

Flood Damage Prevention Code Amendments  
 Written Comments Received in Person OR Email by July 24, 2020, &  
 TESTIMONY RECEIVED AT PUBLIC HEARING ON July 21, 2020 .

Count	Last Name	First Name	Organization	Proposal	Method	Received Date
1	Lipscomb	Brian	Citizen	Flood	Verbal	07/21/2020
2	Lipscomb	Brian	Citizen	Flood	Email	07/20/2020
3	Lipscomb	Brian	Citizen	Flood	Email	07/24/2020
3	Kammer	Nora	Skagit River System Cooperative (SRSC)	Flood	Email	07/22/2020
4						
5						

Brian Lipscomb  
27765 West Gilligan Creek  
Sedro-Woolley, WA 98284

July 20, 2020

Skagit County Planning Commissioners  
1800 Continental Place, Suite 100  
Mount Vernon, WA 98273

sent via email to: [pdscomments@co.skagit.wa.us](mailto:pdscomments@co.skagit.wa.us), [planningcommission@co.skagit.wa.us](mailto:planningcommission@co.skagit.wa.us)

Subject: July 21, 2020 Public Hearing - Proposed amendments to SCC 14.04 & 14.34

Dear Commissioners,

The notification for the 2020 Flood Damage Prevention Code Updates stated that if the County fails to correct noncompliance they may be suspended from the National Flood Insurance Program, and that if a suspension occurs flood insurance is unavailable, property owners can be fined, and federally backed mortgage loans are unavailable. *(However, this is false as the Biggert-Waters Flood Insurance Reform Act requires lenders to accept private flood insurance).*

It further stated that the Department Of Ecology (DOE) requested changes are minor and that the Floodplain Manager had reviewed the requests and returned the revised amendments two months after receipt. It should be noted that Skagit County citizens were not notified, consulted, or included in DOE's or the Floodplain Managers revisions.

If one reviews the DOE's requests it has some references to Bremerton Municipal Code (BMC), making one wonder how careless the DOE authors are in cutting and pasting using the plethora of regulations from other communities. No background or technical citations were provided to support any need for these new requirements. It appears they are only required because the DOE said so.

One onerous and unfounded demand was DOE's #3 that stated: "Water wells shall be located on high ground that is not in the floodway."

Only by reading the 29 page staff report will one find on the bottom of page 20 these critical 9 words: "(5) Water wells shall not be installed in the floodway." Nowhere else is this major impact advertised, identified, or documented.

Remember, these code amendments are supposedly necessary so that Skagit County can enjoy a higher community rating which will in turn reduce the NFIP insurance rates. This begs the question, How imaginative must one be to create a nexus between a water well and reduced flood insurance rates?

Water facilitates agriculture, livestock, recreation, and other permitted activities in floodways. If approved this becomes yet another bureaucratic tool to systemically oppress rural property owners and rights. When one considers the incorrect floodway demarcations, it becomes catastrophic.

Please reject the PDS proposed amendment "SCC 14.34.190 (5) Water wells shall not be installed in the floodway." Approving this would also be in conflict with SCC 14.34.190 (2) (vii).

Respectfully,  
Brian Lipscomb

Brian Lipscomb  
27765 West Gilligan Creek  
Sedro-Woolley, WA 98284

July 24, 2020

Skagit County Planning Commissioners  
1800 Continental Place, Suite 100  
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Subject: July 21, 2020 Public Hearing – Additional comments regarding 14.34.190(5)

Dear Commissioners,

The Planning Commission recently discussed proposed changes to SCC 14.34 for which there were a few questions that couldn't be answered. One of these was if existing wells would be allowed. The reply was that there was an exception for wells associated with farmhouses, any other wells are not exempt, and existing wells are a different story. The question was not directly answered and leads to more questions:

How is the story different?

If there are no changes with existing wells why do farmhouses need an exception?

Is it stating that a replacement well can only be for a farmhouse?

Will a replacement for an existing well be allowed?

Further discussion asked if PDS has a response to concerns with map errors. The response was yes there is an issue with map accuracy but there is no effort to correct the maps as FEMA was out of money and these proposals are not about the maps. (Remember the \$385k the County spent challenging these maps?)

The response to a query about the updated 2010 maps was that the updated maps are not being used but are substantially different from what the 1980's maps looked like and there is always an issue with quality. A further response was the maps are what they are and this does not change them, any specific questions could be answered by the floodplain manager.

The 1985 and 2010 maps were derived from the same cross sections developed in 1963 upstream of SR9 on the Skagit river. The only difference between the 1985 maps and the 2010 maps is the availability in digital (tiff's and pdf's) format known as the DFIRM.

How could these maps be substantially different if they use the same cross section data? Perhaps because the 22 sections that had the arbitrary floodway lines drawn are missing?

A question regarding the redundancy of 14.34.190 with existing regulations was replied that it was needed for consistency with state and federal codes. This could be a bit misleading along with findings of fact #3 & #5. The proposal makes SCC more restrictive than the State regulation as exceptions for floodways are written in RCW 86.16.041 (3)(g) and (4). Can anyone cite a FEMA regulation that specifically prohibits a well in a floodway? I could not find one.

It was questioned if a LOMA could be used for a floodway. Staff did not know the answer, although the answer is no. A LOMR (Letter Of Map Revision) is required. This requires "community sponsorship". You can provide surveys and elevations but the floodplain manager must agree and ask FEMA for the revision.

The floodplain manager was recently requested to do this very thing but insisted on having hydraulic and hydrology (H&H) studies done in addition to the surveys and elevations. A “NO-RISE” certification is a usual method for the H&H study.

The procedure is to obtain the hydraulic model that was used to determine the original floodway boundaries and run the model to ensure the results are equal to the original results for a baseline. The model is then changed to reflect existing site specific conditions and the model ran again. Then change the existing site model with the proposed changes and run again. All three model runs must indicate no impact on the 100 year flood elevations.

A citizen who wanted to improve a small utility building and was not increasing the footprint proceeded to do the no-rise certification as nothing in the model would need to change. They requested the model used for the Skagit river and paid the fee to the FEMA librarian for the data, only to receive a reply (and no refund) stating that they only had the output data from the backwater calculations and “there is no floodway data available for many of the x sects”.

That’s a lot of effort to revamp an existing 600 sq ft building protected by an armored embankment rising two feet above Base Flood Elevation. Without being able to obtain the original input data used it’s not possible to do the no-rise.

A comment about not seeing any benefits achieved with updated maps was made. Inaccurate maps cause all kinds of trouble. Some properties are denied the right to improve existing structures, forced to undertake multiple expensive habitat studies, record title documents, etc. while adjacent parcels with identical site conditions have no such burdens. This encourages blight, the LOMR and associated engineering costs are unnecessary and add zero benefit.

In summary, SCC 14.34.190(5) is overly restrictive as written and should incorporate the exceptions in RCW 86.16 and specifically state that all existing wells can continue to be used and can be replaced when necessary.

The floodplain manager should also have Ecology provide documentation for the technical reasons and justification for WAC 173-160-171 not allowing a well in a floodway.

Thank you,  
Brian Lipscomb



## Skagit River System Cooperative

11426 Moorage Way • P.O. Box 368 LaConner, WA 98257-0368

Phone: 360-466-7228 • Fax: 360-466-4047 • [www.skagitcoop.org](http://www.skagitcoop.org)

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July 22, 2020

Mr. Peter Gill  
Long Range Planning Manager  
Skagit County Planning and Development Services  
1800 Continental Place  
Mount Vernon, Washington

(sent via electronic correspondence)

Reference: Proposed Code Amendments to Skagit County Code Chapters 14.04 and 14.34

Dear Mr. Gill,

As you are likely aware, the Skagit River System Cooperative (SRSC) represents the off-reservation fisheries and natural resource interests of the Swinomish Indian Tribal Community and the Sauk-Suiattle Indian Tribe. The Swinomish Tribe and the Sauk-Suiattle Tribe are federally recognized Tribes and Signatories to the Treaty of Point Elliott of 1855. As such we take a keen interest in laws and regulations that have potential effects on fish and shellfish in the Skagit basin and beyond. Skagit County Code affecting developments within the floodplain have a direct effect on floodplain management, and therefore the fish species of the Skagit basin. We have an interest in reviewing the proposed regulations that are currently under review. This letter is intended to help with that review, by identifying some of the omissions and observations from the two Chapters under revision.

Skagit County Code 14.04 and 14.34, Definitions and Flood Damage Prevention, are being proposed for revision. We recognize that these revisions were requested by the Washington State Department of Ecology as a follow-up to the Community Assistance Visit and were received by the County in October 2013. The proposed revisions incorporate these requested changes into County Code. However, we are concerned that even after incorporating the proposed changes, the Skagit County Code will continue to allow floodplain developments that negatively affect salmon habitat.

The stated purpose of the code amendments is to “remain compliant with the FEMA’s floodplain management minimum criteria and continue Skagit County participation in the National Flood Insurance Program.” As an outcome of the 2004 ESA Consultation, NMFS provided the 2008 Biological Opinion (BiOp) which identified Reasonable and Prudent Alternatives (RPA) that require FEMA and affected participating NFIP communities to ensure that any type of floodplain development does not have an adverse effect on listed species or their critical habitat. Specifically, the local jurisdiction must demonstrate to FEMA that any proposed development in the Protected Area (the designated floodway, the Channel Migration Zone plus 50 feet, and the riparian buffer zone) does not adversely affect water

quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.

We understand that in 2011, Skagit County tried to implement the requirements of the FEMA BiOp by utilizing “Door 2” whereby existing regulations would be updated as needed in order to be compliant with the BiOp. At that time, County codes were revised but FEMA indicated to the County in a letter dated November 7, 2011 that County codes needed additional revisions to meet the requirements of the BiOp. Since that time, Skagit County has been operating on a default “Door 3” where development permits are reviewed on a case-by-case basis for compliance with the BiOp. SRSC feels the presently proposed changes to Skagit County code do not go far enough to protect floodplains and their critical habitat, and as such, will continue to be out of compliance with the NFIP BiOp.

Despite the proposed revisions to Code, Skagit County will continue to insufficiently protect floodplains and their critical habitat, per the NMFS 2008 BiOp. The Riparian Buffer Zone (RBZ), which includes the floodway, channel migration zone, and a defined buffer on typed streams, is not represented in County code at this time and should be. According to the BiOp “the RBZ is a no-disturbance zone, other than for activities that will not adversely affect habitat function”. The BiOp identifies numerous uses that are not permitted (including new buildings including accessory buildings; new impervious surfaces; removal of native vegetation; new clearing, grading filling; septic tanks and drainfields; landfills; receiving areas for toxic or hazardous waste; and stream relocations unless the primary function of the action is to restore natural ecological function) unless the development proposal shows no adverse effect to water quality, quantity, flood volumes, velocities, spawning substrate, and/or refugia habitat for ESA protected salmon. This prohibition and definition of development is quite restrictive and is currently not reflected in the Skagit County floodplain regulations.

To ensure that any permitted development within the Riparian Buffer Zone does not adversely affect protected species, a site assessment must be prepared by a qualified fisheries biologist who can look at the existing site conditions and assess whether the proposed action will have an adverse effect on fish habitat as specified by FEMA. If there is an adverse effect within the RBZ, the proposed development is not a permissible activity.

Beyond the RBZ, the 100-year floodplain needs additional protections incorporated into County Code in order to provide the level of protection for ESA species identified in the BiOp. In the floodplain, compensation must be provided for any effects to floodwater storage within the floodplain. Current County Code provides a process to quantify and assess effects to flood storage in the floodway (SCC 14.34.190(1)); the requirements of a hydraulic assessment should be expanded to include the floodplain to ensure that effects to flood storage and fish habitat function within the floodplain is compensated. Additionally, the BiOp identifies numerous restrictions that aim to reduce impacts to fish habitat in the floodplain outside of the RBZ. These include siting requirements minimizing encroachments; mitigation for the creation of large areas of impervious surfaces; restrictions on the removal of native vegetation; designing and locating structures so that they will not require new structural flood protection; and prohibition of new road crossings over streams.

The above cited BiOp provisions are referenced from the Minimum Criteria (Appendix 4) of the FEMA BiOp. Implementation of the NMFS BiOp RPMs represent the *minimum* level of protection needed to curtail damage to floodplains and their associated protected habitats and end the jeopardy to ESA species. The code changes proposed do not go far enough to ensure that permitted floodplain developments do no harm to salmon and their habitats. SRSC requests that a more thorough review and revision of Skagit County Codes are made to fully reflect the minimum criteria put forth by NMFS for the protection of endangered species under the implementation of the National Flood Insurance Program.

Finally, we at SRSC would like to thank you and your colleagues for your attention to these comments. We genuinely appreciate your effort in communications and seeking to improve the way County codes are developed and implemented. We look forward to maintaining this collaborative relationship. If you have any questions about our comments, or if there is anything we can provide, please don't hesitate to call me at 360-391-8472 or email me at [nkammer@skagitcoop.org](mailto:nkammer@skagitcoop.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Nora Kammer".

Nora Kammer  
Skagit River System Cooperative

CC: Amy Trainer, Swinomish Indian Tribal Community  
Jason Joseph, Sauk-Suiattle Indian Tribe  
John Graves, FEMA  
Elizabeth Babcock, NMFS