Compliance with the Growth Management Act (RCW 36.70A.106):*

- The County requested expedited review from the Department of Commerce on July 17, 2017.
- The County must obtain approval from the Department of Commerce prior to adoption by the Board of County Commissioners.
- Staff will file the ordinance with the Department of Commerce within 10 days of the County Commission's action.

Conclusions – The proposed code amendment will meet the Growth Management Act requirements.

3. *Public Notice and Comments*

- The County published a Notice of Application, Public Comment, and SEPA threshold determination in the Skagit Valley Herald on July 17, 2017.
- The County posted the staff report, public notice, and threshold determination on the County website on July 17, 2017.
- No agency comments have been received as of the writing of this staff report. One public comment has been received as of the writing of this staff report.

Conclusions – The County has met the public noticing requirements per SCC 14.08.070.

Recommendation

Skagit County PDS recommends adoption of the proposed code amendment to allow trails as an outright permitted use in the Industrial Forest – Natural Resource Land (IF-NRL) zoning designation.

For More Information

Please visit the project website at www.skagitcounty.net/planning.

Attachments List:

1. Staff report, dated July 14, 2017
2. Proposed edits to SCC 14.16.410, dated July 14, 2017
3. Comment letter from Friends of Skagit County Board, received via email on July 24, 2017



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Staff Report

From: Dale Pernula, AICP, Director

Re: Permitting of Non-Motorized Trails in the Industrial Forest – Natural Resource Lands (IF-NRL)
Zoning Designation

Date: July 14, 2017

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Summary

Skagit County Planning & Development Services proposes to modify Skagit County Code Chapter 14.16.410: Industrial Forest – Natural Resource Lands (IF-NRL) to allow the construction of non-motorized trails to be an outright permitted use (no County permit required). SCC 14.16.410(4)(g) currently designates trails as being allowed pursuant to a Level I administrative special use development permit.

This proposed exemption would only apply to non-motorized trails within the IF-NRL zoning designation. Proposals for primary and secondary trailheads will still be processed as Level I administrative special uses requiring a Notice of Application and public comment period pursuant to SCC 14.06.150.

Skagit County has requested expedited review from the Washington State Department of Commerce, and reached out to partner SEPA agencies and community stakeholders for environmental and Growth Management Act (GMA) review of this non-project legislative action.

Background

The purpose of the IF-NRL zoning district pursuant to SCC 14.16.410 is to ensure that forest lands of long term significance are conserved and managed in order to provide jobs, ecological value, and contribute to the commercial forest industry of Skagit County. The IF-NRL zone also provides allowances for recreational uses, such as providing access to historic sites for the public, primitive camping, and the establishment of trails and trailheads. Staff proposes to allow the establishment of non-motorized trails

as an outright permitted use in the IF-NRL zone in order to mitigate conflict between public recreational opportunities and on-going commercial forestry.

Analysis and Consistency

The permitting of non-motorized trails in the Industrial Forest – Natural Resources Land (IF-NRL) zoning designation is consistent with the following State and local policies and regulations:

- The construction of a trail is not considered an act of forest conversion (a Class IV – General Forest Practices Application) by the Washington State Department of Natural Resources (DNR) and pursuant to the WAC 222-16-050.
- Policy 4B-5.4 in the Natural Resource Lands Element of the Skagit County Comprehensive Plan permits recreational opportunities on Forest Resource land when they are not in conflict with forest practice activities or when the impacts can be fully mitigated. The construction of trails is not categorized as a forest conversion activity by the DNR, and does not preclude the surrounding land from being utilized for commercial forestry.
- The development of a primary or secondary trailhead as defined by SCC 14.04.020 will still require a Level I administrative special use permit and be subject to the public noticing requirements of SCC 14.06.150, the performance standards of SCC 14.16.840, and all applicable elements of Titles 14 and 16, including but not limited to SEPA, stormwater mitigation, critical areas review, and concurrency.

Recommendation

Skagit County PDS recommends adoption of the proposed code amendment to allow trails as an outright permitted use in the Industrial Forest – Natural Resource Land (IF-NRL) zoning designation.

The Public Process

Public Notices

Skagit County published a Notice of Availability for this proposal on July 17, 2017.

SEPA Threshold Determination

The Skagit County SEPA Responsible Official has issued a Determination of Non-Significance for this non-project legislative proposal.

Public Comment

The proposal will receive at least one public hearing and written comment period before the Planning Commission, consistent with the process for adoption of land use regulations in SCC Chapter 14.08. The Board of County Commissioners must approve the final adoption.

For More Information

Please visit the project website at www.skagitcounty.net/planning.

Public Comment DRAFT 07/14/2017 Proposed Development Regulations

Plain text = existing code with no changes
Strikethrough = existing code to be deleted
<u>Underlined</u> = new code to be added
Double Strikethrough = existing code moved to another location
<u>Double Underline</u> = existing code moved from another location
<i>Italics</i> = instructions to code reviser
[Bracketed] = options for public comment

Skagit County Code Chapter 14.16: Zoning

14.16.410 Industrial Forest – Natural Resource Lands (IF-NRL)

- (1) Purpose. *No change.*
- (2) Applicability. *No change.*
- (3) Permitted Uses. *No change.*
 - (a) through (q). *No change.*
 - (r) Non-motorized trails.
- (4) Administrative Special Uses. *No change.*
 - (a) through (f). *No change.*
 - (g) Trails (except non-motorized trails) and primary and secondary trailheads.
- (5) Hearing Examiner Special Uses. *No change.*
- (6) Dimensional Standards. *No change.*
- (7) *No change.*

ATTACHMENT 2

From: [PDS comments](#)
To: [Stacie Pratschner](#)
Cc: [Ryan Walters](#)
Subject: FW: Permitting of Non-Motorized Trails in the Industrial Forest - Natural Resource Lands (IF-NRL) Zoning Designation
Date: Monday, July 24, 2017 8:04:44 AM

FYI

Sincerely,

Kathy Jewell
Administrative Coordinator
Skagit County Planning and Development Services
direct: 360-416-1338
www.skagitcounty.net/planning

From: Ellen Bynum [mailto:skye@cnw.com]
Sent: Friday, July 21, 2017 3:51 PM
To: PDS comments
Cc: FOSC Office
Subject: Permitting of Non-Motorized Trails in the Industrial Forest - Natural Resource Lands (IF-NRL) Zoning Designation

Dear Commissioners and PDS Staff:

Friends of Skagit County opposes the proposed changes to allow non-motorized trails (NMT) within Industrial Forest (IF) zones without County permits.

We understand that the request for this change was initiated by a County Commissioner responding to a request from an adjacent jurisdiction who wishes to continue a trail it is planning to develop (or has already developed) into Skagit County IF lands. While we do not support changing County codes at the request of a single project (spot zoning), we do think that limiting the change to the proposed project is more appropriate than making the change for all IF lands in the county. We understand that the proposal was reviewed and approved by the WA State Dept. of Commerce for GMA compliance. We request the County re-submit the proposal to DOC to determine if limiting the change to a one-time project in one location in IF as part of a cooperative recreation area with Darrington is compliant with GMA.

Under the proposed change, proposed trailheads (primary and secondary) will continue to need permits from PDS, while trails inside the IF will not. We presume this means that the beginning of a trail cannot be developed without a permit, but a trail that has no formal trailhead would be allowed. Does this mean that an IF landowner can apply for a single trailhead permit and then create as many trails as they wish on their property without any permits? Examples might be a mountain bike trail system or horse trails with a single trailhead. At what point does this compromise the use of the land as IF and what are the standards to determine when a conversion has happened? Who, if anyone, monitors the effects of trail developments on forest practices?

While DNR policy has allowed trails in Industrial Forest zones, it is unclear where liability for the use of those trails lies. Is the landowner liable for injuries? Is the user liable for damages

to the land, water or forest? What is the County's exposure in this instance?

It is unclear to us how allowing the establishment of non-motorized trails as an outright permitted use in the IF-NRL zone would "mitigate conflict between public recreational opportunities and on-going commercial forestry". How would not requiring a permit for NMT to allow public recreation opportunities on private IF lands lessen conflict? And how would this change affect those private IF landowners who do not want to develop trails on their lands?

We understand that establishment of NMTs now requires a County permit which presumably allows the County to know the location of such trails, contact information for the property owner and any details which may be important to the provision of emergency services or fire protection. We consider this process to be important for the landowner, trail users the County service providers and the public. Emergency services are more difficult when accidents happen on land (or water) with limited or unclear access.

Without a permit, the public and the County may not know if there is an NMT in IF zone. Absent a requirement to notify adjacent and surrounding landowners, we do not see any advantage to allowing NMT construction without a permit.

The GMA requires identification, protection and preservation of all Resource Lands in Skagit County, including IF lands. Skagit County has identified these lands through the Comprehensive Plan process and created policies and codes to ensure their preservation. These public processes require public notice and provide certainty on the use of the land to both landowners and the public.

Adjacent landowners and the public would not have input or recourse as to the establishment and/or use of these trails. While IF lands are private property and the property owner certainly has the choice of whether to allow trails or not, the public use of these lands for other purposes introduces public liability for their use as well as for oversight and management. There is no requirement for monitoring this use and it is assumed that the property owner would have to provide these services.

The County permit also provides data on the cumulative number and acres of trails in the County. Without permits, how would this data be determined or monitored for evaluating whether Skagit County has actually identified and protected IF - Natural Resource Lands under the Comprehensive Plan and GMA?

Fire hazard from public uses is a liability concern for private landowners. Skagit County Board of County Commissioners passed a clear resolution prohibiting new developments without adequate fire protection. We consider trails to be a development, albeit with less capital investment, and fire protection should be a consideration in development of trails and trailheads.

Please review this proposal and consider these comments in making your decisions. Thank you for your consideration and time.

Yours sincerely,

Ms. Ellen Bynum, Executive Director

cc: Friends of Skagit County Board.

Ms. Ellen Bynum
Executive Director

EB/

cc: FOSC Board members.