

Draft CDIP Code

Plain text = existing code with no changes
Strikethrough = existing code to be deleted
<u>Underlined</u> = new code to be added
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Chapter 14.04 Definitions

14.04.020 Definitions

The following definitions are added, amended, or deleted in SCC Chapter 14.04.020:

Conservation priority area: as defined in SCC 14.22.040. [Conservation priority areas are those places where development rights may be sold to the County or a private party in exchange for conservation via a conservation easement.]

Development priority area: as defined in SCC 14.22.030. [Development priority areas are those places where development credits may be used to increase the level of development over what would otherwise be allowed.]

Development credit: a credit that a qualifying owner of real property may use to add development rights to that property per SCC Chapter 14.22.

Development right: the right to one unit of residential development on real property as conferred and constrained by this Title, especially SCC 14.06.045 Lot Certification.

Land division: the division of a lot, tract, or parcel of land into 2 or more lots, tracts, parcels, or other divisions of land for sale, development, or lease, [including through a binding site plan or condominium](#).

Chapter 14.06 Permit Procedures

Code to be written will:

- Amend the list in SCC 14.06.050 for Level 1 decisions to include application for CDIP eligibility report.
- Add to the exemption list in 14.06 for things that do not require a letter of completeness (SCC 14.06.100), a Notice of Development Application and public comment period (SCC 14.06.150), nor a Notice of Decision (SCC 14.06.200)

Chapter 14.08 Legislative Actions

Code to be written will:

- Amend process for comp plan amendments and rezones to integrate CDIP program.

Chapter 14.16 Zoning

Code to be written will:

- Amend each of the zoning chapters to which CDIP applies

- Amend 14.16.030 Table of Land Use Districts.

Chapter 14.18 Land Divisions

Code to be written will:

- Amend CARD provisions generally as follows, applicable to short CaRDs only:
 - (a) The following two CaRD development options, otherwise not available under the CaRD regulations, are available on lands designated Rural Reserve through the use of development credits:
 - (i) Parcels that are at least 7 acres but are less than 10 acres in size may obtain and utilize a CaRD density bonus as if they were a full 10 acres in size.
 - (ii) A short CaRD may be approved allowing the creation of two 5-acre lots, each with a maximum 1-acre building envelope, provided that the lots are clustered consistent with the short-CaRD approval criteria under SCC 14.18.320 and the remainder of the parcels are conserved as open space per SCC 14.18.310.

- Amend to implement rural infill provisions:

- (b) Rural infill. If a parcel designated Rural Intermediate or Rural Village Residential (without public water) is larger than the standard lot size for the zone (2.5 acres), but too small for subdivision into two standard size parcels, it may be divided, with a development credit, to create one standard sized parcel and a second substandard parcel provided the second parcel is at least 1 acre in size (that’s equal to or larger than the lot size exemption under lot certification for those zones).

Existing Chapter 14.22 Records of Survey

Recodify chapter as section 14.02.090.

New Chapter 14.22 Conservation and Development Incentives Program

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14.22.010 Policy.

- (1) Purpose. The purpose of this Chapter is to enable the movement of development rights from areas where the County prefers land conservation (see SCC 14.22.040) to areas where the County and its partners prefer residential development (see SCC 14.22.030), through voluntary and market-based transactions.
- (2) Policy objectives. The objectives of this chapter are to:
 - (a) Provide additional options to owners of natural resource and open space lands interested in permanently conserving their lands while retaining the land in private ownership;
 - (b) Conserve working farm lands and forest lands and the numerous economic, environmental and open space benefits they provide to the Skagit community;
 - (c) Offer incentives to developers to concentrate development in areas best suited for additional growth, while engaging the private development market to support conservation of farm and forest land and open space;
 - (d) Implement the goals, policies, and objectives of the Growth Management Act and the comprehensive plans of Skagit County and participating cities and towns.

14.22.020 Development credits—purchase and use.

- (1) Generally.
 - (a) In development priority areas, qualifying landowners may buy development credits from the County, or from willing landowners in conservation priority areas, and use those development credits for the purposes described in SCC 14.22.030.
 - (b) In conservation priority areas, qualifying landowners may sell their development rights to the County, or convert their development rights into development credits for sale to and use by landowners in development priority areas, per SCC 14.22.040.
- (2) Jurisdiction and applicability.
 - (a) Projects in development priority areas in unincorporated Skagit County, including unincorporated portions of urban growth areas, are reviewed by the Department per this Chapter.
 - (b) Projects in development priority areas in a town or city are reviewed by the municipality's land use authority per that municipality's code instead of this Chapter.
- (3) Application requirements. In order to utilize development credits toward an application authorized by SCC 14.22.030, the applicant must provide the Department with some combination of the following:
 - (a) development credits issued in the name of the applicant;
 - (b) development credits issued in the name of another person with a signed agreement for the applicant to purchase those development credits;

- (c) a signed intent to purchase development credits from the County, on forms provided by the Department.
- (4) Purchase and use of development credits.
 - (a) Purchase from County. An applicant may purchase development credits from the County consistent with the fee schedule adopted per SCC 14.22.100. An applicant may purchase only as many credits from the County as are necessary to process the application.
 - (b) Purchase from private party. An applicant may purchase development credits from a private party per SCC 14.22.070 for use at the exchange rates adopted per SCC 14.22.100.
- (5) When credits are required and expended.
 - (a) For land division applications, a development credit must be committed to the application and is considered expended at the time of preliminary subdivision approval.
 - (b) For multifamily development applications, a development credit must be committed to the application and is considered expended at the time of application approval.
 - (c) For Comprehensive Plan map amendments or rezones, a development credit is not required to be committed until the time of the subsequent land division or development. At the time of map amendment or rezone, the Department must add the subject property to its map of Development Priority Areas and record a notice on the title of subject property that development credits will be required for any future land division or development.
 - (d) To be committed, a development credit must be:
 - (i) purchased from the County, including full payment; or
 - (ii) purchased from a private party, including a valid conveyance to the applicant per SCC 14.22.070, and submitted to the Department for the application.
 - (e) After a development credit is committed, the Department must cancel the credit in its database.

14.22.030 Development priority areas.

- (1) Defined. Development priority areas are those places where development credits may be used to increase the level of development over what would otherwise be allowed.
- (2) Designation. Development priority areas include all parcels subject to any of the following:
 - (a) an application for a CaRD development priority bonus per SCC 14.18.____;
 - (b) an application for a rural infill development priority bonus per SCC 14.18.____;
 - (c) a Comprehensive Plan Map amendment approved after January 1, 2016, including an urban growth area expansion, that increased the maximum allowable number of residential lots or dwellings;
 - (d) a rezone inside an urban growth area (“stand alone rezones” per SCC Chapter 14.08) approved after January 1, 2016, that increased the maximum allowable number of

residential lots or dwellings. In the case of municipal UGAs, this provision must be authorized through an interlocal agreement between the County and the municipality.

- (3) Cities and towns may designate municipal development priority areas and establish policies, procedures, and regulations for the use of development credits within them.
- (4) Development credits required. Inside development priority areas:
 - (a) development must use development credits to achieve the increased development rights enabled by the development priority areas; but
 - (b) development may occur at the intensity allowed by the zoning prior to the designation as a development priority area without the use of development credits.

14.22.040 Conservation priority areas.

- (1) Defined. Conservation priority areas are those places where development rights may be sold to the County or a private party in exchange for conservation via a conservation easement.
- (2) Designation. Conservation priority areas include:
 - (a) all parcels designated Ag-NRL;
 - (b) all parcels designated Industrial Forest-NRL and located inside a fire district;
 - (c) all parcels designated Secondary Forest-NRL;
 - (d) all parcels designated Rural Resource-NRL;
 - (e) all parcels designated Rural Reserve that are enrolled in or eligible for the Open Space Taxation program.
- (3) The Board may designate additional lands as conservation priority areas by resolution if it finds that the area to be added has significant natural resource, conservation, watershed, habitat, or open space values; or pursuant to an interlocal agreement or development agreement.

14.22.050 Conservation priority areas—eligibility to sell development right.

- (1) A property owner must apply for a determination of eligibility to use this Chapter to convert its development rights into development credits for sale to the County or to a private party.
- (2) Eligibility requirements. To be eligible to sell development rights, a tract of land must meet all of the following criteria:
 - (a) The tract must be located within a conservation priority area.
 - (b) The tract must have at least one development right, as determined by SCC 14.06.045 Lot Certification.
 - (c) The tract must be contiguous.
 - (d) The tract must be at least [5-20] acres.
 - (e) The tract must be owned by a private individual or entity, and may not be owned by a municipal corporation, special purpose district, or other public entity.

- (f) The tract may not be the subject of unresolved County code enforcement action pursuant to SCC Titles 12, 14, 15, or 16, including any unresolved abatement, restoration, or payment of civil penalties.
- (g) Forest practices compliance required.
 - (i) If any portion of the tract has been cleared or graded pursuant to a Class II, III, or IV special forest practices permit within the six years prior to determination of eligibility, the tract must be in complete compliance with the reforestation requirements of RCW 76.09.070, WAC 222-34-010, and any additional reforestation conditions of their forest practice permit.
 - (ii) The tract must not be subject to a current six-year moratorium on development applications pursuant to RCW 76.09.060.
- (3) Application requirements. An application for an eligibility report must be submitted on forms provided by the Department, include the application fee, and include all of the following:
 - (a) Lot certification application, or if a lot certification has been completed, the Lot of Record Certification issued by the Department.
 - (b) If one or more single family dwellings or other residential, commercial, or industrial structures exist on the property, or unused development rights are proposed to be retained, a site map showing the location of each dwelling or structure and the proposed buildable area boundary.
 - (c) If the tract is in Rural Reserve but not enrolled in the Open Space Taxation program, a demonstration of eligibility for enrollment.
 - (d) A title report issued no more than 30 days prior to the date of application confirming that the ownership interests in the tract are in the name(s) of the applicant(s) and identifying any conservation easements, liens, or similar encumbrances recorded against the tract.
 - (e) An affidavit of compliance with the reforestation requirements of RCW 76.09.070, WAC 222-34-010, and any additional reforestation conditions of the forest practice permit, if applicable.
- (4) Application review.
 - (a) If the application is inadequate, the Department may require additional documentation from the applicant or rely on information contained in the County geographic information system or other County records.
 - (b) If the Department determines that the property meets the eligibility requirements, the Department will issue an eligibility report that describes the number of development rights calculated for the application and the land use designation and zoning.
- (5) Contents of eligibility report.
 - (a) The eligibility report must contain:

- (i) a description and documentation of the current conditions of the property, including any existing development and the property's Comprehensive Plan designation;
- (ii) the number of development rights eligible for sale.
- (b) The number of development rights eligible for sale is equal to the number of development rights established by the lot certification process in SCC 14.06.045 except that a development right is not eligible for sale if:
 - (i) it has already been exercised;
 - (ii) the lot from which it originates is located entirely within a regulatory floodway; or
 - (iii) the lot is designated Industrial Forest-NRL, is located outside of a fire district, and is ineligible for development per SCC 14.16.850(6)(b)(iii).
- (6) Expiration of eligibility report.
 - (a) An eligibility report is valid for five years from the date of issuance.
 - (b) After five years, if an eligibility report has not been converted to development credits the property owner must reapply to the Department to update the eligibility report.

14.22.060 Conservation priority areas—sale of development right to County

- (1) The owner of eligible property in a conservation priority area may sell its development right(s) to Skagit County pursuant to this section.
- (2) Application—evaluation and ranking.
 - (a) Skagit County's selection of development rights to purchase is a competitive process intended to achieve the greatest conservation at the lowest cost.
 - (b) Periodically, the Department will review and evaluate all properties that have been determined eligible per SCC 14.22.050 where the owner has indicated interest in selling development rights to the County.
 - (c) The Department will rank properties for purchase priority based on the ranking criteria adopted per SCC 14.22.100.
- (3) Purchase and extinguishment of development rights.
 - (a) After the Department has completed a final rank of the properties, the Department will request a letter of opinion from an MAI-certified appraiser on the likely fair market values for the top-ranked property or properties.
 - (b) Based on the letter of opinion, the landowner may sign a letter of intent to execute a conservation easement in exchange for the fair market value.
 - (c) Upon receipt of a signed letter of intent, the County may order a full appraisal of the proposed conservation easement.
 - (d) The County may not pay more than fair market value for a conservation easement. The County may pay less than fair market value for the conservation easement if the landowner is willing to accept a lower price.

- (e) Upon agreeing to the value of the conservation easement, the County and the landowner must execute a conservation easement per SCC 14.22.100 to close the transaction.
- (f) If, in the judgment of the Administrative Official, the County and landowner cannot reach agreement as to the value, the Department may terminate the negotiation.

14.22.070 Conservation priority areas—sale of development right to private party

- (1) The owner of eligible property in a conservation priority area may sell its development rights to a private party in the form of development credits, pursuant to this section.
- (2) Application.
 - (a) The owner of eligible property and a valid eligibility report may request conversion of that property's development rights into development credits in exchange for execution of a conservation easement per SCC 14.22.090.
 - (b) The Department will prepare the conservation easement for extinguishment of the development rights and provide the draft conservation easement to the applicant.
 - (c) The property owner must execute a conservation easement per SCC 14.22.100, to close the transaction and receive development credits.
- (3) Severance and extinguishment of development right.
 - (a) Upon receipt of the executed conservation easement, the Department must record the easement with the County Auditor and issue the development credits specified in the agreement.
 - (b) The Department will record the development credits in its database per SCC 14.22.100 and issue the property owner a certificate containing the information from the database record.
- (4) Conveyances of development credits.
 - (a) The holder of a certificate of development credits may convey one or more of the development credits noted on the certificate to another party, but a conveyance is not valid unless:
 - (i) submitted with a Real Estate Excise Tax (REET) affidavit for the sale price of the development credits and payment of REET to the County Treasurer; and
 - (ii) registered with the Department for recording in the conveyance database established per SCC 14.22.100.
 - (b) At the time of a valid conveyance, the Department must cancel the development credit and reissue one or more new certificates in the names of the appropriate parties.

14.22.080 Reserved

14.22.090 Conservation easements.

- (1) Form. Conservation easements accepted per this Chapter must be in a form approved by the Prosecuting Attorney and the Board of County Commissioners, subject to the requirements of this section.

- (2) Contents. The conservation easement must contain all of the following:
- (a) a legal description;
 - (b) if the development rights are to be sold to a private party in the form of development credits, the serial numbers of any development credits to be issued;
 - (c) if only a portion of the development rights are to be extinguished, a designation of the remaining buildable area tightly constrained around the existing development, designation of critical areas, and how many development rights remain;
 - (d) a prohibition on subdivision or division of ownership;
 - (e) a prohibition on boundary line adjustments except where approved by the County:
 - (i) for minor corrections in parcel boundaries;
 - (ii) where land is added to the parcel subject to the easement; or
 - (iii) where land subject to the easement is swapped for contiguous land of equal or greater area and equal or greater conservation value;
 - (f) if an existing residence exists on the property, a reservation of that existing development right and designation of a limited building envelope boundary outside of which new construction is prohibited;
 - (g) a prohibition on the construction of any other buildings, dwellings, structures, or other improvements except customary farm, agricultural, or forestry use structures;
 - (h) a grant to the County of a right of entry, subject to reasonable advance notice, to conduct brief inspections for the purpose of determining compliance with the requirements of the easement;
 - (i) a statement that nothing in the easement may be construed to convey to the public a right of access or use of the property and that the owner of the property, his or her heirs, successors, and assigns retains the right to exclude others, subject to the other terms of the conservation easement;
 - (j) a statement that all provisions run with the land and may be enforced by the County;
 - (k) additional provisions that are reasonably necessary for the enforcement and administration of the easement as determined by the Administrative Official.
- (3) Perpetuity. The easement must permanently encumber the property, but may allow for termination of the easement in the following circumstances:
- (a) The landowner must demonstrate a hardship beyond his or her control, namely that the land may no longer be managed in its conserved status due to changed conditions; and
 - (b) The landowner must purchase an equivalent number of development credits as were originally sold from the property, or pay a fee in lieu to the County for an equivalent number of credits, as determined by the County; and
 - (c) The Board of County Commissioners makes a finding that the transaction described in (b) above will achieve an equivalent or better public conservation benefit as the easement to be terminated.

14.22.100 Administration.

- (1) Development credits. The Department must:
 - (a) serially number all issued development credits;
 - (b) record all issued development credits in a database with:
 - (i) parcel number(s) and zoning of the conservation priority area from which the development credits originated;
 - (ii) number of issued credits;
 - (iii) date of issue;
 - (iv) parcel number(s) and date of expenditure.
 - (c) track conveyances, including sales prices, of any development credits in a database;
 - (d) promptly cancel any committed credits;
 - (e) make the database available for public inspection on the County website; and
 - (f) maintain an exchange on the County website where individuals may indicate their interest in buying or selling development rights or developer credits, the number of credits being offered or sought, and the asking or offering price.
- (2) Fees and exchange rates.
 - (a) The Board of County Commissioners must adopt a fee schedule containing appropriate fees for:
 - (i) application for eligibility report;
 - (ii) price of development credits,
 - (A) for each development incentive option in each zone in which they may be used; or
 - (B) for each transaction type described in SCC 14.22.030.
 - (b) The Board of County Commissioners must adopt an exchange rate schedule to implement this Chapter.
 - (i) Exchange rates represent the additional residential development units that may be obtained in a given development priority area for each development right purchased from a given conservation priority area.
 - (ii) Exchange rates may differ depending on the development incentive option applied for, the development priority area in which it is located, and the conservation priority area from which the development credits are purchased.
 - (iii) The fee and exchange rate schedule must be developed to:
 - (A) reflect the differing values of residential development rights in different zones and development priority areas;
 - (B) facilitate the transfer of development rights from areas best suited for conservation to areas better suited for rural development, and

calculated to ensure that this Chapter does not add additional development rights to the rural area as a whole.

- (c) The Board should periodically evaluate the fee and exchange rate schedules to ensure they reflect current market conditions and must re-adopt the schedules at least every [five] years.
- (3) Revenue. The County must use the revenue from sale of development credits in unincorporated development priority areas, or from a municipal program established per this Chapter, to purchase conservation easements from properties in conservation priority areas.
- (4) Maps. The GIS Department must maintain an interactive map on the County website of:
 - (a) conservation priority areas;
 - (b) parcels conserved by conservation easements issued per this Chapter;
 - (c) development priority areas, including a layer showing the allowed density prior to the upzone.
- (5) Ranking criteria.
 - (a) The Department will develop criteria to rank properties for purchase priority based on conservation value.
 - (b) In developing selection criteria, the County will consider factors including:
 - (i) the number of development rights offered for sale;
 - (ii) land use designation;
 - (iii) parcel size;
 - (iv) soil quality or site productivity (e.g., PFLG for forest land);
 - (v) economic productivity;
 - (vi) current use of the property for resource management;
 - (vii) enrollment in or eligible for Open Space Taxation (as open space land, farm and agricultural land, or forest land);
 - (viii) proximity to other properties conserved as open space or working natural resource land;
 - (ix) conversion threat including:
 - (A) proximity to urban development or major highways and intersections;
 - (B) availability of sewer service;
 - (C) urgency of sale;
 - (x) presence, size, and quality of environmental resources or critical areas, including wetlands and wildlife habitat;
 - (xi) presence of geologic hazards;
 - (xii) scenic and open space value;

- (xiii) availability of other conservation programs (e.g., Farmland Legacy Program) to conserve the property.
- (c) The ranking criteria must be approved by the Board of County Commissioners, and may be periodically reviewed at the Board's direction.
- (6) Easement monitoring and enforcement.
 - (a) The County must annually monitor properties subject to easements acquired per this Chapter for compliance with the easement terms.
 - (b) The County must take appropriate measures to enforce the terms of such easements consistent with the enforcement provisions in the easements.
- (7) Interlocals to establish development priority areas.
 - (a) Subject to review by the Prosecuting Attorney's office and approval by the Board of County Commissioners, the County may negotiate an interlocal agreement with any city or town that chooses to establish a conservation and development incentives program in coordination with the County. Execution of such agreements by the County shall be subject to the applicable requirements of this chapter and the comprehensive plan.
 - (b) Substantive requirements. Interlocal agreements executed by the County pursuant to this subsection must:
 - (i) Provide for the movement of certified development rights from conservation priority areas for use in development projects in specified incorporated areas.
 - (ii) Establish procedures for a city or town to return applied development credit certificates to the County, following final approval of a development project in a city or town receiving area, to ensure timely and accurate record-keeping.
 - (iii) Identify unincorporated areas that the municipality has an interest in helping to conserve in cooperation with the County.
 - (iv) Establish a process for the transfer by a city or town of revenues generated from the sale of development credits in specified incorporated areas, to the County for the purchase of development rights in conservation priority areas.