



PLANNING & DEVELOPMENT SERVICES

DALE PERNULA, AICP, DIRECTOR

JACK MOORE

Building Official & Floodplain Manager

Memorandum

To: Planning Commission
CC: Board of County Commissioners
From: Dale Pernula, AICP
Date: February 26, 2013
Re: Update on Planning and Land Use Legislation Ordinance

PC Comment Draft

We have drafted new language for the Planning and Land Use Legislation Ordinance based on the Planning Commission's comments at your February 8 meeting and based on comments from the public about specific provisions of the ordinance. We have posted two versions of this document to the Planning Commission webpage at www.skagitcounty.net/planningcommission:

- The "February 26 Draft" document shows the new revisions in red and the originally-proposed revisions to current code in purple. Optional text is indicated with brackets.
- The "February 26 Draft – Clean Copy" document shows the new revisions in red. Differences between the proposal and current code are not shown.

Comparison to Planning Enabling Act

As you know, Skagit County established its Planning Commission in 1961 using the Planning Enabling Act ("PEA"), RCW Chapter 36.70. As you heard explained by legal counsel at your February 5 meeting, the PEA is one statutory method of organizing a planning commission. The County's proposed Planning and Land Use Legislation Ordinance would reestablish the Planning Commission without using the PEA, relying instead on the state constitutional provisions and GMA, which the County is required to use to plan. See RCW 36.70A.040.

Some recent public comments have characterized the approach of abandoning on the Planning Enabling Act as an "untested theory." It is not. The whereas clauses in the proposed ordinance cite (1) other state planning statutes, (2) code from other jurisdictions, and (3) case law that demonstrates the soundness of this approach. See also the following provisions of the Planning Enabling Act itself, which make clear that using it is just one of many ways that counties can plan:

- RCW 36.70.930 — “This chapter shall not repeal, amend, or modify any other law providing for planning methods but **shall be deemed an alternative method** providing for such purpose.”
- RCW 36.70.940 — “Any county or counties presently operating under the provisions of chapter 35.63 RCW **may elect to operate henceforth under the provisions of this chapter.**”
- RCW 36.70.547 regarding general aviation airports — “This section applies to every county, city, and town, **whether operating under chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or under a charter.**”

At your February 5 meeting, Commissioner Ehlers requested an analysis comparing the provisions of the PEA to the proposed ordinance to ensure that it addresses each relevant provision of the PEA. I’ve provided the table below demonstrating how PEA sections are addressed in the proposed ordinance. Readers of this document in its electronic form can click the RCW citation to jump to that section on the Legislature’s website.

Some sections are not specifically included in the proposed ordinance because they are outdated, addressed by GMA, not relevant to Skagit County, or addressed by other existing county code provisions. As you can see in the table, there are many sections of the PEA that are replaced by the newer GMA (sometimes verbatim), precisely because counties do not have to plan under the PEA.

Citation	RCW Section Title	Addressed in proposed ordinance
36.70.010	Purpose and intent.	N/A.
36.70.015	Expenditure of funds declared public purpose.	N/A.
36.70.020	Definitions.	N/A.
36.70.025	"Solar energy system" defined.	N/A.
36.70.030	Commission -- Creation.	See proposed SCC 2.80.100 and 14.02.100.
36.70.040	Department -- Creation -- Creation of commission to assist department.	See proposed SCC 14.02.100.
36.70.050	Authority for planning.	See section 4 of proposed ordinance.
36.70.060	Regional planning commission -- Appointment and powers.	N/A. Skagit County does not use a regional planning commission.
36.70.070	Commission -- Composition.	See proposed SCC 14.02.100(4).
36.70.080	Commission -- Appointment -- County.	See proposed SCC 14.02.110.
36.70.090	Commission -- Membership -- Terms -- Existing commissions.	See proposed SCC 14.02.100(5)(c).
36.70.100	Commission -- Vacancies.	See proposed SCC 14.02.110(2).
36.70.110	Commission -- Removal.	See proposed SCC 14.02.110(4).
36.70.120	Commission -- Officers.	See proposed SCC 14.02.120.
36.70.130	Planning agency -- Meetings.	Proposed ordinance does not include this requirement.
36.70.140	Planning agency -- Rules and records.	See proposed SCC 14.02.130(1).
36.70.150	Planning agency -- Joint meetings.	Implicit.
36.70.160	Director -- Appointment.	See proposed SCC 2.80.
36.70.170	Director -- Employees.	See proposed SCC 2.80.
36.70.180	Joint director.	N/A. Skagit County does not have a multi-county planning department.
36.70.190	Special services.	Implicit. BOCC already approves all contracts.

Citation	RCW Section Title	Addressed in proposed ordinance
36.70.200 - 36.70.280	Board of adjustment -- Creation -- Zoning adjutor.	N/A. We do not currently have a Board of Adjustment.
36.70.290	Appropriation for planning agency, board of adjustment.	Implicit.
36.70.300	Accept gifts.	BOCC must approve grant contracts.
36.70.310	Conference and travel expenses -- Commission members and staff.	See proposed SCC 14.02.140.
36.70.315	Public notice -- Identification of affected property.	Understood; see also proposed SCC 14.08.210.
36.70.317	Statement of restrictions applicable to real property.	Implicit and addressed by the Public Records Act, RCW 42.56.
36.70.320 - 36.70.440	Comprehensive plan.	More fully addressed by the Growth Management Act, RCW 36.70A, especially RCW 36.70A.070-.115.
36.70.450	Planning agency -- Relating projects to comprehensive plan.	See proposed SCC 14.08.070(5)(e).
36.70.460	Planning agency -- Annual report.	Not included in proposal; not currently performed.
36.70.470	Planning agency -- Promotion of public interest in plan.	Implicit.
36.70.480	Planning agency -- Cooperation with agencies.	Implicit.
36.70.490	Information to be furnished agency.	Implicit and addressed by the Public Records Act, RCW 42.56.
36.70.493	Manufactured housing communities -- Prohibitions of county due to community status as a nonconforming use.	See existing SCC 14.16.880.
36.70.495	Planning regulations -- Copies provided to county assessor.	Not addressed, but all planning regulations are available on the county website.
36.70.500	Right of entry -- Commission or planning staff.	Implicit and largely governed by Fourth Amendment.
36.70.510	Special referred matters -- Reports.	See proposed SCC 14.02.100(3).
36.70.520	Required submission of capital expenditure projects.	Addressed by GMA Capital Facilities requirements at RCW 36.70A.150.
36.70.530	Relating capital expenditure projects to comprehensive plan.	Addressed by GMA Capital Facilities requirements at RCW 36.70A.120.
36.70.540	Referral procedure -- Reports.	Largely handled by GMA Capital Facilities Plan requirement.
36.70.545	Development regulations -- Consistency with comprehensive plan.	Superseded by GMA 36.70A.040(4).
36.70.547	General aviation airports -- Siting of incompatible uses.	This RCW section would continue to apply even after adoption of proposed ordinance.
36.70.550 - 36.70.640	Official controls.	See proposed SCC 14.08.060 -.090.
36.70.670	Enforcement -- Official controls.	See existing SCC Chapter 14.44.
36.70.675	Child care facilities -- Review of need and demand -- Adoption of ordinances.	This section directs actions that were due in 1991.
36.70.677	Accessory apartments.	Applied via RCW 36.70A.400.
36.70.678	Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections -- Mediation prior to appeal required.	Not incorporated into proposal.

Citation	RCW Section Title	Addressed in proposed ordinance
36.70.680	Subdividing and platting.	Addressed by subdivision statute, RCW 58.17.
36.70.690	County improvements.	Addressed by prohibition on gifts of public funds.
36.70.695	Development regulations -- Jurisdictions specified -- Electric vehicle infrastructure.	Applied via RCW 36.70A.695.
36.70.700	Planning agency -- Time limit for report.	Not incorporated into proposal.
36.70.710	Final authority.	See proposed SCC 14.08.080 and .090.
36.70.720 - 36.70.750	Prerequisite for zoning.	Superseded by GMA, which requires all planning elements for all areas of the county, and requires a countywide map.
36.70.755	Residential care facilities -- Review of need and demand -- Adoption of ordinances.	This section directs actions that were due in 1991.
36.70.757	Family day-care provider's home facility -- County may not prohibit in residential or commercial area -- Conditions.	Superseded by GMA at RCW 36.70A.450.
36.70.760	Establishing zones.	All areas are already mapped.
36.70.770	All regulations shall be uniform in each zone.	Not specifically addressed.
36.70.780	Classifying unmapped areas.	All areas are already mapped.
36.70.790	Interim zoning.	See existing SCC 14.08.100.
36.70.795	Moratoria, interim zoning controls -- Public hearing -- Limitation on length.	See existing SCC 14.08.100.
36.70.800	Procedural amendments -- Zoning ordinance.	Addressed by GMA.
36.70.810 - 36.70.900	Board of adjustment -- Authority.	Skagit County does not use a Board of Adjustment or Zoning Adjustor.
36.70.910	Short title.	N/A.
36.70.920	Duties and responsibilities imposed by other acts.	N/A.
36.70.930	Chapter alternative method.	N/A.
36.70.940	Elective adoption.	N/A.
36.70.970	Hearing examiner system -- Adoption authorized -- Alternative -- Functions -- Procedures.	See existing SCC 14.02.070.
36.70.980	Conformance with chapter 43.97 RCW required.	N/A. RCW 43.97 is the Columbia River Gorge Compact.
36.70.982	Fish enhancement projects -- County's liability.	This RCW section would continue to apply even after adoption of proposed ordinance.
36.70.990	Treatment of residential structures occupied by persons with handicaps.	Superseded by GMA at RCW 36.70A.410.
36.70.992	Watershed restoration projects -- Permit processing -- Fish habitat enhancement project.	Addressed by RCW 77.55.181.