



Planning & Development Services

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Planning Commission Deliberations

Supplemental Staff report concerning the 2019 Docket of Comprehensive Plan Policies, Land Use Map, and Development Code Amendments.

To: Skagit County Planning Commission
From: Michael Cerbone, AICP: Assistant Director
Re: 2019 Docket of Comprehensive Plan Policy, Map, and Code Amendments
Date: February 4, 2020

Summary

Planning and Development Services (PDS) is providing this supplemental staff report in advance of the February 11, 2020 Planning Commission Deliberations for the 2019 Comprehensive Plan policies, Land Use map, and Development Code amendments (Docket). The staff report is intended to supplement the Staff Report dated December 11, 2019. This staff report provides written responses to questions asked at the December 17, 2019 meeting. The staff report also provides a summary of the written testimony received by PDS. The staff report also includes more information from Legal Counsel regarding Docket Item P-2.

The previous staff reports, draft maps, citizen comments, public noticing documents, and other supporting materials concerning this year's Docket are available at the following project webpage: www.skagitcounty.net/2019CPA.

Public comments received prior to the closing date are located here:

<https://www.skagitcounty.net/PlanningAndPermit/Documents/2019CPA/PublicComments2019Docket.pdf?ver=2>

Planning Commission Questions (12-17-19)

The Planning Commission requested Staff research the following question at the December 17, 2019 meeting. Each question is set forth below along with a response from PDS staff.

Define a guidance document vs a template (Docket Items P-1 and P-2)?

Staff was asked during the presentation to discuss the difference between a guidance document and a template. The petitioner provided the following explanation of what a “template” is as part of their petition:

The petitioner has requested amendments to SCC 14.24.380 that would require Planning and Development Services to produce a template following guidelines in the Washington Department of Ecology’s Rainwater Harvesting Calculator, the intent is that the template can be used in lieu of an engineer designed system for rainwater catchment.

Staffs’ intent is to work to produce a document that provides guidance for applicants interested in utilizing rainwater harvesting. The intent of the document is to discuss design considerations and the permitting process in more detail. The guidance document is not intended to replace the need to engage an engineer as part of the design and permitting process.

Does an applicant have the ability to utilize a hammerhead design in lieu of a cul de sac, or is it at the discretion of the Fire Marshal (Docket Item C-6)?

Staff discussed this question with the Fire Marshal. It was reported that the applicant has the ability to choose either design.

How are decibels measured, what is the process at permitting and enforcement (Docket Item P-4)?

Sound is measured in a unit referred to as a *decibel*. Decibels are measured by a device often referred to as a *Decibel Reader*. Option 4 identifies a sound threshold utilizing decibels for measurement. This threshold can be applied to a land use application that seeks approval for a use. This threshold can also be used to address

compliance concerns after a land use approval is issued. For reference purposes, a gas chain saw operates at around 110 decibels, a gas lawn mower operates around 100 decibels, a motorcycle operates at about 90 decibels (as heard from 25 feet away), and a garbage disposal is around 80 decibels¹.

As part of a land use review, the County would require the applicant to model the sound from a particular use or development action that may violate this standard. This provides the ability to identify specific impacts before they occur and preclude them from happening or mitigate the impact.

The County has limited resources to respond to sound complaints. If a complaint is received regarding a use or activity that is subject to a decibel threshold, it is possible to utilize a Decibel Reader to measure the noise level. Measuring sound and enforcing against violations is difficult. The Decibel Reader needs to be properly maintained and calibrated and operated by a person trained in its use. If a decibel reader is employed within the field to determine impacts on a nest site, those measurements would be taken as close to the nest site as possible.

Can we have a map of nesting sites with proposed buffers from Option 3 and 4? (Docket Item P-4)

Staff has prepared maps which is attached to this staff report and is located here:

https://www.skagitcounty.net/PlanningAndPermit/Documents/2019CPA/Blue%20Heron%20Roost%20Buffer%20Maps_2020-01-13.pdf

Was the landowner (the petitioner for PL18-0404) notified of the proposed MRO as part of the process to designate the overlay? (Docket Item PL18-0404)

In 2006 a letter was sent to property owners providing them notice that the MRO was proposed on their property (the petitioner for PL18-0404). The letter included a link to where information concerning the proposal was stored on the County's website. The letter also included detailed instructions on how to locate the map of the proposed MRO on the website. The letter provided more than 7 weeks to review the proposal

¹ Reference for decibels levels taken from <https://www.industrialnoisecontrol.com/comparative-noise-examples.htm>

and provide written comment and more than 3 weeks to prepare testimony for the public hearing. Two staff members were identified to assist with questions.

Summary of Written Comments Received for 2019 Docket

P-1 Rainwater Catchment: The County received 28 comments on this docket item. All of the comments received supported the petition.

P-2 Guemes Island Wells: The County received 29 comments on this docket item. All of the comments received supported the petition.

P-4 Great Blue Herons: The County received 30 comments on this docket item. 29 comments in support of the petition and one comment in opposition. The Forest Advisory Board (FAB) provided written comments for P-4. The FAB does not support the petitioner or staff recommendation, they would like to see additional research completed prior to implementing a site specific approach that is implemented as an Administrative Special Use (level 1 review).

PL18-0404 Mineral Resource Overlay Removal: The County received three (3) comments on this docket item. Two (2) support of the petition and one (1) is in opposition. The Forest Advisory Board (FAB) provided written comments for PL18-0404. The FAB supports staffs' recommendation.

C-4 Trails in OSRSI: The County received four (4) comments on this docket item. Three comments supported keeping trails as an Administrative Special Use. The Forest Advisory Board (FAB) provided written comments for C-4. The FAB identifies the desire to have property owners adjacent to the trails be provided notice and to not classify trails in the OSRSI as outright permitted.

C-5 Habitat Restoration: The County received twelve (12) comments on this docket item. Ten (10) comments are in support of the staff recommendation. The Ag Advisory Board provided written comments for C-5 Habitat Restoration requesting that Rural Intermediate (RI) and Rural Resource – Natural Resource Lands (RRc-NRL) also require a Hearings Examiner Special Use Permit Review. The FAB provided written comments for C-5. The FAB provided written comments for C-5 Habitat Restoration requesting that Industrial Forest – Natural Resource Lands (IF-NRL) and Secondary Forest – Natural Resource Lands (SF-NRL) also require a Hearings Examiner Special Use Permit Review.

P-2 Guemes Island Wells: Additional Information from Legal Counsel

There have been recent inquiries about Skagit County's legal opinion regarding this application. The Department cannot disclose attorney-client communications or attorney work product. However, the Department can generally explain the County's current code and authority regarding well regulation. Skagit County Code ("SCC") 14.24.380(2)(a) regarding seawater intrusion areas currently requires "an application proposing use of a well" to be "submitted for

review prior to drilling any new well.” These requirements were adopted to protect critical areas and limit impacts to aquifer recharge areas as required under the Growth Management Act.

RCW 18.104.043 also requires a property owner or the owner’s agent to notify the Washington Department of Ecology of their intent to begin well construction, reconstruction, or decommissioning procedures at least 72 hours prior to commencing work. At this time, Ecology does not share this information with the County. Furthermore, SCC 12.48.090 requires “well site approval for an individual water system.” Pursuant to SCC 12.48.110(5), **“connecting an individual water system to another water system or water source without approval is prohibited.”** Therefore, if a well runs dry and a replacement well is proposed for an existing development, the property owner must obtain approval from Skagit County to use a new well for drinking water.

If a well is illegally installed associated with a development without County approval, then the County could issue a Stop Work Order and require the applicant to submit the required information and take specific actions to come into compliance. Penalties could also be issued by the County. The County will not investigate a code violation unless a written complaint is submitted.

It appears that the applicant (GIPAC) desires the County to change the code to require a permit for all wells installed on Guemes Island regardless of whether they are associated with development. This could involve irrigation wells and investigative wells. Skagit County does not have the authority to regulate wells unrelated to a development application because groundwater is owned by the State and managed by the Washington Department of Ecology. While Ecology is responsible for appropriation of groundwater by permit under RCW 90.44.050, the County is responsible for land use decisions that affect groundwater resources. Accordingly, the County cannot regulate well installations outside of the development context because the County does not have jurisdiction to do so.

While a code change is not appropriate at this time, further education and outreach is recommended to educate the communities within the seawater intrusion areas of the County about the special well notice requirements related to development in these areas, which could include:

- Educational outreach campaign-- letters to residents and well drillers.
- Department could attend community meetings to educate residents
- Department could ask Ecology to share the notices of intent it receives in the seawater intrusion areas so that the County could pursue enforcement.