



Planning & Development Services

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Memorandum: Seawater Intrusion Amendment

To: Skagit County Planning Commissioners
From: Robby Eckroth, AICP, Senior Planner
Date: June 4, 2024
Re: Seawater Intrusion Amendment Public Comments and Supplemental Information

Summary

Planning and Development Services (PDS) is providing this staff report in advance of the Planning Commission deliberations meeting on the seawater intrusion amendment for sole source aquifers. This report supplements the April 16, 2024 [staff report](#)¹ (Attachment 1) by providing a summary of the public comments from the formal comment period which started on May 2nd, 2024, and ended May 30th, 2024, at 4:30 PM. Department responses are given to clarify facts and do not address opinions. Public comments are summarized in a table below. This staff report also provides supplemental information in response to questions asked by the Planning Commission. More information and supplemental documents for the proposed amendment can be found on the [Seawater Intrusion Amendment webpage](#)².

Supplemental Information

Regulatory Authority

The Growth Management Act requires that cities and counties designate and protect critical areas, including aquifer recharge areas, using best available science. RCW 36.70A.060(2) requires counties to adopt development regulations that protect critical areas. RCW 36.70A.030(11) includes “areas with a critical recharging effect on aquifers used for potable water” in the critical areas definition. RCW 36.70A.170(1)(d) requires the County to designate critical areas and must use best available science per RCW 36.70A.172(1). Failure to protect critical areas can result in State sanctions per RCW 36.70.345. Sole source aquifers and areas affected by seawater intrusion are regulated under SCC 14.24 as aquifer recharge areas. See *Olympic Environmental Council v. Jefferson County*, W. Wash. Growth Mgmt Bd., No. 01-2-0015 (Final Dec. & Order Jan. 10, 2002).

¹https://www.skagitcounty.net/PlanningAndPermit/Documents/2024Seawater/Guemes%20Island%20SSA%20Amendment%20Staff%20Report_04232024.pdf

² <https://www.skagitcounty.net/Departments/PlanningAndPermit/Seawater.htm>

Review of environmental impact to groundwater, including potential impacts related to seawater intrusion, are unrelated to water rights (which are regulated by Ecology). The amendment to SCC 14.24.380 does not grant Skagit County Planning and Development Services the authority to deny approval of a well. However, the Skagit County Public Health Department does have the ability to deny the use of a well if chloride levels exceed 250 mg/L.

Surrounding Well Depth and Chloride Levels

On April 23rd, 2024, the Planning Commission held a work session to review and discuss the seawater intrusion amendment. During the work session, several questions were raised by the Planning Commission about the existing requirement for an application proposing use of a well to provide the depth and chloride levels of surrounding wells. Specifically, questions were asked about the potential consequences if a neighboring property owner refuses to supply information about the depth and chloride level of their well.

SCC 14.24.380(2)(a)(i)(D) does not specify the number of surrounding wells that applicants must obtain depth and chloride information on which provides flexibility by the Department if the applicant is unable to acquire information on all surrounding wells. Furthermore, the *Standard Critical Areas Review and Site Assessment Procedures* (SCC 14.24.080(4)) states that “[i]f the applicant, together with assistance from the Administrative Official, cannot obtain permission for access to properties within 300 feet of the project area, then the site assessment may also be limited accordingly.”³ Therefore, if neighboring property owners refuse to provide depth and chloride levels of their wells, the assessment can be limited and the inability to access other’s property does not necessarily prevent the installation of the well. If the applicant can provide the depth and chloride information of neighboring wells, this allows the Department to estimate the new well’s impact to chloride levels and add a condition limiting the maximum pump rate based on the chloride level and the location of the well to mitigate the impact.⁴

Use of Application Information

Skagit County Planning and Development Services has two water resource planners on staff to review water applications for impacts to critical aquifer recharge areas. Collecting chloride and depth level data from surrounding wells allows the Department to determine if the new well would negatively impact the aquifer and estimate the maximum pump rate of their well. The data will also allow the applicant to make an informed decision as to whether an alternative water source, such as a rainwater catchment system, may be a better option, prior to going through the process of drilling the well. The well depth and chloride data are also tracked by the County water resource planners to develop a better understanding of the Guemes Island aquifer. The County uses all available data to inform potential applicants that they may be in a high-risk seawater intrusion area of Guemes Island.

³ [SCC 14.24.080\(4\)](#)

⁴ [SCC 14.24.380\(4\)\(d\)](#)

Public Notice and Participation

On May 2nd, 2024, the April 16, 2024, staff report was published to the County website and the County published and gave notice of the opening of the comment period for the proposed amendment. This included notice of the public hearing. Notice was published on May 2nd, 2024, to the Skagit Valley Herald. A SEPA Determination of Non-Significance was already issued for this amendment on October 3rd, 2023, as part of the 2023 Docket of Proposed Policy, Code, and Map Amendments.

On May 28th, 2024, the Planning Commission held a public hearing on the proposed amendment as authorized by Skagit County Code (SCC) 14.08.080. The hearing was attended by six (6) Planning Commission members. Three (3) participants gave testimony at the public hearing, one (1) participant opposing the amendment and two (2) participants supporting the amendment. A full transcript of the meeting can be found on the [Planning Commission Agenda and Archive page](#)⁵.

Comments on the proposed code changes were sent by email to pdscomments@co.skagit.wa.us and or mailed or delivered as hard copy at the public hearing. A total of seven (7) comments were submitted during the comment period from May 2nd, 2024, to May 30th, 2024, at 4:30 PM. One (1) written comment was in opposition to the amendment and six (6) of the written comments were in support of the amendment. The comments on the are presented in the public comment summary below and the comments have been compiled in Attachment 2. Each attachment includes a table of contents with each comment numbered. The remainder of this report summarizes the comments and provides a department response, if required.

Pursuant to SCC 14.08.080(4) and (5), the Planning Commission shall consider public comments and deliberate on any proposed plan, plan amendment, or development regulation⁶. At the completion of its deliberations, the Planning Commission shall vote to recommend adopting, not adopting, or amending the proposed amendments. Recommendations shall be by a recorded motion which shall incorporate findings of fact and the reasons for the recommendations.

Public Comment Summary

The table below summarizes comments and are organized by issue/topic. Complete comments are attached in Attachment 2.

⁵ <https://www.skagitcounty.net/Departments/PlanningCommission/PCminutes.htm>

⁶ SCC 14.08.080(4)

| <u>Public Comment Issue/Topic</u> | <u>Department Response</u> |
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| <p><u>Issue #1:</u> The proposed study elements do nothing to prevent or identify seawater intrusion or aquifer contamination. Site plans, drilling plans, or payment of fees have no impact on seawater intrusion or aquifer contamination.</p> | <p><u>Response:</u> The information collected as required by SCC 14.24.380(2)(a) informs the Department on chloride levels on surrounding wells. This information can be used to add a condition informing the applicant of the likely maximum pump rate of their well. The data will also allow the applicant to make an informed decision as to whether an alternative water source, such as a rainwater catchment system, may be a better option, prior to going through the process of drilling the well.</p> |
| <p><u>Issue #2:</u> Seawater intrusion is not well documented. Although well drillers have noted a few pockets where seawater is found, it is not a common occurrence. Nothing in the past 20 years shows intrusion caused by well drilling.</p> | <p><u>Response:</u> A report prepared by the United States Geological Survey (USGS) (Report 94-4236⁷) published in 1995 has shown that there are documented seawater intrusion issues on Guemes Island. Seawater intrusion cannot be fixed.</p> |
| <p><u>Issue #3:</u> The required information could lead to Planning and Development Services denying wells.</p> | <p><u>Response:</u> The amendment to SCC 14.24.380 does not grant Skagit County Planning and Development Services the authority to deny approval of a well.</p> <p>SCC 14.24.380(2)(a)(i)(D) does not specify the number of surrounding wells that applicants must obtain depth and chloride information on which provides some flexibility by the Department if the applicant is unable to acquire information on all surrounding wells.</p> <p>Furthermore, the Standard Critical Areas Review and Site Assessment Procedures (SCC 14.24.080(4)) states that “[i]f the applicant, together with assistance from the Administrative Official, cannot obtain permission for access to properties within 300 feet of the project area, then the site assessment may also be limited accordingly.</p> |

⁷ <https://pubs.usgs.gov/wri/1994/4236/report.pdf>

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| <p>Issue #4: The Growth Management Act (“GMA”) endows Skagit County with the authority and obligation to deny the drilling of a well likely to adversely impact an aquifer. This authority exists independent of the Washington Department of Ecology’s oversight of water rights. The GMA therefore endows counties with sufficient authority, and the obligation, to protect aquifer recharge areas like the sole source aquifer on Guemes Islands. In addition, the GMA directs counties to ensure that applicants for building permits provide evidence of an adequate water supply for the intended use of a building. Applicants must demonstrate that the water is adequate both in quality and quantity. The submission of well information prior to drilling the well is consistent with these statewide directives and would be necessary to demonstrate that a well has a sufficient quantity of potable water.</p> | <p>Response: The amendment to SCC 14.24.380 does not grant Skagit County Planning and Development Services the authority to deny approval of a well. The Skagit County Public Health Department reviews wells for quantity and quality as mandated by SCC 12.48.110.</p> |
| <p>Issue #5: This Amendment is about protecting the senior water right holders of Guemes Island, not about limiting the development of a new lot. By pre-inspecting a well site before the well is drilled, the property developer will be given information about the likelihood this proposed well may itself be vulnerable to seawater intrusion or will contribute to seawater intrusion on nearby existing wells.</p> | <p>Response: Skagit County does not control or regulate water rights. The proposed amendment only analyzes the potential impact of the well to worsen seawater intrusion consistent with the intent set forth in SCC 14.23.300 to protect existing and future beneficial uses of the ground water.</p> |
| <p>Issue #6: There has been some confusion to date about the scope of the proposed amendment. It may be helpful to keep in mind that it would not change the type of information that would need to be gathered when drilling a new well, but instead, would change the timing of the gathering and submission of that information.</p> | <p>Response: The amendment does not require new information but does change the timing of review of applications submitted in compliance with SCC 14.24.380(2)(a).</p> |

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| <p>Issue #7: While the County Public Health Department generally discourages alternative water sources, they authorize the use of sources like rainwater catchment where public water systems or drilled wells will not suffice to provide potable water. Guemes Island residents have developed experience storing and treating water from rainwater catchment to meet their drinking water needs if necessary. This method is permitted by Skagit County and provides a viable alternative water supply to Guemes Island property developers in areas where drilling more wells is inadvisable because it would adversely affect existing wells.</p> | <p>Response: SCC 12.48.250 authorizes alternative water sources if criteria (a)-(g) is met.</p> |
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Next Steps

The Planning Commission is scheduled to consider the proposed Seawater Intrusion amendment for deliberations on June 11th, 2024. Pursuant to SCC 14.08.080(4) and (5), the Planning Commission shall consider public comments and deliberate on any proposed plan, plan amendment, or development regulation. At the completion of deliberations, the Planning Commission shall vote to recommend adopting, not adopting, or amending the proposed amendments. Recommendations shall be by a recorded motion which shall incorporate findings of fact and the reasons for the recommendations.

Attachments

Attachment 1 – April 23, 2024, Staff Report

Attachment 2 – Compiled Public Comments

Attachment 3 – Proposed Seawater Intrusion Amendments