



Planning & Development Services

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Memorandum

To: Planning Commission
From: Tara Satushek, Sr. Planner
Date: September 3, 2024
Re: Major Electrical Utility Developments on Ag-NRL zone land

Summary

This staff report is being issued in advance of the work session scheduled with the Planning Commission on September 10, 2024. The proposal would amend SCC 14.16.400(4)(h) to exclude on Ag-NRL zoned land electrical generation and/or storage facilities from the major utility developments permitted with a hearing examiner special use permit. Skagit County has long maintained a strong policy of protecting agricultural land for agricultural uses, and this proposal furthers that policy by not allowing major utility developments for the generation and/or storage of electrical power on agricultural land. As such the Department recommends the Planning Commission **approve** the proposed amendment.

Background

[SCC 14.040.020](#) defines three kinds of 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 is not a minor utility development or a major regional utility development.
- (3) Major regional utility development:** a utility development that is designed to serve a region.

Recently the Administrative Official has issued three Administrative Official Interpretations on how to properly define electrical utility developments. See [AOI 2024-02](#) (Cloudbreak: solar electricity generation facility); [AOI 2023-02](#) (Sounder: battery energy storage system); [AOI 2023-01](#) (Goldeneye: battery energy storage system). Each AOI has concluded the contemplated development would be defined as a major utility development.

Each of the developments was proposed to be sited on Ag-NRL land. While a major utility development can be permitted on Ag-NRL with a hearing examiner special use permit, to obtain the

SUPs the applicant must establish that “there is no other viable parcel or non-agricultural designated land to serve the affected area.” [SCC 14.16.400\(4\)\(h\)](#). This question was not considered in the AOIs and thus no discussion or decision was made related to the proper siting of utility developments. The AOIs just answered the preliminary question of whether a permit would be considered as a major utility development under [SCC 14.16.400\(4\)\(h\)](#). Nevertheless, the Goldeneye project has filed an application with the Washington Energy Facility Siting Evaluation Council (EFSEC) and [has argued](#) its AOI constitutes certificate of compliance with the County’s land use regulations.

The three applications for AOI and Goldeneye’s EFSEC application show there is substantial interest in developing lands zoned Ag-NRL for electrical generation and storage. It is not clear that the EFSEC process will scrutinize the conversion of ag-land to the degree required by the County Code and Comprehensive Plan.

Analysis

The proposal is to amend [SCC 14.16.400\(4\)\(h\)](#) to exclude electrical generation and/or storage as utility developments that can apply for a hearing examiner’s special use permit:

(h) Major utility developments, excluding those involving the generation and/or storage of electricity, where there is no other viable parcel or non-agricultural designated land to serve the affected area. Analysis of alternatives to the development of the utility in the natural resource land must be provided.

This Code amendment will effectively prohibit electrical major utility developments on Ag-NRL zoned land. This will help prevent the unnecessary conversion of agricultural land. This proposed amendment would not affect permitting of minor utility developments, which require a administrative SUP, [SCC 14.16.400\(3\)\(g\)](#), nor net metering systems allowed under [SCC 14.16.400\(3\)\(t\)](#).

Consistency

Consistency Review with SCC chapter 14.08

1. Is the amendment consistent with the vision statements, goals, objectives, and policy directives of the Comprehensive Plan and the does the proposal preserve the integrity of the Comprehensive Plan and assure its systematic execution?

This amendment is consistent with the [Comprehensive Plan](#) as shown by the following parts of the Plan:

- **Vision Statement | Major Themes:** Protect and conserve agriculture, forest and mineral resource lands: Natural resource lands, such as farms and timber lands, provide economic, social, cultural and environmental benefits. This plan ensures that these areas, including mineral resource lands, continue to be viable today and into the future.

- **Goal 4A Agricultural Resource Lands.** Agricultural Resource Lands are those lands with soils, climate, topography, parcel size, and location characteristics that have long-term commercial significance for farming. Skagit County is committed to preserving and enhancing the agricultural land base and promoting economic activities and marketing support for a strong agricultural industry. The agricultural community faces significant challenges in preserving the agricultural land base and a viable agricultural industry, including: conversion of agricultural lands to development and inappropriate habitat restoration; conflict with neighboring residential uses; drainage impacts; and other disruption of agricultural lands functions and values. The following policies are intended to ensure the stability and productivity of agriculture in Skagit County.
- **Guiding Principles:** Agricultural Resource Lands: Protect the agricultural land resource and farming in Skagit County; endeavor to minimize the loss of the resource; mitigate unavoidable losses; and replace lost resources whenever possible. These principles shall guide Skagit County’s actions to:
 - Preserve agricultural land for agricultural uses;
 - Limit new non-agricultural uses and activities on agricultural resource lands;
 - Provide education and support services that maintain the farming industry and lifestyle;
 - Promote the economic benefits of farming;
 - Resolve conflicts between agricultural and environmental objectives; and
 - Monitor the long-term achievement of the goals and policies
- **Goal 4A-3:** Promote preservation of agricultural land for agricultural uses, minimize non-farming uses on agricultural lands; and develop incentive programs to promote farming.
- **Goal 4A-4:** Land uses allowed on designated agricultural land shall promote agriculture, agricultural support services, and promote diverse agricultural industries.

2. Is the proposal supported by the Capital Facilities Plan (CFP) and other functional Plans?

The proposal is not affected by, nor does it affect, the Capital Facilities Plan or other functional plans.

3. Is the proposal consistent with the Growth Management Act (GMA), the Countywide Planning Policies (CPPs), and applicable provisions of the Comprehensive Plan?

The following GMA Planning Goals are applicable:

- **RCW 36.70A.020(8) Natural Resource Industries:** Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.
- **RCW 36.70A.020 Economic Development:** Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic

opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

The following [Countywide Planning Policies](#) are applicable:

- **CPP 5.8:** Agriculture, forestry, aquatic resources and mineral extraction shall be encouraged both within and outside of designated resource lands
- **CPP 5.11:** Skagit County shall conserve agriculture, aquaculture, forest and mineral resources for productive use by designating natural resource lands and aquatic resource areas, where the principal and preferred land uses will be long term commercial resource management.
- **CPP 8:** Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses
- **CPP 8.9:** Skagit County shall conserve agricultural, aquatic based, forest and mineral resources for productive use by designating natural resource lands and aquatic resource areas where the principal and preferred land uses will be long-term commercial resource management.

4. Does the proposal bear a substantial relationship to the public general health, safety, morals, or welfare?

Yes. The proposed amendment will protect the safety and welfare of the public by ensuring agricultural lands are not subject to inappropriate conversion for major electrical utility developments. This will help ensure the long-term viability of Skagit County's agricultural economy.

Recommendation

The Department recommends adoption of the proposal.

Public Notices

Notice of public meetings was provided via the Skagit County Planning & Development Services listserv and on the County's website.

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. The anticipated schedule is as follows:

Meeting Date	Topic Area
September 10, 2024	Intro to major electrical utility development in Ag-NRL amendment
October 8, 2024	Public Hearing to take citizen comments & testimony
October 8, 2024	Planning Commissioner Deliberations

SEPA Threshold Determination

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

Public Comment

Option 1: Email comments are preferred and must be sent to pdscomments@co.skagit.wa.us with the proposal name “Major electrical utility developments on Ag-NRL lands” in the subject line. Please include your comments in the body of your email message rather than as attachments.

Option 2: Paper comments must be printed on 8½x11 paper and mailed or delivered to:

Planning and Development Services
 Comments on “Major electrical utility developments on Ag-NRL lands”
 1800 Continental Place
 Mount Vernon WA 98273

All comments must be received by Tuesday, October 8, 2024, at 4:30 p.m. and include your full name and mailing address. Comments not meeting these requirements will not be considered.

Option 3: You may also comment in person. The Planning Commission is hosting the public hearing in the Skagit County Commissioners Hearing Room at 1800 Continental Place, Mount Vernon, WA 98273.

If you wish to provide testimony via the online meeting option, please send an email to pdscomments@co.skagit.wa.us, with your name, phone number, and include a request to be added to the speakers list in the body of the email. All requests must be received 24 hours prior to the Public Hearing Date referenced above. Public hearing testimony is usually limited to three minutes, so written comments are preferred.

Anyone who plans to attend the public hearing and has special needs or disabilities should contact Planning and Development Services at (360) 416-1320 at least 96 hours before the hearing to discuss and arrange any special accommodations.

Attachment 1 – Redline Code Amendments SCC 14.16.400

2024 Amendments re Utilities on Ag-NRL zones—DRAFT

Plain text = existing code with no changes

~~Strikethrough~~ = existing code to be deleted

Underlined = new code to be added

~~Double Strikethrough~~ = existing code moved to another location

Double Underline = existing code moved from another location

Italics = Instructions for code reviser/reviewer

Markup DRAFT August 26, 2024

Chapter 14.16 Zoning

Chapter 14.16 Zoning

14.16.400 Agricultural—Natural Resource Lands (Ag-NRL).

(1) – (3) *No change*

(4) Hearing Examiner Special Uses.

(a) – (g) *No change*

(h) Major utility developments, not including those involving the generation and/or storage of electricity, where there is no other viable parcel or non-agricultural designated land to serve the affected area. Analysis of alternatives to the development of the utility in the natural resource land must be provided.

(i) – (o) *No change*

(5) – (7) *No change*