



SKAGIT COUNTY BOARD OF COMMISSIONERS

RON WESEN, Chair, First District
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January 9, 2023

KIMBERLY D. BOSE, SECRETARY
FEDERAL ENERGY REGULATORY COMMISSION
888 FIRST STREET, NE
WASHINGTON, DC 20426

**RE: Comment on Draft License Application Regarding Fisheries Mitigation
Skagit Hydroelectric Project P-553-235**

Skagit County ("County") and the Skagit County Drainage and Irrigation Districts Consortium LLC ("Consortium") jointly submit this comment letter on license applicant Seattle City Light's ("SCL") Draft License Application ("DLA"), pursuant to 18 CFR § 5.16(e).

This comment letter pertains solely to the fisheries mitigation aspects of the Project, in particular, SCL's proposed environmental protection, mitigation and enhancement ("PM&E") measures involving lands under our jurisdiction, as discussed in DLA Exhibit E.

We will submit a separate DLA comment letter addressing flood risk reduction, together with the Skagit Dike District Partnership.

As discussed in this comment letter, SCL's mitigation activities on our natural resources land base are undermining our community's ability to strategically prioritize and harmonize fisheries enhancement, farmland preservation, climate resilience, and the long-range maintenance of community services and infrastructure, as well as hampering our efforts to heal and unite our culturally complex community around strategic natural resource policies and plans.

Skagit County and the Consortium support strategic, well-planned habitat improvement over time, as a careful public investment. Importantly, SCL and its mitigation funding is *not* a necessary component of this effort. To the contrary, we view it as counterproductive.

We respectfully request the Commission focus SCL's fisheries mitigation at the Project, on fish passage and related mitigation measures that can help provide anadromous access to the 37 percent of the Skagit River presently blocked by SCL's Skagit dams.

1. Identity of Parties and Interest.

Skagit County is the government of general land use and regulatory authority in virtually the entirety of the Skagit Valley downstream of the Skagit Project, responsible for a broad range of regulation, infrastructure and services in all areas outside the Skagit's incorporated towns and cities.

The Consortium is a public entity representing the consolidated interests of twelve special purpose districts that own, manage and maintain drainage and other infrastructure. Among other things, our work creates and ensures the productive viability of over 60,000 acres of prime Skagit farmland, a substantial majority of the Skagit's remaining agricultural lands.

Skagit County's farmland is some of the richest in the world. Owing to our unique maritime climate, Skagit farmland plays a central role in the production of agricultural seed crops globally, as well as serving as a sustainable and climate-resilient regional food source. Our community has voluntarily sacrificed the development value of our farmland to protect this special place for future generations, with strict protective zoning and strong safeguards throughout our transparently-established Comprehensive Plan.¹

We are also a fishing community, and we acknowledge our collective national obligation to ensure harvestable levels of anadromous species as required by the 1855 Treaty of Point Elliott, an objective significantly incorporated in our zoning and Comprehensive Plan as well.

Strategically balancing and harmonizing fisheries, farming and existing infrastructure while fending off tremendous development pressure from surrounding urban areas is both a challenging task and the very core of our community's culture. It is also compelled by Washington law, which requires us to "[m]aintain 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."²

¹ To cite one example, Skagit County's Farmland Legacy Program, established in 1996, uses locally-raised property tax revenue to acquire farmland development rights, to date protecting over 14,000 acres of at-risk farmland from development, representing some 16% of the total number of acres zoned agriculture by Skagit County Code. See, Skagit County Farmland Legacy Program, 2021 Annual Report (**Exhibit D**). To cite another example, Skagit County's agricultural land zoning is some of the most restrictive in the nation, prohibiting new residential construction unless intended to house active farmers that have a proven economic track record of agricultural production. See, Skagit County Code 14.16.400 (**Exhibit E**); see also Administrative Interpretation regarding Single Family Residences on Agricultural lands (**Exhibit F**).

² RCW 36.70A.020(8)(Washington Growth Management Act) See also *Bremerton et al v. King County*, CPSGHMB Case No. 95-3-0039c Final Decision and Order (October 6, 1995)("The regional physical form required by the [GMA] is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape.")

Moreover, through a wide array of regulatory and legal mechanisms both state and federal, Skagit local government and landowners are being held deeply accountable for the presence and condition of anadromous species in the Puget Sound region.

While subsidiary metrics such as “acres of riparian trees planted” or “smolt produced” are interesting to mitigation funding sources, and are themselves useful data points, the relevant metric to which we are held is *adult returning salmon, available for Treaty and non-Treaty harvest*. Thus, even if others are not held to meaningful account for actual results, we are nevertheless compelled to judge mitigation plans on the basis of that metric.

Consistent with the foregoing, we have a strong interest in ensuring that SCL be required to pursue mitigation actions that are both highly effective and strategically harmonize fisheries, farming and infrastructure on our natural resources land base.

As discussed further in this letter, we have serious concerns regarding SCL’s current and proposed future mitigation activities on lands under our jurisdiction.

2. Discussion of SCL Fisheries Mitigation Under The Current License.

As mitigation under its current license, SCL has acquired more than 10,000 acres of Skagit County natural resource lands.³ (We observe for context that Skagit County has only approximately 88,000 acres of remaining farmland.)

Because Seattle is a municipal entity and state law allows it, these lands have been removed from local tax rolls – defunding Skagit schools, fire departments, and other services and infrastructure.⁴ There is no apparent evidence – and SCL has presented none – suggesting that SCL’s mitigation activity under the current license has improved the Skagit fisheries resource.

Furthermore, Seattle has generally failed to appropriately manage these lands for agriculture, silviculture or other productive use consistent with our Comprehensive Plan, degrading our community’s natural resources economy, services, infrastructure, and much else.

While SCL claims to have “protected” these lands, it is unclear from what threat these lands are actually being protected. Much of the land in question was already protected from development by local zoning and floodplain development restriction. In fact, inadequate management of mitigation lands since SCL’s acquisition has been an ongoing issue, with noxious weeds, illegal dumping, poaching, inadequate tribal hunting access, and other pervasive problems.⁵

³ See, DLA Exhibit A, paragraph 5.11, PDF page 76.

⁴ See, Skagit County’s Comment Letter and Study Requests dated September 15, 2020 (FERC Accession No. 20200916-5058)(**Exhibit A**).

⁵ See, e.g., Swinomish Indian Tribal Community’s Study Requests dated October 26, 2020 at PDF 22 (FERC Accession No. 20201026-5092)(“[SCL Mitigation Lands] parcels are vulnerable to theft, vandalism, timber poaching and game poaching.”)

3. Discussion of Future SCL Fisheries Mitigation In The DLA.

Skagit County and the Consortium have diligently participated in SCL's Integrated Licensing Process ("ILP") over the last three years.⁶

However, along with the Skagit Dike Partnership, we have been excluded by SCL from dialogue with entities and agencies with relevant regulatory authority, which SCL has conducted confidentially under the auspices of the "Partners' Committee" it established. As such, we do not believe that our interests and regulatory authority have been adequately represented. Of particular note, the concerns stated in Skagit County's September 15, 2020 Comment Letter/Study Request attached as **Exhibit A** have not been appreciably addressed.

From the outset of the relicensing, SCL has made clear its intention to scale up land acquisition and habitat enhancement on Skagit County's natural resources land base as mitigation for the dams. This includes plans for unspecified large-scale habitat projects on Skagit farmland that inherently involves major modification and inherent risk to our interconnected and interdependent system of marine dikes, riverine levees, road and bridge infrastructure, and much else owned and managed by our respective entities.

⁶ See, e.g., Skagit County Comment Letter dated September 15, 2020 (FERC Accession No. 20200916-5058); Study Plan Requests of Consortium and Skagit Dike District Partnership (the "Partnership"), dated September 21, 2020 (FERC Accession No. 20201021-5092); Comment Letter by Consortium requesting operations trend analysis, dated September 21, 2020 (FERC Accession No. 20200921-5070); Study Plan Requests of Skagit County dated October 23, 2020 (FERC Accession No. 20201023-5137); Comment of Skagit County submitting letter to Seattle Mayor Durkan, dated December 10, 2020 (FERC Accession No. 20201210-5009); Comments of Skagit County on Initial Study Plan, dated March 4, 2021 (FERC Accession No. 20210304-5112); Comments of Consortium on Proposed Study Plan, dated March 4, 2021 (FERC Accession No. 0304-5124); Skagit County Comments on Revised Study Plan, dated May 5, 2021 (FERC Accession No. 20210506-5015); Comments of Consortium and Partnership on Revised Study Plan, dated May 5, 2021 (FERC Accession No. 0505-5067); Comments of Skagit County regarding role of Skagit Environmental Endowment Commission, dated September 28 2021 (FERC Accession No. 0928-5073); Comments of Skagit County dated October 6, 2021 (FERC Accession No. 20211006-5013); Comments of Skagit County dated January 7, 2022 (FERC Accession No. 0107-5066); Comments of Skagit County dated January 22, 2022 (FERC Accession No. 20220122-5210); Comments of Consortium re SCL Habitat Program, dated February 9, 2022 (FERC Accession No. 20220209-5090); Comments of Skagit County and Partnership re Operations Model dated March 25, 2022 (FERC Accession No. 20220328-5031); Comments of Skagit County on Interim Study Report, dated May 5, 2022 (FERC Accession No. 20220505-5112); Comments of Consortium and Partnership dated May 5, 2022 (FERC Accession No. 20220505-5135); Comments of Consortium on Interim Study Report dated May 5, 2022 (FERC Accession No. 20220505-5136); Comments of Skagit County and Partnership dated May 25, 2022 (FERC Accession No. 0525-5084); Comments of Skagit County on Interim Study Report, dated August 8, 2022 (FERC Accession No. 20220809-5006); Comments of Consortium and Partnership dated September 26, 2022 (FERC Accession No. 20220926-5093).

SCL's intentions are discussed in the Draft License Application, albeit without any meaningful detail, promising a plan in the Final License Application that will allegedly "enhance and improve the availability of mainstem, off-channel and side-channel habitats throughout the Skagit River downstream of the Gorge Powerhouse."⁷

Concurrently, SCL has made clear its opposition to fish passage through Ross, the largest and uppermost reservoir in the Skagit Project – which, if required by the new license, would allow anadromous access to much of the 37 percent of the Skagit River watershed above SCL's three dams. While SCL's science-based opposition to fish passage has been roundly discredited, SCL has also cited economic reasons for its opposition to adequate fish passage in discussions outside settlement confidentiality.

While we are not experts in fish passage, it appears obvious that fish passage has tremendous potential to improve the Skagit fisheries resource by significantly increasing the number of anadromous species available for Treaty and non-Treaty harvest, which the past 25 years of habitat activity on its own has clearly failed to accomplish. After diligent investigation, it also appears to us that appropriate fish passage can likely be established at reasonable and regionally equitable cost.

With the potential exception of the warm water-caused failure at the U.S. Army Corps' Snake River dams, fish passage has generally been a Pacific Northwest success from the standpoint of the fisheries resource.

For example, Puget Sound Energy's FERC Project No. 2150 on the Baker River (a Skagit tributary) installed fish passage starting under its 2007 FERC license, and a salmon run once close to extinction has returned over 30,000 salmon annually in recent years. Skagit County residents and businesses are currently paying for the Baker fish passage via a reasonable surcharge on our power rates. Unlike the property acquisition and related mitigation activity in which SCL has involved itself over the past 30 years, fish passage can be closely monitored, results (or lack thereof) demonstrated, and appropriate adjustments made.

It is also the case that only SCL can install fish passage at the Skagit Project, while other public entities such as the County and Consortium are far better suited to carry out well-planned habitat enhancement on our natural resources land base. Because it reflects a rational and responsible allocation of effort, it has been our position since the outset of our participation that SCL should focus its mitigation at its dams.

While the DLA goes to extraordinary length to describe the alleged need for SCL to engage in habitat activity, the reality is that the Skagit River system, its anadromous species, and the habitat they rely upon are all in far better shape than the remainder of the Puget Sound Basin.

⁷ Draft License Application, Exhibit E, page 3-68 (SCL states that it will propose a plan in the Final License Application to "enhance and improve the availability of mainstem, off-channel and side-channel habitats throughout the Skagit River downstream of the Gorge Powerhouse.")

The Skagit produces over 60% of the Chinook in the Puget Sound Basin, and the Skagit is the only Puget Sound river to support all five species of Pacific salmon as well as steelhead.⁸

SCL asserts that it is following the 2005 Skagit Chinook Recovery Plan – prepared with significant SCL participation, funding and assistance – which requires nothing of SCL other than what is ordered by SCL’s 1995 FERC license. A principal focus of the 2005 Skagit Chinook Recovery Plan is protection of existing habitat, which SCL and many others have vigorously pursued over the past 30 years, leaving little existing habitat lands left to “protect” through acquisition.

As previously noted, a major reason for the excellent ecological condition of the Skagit is that our community has voluntarily sacrificed the wealth that development produces, extinguishing development rights through a broad range of regulatory and voluntary mechanisms, successfully fending off the sprawl that has largely consumed the now-urbanized watersheds to our south. As such, we take exception to the extensive claims in the DLA by SCL regarding the alleged inadequacy of anadromous habitat protection and enhancement in the Skagit.

It is also important to note that, in fact, a tremendous level of habitat enhancement has been accomplished in the Skagit over the past 30 years using public funding. According to the Washington State Resource Conservation Office, over \$163 million dollars has been spent on voluntary habitat improvement, with a significant amount of work involving our entities, Skagit agriculture and landowners. Many of the most important projects have been completed. Over 1,000 acres of farmland has been converted to habitat consistent with recovery planning goals, and projects have generally met or exceeded juvenile salmon production targets. Simply put, we do not need SCL mitigation money to complete habitat enhancement work in the lower Skagit River system.

From our perspective, SCL’s approach to this relicensing has involved an effort to fabricate a “habitat crisis” in the Skagit while excluding local government and landowners from the discussion, to avoid the expense of onsite mitigation at the Skagit Project.

To protect our community’s legitimate interests, the Board of Skagit County Commissioners, in October 2022, adopted an ordinance that prohibits SCL and other entities from conducting large-scale habitat enhancement projects on Skagit farmland to the extent such projects are intended to provide offsite compensatory mitigation. A copy of the Skagit County Offsite Compensatory Mitigation Moratorium, subsequently adopted by permanent ordinance, is attached hereto as **Exhibit B**. We incorporate the findings therein as part of this comment letter. The ordinance generally prohibits the large-scale infrastructure modification projects that SCL has in mind unless undertaken in accordance with a strategic plan and public recovery funding.

To be clear, we fully support continued habitat enhancement, done carefully and thoughtfully over time. Given our ownership of the infrastructure in question and our regulatory authorities, it is indispensable that large-scale habitat enhancement involving hydrological

⁸ See, e.g., 2005 Skagit Chinook Recovery Plan.

modification and riparian plantings on our natural resources land base be led and directed by local government in partnership with resource co-managers.

In particular, we support projects done at scale that will help our community prepare for rising sea levels, higher and earlier riverine floods, and other challenges that climate change portends. To that end, in cooperation with agencies and tribes, we have developed a prioritized list of high-value, multi-benefit estuary enhancement projects that will provide top-tier salmon habitat while strengthening our dike and levee system against sea level rise and climate change. A copy of that prioritized list, the Estuary Restoration Strategic Assessment (ERSA), is attached hereto as **Exhibit C**. We are collaborating directly with resource co-managers to accelerate this work.

Furthermore, to accelerate voluntary participation in riparian buffer planting, we are requesting substantial legislative funding for our existing Voluntary Stewardship Program to accelerate riparian planting on remaining high priority stream reaches. We also note that regulation of critical areas, including riparian zones along anadromous waterbodies, is a regulatory matter squarely within Skagit County's jurisdiction.⁹ As such, we believe our plan involving the funding of our existing riparian buffer program is superior to SCL's unwelcome effort to insert itself into this fraught question as a mechanism to avoid environmental cost at the Skagit Project.

By proposing to fund an alternative Skagit land use and natural resources policy, grounded in opportunistic habitat activity that refuses to meaningfully collaborate with local government, agriculture or local landowners, SCL's approach to the present relicensing is undermining progress on multi-benefit effort to improve habitat and increase climate resilience in the best way possible, as well as obstructing our effort to heal historic rifts between Skagit tribal and non-tribal communities.

From our point of view, funding is not the rate-limiting factor in optimal habitat improvement for anadromous species recovery in the Skagit River Basin. Rather, the principal rate limiting factor is cooperation and collaboration between local government and Skagit Treaty Tribes. As such, SCL's participation in downstream habitat activity for the recovery of salmon, on lands within our jurisdiction, is not needed or appropriate.

In light of the foregoing, Skagit County and the Consortium respectfully request that SCL be directed to mitigate *at its Project*. For the same reasons, we object to any mitigation plan that involves further deployment of SCL mitigation funds on natural resource lands within Skagit County's jurisdiction.

⁹ See, RCW 36.70A.172.

4. **NEPA Requires Analysis of the Relative Efficacy Between Fish Passage Investment and Downstream Habitat Investment.**

The DLA offers downstream habitat enhancement as an alternative to meaningful fish passage, proposing a token level of fish passage but significant downstream habitat activity.¹⁰ Accordingly, the Commission is obligated by NEPA to consider the relative level of improvement to the fisheries resource that these competing mitigation alternatives are likely to produce. As the Ninth Circuit Court of Appeals has held:

NEPA regulations describe the alternatives analysis as “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. The analysis “present[s] the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.*¹¹

As the U.S. Supreme Court has made clear, this includes not just the action itself but the mitigation measures under consideration:

To be sure, one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences. The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from CEQ's implementing regulations. Implicit in NEPA's demand that an agency prepare a detailed statement on “any adverse environmental effects which cannot be avoided should the proposal be implemented,” 42 U.S.C. § 4332(C)(ii), is an understanding that the EIS will discuss the extent to which adverse effects can be avoided.¹²

The courts’ “role in reviewing an EIS is to ensure that the agency has taken a ‘hard look’ at the potential environmental consequences of the proposed action.”¹³

While we appreciate that the question of mitigation efficacy can be difficult to precisely calculate, courts overturn agency NEPA decisions where the agency “[e]ntirely failed to consider an important aspect of the problem.”¹⁴ “This standard requires a pragmatic judgment whether the EIS’s form, content[,] and preparation foster both informed decision-making and informed public participation.”¹⁵ Furthermore, NEPA obligations “must be taken objectively

¹⁰ DLA Exhibit E, Section 3.3.3.3 (Fish and Aquatics), PDF 123-24

¹¹ *League of Wilderness Defenders-Blue Mountain Biodiversity Project v. U.S. Forest Service*, 689 F.3d 1060, 1069 (2012).

¹² *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-352 (1989).

¹³ *League of Wilderness Defenders*, 689 F.3d at 1075.

¹⁴ *Id.* at 1068.

¹⁵ *Id.* at 1075 (internal quotations and citations omitted).

and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made."¹⁶

It is also the case that in preparing an EIS, the Commission is obligated to define the purpose and scope of the proposed mitigation, i.e., a clear definition of the problem being solved. As NEPA regulations discuss, "[t]he [EIS] shall briefly specify the underlying *purpose and need* to which the agency is responding in proposing the alternatives,"¹⁷ because "[t]he scope of an alternatives analysis depends on the underlying purpose and need specified by the agency for the proposed action."¹⁸

While as previously noted we don't perceive need for SCL's funding in the downstream habitat space, we acknowledge the diversity of learned opinion as to what it is that Skagit anadromous species most need.

In attempting to winnow through the competing narratives and financial interests involved, we submit that the Commission's obligation to the public is to focus on the actual point of fisheries mitigation: the number of harvestable returning adult salmon that each alternative is likely to produce.

As such, to satisfy NEPA, SCL's Final License Application must include meaningful analysis of this question.

5. Concerns with SCL's So-Called "Ecosystem Approach" to the Relicensing Process

SCL asserts that the ILP process it has orchestrated and led over the course of the past three years is based on an "ecosystem approach," a phrase for which SCL provides no clear definition.¹⁹

We support SCL's core mission to produce electricity for the City of Seattle at reasonable cost. However, it is also the case that SCL has no long-term obligation to see to the interests of our infrastructure and services; our farmland and forestry land preservation efforts; our taxable land base; Skagit landowners; and the broad range of other matters that local government is obligated to consider in developing long-range natural resources and land use policy on our land base.

From our perspective, SCL's characterization of the ILP process as an "ecosystem approach" is little more than a rhetorical device meant to justify whatever mitigation SCL finds most financially attractive. Because SCL seeks to replace significant aspects of our Comprehensive Plan and the open public processes by which it was developed with a secretive process of SCL's choosing, we must object to SCL's continued assertion of an "ecosystem approach" as the basis for the present relicensing. We are not aware of any legal authority that either compels or

¹⁶ *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000)

¹⁷ C.F.R. § 1502.13

¹⁸ *League of Wilderness Defenders*, 689 F.3d at 1069.

¹⁹ Draft License Application, Cover Letter, PDF 1.

permits this approach, and must insist that SCL focus its Project mitigation in the most effective way for the resource.

Furthermore, SCL's advancement of various offsite compensatory mitigation schemes under the guise of an "ecosystem approach," prior to evaluating and executing avoidance and minimization at the Project site, is inconsistent with the U.S. Environmental Protection Agency's (EPA) hierarchy of mitigation.²⁰ Both the EPA and the White House Council on Environmental Quality (CEQ) make clear that mitigation at the Project site should be pursued first before looking to offsite mitigation opportunities.²¹

Specifically, SCL is required to first evaluate avoidance and minimization measures, such as changes in Project design to incorporate fish passage, before considering and advancing off-site compensatory mitigation. By failing to follow EPA and CEQ guidance, SCL's "ecosystem approach" is, in fact, an attempt to redefine the federal government's authority, subsuming local authority over natural resources, land use and infrastructure.

We acknowledge that local jurisdictions generally lack authority to impede FERC facility siting licensure using local land use authority, but that is not the situation at hand. In this case, SCL proposes to create a habitat enhancement fund to be distributed by a committee selected by SCL, involving unclear plans on privately-owned Skagit County land that SCL does not own.

We note that SCL's intentions related to downstream habitat appear oriented principally toward Skagit County lands zoned for agriculture. As such, SCL's downstream mitigation effort appears largely predicated on the dubious notion that Skagit farmers, landowners, special purpose districts and local government will enthusiastically participate in SCL's mitigation plans, having been shut out of meaningful dialogue or participation throughout the FERC process over the last three years.

"[NEPA] regulations contemplate that agencies...should not rely on the *possibility* of mitigation."²² SCL's exclusionary approach to local government, Skagit landowners, and Skagit agriculture has made it unlikely that SCL's various mitigation plans on our land base will come to substantial fruition.

²⁰ See, e.g., U.S. Environmental Protection Agency, "Types of Mitigation under CWA Section 404: Avoidance, Minimization and Compensatory Mitigation."

²¹ *Id.*

²² *Sierra Club v. Marsh*, 769 F.2d 868, 877 (1st Cir. 1985), quoting *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed.Reg. 18028, 18038 (1981) (citations omitted)(italics added).

6. Conclusion.

SCL's fisheries mitigation activity has been of questionable efficacy, and SCL's insistence on expanding that effort under the forthcoming license has become disruptive to rational and strategic land use policy on lands under our jurisdiction. We respectfully request that SCL's involvement on our natural resource lands be minimized, and that SCL instead be directed to mitigate for the Project, at the Project.

Thank you for considering our comments.

Sincerely,

BOARD OF SKAGIT COUNTY COMMISSIONERS

SKAGIT DRAINAGE AND IRRIGATION DISTRICTS
CONSORTIUM LLC



RON WESEN, Chair



JOHN WOLDEN, Chair



PETER BROWNING, Commissioner



NORM HOFFMAN, Vice Chair



LISA JANICKI, Commissioner

LIST OF EXHIBITS

- Exhibit A** Skagit County Board of Commissioners Comment Letter dated September 15, 2020
- Exhibit B** Skagit County Offsite Compensatory Mitigation Moratorium dated July 18, 2022, Skagit County Ordinance No. 020220007
- Exhibit C** Skagit River Estuary Restoration Strategic Assessment (ERSA), National Marine Fisheries Service *et al*, 2019
- Exhibit D** Skagit County Farmland Legacy Program, 2021 Annual Report
- Exhibit E** Skagit County Code 14.16.400 (Agricultural Lands)(2022)
- Exhibit F** Skagit County Administrative Interpretation Regarding Skagit County Code 14.16.400 (2010)

EXHIBIT A



Skagit County Board of Commissioners

Ron Wesen, First District
Kenneth A. Dahlstedt, Second District
Lisa Janicki, Third District

September 15, 2020

TO: Federal Regulatory Commission (FERC) by e-filing only

**RE: Skagit River Hydroelectric Project (FERC No. 553-235)
Comments on Scoping Document 1**

I. Introduction and Endorsement of Study Requests.

This comment letter pertains to the ongoing relicensing of the Skagit River Hydroelectric Project, FERC No. 553-235, owned by the City of Seattle (the “**Project**”).

We have a strong relationship with the tribal governments located within Skagit County. The Upper Skagit Indian Tribe (“**Upper Skagit**”) is requesting a comprehensive fish passage study, along with a number of other study requests relevant to hydrology, geomorphology, riverine habitat, and instream flows. We have fully participated in the various aspects of the relicensing process with Seattle City Light (“**City**”), and have furnished input that Upper Skagit has taken into consideration. We stand with Upper Skagit, and endorse their study requests.

We also endorse and support the Flood Storage Timing Study Request submitted by the Skagit Dike District Partnership (“**SDDP**”) and the Skagit Drainage and Irrigation District Consortium (“**SDIDC**”), organizations that taken together represent the vast majority of diking, drainage and irrigation districts within Skagit County, which, among other things, protect the population and economic centers on the Skagit Delta from flood risk. By providing trend analysis additive to the City’s proposed Operational Model Study Plan, the Flood Storage Timing Study Request will help these districts anticipate impacts that climate change poses to the Project dams’ operational capacity during flood events.

II. Summary of Comments.

To summarize our comments:

- Dam Failure Early Warning System. The existing dam failure early warning system in Eastern Skagit County is inadequate, relying largely on a continuous ringing of the local fire district’s sirens, which ring numerous times a day on most days for other reasons, inuring citizens to an actual alert of potential dam failure. To the extent not accomplished voluntarily, the City should be required to install a more comprehensive and effective dam failure early warning system in Eastern Skagit County. This should be coordinated with the early warning system that Puget Sound Energy installed as a FERC license condition for its dams on the Baker River. To that end, we are submitting a study request that seeks to analyze the necessary attributes of a safe and effective dam failure early warning system in Eastern Skagit County.
- City Mitigation Lands. Existing and new mitigation lands within the Project area and the County, which the City has taken off the local tax rolls pursuant to a state law tax exemption for municipal entities, are and will continue to shift the property tax burden to a decreasing number of properties, as well as creating impacts on local Skagit government arising from inadequate management of the City Mitigation Lands. This should be addressed through better management protocols and payment

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in lieu of taxes to local taxing districts. Because the Skagit County Auditor and other Skagit County agencies are the repositories of necessary data regarding this issue, we do not intend to present it as a formal study request, but rather wish to identify the issue to FERC and the City for early discussion and resolution.

- Holistic River System Analysis and Channel Migration Planning. Taken holistically, the City Mitigation Lands as well as the implications of a comprehensive fish passage study invoke significant change to system hydrology, instream flows, riverine habitat and assumptions about channel migration on the mainstem Skagit, which have had and will continue to have significant impacts on utilities, roads, infrastructure, and local land use plans required by state law, including the County's Comprehensive Plan and Shoreline Management Plan, which, among other things, envision the preservation of the community's Agricultural land base and farming economy. Appropriately addressing these concerns requires comprehensive analysis of the Project's impacts on the Skagit River, *including current and planned future mitigation activities*, beginning with the Project dams' impact on fish passage downstream to the Skagit River's terminus, including meaningful analysis of climate change-driven impacts that we are likely to experience. We believe that this can facilitate the creation of an agreed-upon Ecological Corridor, which can in turn be adopted into the County's Comprehensive Plan and Shoreline Management Plan in the form of a Channel Migration Zone ("CMZ") map. We request that FERC consider this request in reviewing study requests submitted by Upper Skagit and others, by ensuring that all study requests are appropriate in scope.

III. Discussion Regarding Mitigation Lands, Channel Migration, and Comprehensive Planning.

A. Background Facts.

Skagit County is the government of general jurisdiction in nearly the entirety of the terrestrial land base downstream of the Skagit Project.¹ Together with our junior taxing districts, we are legally responsible for providing roads, bridges, public schools, law enforcement, flood control, diking, drainage, fire protection, and a wide range of other essential services and infrastructure throughout Skagit County.

In addition, we are legally required by state law to provide coordinated long-range land use planning, in the form of a state law-required and approved Growth Management Act ("GMA") Comprehensive Plan² and Shoreline Management Plan.³

A central focus of Skagit County's Comprehensive Plan since its initial adoption in 1960 has been the preservation of our agricultural land base and farming economy. Temperate, well-watered and alluvial, the Skagit is regarded as some of the world's richest soil. Skagit Agriculture represents approximately a third of our county's economy, and agricultural tourism is enjoyed by many tens of thousands of visitors each year, a significant number of whom come from nearby urban areas such as Seattle to visit our small working farms, buy fresh local produce, and the like. With major climate impacts to the viability of arable land predicted through much of the United States, we believe that planning for the continued existence of a robust agricultural economy in the Skagit is a matter of regional food security.

¹ A portion of the Skagit River mainstem reach between Gorge Dam and the town of Marblemount lies within Whatcom County, our neighboring county to the north.

² RCW Chapter 36.70A

³ RCW Chapter 90.58

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As with most river valleys in the mountainous Pacific Northwest, the Skagit is highly geologically active. At various points throughout geological history, the Skagit River has meandered from valley wall-to-valley wall, throughout the Skagit's entire length, an historic channel migration zone that includes, among other things, State Highway 20 (the primary route to the Skagit Project dams); State Highway 530 (a secondary route to the dams); and a large number of primary and secondary Skagit County roads and associated bridges, culverts and other infrastructure. This area also includes a railroad corridor taken from the federal government into trust by Skagit County for the purposes of a public trail that runs near the Skagit River for much of the Middle Skagit mainstem reach, done pursuant to a rail banking instrument containing the explicit condition that the County will keep the rail corridor in condition to be used for potential future rail and utility usage, presenting a significant limit to the existing river channel's northward movement.

At the same time, we acknowledge, as a nation, our perpetual, treaty-based obligation to ensure that harvestable numbers of salmon and steelhead return to the Skagit River ecosystem. While there are many causes to attribute, the fact that salmon and steelhead numbers have almost uniformly declined in the Skagit since the 1995 Project relicensing render it difficult to muster a high level of enthusiasm for the same approach pursued over the last 25 years.

Regardless of the balance between hatchery production and wild salmon recovery pursued by the co-managers, we expect the burden of habitat improvement to be carried equitably and cooperatively by the City.

Taking all of the foregoing into consideration, a continued human presence in the Skagit Valley necessarily requires that we make careful, rational decisions, informed by credible and as comprehensive science as we can obtain, as to which infrastructure, roads, and areas of land we as a community of governments intend to defend from natural channel migration processes, and which areas we do not.

Under the Federal Power Act, analysis of the dams' impact on fish passage is explicitly identified as a requirement in an effort to ensure harvestable numbers of salmon pursuant to the treaties.⁴ But despite the Federal Power Act's clear requirement, fish passage was not so much as studied in the course of the previous 1995 relicensing.

Instead, the principal mitigation under the 1995 relicensing was the City's agreement to purchase areas of land within Skagit County downstream of the Skagit Project (hereinafter, the "**City Mitigation Lands**"). To date, the City has acquired some 13,738 acres within Skagit County, some of which is farmland converted to mitigation use. Some of these lands have been defined as lying within the Project Boundary by the City, and some lands are not.

It should be noted that most of the physical Project facilities other than transmission lines are *not* within Skagit County, but rather are in Whatcom County, meaning that most of the 13,738 acres purchased by Seattle City Light within Skagit County are not directly related to the operation of the dam for electrical power purposes, but rather arise from City land acquisitions and related activities within Skagit County to mitigate for dam operations, pursuant to the 1995 license.

The intent of this letter is to address all 13,738 acres within Skagit County under City ownership, regardless of the City's own characterization of these lands for the purposes of the present relicensing.

⁴ 16 U.S.C. § 803(j).

B. Impacts to Tax Base and Local Government Funding Arising From City Mitigation Lands.

With respect to the City Mitigation Lands, the City has availed itself of the state law exemption from local property tax available to government entities, removing its 13,738 acres within Skagit County from the tax rolls, creating a tax burden shift to the remaining properties in the area, a tax shift of over \$3.2 million thus far.

To provide an example of the significance of this tax shift, consider Fire Protection District No. 19, one of the geographically largest and most rugged fire districts in the State of Washington, which encompasses much of Eastern Skagit County. Its volunteer firefighters routinely respond to accidents and emergencies arising from City Light employees and guests who reside here, and tourists travelling to or from City Light facilities, as well as participating in wildland firefighting. Funded largely by ad valorem property tax assessment, Fire Protection District No. 19 has only one fire engine of dubious reliability, and its volunteers must frequently resort to paying for fuel and personal protective equipment from their own pocket. This has a direct nexus to the Project and its mitigation activities, and is not a satisfactory state of affairs.

The City Mitigation Lands have themselves created a wide range of problems for our community, such as the proliferation of noxious and invasive weeds, illegal garbage dumping, illegal drug activity, and trespassing on private lands through use of the City Mitigation Lands – issues and problems that local government must deal with at local taxpayer expense, drawing on a tax base that the City's activities are steadily degrading.

C. City Mitigation Acquisitions and Objectives Fail to Consider Comprehensive Plans.

While the City's April 2020 Pre-Application Document (Section 6) discusses the large number of other comprehensive plans the City intends to consider, our state law-required and state-approved Comprehensive Plan and Shoreline Management Plan receive no mention whatsoever, despite being the comprehensive plans most highly impacted by the City's mitigation plans and related activities pursuant to the license.

Particularly problematic is the fact that some of the City land acquisitions and related mitigation projects involve explicit or implicit plans that go far beyond facilitation of natural processes, seeking to actively re-direct streamflow and meander in various ways without adequately considering impacts outside the specific parcels on which mitigation activities are pursued – all of which is being carried out by the City, a distant municipal government, with no apparent concern for our state law-required land use comprehensive planning.

At a practical level, this translates to inadequate coordination and consideration for the resultant impacts of City mitigation activities on utilities, roads, agricultural use of the alluvial land base as our Comprehensive Plan envisions, and other aspects of the human environment that are the subject of our comprehensive planning.

In addition, without consulting Skagit County government, the City, together with the State Department of Ecology, has been actively involved in furnishing water rights for selected areas of the Skagit Valley downstream of the Project dams, thereby incentivizing new residential growth in the same areas that the City is pursuing mitigation activities and land acquisitions, which are also the same areas our state law-required Comprehensive Plan seeks to discourage new

Skagit River Hydroelectric Project (FERC No. 553-235)
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residential growth in favor of natural resource activity.⁵ Yet at the same, the City has expressed resistance to helping meet the water needs of Skagit Agriculture, which, due to defects in earlier state-level water planning processes, is presently unable to access the relatively small amount of water, at a point of withdrawal low in the Skagit River mainstem, such as would be needed to ensure future viability for Agriculture in the face of climate change.

This kind of uncoordinated, unplanned activity at an ecosystem scale is exactly what our State Growth Management Act was meant to prevent:

The legislature finds that uncoordinated and unplanned land use, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.⁶

From our perspective, continued failure to address these concerns would represent a major shortcoming in any licensing or related NEPA process. We believe these concerns must be dealt with in the context of the present relicensing, beginning with the scope of the study requests presented by the Upper Skagit Indian Tribe and others.

D. Specific Requests Related To City Mitigation Lands.

As to the existing 13,738 acres of City Mitigation Lands within Skagit County, we believe that specific management protocols must be included in any new license to reduce the ongoing problems and impacts described above, in addition to payment of \$3,147,256.18⁷ in lieu of taxes to local junior taxing districts such as Concrete School District and Fire Protection District No. 19 as necessary to compensate for the prior impact to the local tax base.

We are not completely opposed to new City Mitigation Lands acquisition in appropriate instances, but believe that any new mitigation lands acquisition should (a) generally be limited to lands adjacent to the Skagit River and its tributaries that are clearly at risk due to natural channel migration patterns; (b) should be limited to activities that facilitate natural processes rather than projects that envision active modification of channel migration and hydrology; (c) involve payment in lieu of taxes to local junior taxing districts to the extent such lands have been or will be removed from local tax rolls; and (d) must include management protocols to minimize the various problems arising from the City Mitigation Lands that we have experienced over the past 25 years since the 1995 relicensing.

As such, we join Upper Skagit in requesting a comprehensive fish passage study, as well as endorsing other studies sought by Upper Skagit that will consider geomorphology, riverine habitat, hydrology, and instream flows. We are confident in the scientific expertise and leadership that Upper Skagit has brought to bear on this issue, and stand with Upper Skagit in their effort to seek holistic analysis of the Project's impacts on the Skagit ecosystem we treasure and share.

⁵ See, "Seattle City Light Agrees To Provide Water To Mitigate Wells," Seattle Times, May 18, 2019, <https://www.seattletimes.com/seattle-news/seattle-city-light-agrees-to-provide-water-to-mitigate-wells/> (last visited September 11, 2020).

⁶ RCW 36.70A.010.

⁷ This amount is current as of May 2020, and will be updated as discussions proceed.

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From our perspective, the scope of the studies requested by Upper Skagit and others must include the entire length of the Skagit River, which is necessary and proper given the inextricably intertwined impacts arising from City mitigation activities as well as changes to basic assumptions about instream flows, hydrology and natural processes that the current Skagit relicensing now appears likely to invoke.

We believe that the product of a holistic study will help inform a potential "Ecological Corridor" concept, which can be adopted into a regulatory Channel Migration Zone map as part of our state law-required Shoreline Master Plan and GMA Comprehensive Plan. In our view, this approach will create a new pattern language of cooperation and coordination over the long term between the City, tribes and local government.

These issues must be addressed in the socioeconomic component of the Project NEPA analysis if not resolved prior through direct settlement discussion.

Thank you for considering our input on this matter. We request to be made a formal party of record to this action, and be included on all communications relevant to the present relicensing.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



Ron Wesen, Chair



Kenneth A. Dahlstedt, Commissioner



Lisa Janicki, Commissioner

cc: Tribal Council, Upper Skagit Indian Tribe
Tribal Senate, Swinomish Indian Tribal Community
Tribal Council, Sauk-Suiattle Indian Tribe
City Council, City of Seattle

EXHIBIT B

An Interim Ordinance Declaring an Emergency and Adopting a Moratorium on the Acceptance of Permit Applications for Certain Offsite Compensatory Mitigation Projects On Skagit County Agricultural-Natural Resource Lands

WHEREAS pursuant to the Growth Management Act, Chapter 36.70A RCW (“GMA”), the Skagit County Board of Commissioners has adopted the Skagit County Comprehensive Plan and Title 14, the Unified Development Code, for all unincorporated areas of Skagit County; and

WHEREAS RCW 36.70A.390 and RCW 36.70.795 authorize the Board of County Commissioners to adopt moratoria, interim zoning ordinances, and interim official controls to preserve the *status quo* while new plans and regulations are being developed; and

WHEREAS RCW 36.70A.390 and RCW 36.70.795 permit the County to adopt such measures without notice and public hearing when deemed appropriate to promote the public health, safety and welfare, provided that the County holds a public hearing within sixty (60) days after the adoption of this interim ordinance; and

WHEREAS Skagit County has declared that natural resource lands, including agricultural lands, are a cornerstone of the County’s economy, culture, community, and history, and as such, their protection and enhancement is of paramount importance to Skagit County and its citizens; and

WHEREAS Skagit County has declared that commercial, residential and industrial uses unrelated to agriculture are to be discouraged on designated Agricultural Natural Resource Lands (Ag-NRL); and

WHEREAS the protection of Skagit County’s agricultural land base has required generations of sacrifice, by which Skagit landowners have intentionally forgone the business opportunity and wealth that intensive urban development of farmland has produced in other Puget Sound counties; and

WHEREAS Skagit Valley farmland and the open space our community has successfully protected is a regional treasure used and enjoyed by many tens of thousands of visitors each year as well as birds and other wildlife; and

WHEREAS uniquely suited for seed production due to its maritime proximity, the Skagit Valley produces a substantial portion of the world’s brassica, spinach and other crop seed; and

WHEREAS with escalating food prices and global instability in food markets, protecting the Skagit for seed production and other agriculture is squarely in the public interest; and

WHEREAS a critical mass of farmland acreage is necessary to sustain crop rotation as well as agricultural processing, transport, storage and support services and infrastructure, and the tipping points beyond which these functions and services will be lost due to declining farmland acreage is impossible to calculate with meaningful precision; and

WHEREAS only some 88,000 acres of prime Skagit farmland remain, and continued conversion of prime farmland to other uses is likely to have far-reaching effects on the stability and viability of Skagit County's agricultural economy; and

WHEREAS Skagit County has adopted a broad range of GMA Comprehensive Plan policies and development regulations intended to ensure long-term conservation of agricultural lands; and

WHEREAS it is in Skagit County's interest to ensure that large habitat enhancement projects on Ag-NRL lands are professionally and competently executed, with consent from and cooperation with responsible diking and drainage districts. To that end, Skagit County Code ("SCC") 14.16.400(4)(d) requires that any habitat enhancement project on farmland involving "the alternation of the landscape by excavation or sculpting of soil and/or the alteration of hydrology" first obtain a Hearing Examiner Special Use Permit, *see also* SCC 14.04.020 (definition of "habitat enhancement project"); and

WHEREAS there is no requirement to seek a Hearing Examiner Special Use Permit for habitat enhancement projects on Ag-NRL lands to the extent the proposed project does not involve terraforming, hydrology modification and/or channel redirection; and

WHEREAS a Hearing Examiner Special Use Permit is *not* required for habitat enhancement projects done as *onsite* mitigation, *see* SCC 14.04.020, definition of "habitat enhancement project"; and

WHEREAS Skagit County prohibited wetland mitigation banking on lands zoned Ag-NRL by interim Ordinance No. 20090001 on February 9, 2009, followed by permanent Ordinance No. 20090006 adopted on June 8, 2009, categorically excluding wetland mitigation banking from major habitat enhancement activities that may be permitted as a Hearing Examiner Special Use on designated Ag-NRL lands;

WHEREAS the central reason for the Board's adoption of Ordinance Nos. 20090001 and 20090006 was to prohibit large-scale compensatory mitigation on Skagit County farmland arising from the environmental impacts of offsite commercial, residential and industrial activities unrelated to farming; and

WHEREAS consistent with the foregoing, the Board generally opposes offsite compensatory mitigation on designated Ag-NRL lands; and

WHEREAS Skagit County's Comprehensive Plan envisions sustaining a robust fisheries resource in the Skagit, in part to help satisfy our collective national obligation to ensure a harvestable anadromous fishery in the Skagit River under the 1855 Treaty of Point Elliott; and

WHEREAS Skagit County acknowledges that long-standing and broadly-supported plans and agreements envision major habitat enhancement projects in the diked and drained portion of the Lower Skagit Valley to achieve agreed-upon recovery goals set forth by the 2005 Skagit Chinook Recovery Plan; and

WHEREAS habitat enhancement in the diked and drained portion of the Lower Skagit Valley inherently involves major modification to critical flood protection and drainage infrastructure owned and maintained by Skagit diking and drainage districts; and

WHEREAS the Board finds it imperative that habitat enhancement projects on Ag-NRL lands be sited, planned, executed and maintained with the utmost forethought and care, with the direct and continuous involvement of diking and drainage districts an indispensable necessity; and

WHEREAS the GMA and the Skagit County Comprehensive Plan require that the needs of farming and the fisheries resource be carefully and thoughtfully balanced, and to that end the Board finds it imperative that any conversion of prime Skagit agricultural land be highly likely to deliver an increase in harvestable anadromous species while minimizing impacts to agriculture and farmland; and

WHEREAS the Board finds that major habitat enhancement projects that have implications for existing diking and drainage (as defined by SCC 14.04.020) should generally be done at scale rather than piecemeal, with careful planning, thereby allowing effective project and long-term management as well as meaningful monitoring of results; and

WHEREAS Skagit County participated in good faith with federal and state resource agencies, Skagit tribal representatives, and other local governments in a comprehensive analysis to determine the highest and best locations for significant estuary habitat enhancement in the Lower Skagit Valley, which produced the Estuary Restoration Strategic Assessment (“ERSA”), a document identifying a prioritized list of significant Skagit Delta habitat enhancement projects from the standpoint of fisheries resource benefit and other key criteria, a copy of which is attached hereto as **Exhibit A**; and

WHEREAS Skagit County fully supports the prioritized completion of major habitat enhancement projects in furtherance of 2005 Chinook Recovery Plan goals to the extent professionally executed and competently managed, which indispensably necessitates the involvement and consent of the relevant diking and drainage districts responsible for the geographic area and critical public infrastructure involved in such projects; and

WHEREAS it is in the interest of Skagit County and our community as a whole that 2005 Chinook Recovery Plan goals be completed on a timely basis, notwithstanding valid concerns that habitat enhancement to date has failed to deliver increases in harvestable numbers of Skagit Chinook promised by the 2005 Skagit Chinook Recovery Plan, in part due to extremely high marine intercept of Skagit Chinook; and

WHEREAS the Board finds that major delta habitat enhancement projects necessary to achieve agreed-upon recovery goals under the 2005 Chinook Recovery Plan are substantially on schedule; and

WHEREAS the Board finds that prioritized public land enhancement projects, to be completed prior to projects on private land, have yet to be started and/or completed; and

WHEREAS Seattle City Light, an energy production entity based in Seattle, has recently expressed intent to engage in offsite compensatory mitigation for its hydroelectric dams, which are not located in Skagit County; and

WHEREAS Seattle City Light's offsite compensatory mitigation plans specifically involve the acquisition and conversion of a significant amount of designated Ag-NRL land within Skagit County, which will inherently necessitate modification to Skagit diking and drainage infrastructure; and

WHEREAS for energy production and other offsite industries, the conversion of Skagit County farmland may well be a more financially attractive alternative than onsite mitigation, thereby creating inappropriate economic incentives that, if left unaddressed, will undermine Skagit County's long-stated intention to preserve and protect Skagit County's agricultural land base; and

WHEREAS in part due to rapid growth in the compensatory mitigation industry, Skagit County has reasonable fear that more such economic interests unrelated to agriculture will increasingly target Skagit Valley farmland for offsite compensatory mitigation activities, further degrading and endangering Skagit County's agricultural land base and economy; and

WHEREAS Skagit County has grave concerns regarding the integrity of offsite compensatory mitigation conducted on Skagit County Ag-NRL lands to date, see, *Sauk-Suiattle Indian Tribe v. City of Seattle*, Washington State Court of Appeals Division 1, Case No. No. 83632-3, and in particular Skagit County's *amicus curiae* brief filed therein; and

WHEREAS Skagit County has reasonable fear that unrestricted access to Skagit County's agricultural land base for offsite compensatory mitigation purposes will undermine, interfere with, and jeopardize existing plans and agreements intended to meet established species recovery goals in a rational and orderly manner; and

WHEREAS the Board of County Commissioners finds that an emergency exists within the County, and the immediate adoption of an interim ordinance effecting a moratorium on applications for special use permits for offsite compensatory mitigation on lands designated Ag-NRL is necessary for the immediate preservation of the public peace, health, and safety and for the support of Skagit County government and its existing institutions; and

WHEREAS this action is taken consistent with the State Environmental Policy Act (SEPA) provisions at WAC 197-11-880 regarding emergency actions.

[remainder of page left intentionally blank]

NOW, THEREFORE, BE IT ORDAINED:

The Board of County Commissioners adopts the foregoing findings of fact, finding further as follows:

1. The United States Supreme Court in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), held that moratoria are essential tools for successful development regulation and re-affirmed that moratoria are not per se takings.
2. The regulations currently in effect do not adequately ensure the protection of Ag-NRL lands as agricultural lands of long-term commercial significance in Skagit County.
3. Skagit County intends to develop permanent regulations to address the deficiencies in the current regulations.
4. This interim ordinance is exempt from the public participation requirements of the GMA, subject to the requirements of RCW 36.70A.390.
5. An emergency exists and the immediate adoption of a moratorium imposed by this ordinance is necessary for the protection of the public health, safety, property, and peace.

[remainder of page left intentionally blank]

NOW THEREFORE, BE IT FURTHER ORDAINED:

Section 1. The Board of County Commissioners hereby declares a moratorium providing that no special use permit applications for projects involving offsite compensatory mitigation shall be accepted pursuant to Skagit County Code 14.16.400(4)(d).

Section 2. Skagit County Code 14.16.400(4)(d) is hereby provisionally amended to read as follows, with added text in bold:

Habitat enhancement and/or restoration projects, except mitigation banks and other projects involving offsite compensatory mitigation, as defined by SCC 14.04.020.

Section 3. For the purposes of this ordinance, “Offsite Compensatory Mitigation” is defined as any action proposed on Ag-NRL zoned lands as compensatory mitigation for activities, actions or environmental impacts occurring outside Skagit County Ag-NRL zoned lands. Skagit County Code 14.04.020 (Definitions) is hereby provisionally amended to add the foregoing definition.

Section 4. This ordinance shall take effect immediately upon passage by the Board of County Commissioners.

Section 5. The moratorium created by this ordinance shall be effective for six (6) months.

Section 6. The ordinance and moratorium may be renewed for one or more six (6) month periods if a subsequent public hearing(s) is held and findings of fact are made prior to each renewal.

Section 7. This ordinance and moratorium shall not apply to any applications vested before the effective date of this ordinance. An application shall be vested pursuant to Skagit County Code 14.02.050 when the application is deemed complete pursuant to Skagit County Code 14.06.090.

Section 8. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

[remainder of page left intentionally blank]

Section 8. The Board of County Commissioners shall hold a public hearing on September 6, 2022 at 9:30 a.m. - 10:30 a.m. in the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington, for the purpose of hearing public testimony on this matter in accordance with RCW 36.70A.390.

WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this 18th day of July 2022.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**





Peter Browning, Chair



Ron Wesen, Commissioner




Lisa Janicki, Commissioner

ATTEST:



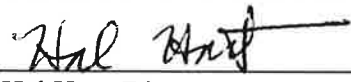
Linda Hanmer
Clerk of the Board

APPROVED AS TO FORM:



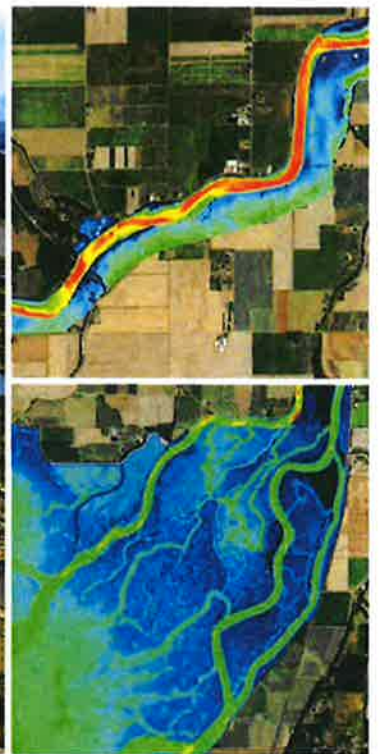
Will Honea, Senior Deputy
Skagit County Prosecuting Attorney

APPROVED AS TO CONTENT:



Hal Hart, Director
Planning & Development Services

EXHIBIT C



Estuary Restoration Strategic Assessment

A Summary Report of the Skagit Hydrodynamic Modeling Project



INTRODUCTION



IN THE SKAGIT RIVER, the futures of salmon and people are intertwined. The Estuary Restoration Strategic Assessment sets a course to balance the needs of fish, farmers, and flood risk reduction.

Chinook salmon are a cornerstone of the Skagit River's tribal culture, economy, and ecosystem. As with many watersheds in Puget Sound, a majority of the Skagit's tidal wetlands were diked and drained over a hundred years ago to make way for farms and towns. Young salmon, or smolts, find food and shelter in estuarine waters as they prepare to go to sea; loss of estuary habitat is one of several factors that contributed to the decline of this important species.

To recover Chinook, the Skagit delta needs to provide habitat for 1.35 million more smolts annually, which is predicted to require 2,700 acres of estuary restoration and improving access to existing habitats.¹

Local communities and businesses also rely on the delta. Farmers grow crops in the rich soils, producing valuable food, flower bulbs, and seeds, and driving the local economy. Thousands of people live, work, and recreate on the delta, with the number rising every year. Aging flood and drainage infrastructure combined with a changing climate are increasing flood risk.

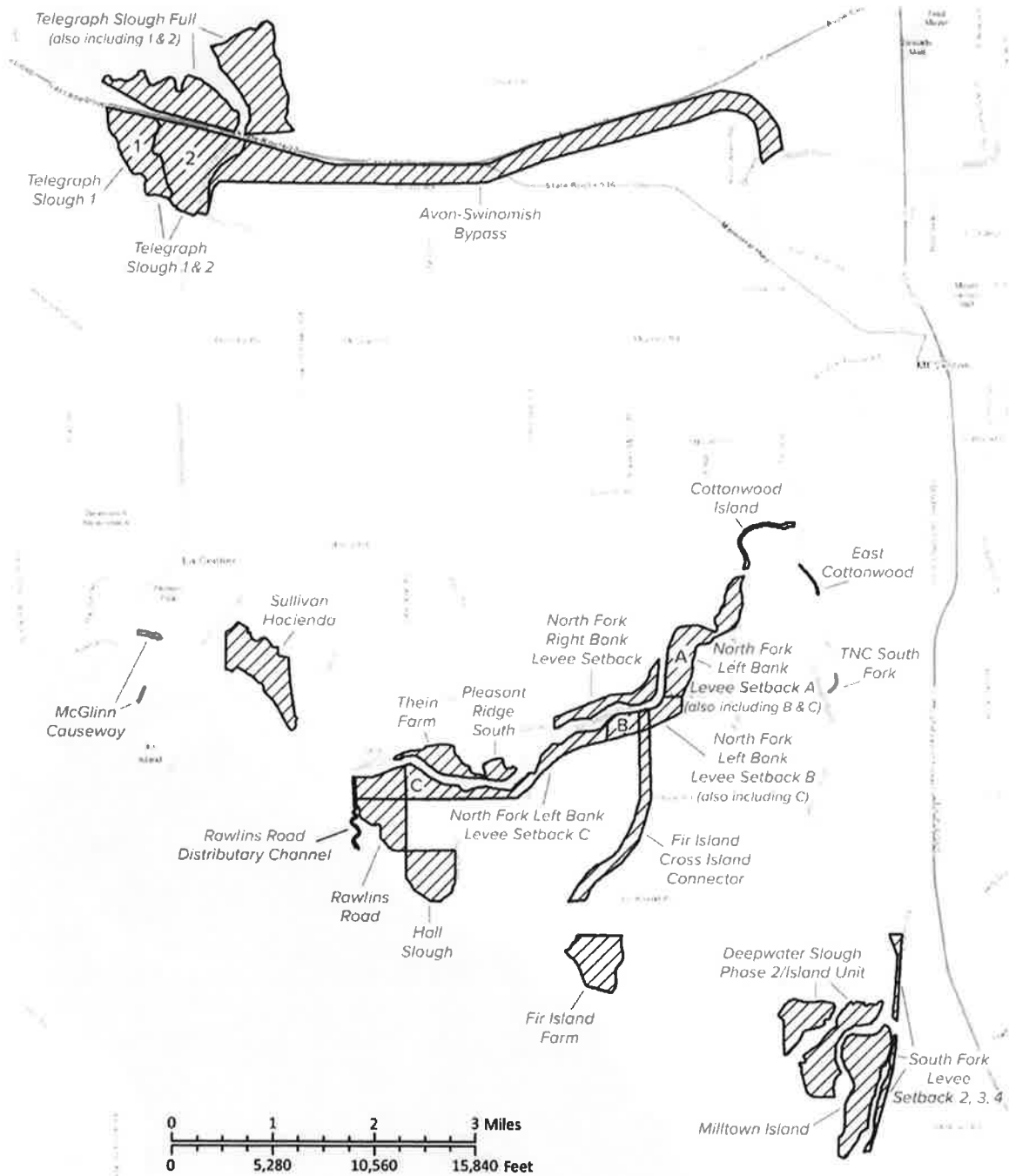
The Skagit Farms, Fish and Flood Initiative (3FI) is addressing these challenges by creating and implementing mutually beneficial solutions. The goal is to ensure long-term viability of agriculture and

salmon while reducing the risk of destructive floods. 3FI also aims to support implementation of the Skagit Tidegate Fish Initiative, an agreement that links the maintenance of critical drainage infrastructure to estuary restoration to ensure that both needs are being achieved.

Under the umbrella of 3FI, representatives from salmon recovery, flood risk reduction, and agricultural groups collaborated to develop the Estuary Restoration Strategic Assessment (ERSA). Using scientific modeling and analysis, they evaluated the potential benefits and impacts of more than twenty project concepts for estuary restoration. In a collaborative decision-making process placing equal weight on farms, fish, and flooding, they used data to develop recommendations for restoration actions that will increase estuarine habitat for salmon while providing benefits and minimizing negative impacts for farms and flood risk reduction.

The ERSA combines best available science, local knowledge, and community values to achieve shared goals. The following pages summarize the process used to develop the ERSA and present the recommendations, lessons learned, and next steps for implementation.

¹ Skagit Chinook Recovery Plan (2005)



STUDY AREA

The Estuary Restoration Strategic Assessment focused on tidally influenced portions of the Skagit River watershed, including Skagit Bay, the Swinomish Channel, and southern Padilla Bay. Drawing on previous studies and incorporating new ideas, the project team worked to identify all project concepts, regardless of type or size, for inclusion in the analysis. The resulting list included twenty-three individual project concepts and three combined project concepts. The project team shared the list with community members and subject matter experts for review to ensure accuracy and completeness. This map shows the locations of all project concepts that were analyzed. Three types of projects were included: (1) dike setbacks or removals to restore inundation with dike construction to protect adjacent lands, (2) hydraulic projects to change flow patterns by excavating new channels, and (3) alteration of existing channels waterward of dikes to increase backwater flow.

APPROACH



A project team with **DIVERSE** participants created a **SCIENTIFICALLY** sound decision-making process based on community **VALUES**.

COLLABORATION AND TRANSPARENCY

The ERSA project team was led by scientists from the National Oceanic and Atmospheric Administration (NOAA) Restoration Center, The Nature Conservancy, and Washington Department of Fish and Wildlife. The co-leads invited a wide array of organizations from salmon recovery, flood risk reduction, and agricultural interests to join. Representatives from fourteen organizations actively participated as members of the project team. The diversity of perspectives represented on the project team was critical to ensure that the final results were meaningful and well supported. The project team strived for a collaborative, thoughtful, and transparent process that used best available science. The project team engaged with people in the broader community to gain additional input and perspectives.

ESTABLISHING CLEAR OBJECTIVES

The project team set out to understand the benefits and impacts that could result from each of the project concepts. The goal was to use this information to develop a strategic approach for prioritizing project concepts for implementation.

Quantitative analysis was an important part of the process. It enabled participants to understand how their priorities were incorporated in decision-making

toward, and ultimately the final recommendations. Groups of representatives from each of the three interests—farm, fish, and flood—chose the objectives for their interest. The objectives encompassed both benefits to be maximized and impacts to be minimized from estuarine restoration. For each of their objectives, the interest groups developed quantitative indicators that could be used to analyze

PROJECT TEAM

The ERSA project team included individuals from:

- NOAA Restoration Center
- Seattle City Light
- Skagit Conservation District
- Skagit County Consolidated Diking Improvement District #22
- Skagit County Dike District #3
- Skagit County Dike District #17/Dike District Partnership
- Skagit Watershed Council
- Skagitians to Preserve Farmland
- The Nature Conservancy
- Washington Department of Fish and Wildlife
- Western Washington Agricultural Association
- Upper Skagit Tribe
- United States Geological Survey

how much each restoration project concept would contribute toward the objectives.

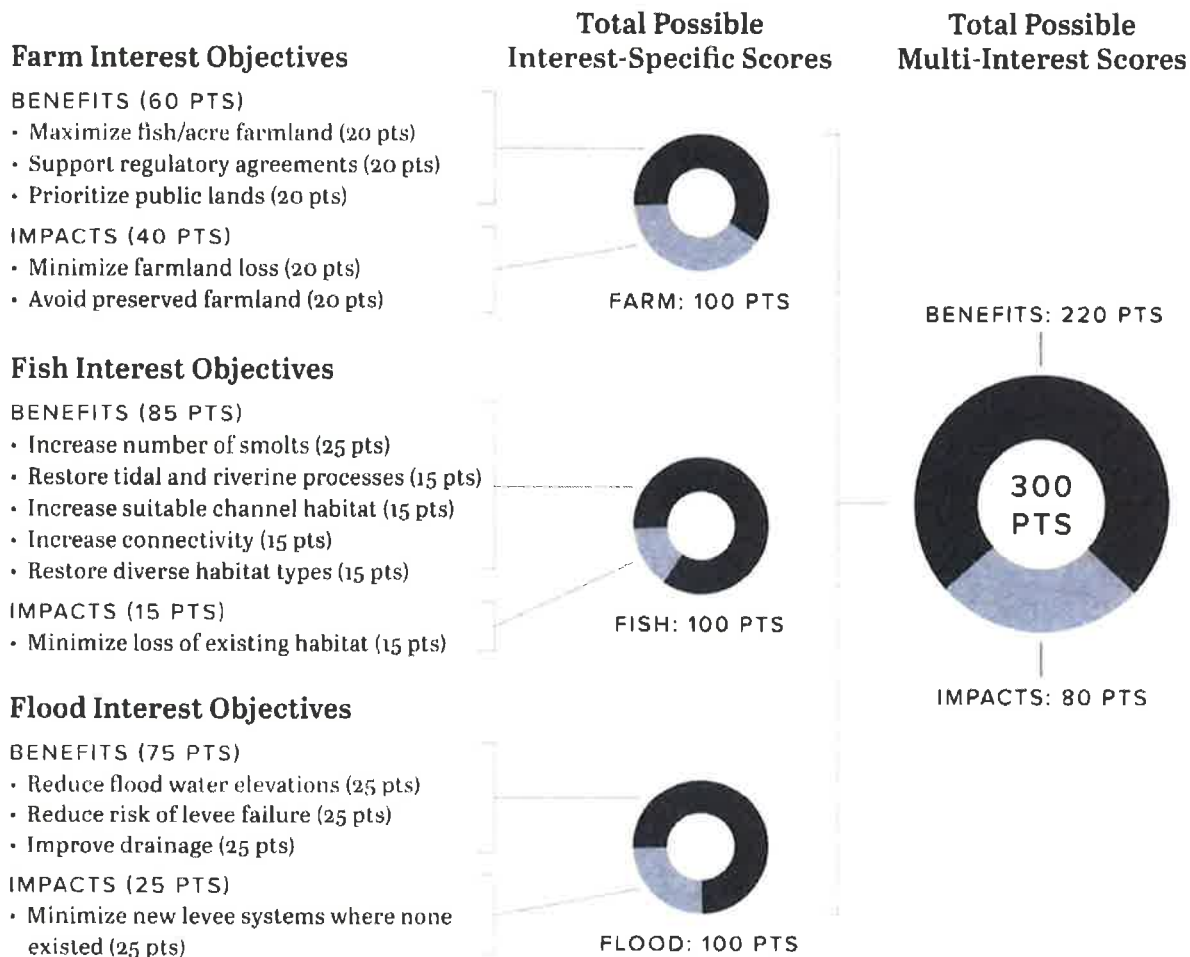
Each interest group had one hundred points to allocate among their objectives, allowing weighting of high-priority objectives. By allocating a hundred points for each of the three interests, the analysis placed equal weight on fish, farms, and flood risk reduction, when calculating multi-interest scores.

The interest groups shared with the entire project team their reasons for choosing objectives and indicators, and for weighting or not weighting objectives. This discussion allowed everyone to better understand the perspectives of the other groups, building trust and a common knowledge base.



Levees and dikes protect Skagit farmland from flooding.

OBJECTIVES AND SCORING SYSTEM FOR RESTORATION PROJECT CONCEPTS



Approach

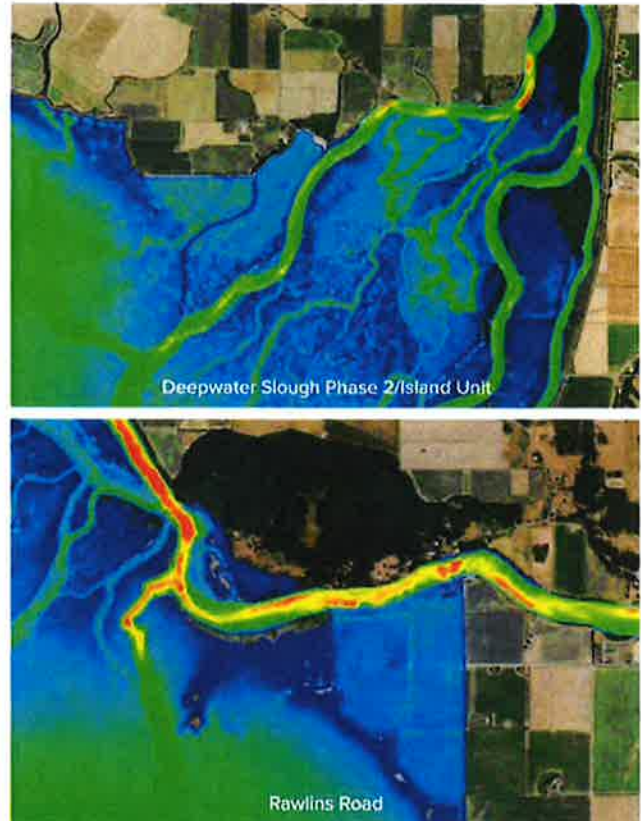
ANALYZING POTENTIAL OUTCOMES WITH BEST AVAILABLE SCIENCE

Scientists and technical experts worked with the project team to quantify the indicators for each project concept using best available science, including updated models and analytical methods.

Since release of the Skagit Chinook Recovery Plan in 2005, improvements have been made in models used to predict tidal channel formation on restored sites, which in turn affects the predicted number of smolts a site can hold. Incorporating the improved models was critical, as the updated predictions significantly increased smolt numbers for two sites and lowered those for two others.

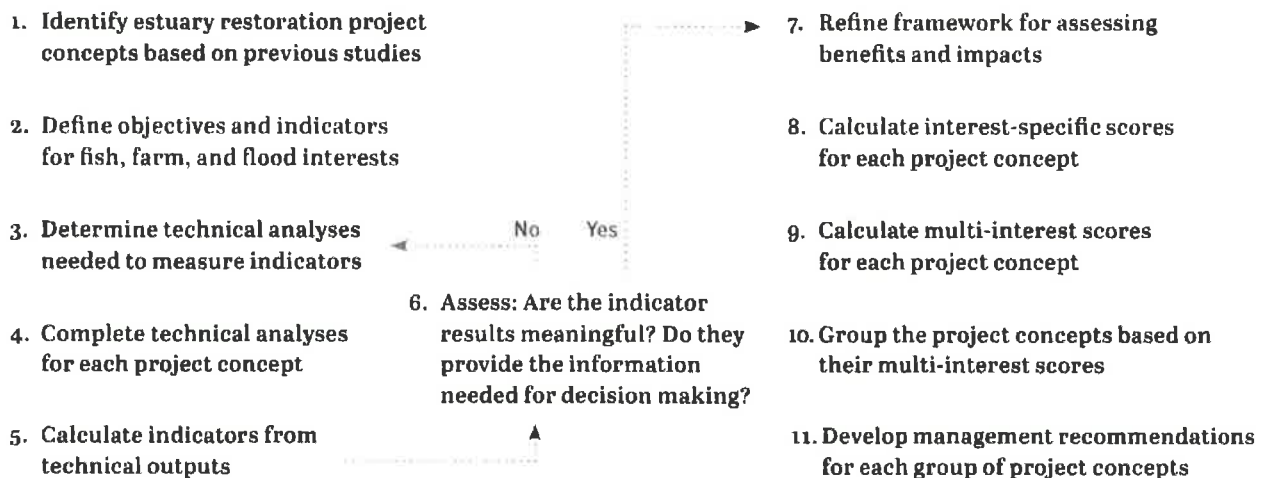
New geographic information system (GIS) analyses, models of sedimentation patterns, knowledge of local tidal and river flood and drainage patterns, and vegetation community predictions also informed calculations of indicators.

This work was an iterative process between experts and the project team. Input from members of each interest group helped ensure that the models reflected real-world conditions. Through this process, the team refined indicators to better convey the effects of restoration and to ensure that they provided meaningful information to each interest group.



Technical experts used a hydrodynamic model to predict water depths, as part of the indicators analysis for each project concept.

THE ANALYSIS PROCESS



MULTI-INTEREST SCORES FOR EACH PROJECT CONCEPT

The indicator measurements were used to produce a multi-interest score for each project concept. The purpose of the multi-interest score is to indicate the total anticipated benefits and impacts for the three interest areas—fish, farms, and flood risk reduction—collectively, rather than separately.

First, the values calculated for each indicator across all project concepts were standardized on a scale from zero to one, so that results from different types of indicators could be summed into a total score. To reflect the weight assigned by the interest groups to each objective, the standardized value for an indicator was multiplied by the number of points allocated to its corresponding objective. For example,



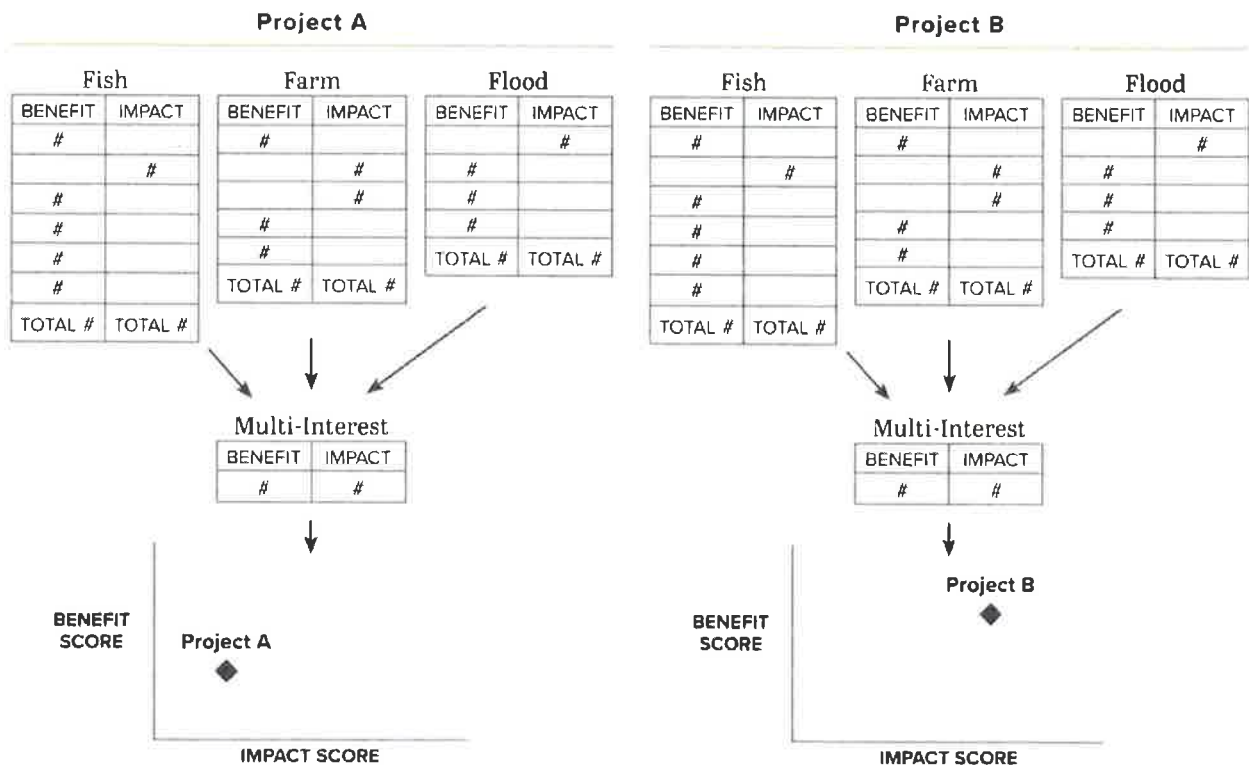
A levee protects adjacent farmland from flooding

a project that received a 1.0 score for the objective to "Maximize fish/acre farmland" would receive all of the possible 20 points, and a project with a 0.5 score would receive 10 points.

The benefit and impact scores within each interest were summed, and then the multi-interest score was calculated by summing the interest-specific scores.

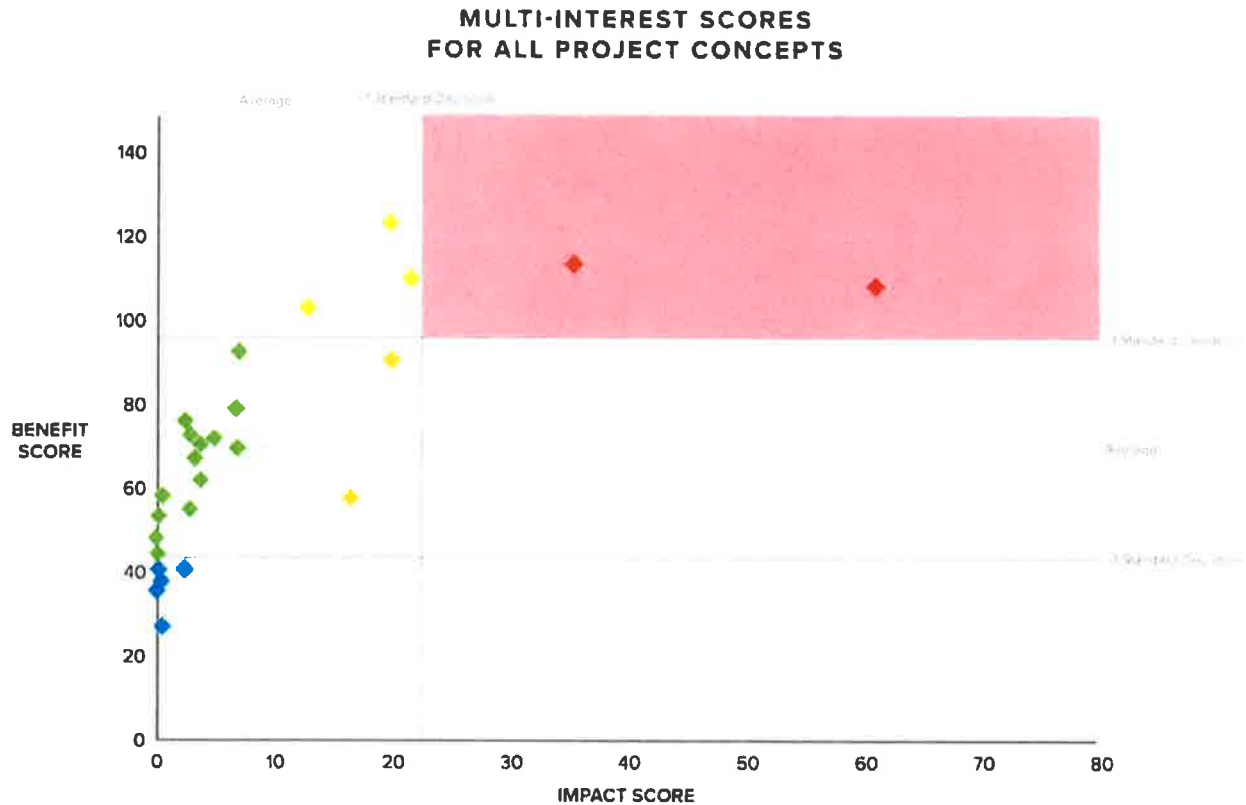
The process of calculating multi-interest scores is illustrated in the figure below.

CALCULATING MULTI-INTEREST SCORES



For each project concept, the benefit and impact indicator scores for fish, farm, and flood interests were summed to generate single-interest total scores, and then multi-interest scores. The multi-interest scores were graphed for comparison to other project concepts, as shown in this conceptual diagram for two hypothetical projects.

Approach



This graph shows the multi-interest scores for all project concepts in the ERSA analysis. Each diamond represents a project concept. The colors indicate groups of project concepts for management purposes, based on their levels of benefits and impacts (low, medium, or high). The ERSA project team recommends the green management group (low impacts, medium benefits) as the priority for implementation.

VISUALIZING TRADEOFFS

To visualize how the project concepts compared in their benefits and impacts, the project team plotted the multi-interest benefit score for each project concept against its multi-interest impact score, as shown above.

DEFINING MANAGEMENT GROUPS

Based on the averages and standard deviations of the benefit and impact scores, the project team categorized the multi-interest scores as high, medium, or low. This placed the project concepts into five distinct groups for planning and management purposes.

CUMULATIVE IMPACTS AND CLIMATE CHANGE

All restoration project concepts except the two projects in the red management group were modeled to identify potential cumulative impacts and begin preliminary analysis of climate change impacts. Cumulative effects analyses revealed no major impacts on the flow distribution between the North and South Forks of the Skagit River or on the performance of individual project concepts.

These findings provide a starting point for evaluating how the benefits of project concepts may change over time. Additional analysis of climate change, including modeling a wider array of sea level rise and river flow scenarios, needs to be completed to better understand potential changes to these projects and address future needs for drainage and diking infrastructure.

RECOMMENDATIONS



To support successful outcomes, the project team recommends a **CLEAR FRAMEWORK** for implementation and a **TIMELINE** for each management group.

PROJECT IMPLEMENTATION PATHWAY

Advancing estuary restoration from concepts to completed projects with monitored outcomes requires a clear framework. To support specific recommendations for each management group, the project team identified a typical pathway for project implementation. The pathway has well-defined phases and applies to projects on both public and private lands. Monitoring project outcomes provides valuable information about progress toward recovery goals for decisions about future project implementation.



Project implementation pathway showing phases to advance a restoration project from concept to implementation and monitoring.

Recommendations

AN IMPLEMENTATION STRATEGY FOR EACH MANAGEMENT GROUP

Using the implementation pathway as a framework, the project team developed a specific implementation strategy for each management group. The strategies were tailored based on the management group's levels of benefits and impacts (high, medium, low). Not all steps in the management pathway are included in the implementation strategies for some groups, and within each group not all projects are expected to advance at the same pace. Additionally, some project concepts may never advance because of project-specific factors.

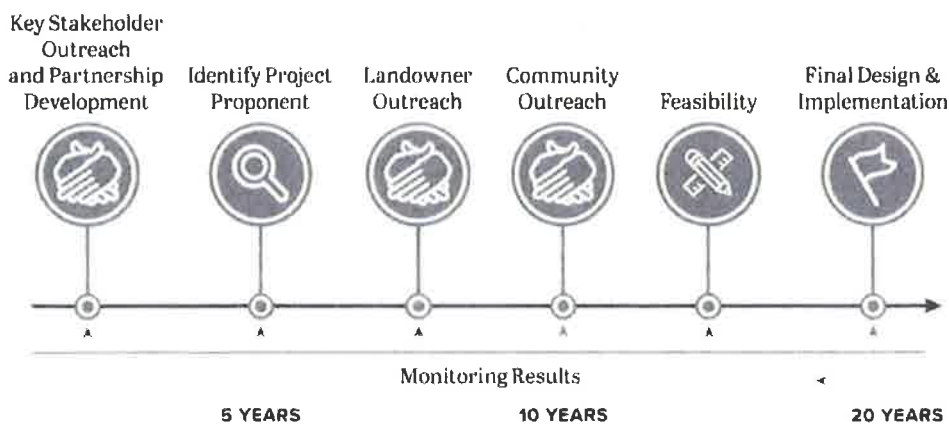
GREEN MANAGEMENT GROUP: HIGHEST PRIORITY

The project team recommends the green group of project concepts as the highest priority for collaborative implementation by fish, farm, and flood groups. These projects are anticipated to have moderate levels of benefits across interests and relatively low impacts. Therefore, they have the greatest potential to advance the goals of each interest while minimizing negative impacts.

With thirteen individual or combined project concepts, this is also the largest group. Some of the projects are already in the implementation pathway due to landowner willingness. As of 2019, Fir Island Farm had been completed, additional restoration actions at Milltown Island were in the feasibility and design phase, and Deepwater Slough Phase 2/Island Unit was in the stakeholder outreach phase.

Project	Acres
Fir Island Farm*	140
Milltown Island**	222
Deepwater Slough Phase 2/Island Unit**	268
McGlenn Causeway	7
North Fork Left Bank Levee Setback C	275
North Fork Right Bank Levee Setback	86
Rawlins Road	191
South Fork Levee Setback 2, 3, 4	56
Sullivan Hacienda	205
Telegraph Slough 1	185
Telegraph Slough 1 & 2	495
McGlenn Causeway & Telegraph Slough 1	192
McGlenn Causeway & Telegraph Slough 1 & 2	501

* Completed (actual acres restored: 131) ** In progress (2019)



Recommended timeline for projects in the Green Management Group.



The Fir Island Farm restoration project in the Green Management Group has been completed with 131 acres of estuary habitat restored.

YELLOW & ORANGE MANAGEMENT GROUPS

Five individual or combination project concepts had either high benefits/moderate impacts or moderate benefits/moderate impacts. Because of the higher likelihood of impacts from these projects, the project team recommends that outreach to key stakeholders and the development of multi-interest partnerships not begin immediately to allow time for less impactful actions from the green group to be implemented.

Project	Acres
Fir Island Cross Island Connector	150
North Fork Left Bank Levee Setback B	370
McGlinn Causeway & Telegraph Slough Full	1,055

Project	Acres
Hall Slough	134
Telegraph Slough Full	1,055

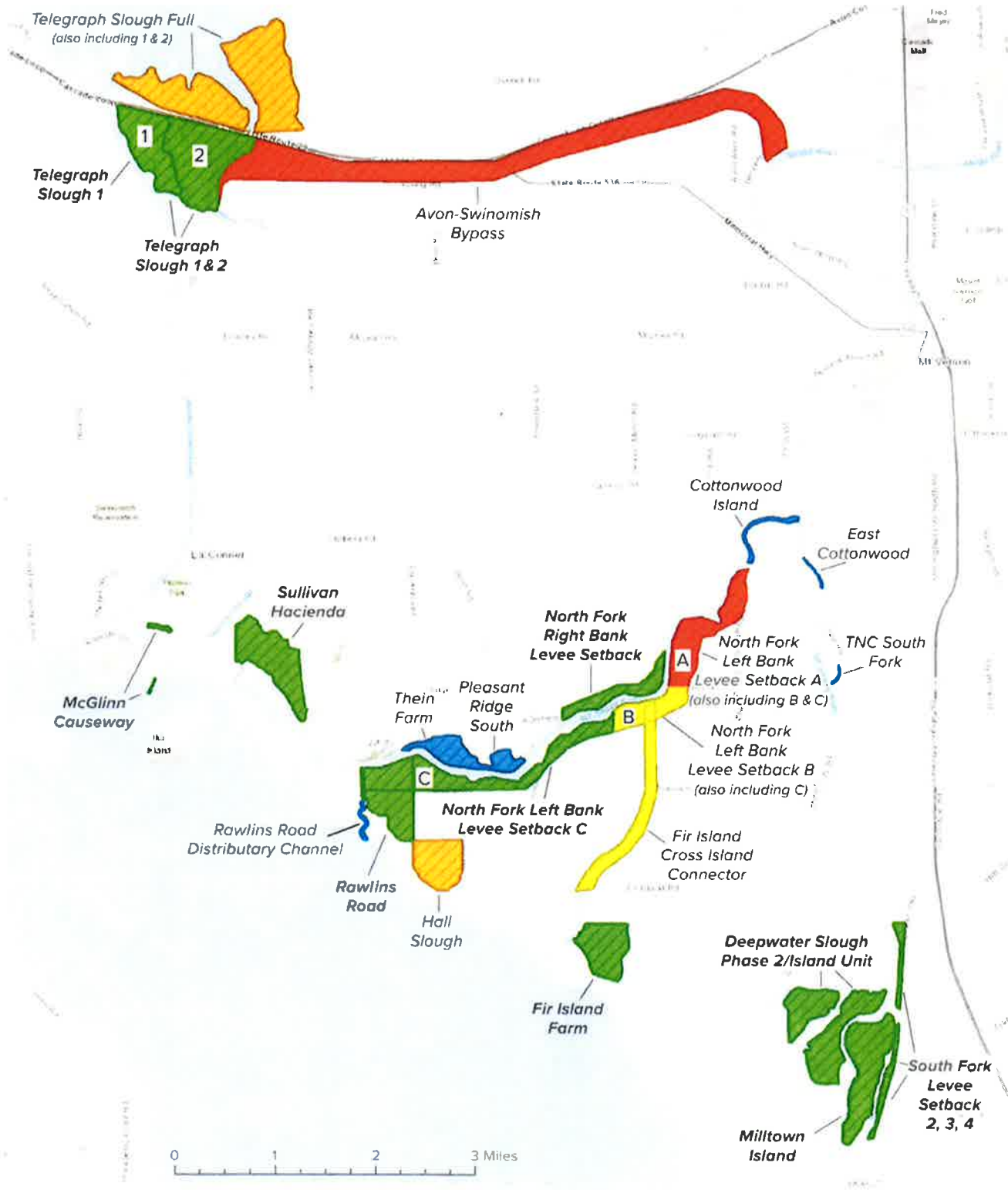
BLUE MANAGEMENT GROUP

The blue group includes six project concepts with low multi-interest benefits or strong benefits for only one interest group and therefore are not recommended to be a focus of multi-interest work. Because they are anticipated to have low impacts, however, they may be advanced by one interest group should the benefits be valuable enough.

Project	Acres
Cottonwood Island	15
East Cottonwood	2
Pleasant Ridge South	30
Rawlins Road Distributary Channel	8
Thein Farm	78

RED MANAGEMENT GROUP

The two project concepts in the red group—Avon-Swinomish Bypass and North Fork Left Bank Levee Setback A—are anticipated to have the highest total impacts as well as the highest impacts to any single interest. The project team recommends not advancing these projects toward implementation due to the high levels of impacts. These project concepts were excluded from cumulative impacts analyses.



PRIORITIES FOR IMPLEMENTATION

The project team recommends the green group of project concepts as the highest priority for collaborative implementation. The yellow and orange groups should not move ahead immediately due to the likelihood of higher impacts. Blue project concepts may be advanced as single-interest actions. The red group should not be advanced at this time.

MOVING FORWARD



STRONG COLLABORATION of fish, farm, and flood interest groups and **MONITORING** of project outcomes are essential for successful estuary restoration.

THROUGH PARTNERSHIPS, ADVANCE THE PROJECTS IN THE GREEN MANAGEMENT GROUP

The project team recommends that the focus over the next five years should be on engaging key stakeholder groups and developing multi-interest partnerships to advance project concepts in the green group. Project footprints may be modified to address concerns related to climate change, agricultural drainage, coastal resiliency, and offsite impacts that were too detailed and complex to include in the ERSA analysis.

The Skagit County Drainage and Irrigation Districts are a key stakeholder group for this effort. The twelve districts are signatory to the Skagit Tidegate and Fish Initiative (TFI), a framework that balances estuary restoration for Chinook salmon recovery and the need to maintain critical drainage infrastructure. The districts agreed to work with the restoration community to make the landowner contacts necessary to secure permissions, easements, or ownerships to implement restoration projects and to work with landowners to understand habitat restoration goals.





Additionally, the commissioners of the Skagit Dike, Drainage and Irrigation Districts are themselves key landowners as they own and maintain the infrastructure that will need to be removed or realigned during restoration. By providing crucial knowledge of the complex diking and drainage systems that need to be considered in the design of restoration projects, the commissioners can help ensure that multiple benefits are achieved. Restoration practitioners will work together with the Districts to engage private landowners and advance projects from concept to design and implementation.

The project team anticipates these collaborative efforts may focus on a few, well-supported projects at any one time; therefore, individual project timelines will be staggered. The timeline for implementing projects will also be influenced by monitoring programs that measure progress toward Chinook recovery goals and allow for adaptive management in the Skagit delta.

SUPPORT PROJECTS ALREADY IN THE IMPLEMENTATION PATHWAY

As of 2019, two projects in the green group were being advanced: Deepwater Phase 2/Island Unit (outreach and partnership development) and additional restoration actions at Milltown Island (feasibility and design). Outreach to district commissioners and the

local community, including agricultural and salmon recovery entities, is being incorporated in these two projects. Continued support through partnerships and funding to advance these two projects through the implementation pathway is a priority.

MONITOR COMPLETED PROJECTS AND SUPPORT ADAPTIVE MANAGEMENT

Monitoring the outcomes of completed restoration projects and sharing results broadly is a critical need voiced by all interest groups. Understanding how completed projects are achieving, or not achieving, the goals of each interest will help improve the design and approaches used for future projects. Monitoring information from past projects informs all steps in the implementation pathway.

Project monitoring is also crucial for adaptive management to ensure that the anticipated benefits are achieved and unforeseen impacts are addressed. Monitoring to support adaptive management should address multi-interest goals. At the Milltown Island project, monitoring has shown that the site has not achieved the desired channel network connectivity and density, and therefore needs additional actions to achieve its full potential for supporting Chinook smolts. Wiley Slough has had ongoing infrastructure problems related to the tidegates and dikes that need to be corrected to meet its infrastructure goals.

CONCLUSION



ERSA provides a strategic approach for achieving **SALMON RECOVERY, FLOOD RISK REDUCTION, and AGRICULTURAL VIABILITY.**

The Skagit Chinook Recovery Plan notes that long-term estuary restoration projects “are socially complex and resource intensive so will need to include elements of mutually understood benefits for most, if not all, interest groups involved.” Focusing on restoration project concepts with moderate benefits and low impacts (Green Management Group), building off existing multi-party agreements, and continuing collaborations across the three interests creates a pathway for success on the Skagit delta.

LESSONS LEARNED FOR DEVELOPING WELL-SUPPORTED ACTIONS

The goal of the ERSA project was to develop “well-supported actions to achieve long-term viability of Chinook salmon and community flood risk reduction in a manner that protects and enhances agriculture and drainage”. To achieve this goal, the

ERSA project team used a process and analyses that were themselves well supported by participants representing the three interests.

Several components of the process were integral for buy-in across interests and the development of critical partnerships for this and future actions.

- All interests were allocated equal portions of the multi-interest score.
- Representatives of interest groups developed the objectives and indicators for their interest and decided whether weighting of objectives was needed.
- Interest groups shared why they had selected objectives and indicators, leading to common understanding across interests.
- All parties had time to review, understand, and comment on the modeling and scientific analyses.
- Throughout the process, participants adjusted



Conclusion

objectives and indicators to ensure that they were meaningful and informative.

- Benefits and impacts were clearly identified, and impacts were acknowledged.
- Concerns of the project team members were identified and addressed; additional concerns were documented so they can be addressed at later stages.

By creating a process that engaged all interests, incorporated their views, and weighted their needs equally, the ERSA project built strong support for its recommendations and for continued collaboration.

The relationships that were developed are critical to the next phase of work, as the groups advance projects through the implementation pathway to maximize benefits and minimize or offset impacts.



PROJECT TEAM

Development of the Estuary Restoration Strategic Assessment required multiple years of intensive effort and would not have been possible without the dedication of project team members.

The project team included individuals from:

- NOAA Restoration Center
- The Nature Conservancy
- Washington Department of Fish and Wildlife
- Seattle City Light, Skagit Conservation District
- Skagit County Consolidated Diking Improvement District #22
- Skagit County Dike District #3
- Skagit County Dike District #17/Dike District Partnership
- Skagit Watershed Council
- Skagitians to Preserve Farmland
- Western Washington Agricultural Association
- Upper Skagit Tribe
- U.S. Geological Survey

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Editorial & Design: Peter Taylor, Waterview Consulting

SKAGIT FARMS, FISH AND FLOOD INITIATIVE

NOAA Restoration Center
Skagit County Dike District #17/Dike District Partnership
Skagitians to Preserve Farmland
Washington Department of Agriculture
Washington Department of Fish and Wildlife
Western Washington Agricultural Association

SCIENTIFIC AND TECHNICAL EXPERTS

Pacific Northwest National Labs (hydrodynamic modeling)
U.S. Geological Survey (sediment study)
Skagit River System Cooperative (tidal channel and smolt estimates)
The Nature Conservancy (GIS analyses)

FUNDERS

Environmental Protection Agency/National Estuary Program
NOAA Restoration Center
Private donors through The Nature Conservancy
Salmon Recovery Funding Board/Recreation and Conservation Office/Skagit Watershed Council

EXHIBIT D

SKAGIT COUNTY

FARMLAND LEGACY PROGRAM

2021 ANNUAL REPORT



S kagit County's Farmland Legacy Program is one of the most active and successful farmland preservation programs in the state of Washington.

Now in its 25th year, the Skagit County Farmland Legacy Program has protected nearly 14,000 acres of fertile Skagit County farmland from future development.

The voluntary program enables farmland owners to sell unused residential development rights to the county, while landowners retain ownership and continue to farm their land as they always have.

PROTECTING LAND

The 14,000 acres of protected farmland in Skagit County include row crops, seed crops, dairy and cattle operations, as well as silage, hay pasture, bulbs, flowers and berries.

More than 170 conservation easements on Skagit farmland place permanent restrictions on future use and development of the land—protecting its agricultural productivity for future generations.

Total protected acreage as of December 2021 represents 16% of roughly 89,000 acres designated Agriculture-Natural Resource Lands in Skagit County.

THE ECONOMY OF AGRICULTURE

We can be proud that our county has made it a priority to protect our farmers and to support Skagit County's agricultural industry—for the last 25 years and into the future.

A special thank you to our farmers and land owners for their commitment to preserve the county's agricultural landscape. And to our Skagit County Commissioners and citizens, it is through your support that this important work continues.





RECENT SUCCESSES: 2021 SKAGIT COUNTY PROTECTED FARMLAND

Four Farms—950 Acres of Farmland—Added to Preservation Program in 2021

Skagit County's Farmland Legacy Program protected 772 acres of farmland in 2021 through its voluntary farmland preservation program—now in its 25th year of protecting Skagit County farmland. The Farmland Legacy program compensates agricultural landowners for extinguishing unused residential development rights. Landowners retain ownership and continue farming. Future building is limited to ag-related structures. Another 173 acres of farmland were protected in 2021 using the Agricultural Lands Preservation code SCC (14.16.860), an option available to landowners looking to separate a homesite from existing farmland. The same agricultural conservation easement protects these newly enrolled 945 acres of farmland—limiting future use to agriculture. Preserving these unparalleled silt and sandy loams promotes food security for the region while focusing development away from working lands. It's farmland forever.

Meet the farmers and landowners whose commitment in 2021 to protect their land benefits us all—they've protected it as farmland today and for future generations.

210 ACRES | FIR ISLAND

Robert Hayton's great grandparents established their farm in 1876 on Fir Island. They grew grain and made hay to barge from the banks of Deer Slough to Seattle to feed the city's workhorses. In the early 1900s, the farm transitioned into a dairy and, in the 1950s into a crop farm focused on peas, then berry, potato, cauliflower and cucumber crops. Robert is fourth generation in his family to farm the land and added a variety of berries over recent years.



Together with Susan Hughes-Hayton last February, Robert protected 210 acres of prime farmland and extinguished five development rights. "It was our great good fortune to work with Skagit County staff Grace Roeder and Kara Symonds to create a perpetual conservation easement beneficial to Hayton Farm and the county's future in agriculture," says Susan.

173 ACRES | LA CONNER

The soil on Nancy Dunton's farm has grown many crops over her lifetime, including tulips, daffodils, beet and cabbage seed, cauliflower, peas and potatoes. Most of her fields are currently leased to local farmers growing flowers and food who regularly trade ground with each other. It is a critical, large piece of land in a farming community reliant on field rotation.

Through the Farmland Legacy Program last April, she protected 173 acres of prime farmland and extinguished three development rights. "Nobody is going to build on this land, ever," says Nancy. "Concrete does not grow the food [people need] to eat."

286 ACRES | COOK ROAD I-5 INTERCHANGE

Ever since the Pierson family's 600-acre family farm and homestead was cut through by I-5 in the early 1960s, golf course builders to amusement park developers have

"With an ever-growing world population, we have to be careful about protecting what farmland we have left... there is no 'somewhere else' to go." David Pierson

sought to purchase the highly productive farmland. David Pierson's farm has grown dozens of crops over the years including seed crops that then went on to produce food around the world. The stark contrast between the Pierson side of Cook Road interchange and the developed area of the interchange shows the importance of preserving soil for future generations.

Through the Farmland Legacy Program last June, David protected 286 acres of prime farmland and extinguished seven development rights. "We've stopped the sprawl of commercial development... That's not what this land



This report was produced by the Skagit County Public Works Department and funded by the Farmland Legacy Program Conservation Futures Fund. Printed by Skagit Publishing Commercial Printing. Photography provided by Tahlia Honea, Colby Mesick, Sarah Walls of Cedarbrook Studio plus Hayton and Hedlin Farms Content and Editing: Sarah Stoner, Kai Ottesen, Andrea Xaver





“Once this land is paved over, or scooped out and carried away, it’s gone forever.” Nancy Dunton, whose permanently protected La Conner farmland is shown above,

is for,” says David, “Gone are the days developing on productive farmland, thinking that it can be replaced with new farmland somewhere else. There is no somewhere else to go,” David adds,

103 ACRES | CONWAY

The Tobiason farm has been in their family for three generations. The property sits just west of the I-5 corridor with the Skagit River on its eastern edge. It has been farmed by the Morrison family for several generations. Potatoes were the most recently grown crop on this highly productive land. “We weren’t sure what we’d do with the family farm after our mother died last February,” said Wendell Tobiason, part owner with his four siblings.

The Tobiason family protected 103 acres of prime farmland and extinguished two development rights last October. “The Farmland Legacy program allowed us to come together as a family to clarify our values surrounding the farm,” says Wendell Tobiason, one of four siblings. “We are proud as a family to participate in preserving farmland in Skagit Valley, and as well, our grandfather’s legacy,” adds sibling Michael Tobiason.

Despite strong land-use planning, the state of Washington continues to lose farmland to development—nearly 100,000 acres between 2001 and 2016. Over 50% of the land lost was considered the state’s best quality farmland, according to the American Farmland Trust’s recent report *Farms Under Threat: The State of the States*.

2021
Easement acquisition payments in 2021 totaled \$1,465,000 in Conservation Futures tax funds.

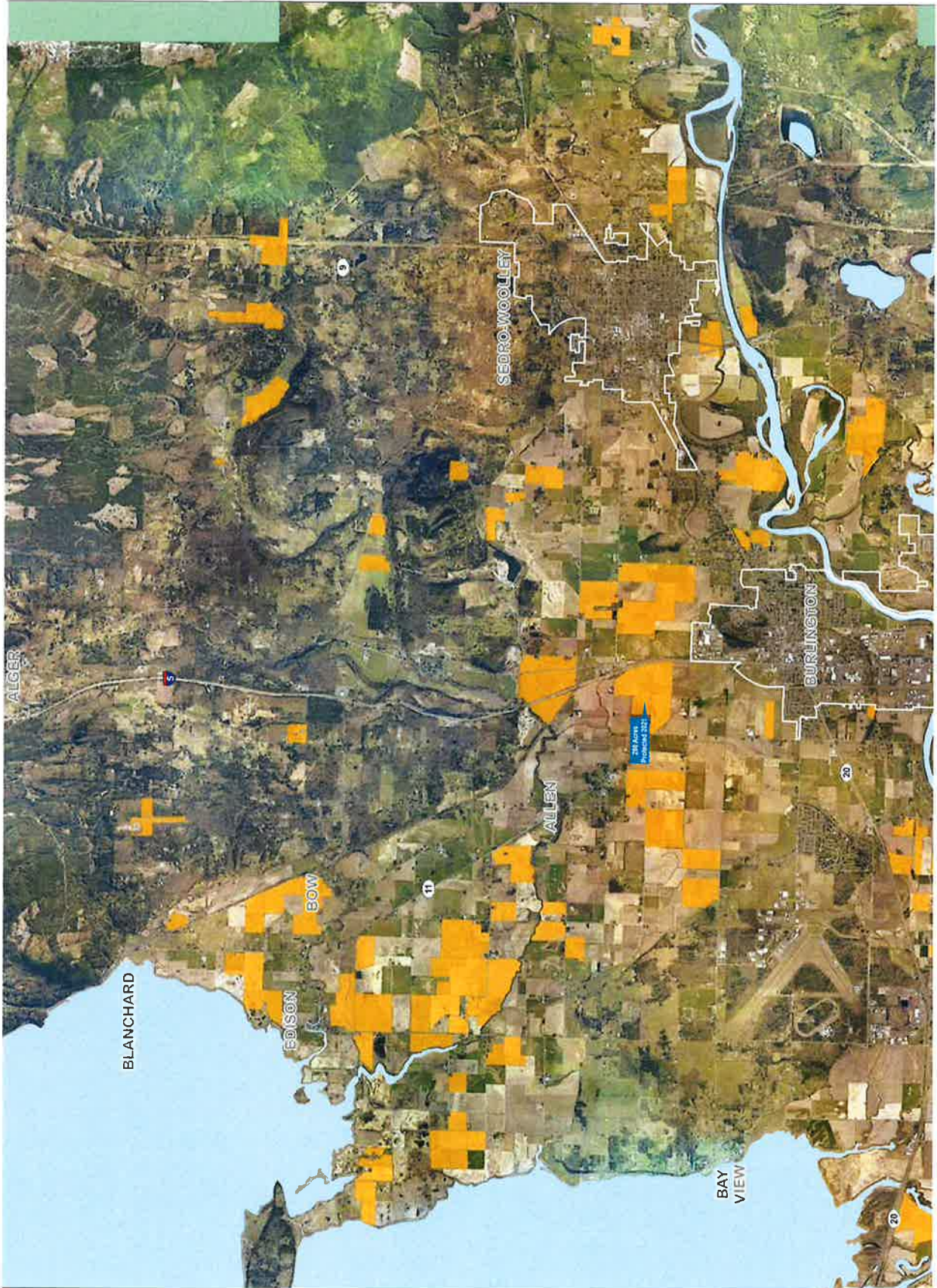
2022
For 2022, the county has budgeted \$1.8 million in Conservation Futures tax funds for the purchase of easements to protect additional agricultural land. More information on Skagit County’s Farmland Legacy Program is available at skagitcounty.net/farmland or by calling (360) 416-1417.

“Skagit County’s farmland is some of the most fertile in the world. The difference between rich farmland and the rest is that it can take two to three times the amount of marginal land—lower crop yields, higher input costs, fast soil degradation—to make up for the loss of the best quality land.”



The Cost of Lost Farmland, Skagitonian’s *The Dirt*



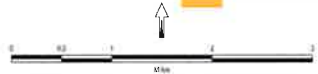




PROTECTED FARMLAND IN WESTERN SKAGIT COUNTY



Aerial Photo ©2021
Skagit County GIS



 Farmland Legacy Conservation Easements



Map Print Date: April 9, 2022





SKAGIT VALLEY AGRICULTURE

The Skagit Valley’s fertile soil has been rated in the top 2% of soils in the world, making the Skagit Valley one of the most important and productive agricultural regions in the world. Roughly 90,000 acres of agricultural land grow 90 different crops, generating nearly \$315 million in revenue in 2020.

More tulip and daffodil bulbs grow here than any other county in the United States. Yet there’s far more to Skagit County agriculture than its famed bulb flowers. Its 12,000 acres of potatoes gross \$60 million annually. Skagit County supplies much of the world’s cabbage, table beet and spinach seed. It is a hub for innovation in the regional grain market, and is one of the state’s top dairy regions. And those are just the highlights!

Skagit County is home to a dizzying array of fresh market staple and specialty crops, processing, nursery crops, grains, small fruits, tree fruit, and more. Bulbs grab more headlines than broccoli and Brussels sprouts, but this diversity of crops is essential to the agronomic and economic resilience of Skagit Valley agriculture. Growers here make the most of each piece of farmland, with an exceptional crop diversity that supports soil health, pest control, disease management, and market diversification.

APPLES

The coastal climate allows Skagit County to grow a unique variety of apples that are not grown in the large apple-producing regions of central Washington. These apples include Jonagold, Gravenstein, Spartan, Akane, and Honey Crisp. While the quality of these apples is excellent, the absence of nearby apple processing facilities makes shipping apples back and forth across mountain passes commercially impractical, limiting apples to a niche crop in the Skagit landscape.



BLUEBERRIES

Compared to the Midwest, quality and production of Skagit County blueberries is exceptionally high. The Pacific Northwest has been one of the fastest growing blueberry production regions in the U.S. While Skagit County currently produces around 30% of the state’s total blueberry production, the rapid increase in acreage over the past few years appears to have slowed.

COLE CROPS

All Skagit County Brussels sprouts, cauliflower and broccoli are grown for fresh market. Head quality is exceptionally high in this region. Approximately 60% to 80% of Brussels sprouts, broccoli and cauliflower grown in Skagit is consumed in Oregon, Washington and British Columbia. Skagit farmers grew more than 2,000 acres of Brussels sprouts, cauliflower, and broccoli this year.

BULB CROPS

Skagit County’s bulb industry averages about \$20 million in annual gross income, \$3 million of which constitutes bulb sales. Skagit County grows more tulip and daffodil bulbs than any other county in the nation—with approximately 1,100 acres dedicated to bulb crops. These flowers are sold as both bulbs and cut flowers which are then shipped throughout the U.S. and Canada. The Tulip Festival, established in 1984, brings more than 400,000 visitors and \$65 million in revenue to county businesses each year.

CHICKENS AND EGGS

As of 2021, Washington ranks 17th in the nation for egg production. Two major companies, Day Creek Organic Farms, and National Foods produce the majority of eggs for Skagit County. Collectively, egg and fryer production totaled more than \$27 million in revenue for 2020.

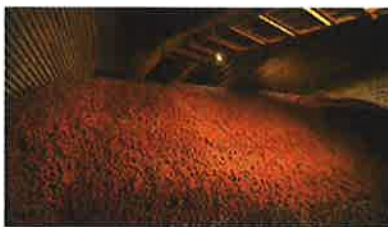
DAIRY

At the end of 2020, there were 23 commercial dairies in Skagit County. Fourteen years prior, there were 46. Skagit dairies grossed an average of \$1.65 million per farm, producing a total of 255 million pounds of milk for the year, or approximately 29.6 million gallons. The loss of dairies negatively affects the agricultural community and county economy on many levels. Dairies provide natural fertilizer essential to soil health and nutrient needs for many crops. They also generated nearly \$40 million in revenue in 2020.

GRAINS

Small grains like wheat and barley have always been important rotational crops in Skagit agriculture, but in recent years they have taken on even greater economic importance. Researchers, farmers, and businesses have worked closely over the decade to identify varieties well-suited to the maritime climate of the Pacific Northwest that also meet the needs of specialty markets, such as malters, millers, brewers, and distillers. These specialized markets often require different crop characteristics and flavor profiles than they can find in commodity grain markets. The scale of production and crop rotation in the Skagit Valley is well suited to these smaller, specialized markets.

POTATOES



Potatoes are the Skagit Valley’s single largest crop by revenue, generating over \$60 million annually. With 12,000 acres dedicated to their production, Skagit County potatoes are in great demand for their high quality. While Late Blight disease, Silver Scurf, and Flea Beetle threaten their production, Skagit farmers work closely with WSU Skagit County Extension to research and troubleshoot these issues in order to continue growing fresh market red, white, yellow, purple, fingerling, and chipping potatoes.

RASPBERRIES

Washington state produces about 75% of the nation’s frozen red raspberries; 95% of this comes from Whatcom and Skagit Counties combined. Skagit County primarily grows Meeker berries, which are processed into juice, preserves, yogurt, bakery ingredients, and frozen products.



SEED CROPS

Skagit County vegetable seed crops consist primarily of spinach, cabbage, and beet seed. Skagit County is considered a world contributor, producing roughly 8% of the world’s spinach seed, 25% of its cabbage seed, and 25% of its beet seed. County seed acreage runs below 5,000 acres due to the need to prevent cross-contamination and cross-pollination. Skagit County ranks first in vegetable seed production throughout Western Washington providing over \$6 million from vegetable seed crops. As of 2020, nine vegetable seed companies called the Skagit Valley home: Sakata, Illinois Foundation, McDonald, Rijk Zwaan, Schafer, Skagit Seed Services, Syngenta, Universal, and Vikima Seeds USA.

STRAWBERRIES

Acreage has increased in recent years, thanks in part to a demand for local production. Skagit County continues to produce about 20% of Washington’s strawberries. With around 500 acres in production, strawberries generate roughly \$2 million in revenue annually, making this crop an important and iconic part of Skagit County agriculture.

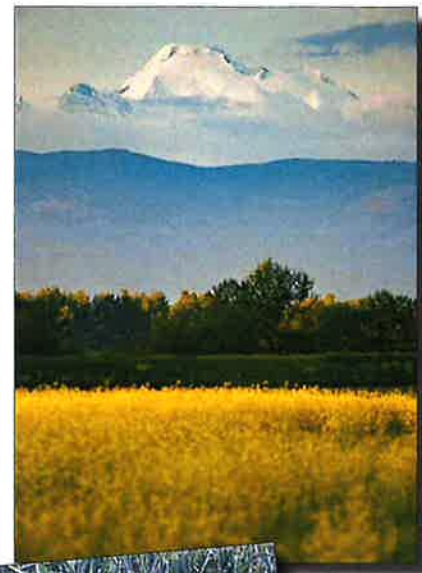
Crop and acreage data above provided by Washington State University Skagit County Extension. A full copy of the 2020 and earlier WSU Skagit County Agricultural Statistics reports are available at www.skagit.wsu.edu/agriculture/.





HOW MANY ACRES HAVE BEEN PRESERVED?

Farmland Legacy Program	
FLP Enrollment	175 conservation easements
Total Acres Protected	13,874 acres in Farmland Legacy Program
Extinguished Residential Development Rights	263
Pending Easements	575 acres; 14 development rights in program queue



Why do landowners apply to enroll in the Farmland Legacy Program?

- To preserve land for agricultural production in perpetuity
- To reinvest funds into equipment
- To reinvest funds into additional land purchases
- To aid in farm succession planning efforts
- To supplement farm income
- To reduce farm debt

Benefits to the community

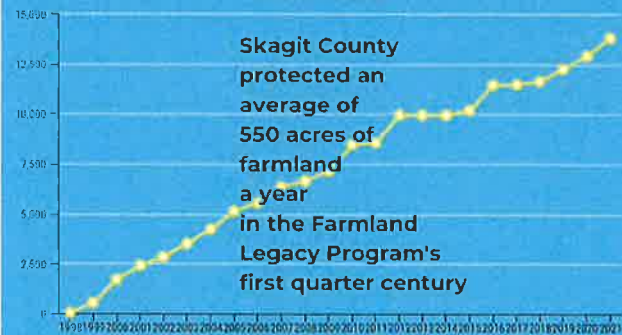
- Preserves open space and rural character
- Supports local food production
- Limits development in the floodplain
- Reduces urban sprawl
- Contributes to the agricultural economy
- Conserves soil for future generations

Since 1996, the Skagit County Farmland Legacy Program has sourced \$23 million in compensation to farmlandowners for the permanent protection of agricultural land in Skagit County. The breakdown of the \$23 million spent over the past 25 years includes \$13.5 million in Skagit County Conservation Futures Tax and \$9.5 million in local and federal grants and nonprofit contributions.

Funding Sources & Partnerships	Contributions
Skagit Land Trust	\$104,000
Ducks Unlimited	\$148,000
The Nature Conservancy	\$250,000
Skagitonians to Preserve Farmland	\$756,800
WA State Recreation & Conservation	\$2,927,880
U. S. Department of Agriculture	\$5,359,087
Skagit County Conservation Futures Tax	\$13,462,142
Total invested to date	\$23,007,909

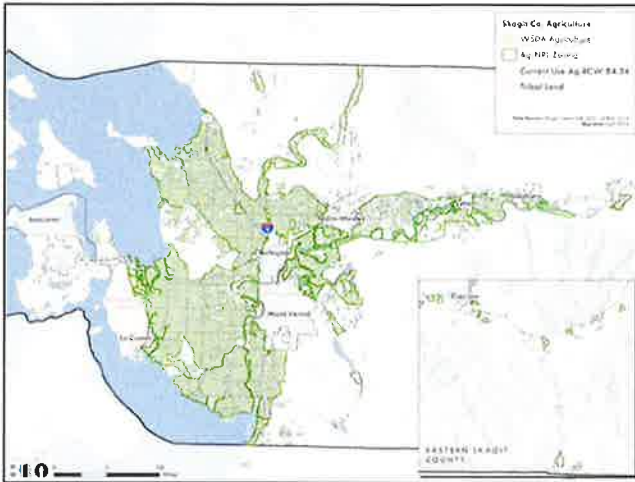
Protected Farmland Acres

Skagit County Farmland Legacy properties 1996 - 2021





SKAGIT COUNTY PRIME AGRICULTURAL SOILS



Interested in Enrolling in the Farmland Legacy Program?

Are you a farmer or farmland owner interested in seeing your property protected as farmland in perpetuity? Skagit County Farmland Legacy Program works with Ag-NRL landowners to voluntarily keep working lands in production.

Take the following easy steps:

- Call today to request an application. Now accepting applications for the second half of 2022 and early 2023.
- Learn more at www.skagitcounty.net/farmland
- Call or meet to discuss your property characteristics for an initial eligibility review.

Contact Farmland Legacy Program Coordinator Sarah Stoner, 360-416-1417, ssoner@co.skagit.wa.us

MEET THE TEAM!

Established along with the Farmland Legacy Program, the Conservation Futures Advisory Committee (CFAC) is a diverse group of farmers, conservationists and business people who oversee the preservation program and its associated Conservation Futures fund.



Left to right: CFAC members Audrey Gravley, Skagitonians to Preserve Farmland (2021-2025); Keith Morrison, At-Large (2018-2025); Margery Hite, Skagit Conservation District (2021-2024); Monitoring Agent Kai Ottesen; Owen Peth, District 1 (2013-2022); Farmland Legacy Coordinator Sarah Stoner, Skagit County; Andrea Xaver, District 2 (2007-2024); Chair Scott DeGraw, District 3 (2008-2025); Jim Glackin, Skagit Land Trust (2018-2026).

CONSERVATION FUTURES ADVISORY COMMITTEE

Reporting to the Board of Skagit County Commissioners, the Advisory Committee (CFAC) reviews and recommends farmland voluntarily offered from owners looking to prevent conversion to non-agricultural uses. CFAC members closely review an applicant's property to consider factors such as size of farm, soil quality, scenic values, and possible development pressures such as proximity to towns and high-traffic roads. Committee members attend monthly meetings together with County staff and local partners.

The committee includes one representative each from the Skagit Conservation District, the Skagit Land Trust, Skagitonians to Preserve Farmland, the three Commissioner Districts and one citizen-at-large member. Two County staff serve as ex-officio members.

ANNUAL MONITORING

'Farmland forever' is key to the Farmland Legacy mission. Annual monitoring of protected properties ensures that farmland remains just that... farmland.

FARMLAND LEGACY PROGRAM COORDINATOR

Skagit County Agricultural Lands Coordinator Sarah Stoner helps landowners through the lengthy and sometimes complicated process to permanently protect their farmland. Contact her with questions or to discuss a specific property at (360) 416-1417, ssoner@co.skagit.wa.us.

WITH GRATITUDE TO OUR FARMERS AND THE ONGOING COUNTY SUPPORT

Hats off to the Board of Skagit County Commissioners whose steadfast support and foresight created one of the most successful farmland preservation programs in the state.

And a resounding thank you to the farmland owners of Skagit County whose hard work and commitment to protect their farmland benefits us all.

Agricultural land peppered with residential houses results in smaller and smaller chunks of open space that make it harder to farm efficiently.



Sarah Stoner, Farmland Legacy Coordinator

To view Title 14.16.86, visit www.codepublishing.com/wa/skagitcounty/



EXHIBIT E

Skagit County Code

14.16.400 Agricultural—Natural Resource Lands (Ag-NRL)

(1) Purpose. 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. The district is composed mainly of low flat land with highly productive soil and is the very essence of the County's farming heritage and character.

(2) Permitted Uses.

- (a) Agriculture.
- (b) Agricultural accessory uses.
- (c) Agricultural processing facilities.
- (d) Co-housing, as part of CaRD, subject to SCC 14.18.300 through 14.18.330.
- (e) Commercial greenhouse operations that are an integral part of a local soil-based commercial agriculture operation.
- (f) Individual or multiple farm composting as an incidental agricultural operation to a working farm with no net loss of soil. The composting operation shall be managed according to an approved nutrient management plan in conjunction with the local Conservation District and Natural Resources Conservation Service (NRCS) standards and all applicable environmental, solid waste, access and health regulations. Such use shall not generate traffic uncommon to a farm operation.
- (g) Family day care provider as defined in Chapter 14.04 SCC; provided, that no conversion of agricultural land is allowed.
- (h) Farm-based business carried on exclusively by a member or members of a family residing on the farm and employing no more than 3 nonresident full-time equivalent employees.
- (i) Historic sites open to the public that do not interfere with the management of the agricultural land.
- (j) Home-Based Business 1.
- (k) Manure lagoons.
- (l) Cultivation and harvest of any forest products or forest crop and necessary accessory buildings.
- (m) On-site sorting, bagging, storage, and similar wholesale processing activities of agricultural products that are predominantly grown on-site or produced principally from the entire commercial farm operation. Such activities shall be limited to those which are integrally related to the agricultural production and harvesting process.
- (n) Seasonal roadside stands not exceeding 300 square feet.
- (o) Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses.
- (p) Water diversion structures and impoundments related to resource management.
- (q) Wholesale nurseries.
- (r) Anaerobic digester, when accessory to an agricultural use.
- (s) Maintenance, drainage.
- (t) Net metering system, solar.
- (u) Repair, replacement and maintenance of water lines with an inside diameter of 12 inches or less.

(3) Administrative Special Uses.

- (a) Agricultural slaughtering facilities.
- (b) Bed and breakfast, subject to SCC 14.16.900(2)(c), provided the use is accessory to an actively managed, ongoing agricultural operation and no new structures are constructed outside of the home for lodging purposes.
- (c) Expansion of an existing major or minor utility or public use; provided, that the expansion is designed to utilize the minimum amount of resource lands necessary and meets items in Subsection (3)(c)(i) or (ii) of this Section as well as the item in Subsection (3)(c)(iii) of the following requirements:
 - (i) The expansion is located within the existing building envelope which may include the required landscaping for the approved use;
 - (ii) It is to be sited on existing impervious surface or in existing right-of-way;
 - (iii) The applicant has proven that there is no other viable alternative to providing the expansion on non-natural resource lands.
- (d) Greenhouse operations not otherwise permitted in SCC 14.16.400(2)(e). Greenhouses operating in the Ag-NRL zone as an administrative special use, should they cease operation, shall be required to return the land to its former state or otherwise place the land in agricultural production.

- (e) **Home-Based Business 2**, provided no conversion of agricultural land is required to accommodate the business activity.
 - (f) **Minor public uses** related to the provision of emergency services where there is no other viable parcel or non-resource designated land to serve the affected area. Applicants shall demonstrate the need to locate the use in the natural resource land. Analysis of alternatives to the development of the use within the natural resource land must be provided.
 - (g) **Minor utility developments** including those that are a necessary part of a salmon recovery or enhancement project, including stormwater management projects, where there is no other viable parcel of non-agricultural land to locate the project.
 - (h) **Personal wireless services** towers, subject to SCC 14.16.720.
 - (i) **Seasonal roadside stands** not exceeding 2,000 square feet, except as allowed in Subsection (2)(n) of this Section.
 - (j) **Temporary manufactured homes**; provided, that no conversion of agricultural land is allowed.
 - (k) **Temporary events** related to agricultural production; and provided, that no agricultural land is converted and no permanent structures are constructed.
 - (l) **Trails** and primary and secondary trailheads.
 - (m) **Marijuana production/processing facility** in a structure existing as of January 1, 2014.
- (4) **Hearing Examiner Special Uses.**
- (a) **Aircraft landing field, private**, as an accessory to an agricultural use only, provided the applicant has proven that there is no other viable alternative to providing the service on natural resource lands.
 - (b) **Concentrated animal feeding operation.**
 - (c) **Expansion of existing natural resource industrial zoned agricultural support service businesses**, provided the expansion is limited to only the area necessary for the business; and also provided, that any conversion of agricultural land is minimized to the greatest extent possible.
 - (d) **Habitat enhancement and/or restoration projects**, except mitigation banks and other projects involving off-site compensatory mitigation, as defined by SCC 14.04.020.
 - (e) *Repealed by Ord. O20160004.*
 - (f) **Kennel**, limited, if accessory to an existing residence or natural resource operation; and provided, that no resource land is converted or taken out of production.
 - (g) **Major public uses** related to the provision of emergency services where there is no other viable parcel of non-resource designated land to serve the affected area. Applicants shall demonstrate the need to locate the use in the natural resource land. Analysis of alternatives to the development of the use within the natural resource land must be provided.
 - (h) **Major utility developments** 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) **Natural resource research and training facility.**
 - (j) **Outdoor outfitters enterprises** as defined in Chapter 14.04 SCC that remain incidental to the primary use of the property for agriculture, result in no conversion of agricultural land; and provided, that temporary lodging, etc., as regulated in SCC 14.16.900(2)(d) is prohibited.
 - (k) **Primitive marinas** with not greater than 3 slips.
 - (l) **Seasonal roadside stands** not exceeding 5,000 square feet, except as allowed in Subsections (2)(n) and (3)(i) of this Section.
 - (m) **Shooting club (outdoor)**, with no associated enclosed structures allowed except as needed for emergency communications equipment; and provided, that no conversion of agricultural land is allowed.
 - (n) **Temporary asphalt/concrete batching** as defined and limited in Chapter 14.04 SCC, provided there is no other viable parcel of non-resource designated land to serve the purpose.
 - (o) **Anaerobic digester.**
- (5) **Dimensional Standards.**
- (a) **Setbacks.**
 - (i) **Residential.**
 - (A) **Front:** 35 feet minimum, 200 feet maximum from public road. Unless specified below or elsewhere in this Chapter, no portion of a structure shall be located closer than 35 feet from the front lot line and no portion of a structure shall be located further than 200 feet from the front lot line. If a parcel is located such that no portion or developable portion of the property is within 200 feet of a public road, the maximum 200-foot setback shall be measured from the front property line. The maximum setback may be waived by Planning and Development Services where critical areas, preventing the placement of residential

- structures, are located within the 200-foot setback area. The maximum setback may also be waived by Planning and Development Services in cases where nonfloodplain or nonprime agricultural land is located on the lot outside of the setback area, which would provide for a more appropriate placement of residential structures. In cases where a residence exists outside the setback area, residential accessory structures may be placed outside the setback area if located in accordance with the siting criteria outlined in Subsection (6) of this Section.
- (B) Side: 8 feet adjacent to a property line.
 - (C) Rear: 35 feet.
 - (D) Accessory: Same as principal structures.
- (ii) Nonresidential.
 - (A) Front: 35 feet.
 - (B) Side: 15 feet.
 - (C) Rear: 35 feet.
 - (b) Maximum height: 40 feet.
 - (i) Height Exemptions. Flagpoles, ham radio antennas, church steeples, water towers, meteorological towers, and fire towers are exempt. The height of personal wireless services towers is regulated in SCC 14.16.720.
 - (c) Minimum lot size: 1/16th of a section of land or 40 acres. Smaller lot sizes are permissible through CaRDs or as provided in SCC 14.16.860.
- (6) Siting Criteria. In addition to the dimensional standards described in Subsection (5) of this Section, new, non-agricultural structures shall be required to comply with the following provisions:
- (a) Siting of all structures in the Agricultural—Natural Resource Lands district shall minimize potential impacts on agricultural activities.
 - (b) When no structures or no compatible structures exist on the subject property or adjacent properties, new structures shall be located in a corner of the property and all development including but not limited to structures, parking areas, driveways, septic systems and landscaping shall be contained within an area of no more than 1 acre. Unless substantial evidence is provided indicating the location is not feasible, wells shall also be located within the 1-acre area whenever possible. Wells located outside of the 1-acre area shall be sited to minimize potential impacts on agricultural activities.
 - (c) When compatible structures exist on the subject property or adjacent properties, siting of new structures shall comply with the following prioritized techniques:
 - (i) Locate new structure(s) within the existing, developed area of any compatible structure(s) in the same ownership, and utilize the existing access road.
 - (ii) When the provisions of Subsection (6)(c)(i) of this Section are not possible, locate new structure(s) within the existing, developed area of any compatible structure in the same ownership.
 - (iii) When the provisions of Subsection (6)(c)(i) or (6)(c)(ii) of this Section are not possible, site new structure(s) to achieve minimum distance from any existing compatible structure on either the subject property or an adjacent property. All development, including, but not limited to, structures, parking areas, driveways, septic systems, wells, and landscaping, shall be contained within an area of no more than 1 acre.
- (7) Additional requirements related to this zone are found in SCC 14.16.600 through 14.16.900 and the rest of the Skagit County Code. (Ord. O20220011 § 1 (Att. 2); Ord. O20170006 § 1 (Att. 1); Ord. O20160004 § 6 (Att. 6); Ord. O20150005 § 3 (Att. 1); Ord. O20110007 Attch. 1 (part); Ord. O20090011 Attch. 2 (part); Ord. O20090010 Attch. 1 (part); Ord. O20090006; Ord. O20080012 (part); Ord. O20080004 (part); Ord. O20070009 (part); Ord. O20050003 (part); Ord. O20030021 (part); Ord. R20020130 (part); Ord. 18375 §§ 4 (part), 5, 2001; Ord. 18069 Appx. A (part), 2000; Ord. 17938 Attch. F (part), 2000)

EXHIBIT F



PLANNING & DEVELOPMENT SERVICES

GARY R. CHRISTENSEN, AICP, DIRECTOR

BILL DOWE, DEPUTY DIRECTOR

PATTI CHAMBERS
Administrative Coordinator

TIM DEVRIES, CBO
Building Official

MEMORANDUM

To: Planning and Development Services staff and interested parties
From: Gary R. Christensen, AICP, Director
Date: August 25, 2009 *REVISED* May 14, 2010
Re: Administrative Interpretation pertaining to the procedures for implementation of Skagit County Code (SCC) 14.16.400(2) Permitted uses, specifically subsection (o) "Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses."

I. Introduction.

SCC 14.16.400(2)(o) as amended in 2007¹ provides that single family residential building permits on land zoned Ag-NRL may be issued only where the occupancy and use of the proposed structure is "accessory" to an agricultural use, and the site plan may not permissibly convert the entire parcel of land out of agricultural production.

SCC 14.16.400(2)(o) does not set forth specific procedural measures for ensuring its criteria are met when an applicant seeks a residential building permit pursuant to SCC 14.16.400(2)(o). Accordingly, the Skagit County Planning and Development Services Department ("Department") is charged with creating appropriate and legally defensible procedural criteria. To that end, the Department has been in lengthy discussions with legal counsel and others regarding the proper method of implementing this ordinance over the course of the past several years, and has not started implementation until this process was finalized.

On June 10, 2009, the Skagit County Agricultural Advisory Board ("AAB") wrote to the Skagit County Board of Commissioners, requesting that the County step up implementation of SCC 14.16.400(2)(o). The AAB is an advisory committee comprised of local agricultural leaders, and is authorized by Resolution with providing advice to the Board of Commissioners, Planning Commission and the Department regarding land use matters impacting the agricultural industry in Skagit County. A copy of the AAB's June 10, 2009 correspondence is attached hereto as **Exhibit A**. This Memorandum and Administrative Interpretation ("Policy") establishes procedures to implement

¹ Skagit County Ordinance No. 20070009

SCC 14.16.400(2)(o) that are consistent with those proposed by the AAB and as further discussed. On August 12, 2009, the AAB voted unanimously to recommend approval of the procedures adopted by this Policy.

II. Discussion, Analysis and Conclusions.

SCC 14.16.400(2)(o) includes as a “Permitted Use” in the agricultural (Ag-NRL) zone the following:

Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses.

When interpreting ordinances and seeking to give them procedural effect, there is an obligation to follow a series of basic interpretive rules established by Washington law. Cited below are some of the most applicable rules by way of a starting point in the analysis.

When interpreting municipal ordinances, the same rules of construction apply as those to state statutes. *Sadona v. City of Cle Elum*, 37 Wn.2d 831, 836-37 (1951) Zoning ordinances are construed as a whole, and any unreasonable construction is rejected. *Bartz v. Bd. of Adjustment*, 80 Wn.2d 209, 218 (1972). The primary purpose when interpreting a zoning ordinance is to ascertain the legislative intent, and give that intent effect. See, *East v. King County*, 22 Wn. App. 247, 253 (1978). If the language of the ordinance is unambiguous, the plain language of the ordinance is relied upon to discern legislative intent. *State v. Roggenkamp*, 153 Wash.2d 614, 621 (2005). One must remain wary of “unlikely, absurd or strained results” when interpreting an ordinance on its face. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590 (2005). Laws “on the same subject matter must be read together to give each effect and to harmonize with each other.” *U.S. West Communications, Inc. v. Washington UTC*, 134 Wn.2d 74, 118 (1997). In the process of interpreting SCC 14.16.400(2)(o) and establishing procedures for its implementation, one must be ever mindful of these well-established legal principles.

Reading the plain language of the ordinance and relevant code definitions, the unambiguous intent of the ordinance, generally speaking, is to limit new residential dwellings on agricultural land to housing units proposed by those actually engaged in commercial production of crops and livestock, with an emphasis on preventing the conversion of productive agricultural land in the process. SCC 14.16.400(2)(o) is a lawfully adopted and unappealed development regulation, and it is therefore presumed valid. As the AAB has correctly pointed out, as long as SCC 14.16.400(2)(o) remains in effect the ordinance must be implemented and enforced in accordance with its terms.

With the foregoing in mind, the principal task of this Policy is to establish legally sound procedures that will ensure, consistent with code, that a proposed single family residential dwelling:

- In fact, will be an “Accessory Use” to “Agriculture”; and

- Will not convert a parcel of agricultural land to non-agricultural purposes.

Each is analyzed below and followed with procedural steps the Department will implement going forward to give effect to the ordinance's plain language.

A. Accessory Use to Agriculture

1. Accessory Use – Definition.

SCC 14.04.020 defines "Accessory Use" as "a use building or structure, which is dependent on and subordinate or incidental to, and located on the same lot with, a principal use, building or structure." SCC 14.16.400(2)(o) permits a residence only when accessory to an "Agricultural" use. The language of this code definition, when coupled with SCC 14.16.400(2)(o), plainly envisions that new single family residential dwelling units on land zoned Ag-NRL are a permitted use only when aimed at providing housing for those engaged in agriculture. This requires analyzing the definition of "Agriculture" under the County's relevant code.

2. Agriculture - Definition.

In relevant part, SCC 14.04.020 defines "Agriculture" as:

*[T]he use of land for **commercial production** of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, cottonwood trees, Christmas trees (not subject to excise tax imposed by RCW 84.33.100 through 84.33.140), or livestock, including those activities directly pertaining to the production of crops or livestock, including, but not limited to, cultivation, harvest, grazing, on-site animal waste storage and disposal, fertilization, the operation and maintenance of farm or stock ponds, drainage ditches, irrigation systems, and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities or improved areas. Activities that bring an area into agricultural use are not considered agricultural activities.*

Bolding added.

In light of the foregoing, a permit applicant proposing a single family residential dwelling on land zoned Ag-NRL must be engaged in the **ongoing commercial production of crops or livestock** in order to qualify under SCC 14.16.400(2)(o).

My interpretation is that the language in the foregoing definition that follows "including, but not limited to" is meant to reference activities that are in service of ongoing commercial production

of crops and livestock, and these activities do not, standing alone, bring an applicant within the definition of agriculture.²

I considered and rejected an interpretation of this code section that would treat the applicant's proposed residential use to be accessory to agriculture where the applicant simply announces a prospective intention to begin engaging in agriculture. Because any permit applicant seeking a residential building permit on Ag-NRL is likely to prospectively announce such a future intention if it leads to permit issuance, this interpretation would provide no meaningful limitation to non-agricultural residential construction on Ag-NRL land. Accordingly, such an interpretation would defeat the basic intent of the ordinance. The AAB has recommended against such an interpretation, and I agree.

Consistent with the AAB's recommendations, the Department will require an affidavit (discussed in detail in Section II) in which the applicant must represent under oath that they have earned at least \$100 per acre per year on average over the past three years in gross revenue derived from the commercial production of crops or livestock on the parcel in question. This dollar amount is derived from RCW 84.34.020's definition of "farm and agricultural land" as land that derives a certain level "gross income from agricultural uses," part of the statute's larger function of determining when a property used for agriculture legitimately qualifies for reduced property taxation rates.

Because RCW 84.34.020's definition is a state law and is aimed at determining whether a parcel of land is truly being utilized for agricultural purposes by reference to its gross revenue, I conclude that this constitutes a legally and economically rational basis on which to determine whether land is actually being used for agricultural purposes in the context of Skagit County's zoning code. In an abundance of caution, we have adopted the lower, pre-1993 threshold established by RCW 84.34.020(2)(b)(i)(A) of \$100 per acre per year.

The AAB recommended the Department adopt a flat threshold of \$10,000 per year by the applicant, but this would not make any allowance for the size of the parcel on which the single family residence is proposed. A threshold showing of \$100 per acre per year would equate to \$4,000 on a 40 acre parcel. In establishing the threshold level substantially below the level recommended by the AAB, the Department is mindful of the increase to small, local and organic producers operating on low gross receipts and overhead, activity that the County seeks to encourage. In order to avoid a situation where an otherwise bona fide agricultural producer is foreclosed from qualifying under SCC 14.16.400(2)(o) by a single poor year of production, the affidavit focuses on the applicant's average for the prior three years.³

The Department extensively discussed and analyzed whether the act of leasing land to another for agricultural purposes constitutes "Agriculture" such that a proposed residential structure would

² For example, maintenance of a farm road in service of agriculture is activity that would normally require a grading permit, but is exempted in service of commercial agricultural production. This is consistent with Skagit County Code's generally preferential treatment for agricultural activities on Ag-NRL lands.

³ The Department reserves the right to adjust this threshold amount upward or downward consistent with future fluctuations in the economy and the U.S. dollar's value, after obtaining appropriate input from the AAB.

qualify as an accessory use. But under such an interpretation of the code, a party could buy a parcel of agricultural land, lease it to a commercial farmer for several years, and on that basis claim a proposed residence qualifies as an accessory use to agriculture. Such an outcome is inconsistent with the code's basic intent, i.e., limiting residential conversion of agricultural land to housing units needed by those actually engaged in ongoing commercial production of crops and livestock. The Department also considered that the financial act of leasing land is not defined as "agriculture" by SCC 14.04.020; rather, the "use" of land is the code's operative verb. For these reasons, I conclude that the code's focus on actual use of the land for agricultural production by the applicant precludes a landowner from falling within SCC 14.16.400(2)(o) ambit simply by leasing land to another engaged in ongoing commercial agricultural production.

B. Non-Conversion.

In addition to the requirement that a proposed residence be accessory to an agricultural use, SCC 14.16.400(2)(o) also provides that "no conversion of agricultural land is allowed for accessory uses." In short, the proposed residential use cannot permissibly subsume the existing principal use of the land for agriculture.

SCC 14.04.020 further illuminates the scope and intent of this provision, defining "Conversion, agricultural land" as follows:

[A]ny activity that alters the landscape so as to preclude a parcel or a portion of a parcel from the reasonable possibility of agricultural production. This includes the construction of structures or infrastructure or any other alteration which would make agricultural production of a parcel or portion of a parcel technically or economically infeasible. Locating structures within an existing developed area used as a home-site, or within an area not more than 1 acre in size on vacant parcels, shall not be considered conversion.

Given SCC 14.16.400(2)(o)'s focus on preventing the conversion of agricultural land to non-farm residential use, I conclude that SCC 14.16.400(2)(o) does not apply to any existing home site or a parcel of land less than one acre. Therefore, a permit applicant seeking to rebuild or remodel an existing residence within an existing converted footprint is not required to comply with the procedures established in Section II of this memorandum, and tax parcels less than one acre in size are similarly exempt.

Much of the intent behind this provision has already been implemented by the siting criteria set forth in SCC 14.16.400(6), a copy of which is attached hereto and published as **Exhibit B**, and incorporated herein by reference. In general terms, these siting criteria apply to all applications for non-agricultural uses and structures on land zoned Ag-NRL.

Because they squarely comport with the regulatory constraints on conversion established by SCC 14.16.400(2)(o) and the definition of "Conversion, agricultural land" established by code, I conclude that the SCC 14.16.400(6) siting criteria for "non-agricultural uses and structures" apply to

applications processed pursuant to SCC 14.16.400(2)(o), including the administrative interpretation attached hereto as Exhibit B.

With respect to accessory dwelling units (ADUs) allowed under SCC 14.16.710, I conclude that ADUs are a subsidiary development right that exists independent of SCC 14.16.400(2)(o), and are, as the code discusses, an accessory to the existence of a properly permitted single family dwelling unit. Therefore, applicants proposing an ADU on land zoned Ag-NRL are not required to meet the SCC 14.16.400(2)(o) procedures established in Section III of this memorandum if the ADU is accessory to a residential dwelling unit exempt from the SCC 14.16.400(2)(o) criteria, as set forth by this Administrative Interpretation. However, ADU applicants on Ag-NRL land must still meet the SCC 14.16.400(6) siting criteria as set forth above.

III. Implementation Procedures.

[Implementation Procedures section and reference in preceding paragraph renumbered to “III” to correct numbering error 5/14/10]

Where SCC 14.16.400(2)(o) applies, it is my conclusion that SCC 14.16.400(2)(o) requires a showing by the applicant that:

- The applicant (or their agricultural business) are engaged in ongoing commercial production of crops or livestock on the parcel of land zoned Ag-NRL where the single family residential dwelling is proposed;
- The use of the structure will be accessory to (dependent upon and subordinate to) ongoing commercial agricultural production of crops or livestock after the structure is completed and occupied.⁴

The procedures by which permit applicants are expected to accomplish these showings are set forth in this section of the policy memorandum.

In establishing procedures to implement SCC 14.16.400(2)(o)'s requirements, the Department attempted to establish procedures that can be easily administered, at minimum cost and burden to applicants. In summary, the Department will require that applicants submit an affidavit that they are engaged in ongoing commercial agricultural production on the parcel where the structure is proposed, and a notice to those later acquiring an interest in the parcel that the use of the structure is accessory to agriculture, consistent with code.

⁴ It is a routine feature of zoning laws that a structure is permitted for one form of use, but not another – despite the structure's obvious physical compatibility with both uses. For example, a barn on land zoned Ag-NRL could be used for agricultural purposes or it could theoretically be used as a nightclub. While the former is a permitted use on land zoned Ag-NRL, the latter is not. Here as well, the focus of the code is on the *use* of the structure.

1. Affidavit

Each individual applicant to whom SCC 14.16.400(2)(o) applies must submit, prior to issuance of a building permit, a signed affidavit verifying that they are the owner of the parcel, and that they have generated gross income derived from commercial agricultural production on the parcel, averaging at least \$100 per acre per year for the previous three years. If the permit applicant is an agricultural business, the company's authorized representative must submit the affidavit.

Copies of affidavits will be provided to the Agricultural Advisory Board as a courtesy. The applicant may be asked to provide backup documentation at the Director's discretion if there is doubt regarding the accuracy of the applicant's affidavit. This is disclosed to the applicant via a footnote on the form.

The form of affidavit is attached hereto as **Exhibit C**.

2. Title Notification.

Each individual and/or corporate applicant to whom the SCC 14.16.400(2)(o) showings apply must submit a Title Notification in the form attached hereto as **Exhibit D**. The Title Notification does not serve as a restriction on title, but rather will simply provide notice of the permissible use of the structure permitted under SCC 14.16.400(2)(o), with a caveat that parties considering acquiring an interest in the property check development regulations to ensure that SCC 14.16.400(2)(o) has not been subsequently amended.

The Department's residential building permit application form and checklist will be amended to include these items.

Because these are implementing procedures that give effect to a lawfully-adopted development regulation, it is not necessary for the Department to publish these procedures in the form of an Administrative Interpretation. This Policy is issued and published solely as an effort to formalize the Department's basis for its implementing procedures, and to transparently set forth the analysis, discussion and rational basis underpinning the Department's implementation of this ordinance, a step seen as necessary given the high degree of interest in the agricultural community concerning this ordinance. Notice of this Policy will be published in the newspaper of record, will be posted on Skagit County's public website, and will be transmitted to the Agricultural Advisory Board and other agricultural industry and advocacy groups. This Administrative Interpretation may be appealed within 14 days of its publication in the newspaper of record. See SCC 14.06.040 and .110 for further information.

ADMINISTRATIVE OFFICIAL



Gary R. Christensen, AICP

EXHIBIT A



June 10, 2009

Dear Board of County Commissioners:

**SKAGIT COUNTY
AGRICULTURAL
ADVISORY BOARD**
2021 E. College Way
Suite 200
Mount Vernon, WA 98273
Phone (360) 424-4708
Fax (360) 428-5035

**"Honoring our past,
sustaining our
future, where Skagit
farms are the pride
of the community."**

The Agricultural Advisory Board ("AAB") writes to request that the Board of Commissioners (BoCC) direct appropriate staff to begin actively implementing and enforcing Skagit County Code 14.16.400(2)(o), which allows single family residential dwellings on land zoned Ag-NRL as a permitted use only when accessory to an agricultural use. SCC 14.16.400(2)(o) is a properly adopted law, and must be implemented and enforced as written.

As you are aware, the AAB is charged under Skagit County Code Chapter 14.16 with advising the BoCC on land use and development regulations related to agriculture. We request to be kept informed of the procedures staff develops to implement this code provision.

Protecting the agricultural land base in Skagit County is a trust we are charged with keeping for future generations. As growth pressures continue to mount in our region, it is imperative that Skagit County government energetically enforce laws and ordinances designed to protect our agricultural land base. We thank you in advance for your assistance.

Sincerely,


Kim Mower, Chair

cc: Planning

Skagit County Agricultural Advisory Board Members: Kim Mower (Chair), Mike Hulbert (Vice Chair), Murray Benjamin, Randy Good, Bob Hughes, Craig Knutzen, Nels Lagerlund, Greg Lee, Ann Marie Lohman, Bill McMoran, John Vendeland, Lyle Wesen, Carly Ruacho, Ex-Officio, Planning & Development Services, Don McMoran, WSU Extension.

EXHIBIT B

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

(1) Purpose. 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. The district is composed mainly of low flat land with highly productive soil and is the very essence of the County's farming heritage and character.

(2) Permitted Uses.

- (a) Agriculture.
- (b) Agricultural accessory uses.
- (c) Agricultural processing facilities.
- (d) Co-housing, as part of CaRD, subject to SCC 14.18.300 through 14.18.330.
- (e) Commercial greenhouse operations that are an integral part of a local soil-based commercial agriculture operation.
- (f) Individual or multiple farm composting as an incidental agricultural operation to a working farm with no net loss of soil. The composting operation shall be managed according to an approved nutrient management plan in conjunction with the local Conservation District and Natural Resources Conservation Service (NRCS) standards and all applicable environmental, solid waste, access and health regulations. Such use shall not generate traffic uncommon to a farm operation.
- (g) Family day care provider as defined in Chapter 14.04 SCC; provided, that no conversion of agricultural land is allowed.
- (h) Farm-based business carried on exclusively by a member or members of a family residing on the farm and employing no more than 3 nonresident full-time equivalent employees.
- (i) Historic sites open to the public that do not interfere with the management of the agricultural land.
- (j) Home Based Business 1.
- (k) Manure lagoons.
- (l) Cultivation and harvest of any forest products or forest crop and necessary accessory buildings.
- (m) On-site sorting, bagging, storage, and similar wholesale processing activities of agricultural products that are predominantly grown on-site or produced principally from the entire commercial farm operation. Such activities shall be limited to those which are integrally related to the agricultural production and harvesting process.
- (n) Seasonal roadside stands not exceeding 300 square feet.
- (o) Single-family detached residential dwelling unit and residential accessory uses, when accessory to an agricultural use; and provided, that no conversion of agricultural land is allowed for accessory uses.
- (p) Water diversion structures and impoundments related to resource management.
- (q) Wholesale nurseries.

(3) Administrative Special Uses.

(a) Agricultural slaughtering facilities.

(b) Bed and breakfast, subject to SCC 14.16.900(2)(c), provided the use is accessory to an actively managed, ongoing agricultural operation and no new structures are constructed outside of the home for lodging purposes.

(c) Expansion of an existing major or minor utility or public use; provided, that the expansion is designed to utilize the minimum amount of resource lands necessary and meets items in Subsection (3)(c)(i) or (ii) of this Section as well as the item in Subsection (3)(c)(iii) of the following requirements:

(i) The expansion is located within the existing building envelope which may include the required landscaping for the approved use;

(ii) It is to be sited on existing impervious surface or in existing right-of-way;

(iii) The applicant has proven that there is no other viable alternative to providing the expansion on non-natural resource lands.

(d) Greenhouse operations not otherwise permitted in SCC 14.16.400(2)(e). Greenhouses operating in the Ag-NRL zone as an administrative special use, should they cease operation, shall be required to return the land to its former state or otherwise place the land in agricultural production.

(e) Home Based Business 2, provided no conversion of agricultural land is required to accommodate the business activity.

(f) Minor public uses related to the provision of emergency services where there is no other viable parcel or non-resource designated land to serve the affected area. Applicants shall demonstrate the need to locate the use in the natural resource land. Analysis of alternatives to the development of the use within the natural resource land must be provided.

(g) Minor utility developments including those that are a necessary part of a salmon recovery or enhancement project pursuant to SCC 14.24.130, including stormwater management projects, where there is no other viable parcel of non-agricultural land to locate the project.

(h) Personal wireless services towers, subject to SCC 14.16.720.

(i) Seasonal roadside stands not exceeding 2,000 square feet, except as allowed in Subsection (2)(n) of this Section.

(j) Temporary manufactured homes; provided, that no conversion of agricultural land is allowed.

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

(l) Trails and primary and secondary trailheads.

(4) Hearing Examiner Special Uses.

(a) Aircraft landing field, private, as an accessory to an agricultural use only, provided the applicant has proven that there is no other viable alternative to providing the service on natural resource lands.

(b) Concentrated animal feeding operation.

(c) Habitat enhancement and/or restoration projects, except mitigation banks as defined by SCC 14.04.020.

(d) Home Based Business 3, provided the use is accessory to an actively managed, ongoing agricultural operation and no conversion of agricultural land is required to accommodate the business activity.

(e) Kennel, limited, if accessory to an existing residence or natural resource operation; and provided, that no resource land is converted or taken out of production.

(f) Major public uses related to the provision of emergency services where there is no other viable parcel of non-resource designated land to serve the affected area. Applicants shall demonstrate the need to locate the use in the natural resource land. Analysis of alternatives to the development of the use within the natural resource land must be provided.

(g) Major utility developments 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.

(h) Natural resource research and training facility.

(i) Outdoor outfitters enterprises as defined in Chapter 14.04 SCC that remain incidental to the primary use of the property for agriculture, result in no conversion of agricultural land; and provided, that temporary lodging, etc., as regulated in SCC 14.16.900(2)(d) is prohibited.

(j) Primitive marinas with not greater than 3 slips.

(k) Seasonal roadside stands not exceeding 5,000 square feet, except as allowed in Subsections (2)(n) and (3)(h) of this Section.

(l) Shooting club (outdoor), with no associated enclosed structures allowed except as needed for emergency communications equipment; and provided, that no conversion of agricultural land is allowed.

(m) Temporary asphalt/concrete batching as defined and limited in Chapter 14.04 SCC, provided there is no other viable parcel of non-resource designated land to serve the purpose.

(5) Dimensional Standards.

(a) Setbacks.

(i) Residential.

(A) Front: 35 feet minimum, 200 feet maximum from public road. If a parcel is located such that no portion or developable portion of the property is within 200 feet of a public road, the maximum 200-foot setback shall be measured from the front property line. The maximum setback may be waived by Planning and Development Services where critical areas, preventing the placement of residential structures, are located within the 200-foot setback area. The maximum setback may also be waived by Planning and Development Services in cases where nonfloodplain or nonprime agricultural land is located on the lot outside of the setback area, which would provide for a more appropriate placement of residential structures. In cases where a residence exists outside the setback area, residential accessory structures may be placed outside the setback

area if located in accordance with the siting criteria outlined in Subsection (6) of this Section.

- (B) Side: 8 feet adjacent to a property line.
- (C) Rear: 35 feet.
- (D) Accessory: Same as principal structures.
- (ii) Nonresidential.
 - (A) Front: 35 feet.
 - (B) Side: 15 feet.
 - (C) Rear: 35 feet.

(b) Maximum height: 30 feet or shall conform to the Skagit County Building Code.

(i) Height Exemptions. Flagpoles, ham radio antennas, church steeples and fire towers are exempt. The height of personal wireless services towers are regulated in SCC 14.16.720.

(c) Minimum lot size: 1/16th of a section of land or 40 acres. Smaller lot sizes are permissible through CaRDs or as provided in SCC 14.16.860.

(6) Siting Criteria. In addition to the dimensional standards described in Subsection (5) of this Section, new, non-agricultural structures shall be required to comply with the following provisions:

(a) Siting of all structures in the Agricultural—Natural Resource Lands district shall minimize potential impacts on agricultural activities.

(b) When no structures or no compatible structures exist on the subject property or adjacent properties, new structures shall be located in a corner of the property and all development including but not limited to structures, parking areas, driveways, septic systems and landscaping shall be contained within an area of no more than 1 acre.

(c) When structures exist on the subject property or adjacent properties, siting of new structures shall comply with the following prioritized techniques:

(i) Locate new structure(s) within the existing, developed area of any compatible structure(s) in the same ownership, and utilize the existing access road.

(ii) When the provisions of Subsection (6)(c)(i) of this Section are not possible, locate new structure(s) within the existing, developed area of any compatible structure in the same ownership.

(iii) When the provisions of Subsection (6)(c)(i) or (6)(c)(ii) of this Section are not possible, site new structure(s) to achieve minimum distance from any existing compatible structure on either the subject property or an adjacent property.

(7) Additional requirements related to this zone are found in SCC 14.16.600 through 14.16.900 and the rest of the Skagit County Code. (Ord. O20090006; Ord. O20080012 (part); Ord. O20080004 (part); Ord. O20070009 (part); Ord. O20050003 (part); Ord. O20030021 (part); Ord. R20020130 (part); Ord. 18375 §§ 4 (part), 5, 2001; Ord. 18069 Appx. A (part), 2000; Ord. 17938 Atch. F (part), 2000)

EXHIBIT C



PLANNING & DEVELOPMENT SERVICES

1800 CONTINENTAL PLACE – MOUNT VERNON, WA 98273

Affidavit Certifying Proposed Single Family Dwelling Is Accessory Use To Ongoing Commercial Agricultural Production of Crops or Livestock on Agricultural-Natural Resources Land (Ag-NRL) Pursuant to SCC14.16.400(2)(o)

Applicant Name: _____

Authorized Representative Name / Position (if entity applicant): _____

Applicant Address: _____

City: _____ State: _____ Zip: _____

Representative Address (if different than above): _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Email Address: _____

Parcel No. _____ Assessor Tax No. _____

Site Address: _____

Permit No. _____

I hereby submit the following information as part of the above-listed building permit application filed with Skagit County Planning and Development Services for the construction of a single family dwelling unit on land zoned Ag-NRL pursuant to Skagit County Code 14.16.400(2)(o). *[Applicant must initial each.]*

_____ I am the lawful owner of the parcel on which the single family dwelling unit is proposed, or its legally authorized representative. I understand that the information furnished in this affidavit is material to the issuance of the above-listed building permit.

_____ The applicant listed above has generated an average of at least \$100 per acre per year on the property over the past three years in gross income from the commercial production of crops or livestock.

_____ The structure proposed by the above-cited building permit will be used as single family residential housing accessory to the ongoing commercial production of crops or livestock.

I certify on penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at _____, Washington, this _____ day of _____, 20_____.

Applicant / Applicant's Representative

Skagit County reserves the right to request additional and/or supporting documentation regarding any or all of the foregoing representation made by you. Skagit County provides a copy of each affidavit to the Skagit County Agricultural Advisory Board, a committee of agricultural industry representatives established by Skagit County Code to advise the Board of Commissioners, Planning Commission and County staff on land use issues impacting agriculture in Skagit County. All documents submitted as part of a permit application are public documents.

EXHIBIT D

Return Name & Address:
Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273-5625
(360) 336-9410

TITLE NOTIFICATION

Development Activity on Designated Agricultural Land pursuant to SCC 14.16.400

Grantor / Property Owner: _____

Grantee: Skagit County **Assessor Tax #:** _____

Property ID #: _____ **Permit Number:** _____

Legal Description of Property: _____

Parcel Address: _____

Comprehensive Plan / Zoning Designation: Agriculture (Ag-NRL) – see SCC 14.16.400

Notice: The owner of this parcel obtained the above-listed building permit for a single family detached residential dwelling unit on the basis of a representation, under penalty of perjury, that the permitted structure is "accessory to an agricultural use" pursuant to SCC 14.16.400(2)(o). SCC 14.04.020 defines "Agriculture" and "Accessory Use." The purpose of this notification is to put parties with interest in the property on notice of the allowable uses of the permitted structure pursuant to applicable zoning. Skagit County development regulations are subject to legislative change and should be reviewed prior to any purchase of land.

Property Owner's Signature: _____

State of Washington, County of Skagit On this ___ day of _____,
year of _____, before me _____, Notary
Public, personally appeared _____, known to
me to be the person whose name is subscribed to this instrument and
known to me be the lawful owner and/or lawful agent of the owner of
the property described above, and acknowledged that he/she executed
this instrument.

Witness my hand and official seal:
Notary's Signature: _____ Notary Public in and for the State of
Washington residing at _____, My Commissioner Expires _____.