

Agritourism Policy Review and Recommendations

AAB Land Use Committee Agricultural Advisory Board April 12, 2023

Purpose

The Land Use Committee provides this review of agritourism policy with recommendations to the Agricultural Advisory Board for presentation to the Skagit County Board of County Commissioners, Planning Commission and Department of Planning and Development.

This review and recommendations attempts to assemble essential state statutes and Skagit County Code regarding agritourism in one document to make the topic more accessible.

(Italicized portions are existing law and code language.)

Premises for Recommendations

1. State statutes (RCW) found in the Growth Management Act (GMA) provide overarching structure for allowable zoning rules for agricultural lands (RCW 36.70(A)).
2. GMA addresses agricultural and non-agricultural uses and provides specific standards for preservation of all commercial agricultural lands. (RCW 36.70(A).177)
3. Existing Skagit County Code (SCC) provides a firm foundation for preserving farmlands and restricting nonagricultural uses. (SCC 14.16.400, 14.16.900, in particular)
4. The Land Use Committee's six principles remain central to the AAB position, primarily asserting that non-agricultural commercial activities be directly connected to on-site farming and enforced.
5. Divergence between rules and practice necessitates policy reconsiderations for agritourism uses on ag lands and raises questions of observance and enforcement.

State Law Guidance

Section 36.70(A).177 of GMA directly addresses preserving agricultural lands and controlling agricultural and nonagricultural accessory uses. Agritourism activities, while not stated, would certainly be covered by this section.

Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;

Accessory uses may include:

Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities.

Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.

(Reformatted and emphasis added.)

Generally, it is assumed that county code can be more restrictive than state law, but cannot exceed the intent of state law (interpretations notwithstanding). The clear language of the state law centers on the preservation of agriculture and primary agricultural use of ag-zoned lands.

Significant value could be gained by clarifying in county code the application of “size, scale, and intensity” so administrative or hearing examiner review of applications fit the property, the neighborhood, the zone and are limited at any extent to one acre.

(Washington Administrative Code (WAC) also provides detailed guidance consistent with applicable RCW and can be found at WAC-365-196-815 Conservation of natural resource lands and WAC365-190-050 Agricultural

resource lands, among other citations. While significant and reinforcing of the RCW, WACs are not included in this discussion.)

Recommendation

The leading statement in RCW 36.70(A).177, above, should augment and the existing Agricultural Accessory Use Definition (SCC14.04) by including:

“[Agricultural] Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties.”

This language would clarify that agricultural accessory uses are to be permitted when they support farming and it adds to existing SCC language the consideration of neighboring properties. (See discussion of “Permitted Uses (SCC14.16.400 (2))” below).

The “Nonagricultural accessory uses” language from RCW 36.70(A).177 above should be inserted in existing code under “Special Use Permit Requirements,” discussed below. Inserted there it would serve as guidance to administrators and hearing examiners when considering permits for activities not outright permitted. In particular, “size, scale, and intensity” would become a guideline (which may require greater definition) for permitting in the ag zone. The one-acre limit would place the state rule into Skagit County Code when considering agritourism activities and would likely limit permanent retail commercial enterprises like restaurants and alcoholic beverage establishments. Also, because the limit is in state law, it would potentially control local demands to exceed the size limitation. This approach is preferable to addressing “size, scale, and intensity” by fixing the number of guests, tables, or square footage for occupancy. Considering the need for septic infrastructure, one acre is a significant constraint.

Existing County Code and Standards for Ag Lands Uses

SCC provisions establishing general rules for uses in the ag zone deserve attention for providing a sound foundation. Those applicable zoning codes and related definitions have a weathered history and should largely withstand new policy considerations. Clarifications and improvements are appropriate, while changing course is unnecessary.

Primary provisions regarding practices on ag lands are found in SCC 14.16.400 Agricultural – Natural Resource Lands (Ag-NRL) and in SCC 14.16.900 Special Use Permit Requirements.

Definitions used in code are found in SCC 14.04.

Ag-NRL Purpose (SCC 14.16 (1))

The purpose of the Agricultural—Natural Resource Lands district is to provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the district. Non-agricultural uses are allowed only as accessory uses to the primary use of the land for agricultural purposes. (excerpted, emphasis added)

Permitted Uses (SCC 14.16.400 (2))

(a) Agriculture.

(b) Agricultural accessory use.

(c) Agricultural processing facilities.

(h) Farm-based business carried on exclusively by a member or members of a family residing on the farm and employing no more than three nonresident full-time employees.

(j) Home-Based Business 1.

(Excerpted.)

Agricultural Accessory Use Definition (SCC 14.04)

Agricultural accessory use: an agricultural accessory use shall predominantly serve the principal use of the farm, but may also serve other farms. It shall be considered accessory to an agricultural use if it is located on either the same lot or other lots that collectively or in singular comprise a principal use of a corporate farm or farm held or leased by a farm manager or his immediate family. An accessory use to an agricultural use, including, but not limited to, the following:

(1) Outdoor storage of processed and unprocessed natural materials, waste materials, or other similar materials;

(2) Impoundments under 1-acre feet in volume;

(3) Farm animal or horticultural viewing by the public;

(4) U-pick sales to the public;

(5) Storage of agricultural products, ingredients, packaging and/or equipment used on-site;

(6) Miscellaneous agricultural support buildings, including barns, sheds, corrals, farm offices, and coops, which are used for on-site soil-dependent agriculture; and

(7) Activities associated with tourism which promote local agriculture; provided, that adequate parking and specified ingress and egresses are designated and permitted.

(emphasis added)

Note that (6), above, permits use of farm buildings for farming. Other uses of buildings would not be permitted or would be permitted only through special use permits.

The above portions of the SCC refer to outright permitted activities. Other activities would or do now require administrative or hearing examiner approval.

Recommendations

1. Clarify (6) above by adding “which agricultural support buildings shall not be a place of human habitation or place, or be a place used by the public” (extracted and edited from SCC 14.34 Flood Damage Prevention)

2. Clarify (7) above to identify “agritourism” in place of “tourism,” and thus, tie this permitted use to newly defined uses.

3. Add SCC definition of Agricultural Accessory Use as a new items (8) and (9):

(8) “Any agricultural or nonagricultural accessory use that is an agritourism event or activity shall be incidental and subordinate to the primary farming operation of the farm or site.”

(9) “Any agritourism accessory use must be part of an active farming operation.”

4. Add "Agritourism" to Definitions (SCC 14.04)

Agritourism: A common, farm-based, commercial activity serving the public that promotes agriculture, is directly related to onsite agricultural production, is incidental and subordinate to the working farm operation, and is operated by the owner or operator of the farm or family members. Regularly occurring celebratory gatherings, weddings, parties or similar uses that cause the property to act as an event center or that take place in structures specifically designed for such events are not agritourism.

Farm-based Business Definition (SCC 14.04)

Farm-based business: an on-farm commercial enterprise devoted to the direct marketing of unprocessed and/or value-added and soil-dependent agricultural products that are produced processed and sold on-site. Farm-based businesses are intended to supplement farm income, improve the efficiency of farming, and provide employment from agriculture support services.

Special Use Permit Requirements (SCC 14.16.900 (1) and (1)(b)(v))

Special Uses. Purpose. To provide a means to recognize and approve land uses not specifically identified as allowed uses. A special use permit must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.

The burden of proof shall be on the applicant to provide evidence in support of the application.

The criteria for approval or denial shall include the following:

(A) The proposed use will be compatible with existing and planned land use.

(B) The proposed use complies with the Skagit County Code.

(Excerpted and Reformatted)

Recommendation

As discussed above under State RCW Guidance, insert here, for administrator and hearing examiner criteria, the following language from RCW 36.70(A).177 as item (C):

(C) The proposed use complies with nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.

Temporary Events (SCC 14.16.400 (3) (h))

Temporary Events. Special use permits for temporary events are also subject to the following criteria:

- (i) Events may occur on no more than 24 calendar days per year.*
- (ii) Parking for all events shall be fully contained on the subject property and shall not include the use of any road right-of-way.*

(Excerpted)

Recommendation

1. Change the number of “events” in this section to “**no more than 12 calendar days per year.**” This change clarifies the essential meaning of “temporary” and further separates temporary from permanent activities when requiring special use permits.
2. Add to permitting criteria for Temporary Events an additional item (v) indicating that fees are to be set and applied by the appropriate department of the county to the extent appropriate to recognize the cost and importance of county personnel who would enforce agritourism zoning codes:

(v) All approved temporary events shall be assessed fees appropriate to the scale of the activity.

3. Add item (vi) to temporary events criteria:

(vi) Temporary events related to agricultural production; and provided, that no agricultural land is converted and no permanent structures are constructed.

Temporary Events Definition (SCC 14.04)

Temporary events: commercial use of a property for any musical, cultural, or social event either indoors or outdoors.

Recommendation

Add to temporary events definition at the end: "including agritourism events."

Special Use Permit Annual Self-Certification (SCC 14.16.900 (3))

(3) Special Use Permit Annual Self-Certification.

(a) Each year Planning and Development Services shall send an affidavit to the property owner(s) of record for all active special use permits. Planning and Development Services shall use the records of the Skagit County Assessor's Office for determining owner(s) of record and the Department's permit tracking system for determining active special use permits.

(b) The affidavit shall contain the special use permit number, applicant name, owner(s) of record name and address, parcel number and address of the subject property, a description of the original project approval, any conditions of the approval, the date of mailing, the required return date and a statement of acknowledgement.

(Excerpted.)

Divergence

The inconsistency between county code and some actual agritourism activities is a source of perplexity for policy construction. Directing new policy to accommodate enterprises that do not comply with existing code is backward and sets an unfortunate precedent suggesting "if one builds it, it will be approved." Indeed, this circumstance may well be a primary reason for the larger and lengthy agritourism study itself.

Recommendation

The committee offers that identifying those operations which do not conform with the SCC regarding agritourism should be given an opportunity to observe the law

and come into conformity over a reasonable period of time. The determination of prior “vested” rights is beyond the purview of the committee.

Conclusion

The Land Use Committee has observed the ongoing process of studying agritourism involving studies, surveys, reports and informal discussions. Overall, the committee finds that existing state law and county code provide sound, basic standards for protecting farmlands and farming as the primary activity there, and the state laws and local codes are firmly restrictive regarding nonagricultural uses.

This paper principally assembles essential features of state law and of SCC into one (hopefully) readable narrative that reveals existing standards that have arisen over time and have their own histories. However, the term “agritourism,” and related uses, deserve a place in code that recognize current interests.

Recommendations offered reflect opportunities for clarification and improvement and not change the general direction of policy as reflected in Skagit County Code.

Many, indeed most, agriculturally-related, public facing activities can fit in the ag zone and satisfy existing and improved standards. Some activities, otherwise, highlight retail commercial enterprises that do not satisfy the growth management standard:

Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of the overall agricultural use of the property and neighboring properties (RCW 36.780(A).177).