



# PLANNING & DEVELOPMENT SERVICES

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## Memorandum

**To:** Planning Commission

**From:** Betsy Stevenson, AICP, Senior Planner

**Date:** October 19, 2011

**Re:** Staff Report on Ag Critical Areas Ordinance & Voluntary Stewardship Enrollment

### Background

Washington counties are required by state law to designate and protect critical areas—wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently-flooded areas, and geologically hazardous areas. Preventing stream pollution is critical for downstream recreation and shellfish farming. Fish and wildlife habitat areas and wetlands are especially important to healthy salmon and endangered Orca whale populations. Other counties have chosen to protect these critical areas using mandatory buffers—strips of land bordering the critical area where farming is not allowed. Skagit County does not require such buffers on ongoing-agricultural lands. Instead, Skagit County requires agriculture to “not harm or degrade” critical areas, and to comply with specific Watercourse Protection Measures.

Skagit County's approach to protection of critical areas in areas of agricultural activity has not been entirely upheld by the courts. In 2007, the state Supreme Court ruled that Skagit County need only “protect” and not “enhance” critical areas. But it also confirmed that the County's monitoring and adaptive management program lacks critical details.

In recognition of the statewide importance of this issue, the Legislature in 2007 imposed a moratorium on changes to critical areas ordinances as they affect agricultural activities. For the last four years, agricultural, environmental, and tribal representatives have worked on a new approach to critical areas protection on agricultural lands that the Legislature adopted this year. A county may now enroll in the State's “Voluntary Stewardship Program” as an alternative to the prior requirement to protect critical areas in areas of agricultural activity through development regulations.

The Ruckelshaus Center, which led the statewide negotiations that led to the new legislation, describes the Voluntary Stewardship Program as follows:<sup>1</sup>

The stewardship program **builds on existing programs** for preserving agriculture and protecting critical areas, including salmon recovery, watershed planning, and agricultural land conservation. It provides focus and direction for stewardship actions related to agriculture, and relies on local watershed groups to set the direction for making effective use of existing programs and resources. Local people know their watersheds best and are the ones who must commit to doing the work.

**Watershed workplans** will be developed to set goals and benchmarks for protection and enhancement of critical areas and will undergo a technical review and approval process.

**Conservation districts** or other qualified technical assistance organizations will provide technical assistance to agricultural landowners and operators in developing individual farm stewardship plans.

**Voluntary incentives** for landowners are emphasized for all program phases. The stewardship program maximizes flexibility for individuals and watersheds to achieve their goals.

**Checkpoints** are built into the program to ensure that protection of critical areas is achieved. Stewardship programs will be evaluated at 3, 5 and 10 years, and counties will be required to proceed with additional actions if benchmarks to protect critical areas are not achieved in local watersheds through voluntary efforts. Potential consequences and actions for counties in this situation include review and possible amendments to critical areas ordinances, or the county may choose to adopt an alternative plan for protecting critical areas subject to state agency approval.

**State roles and responsibilities:** The Washington State Conservation Commission will provide administrative oversight for the voluntary stewardship program, with a state-wide advisory committee to be comprised of the four original caucuses (counties, tribes, agricultural and environmental organizations). It is also recommended that state agencies collaborate to develop a consistent set of guidelines to assist local watersheds in the development and implementation of voluntary measures to protect and enhance critical areas. Enforcement of state and federal water quality regulations by the Department of Ecology is considered to be an integral part of the program.

**Funding:** The goals of the voluntary stewardship program assume that there will be funding for technical assistance, operation of local watershed groups, incentive funds for implementing voluntary stewardship measures, and enforcement of existing regulations. Participants in the Agriculture and Critical Areas process consider an unfunded program agreement to be tantamount to a non-agreement. Given the economic climate, the quest for funding to make the program successful will be a significant challenge for all parties and implementing agencies.

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<sup>1</sup> UW/WSU Ruckelshaus Center, "Agriculture & Critical Areas, A Framework for Stewardship" (May 2011). Available at <http://tinyurl.com/3vh4u6k>.

The Board of County Commissioners, through Resolution R20110239, recently decided to consider enrollment in the Voluntary Stewardship Program.

### **Current Ordinance**

The critical areas ordinance for ongoing agriculture is codified in Skagit County Code section 14.24.120. That section of the Critical Areas chapter is organized as follows:

- (1) Purpose and intent
- (2) Applicability
- (3) “No Harm or Degradation Standard”—agriculture must:
  - (a) Meet the state water quality standards
  - (b) Meet Ecology’s TMDL requirements
  - (c) Meet the Watercourse Protection Measures
  - (d) Not degrade existing fish habitat from baseline inventory characteristics
- (4) Required Watercourse Protection Measures—agriculture must comply with standards for:
  - (a) Livestock and Dairy Management
  - (b) Nutrient and Farm Chemical Management
  - (c) Soil Erosion and Sediment Control Management
  - (d) Management of Agricultural Drainage Infrastructure
- (5) Recognition of Dairy Nutrient Management Plans or Resource Management System plans

### **Proposed Revisions**

Planning & Development Services proposes an ordinance that would accomplish the following:

- (1) Enroll the County in the Voluntary Stewardship Program. Enrollment is reflected both in the ordinance text and the proposed revised purpose statement of SCC 14.24.120.
- (2) Nominate the Samish and Skagit for designation as state priority watersheds by the Washington State Conservation Commission. Nomination is reflected in the ordinance text.
- (3) Make only minor changes for organization and clarity to the existing critical areas ordinance for ongoing agriculture, as codified now in SCC 14.04 (“definitions”) and 14.24 (“critical areas”). Individual changes are explained in comment bubbles throughout the code proposal document.

PDS and Public Works are working on a report analyzing the costs and benefits of enrollment in the Voluntary Stewardship Program that will include a more detailed explanation of how the Voluntary Stewardship Program would work after enrollment.


## Public Participation

This process began with instruction from the Board of County Commissioners, as expressed in Resolution R20110239, to consider enrollment in the Voluntary Stewardship Program. As instructed by the resolution, Planning & Development Services has kept the public involved in the process by posting meeting information and many related documents and video links to the Department's ag-CAO website at [www.skagitcounty.net/agcao](http://www.skagitcounty.net/agcao).

## Planning Commission Public Workshop

The Planning Commission hosted a well-attended public workshop August 23 as the first step in the process of developing this proposal. The Ag and Forestry advisory boards were invited to attend. PDS notified the public of this work session by posting meeting information to the website, the County's press release e-mail list, the Planning & Development Services e-mail list, and the Salmon Strategy e-mail list.

PDS also mailed a postcard to approximately 340 individuals and organizations on our ag-fish postal mailing list in advance of our public workshop before the Planning Commission:

<p><b>Planning Commission Workshop: Ag-Critical Areas Ordinance</b> Possible Revisions to Skagit County's Critical Areas Ordinance for Ongoing Agriculture Commissioners Hearing Room · 1800 Continental Place · Mount Vernon · August 23 · 6pm</p> <p><b>Background</b> Washington counties are required to designate and protect critical areas, such as streams. While other counties protect critical areas using mandatory buffers along streams where agriculture is not allowed, Skagit County instead requires farmers to "not harm or degrade" critical areas, and to comply with specific Watercourse Protection Measures.</p> <p>Although Skagit County has spent years and millions of dollars defending its approach, Skagit County's approach is not yet compliant with state law. In 2007, the state Supreme Court ruled that Skagit County need only "protect" and not "enhance" critical areas. But it also confirmed that the County's monitoring and adaptive management program lacks critical details.</p> <p>For the last four years, agricultural, environmental, and tribal representatives have worked on a new approach to critical areas protection on agricultural lands that the Legislature recently adopted. Skagit County can now opt into a Voluntary Stewardship Program in place of the prior requirement to protect critical areas on farmland through development regulations.</p>	 <p><b>Skagit County</b> Planning &amp; Development Services 1800 Continental Place Mount Vernon WA 98273</p>
<p><b>Workshop</b> The Board of Commissioners recently decided to consider enrolling in the Voluntary Stewardship Program. Enrollment may include changes to the current critical areas ordinance for agriculture, including modifications to the Watercourse Protection Measures requirements and the County's monitoring program.</p> <p>The Planning Commission will hold a public workshop to discuss enrollment and related code changes. Although there will be other opportunities to participate, please attend to get your input in early!</p>	<p><b>Upcoming Workshop for Ag Critical Areas Ordinance</b></p>
<p>for more info, and to track this project's progress, please visit <a href="http://www.skagitcounty.net/agcao">www.skagitcounty.net/agcao</a> or email Senior Planner Betsy Stevenson at <a href="mailto:agcao@co.skagit.wa.us">agcao@co.skagit.wa.us</a></p>	

As a result of this outreach, an article appeared on page A3 of the August 21 Skagit Valley Herald:

<h2>County asks for input on critical areas ordinance</h2> <p>Skagit County Commissioners will seek input at a public workshop on Tuesday night about whether the county should opt into a voluntary stewardship program regarding critical areas ordinances.</p> <p>The county has spent years and millions of dollars defending its approach to critical areas, a designa-</p>	<p>tion for streams that support wildlife. The county's current approach includes directives to "not harm or degrade" those critical areas instead of requiring mandatory buffers.</p> <p>In 2007, the state Supreme Court ruled that Skagit County need only "protect" and not "enhance" critical areas.</p>	<p>The ruling came with additional monitoring and adaptive management programs that the county would need to add.</p> <p>The county now has the choice to opt into a voluntary stewardship program in place of the prior requirement to protect critical areas on farmland.</p>	<p>Commissioners have decided to consider enrolling in the program.</p> <p>They will seek public comment on the program at 6 p.m. on Tuesday, Aug. 23, at the Commissioners Hearing Room, 1800 Continental Place in Mount Vernon.</p> <p>— Whitney Pipkin</p>
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### **Planning Commission Public Work Session**

The Planning Commission held a public roundtable work session on October 4, 2011. PDS and Prosecutor's Office staff, Ag Advisory Board Chair Nels Lagerlund, Skagit Conservation District Director Carolyn Kelly, and Washington State Conservation Commission Director of Policy & Intergovernmental Relations Ron Shultz participated.

### **Ag Advisory Board**

PDS and Prosecutor's Office staff attended the September 22, October 6, and October 12 meetings of the County's Ag Advisory Board and its land use committee to provide an overview of the Voluntary Stewardship Program and its components, and to review the draft code amendment proposal. At the conclusion of its October 12 meeting, the Ag Advisory Board voted 7-1 to support enrollment in the Voluntary Stewardship Program and to recommend nomination of both the Samish and Skagit as priority watersheds. The AAB indicated it does not need an additional workshop with the Planning Commission.

### **Invitations to Confer**

As required by ESHB 1886, PDS identified the following list of environmental and agricultural organizations and sent an email invitation to each to confer with the Department about the program and requesting their support for enrollment.

Evergreen Islands	Skagit Fisheries Enhancement Group
Friends of Skagit County	Skagit Land Trust
Futurewise	Skagit Watershed Council
Northwest Indian Fisheries Commission	Skagitonians to Preserve Farmland
Skagit Citizens' Alliance for Rural Preservation	The Nature Conservancy
Skagit Conservation Education Alliance	Washington Environmental Council
Skagit County Cattlemen's Association	Washington State Farm Bureau
Skagit County Dairy Federation	Western Washington Agricultural
Skagit County Farm Bureau	Association

The Board of County Commissioners also sent a letter via email to the chairs of the Samish, Sauk-Suiattle, Swinomish, and Upper Skagit tribes inviting them to confer to discuss the program.

### **Public Comment and Public Hearing**

A written public comment period is now open until Friday, October 28, 2011. Comments may also be submitted in writing at the public hearing scheduled before the Planning Commission on Tuesday, November 1. Planning Commission deliberations are scheduled for November 15. The Board of County Commissioners is expected to take up the matter shortly after receiving a recommendation from the Planning Commission.