



PLANNING & DEVELOPMENT SERVICES

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Memorandum

To: Skagit County Planning Commission
From: Planning & Development Services
Date: August 1, 2011
Re: Public comments and testimony on changes to SCC 14.34.

Planning & Development Services has presented proposed draft changes to SCC 14.34 (Flood Damage Prevention) and SCC 14.24 (Critical Areas) in order to comply with FEMA/NFIP requirements regarding the Endangered Species Act and in particular, the NMFS Biological Opinion regarding Chinook Salmon and Orca Whales. The following are responses to public testimony and written correspondence received on the County's proposal.

SCC 14.34 changes to comply with FEMA/NMFS Biological Opinion

Comments to proposal

#	Comment(s)	Commenter(s)	Response
1	FEMA mapping errors occurred in 1985	Brian Lipscomb	Flood mapping is not a function of this code revision/update.
2	Existing site conditions are not being considered with proposed changes	Brian Lipscomb	Existing site conditions are considered with the habitat/site assessment rather than through codification.
3	Landowners behind levees are not being treated equally with those who are not behind levees.	Brian Lipscomb	Flooding conditions and presence of habitat are not consistent throughout the County. The proposal intends to recognize varying flooding conditions.

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4	Example FWHCA assessments would be helpful to the public.	Brian Lipscomb	Informational handouts will be developed and provided to the public.
5	No community reward except lower insurance rates.	Brian Lipscomb	Continued participation in the NFIP is the primary goal of these revisions. In addition, the community is rewarded with protected salmon and orca whales.
6	Public notice not sufficient.	Brian Lipscomb Randy Good Roger Mitchell	Public notice has been provided in excess of what is required by law.
7	Rules written ambiguously.	Stephen Burgess	The language was written in such as way as to provide discretion where possible.
8	Setbacks of 250 + 15 feet.	Stephen Burgess	250 feet is a review area not a setback.
9	Include demolishing a roadway back to native conditions as exempt from permits.	WSDOT	This activity would not meet the FEMA/NMFS standard for minor exempt activities.
10	Remove "such as replacing downed power lines", to exempt other below grade activities.	PSE	The Planning Commission could consider making this change, and the County could then try to make a case that this is still compliant with the intent of the BiOp. There is a risk however, that FEMA/NMFS may decide that this is outside the limited activities intended to be exempt.
11	Comment on the FEMA model Ordinance regarding elimination of the word "public" in connection with utilities	PSE	The County draft document does contain the word "public" in relation to utilities.
12	Takings with 250 foot zone and 65% native vegetation requirement	Randy Good	This is a legal issue outside the scope of this project. It should be noted however That the 250-foot dimension is an area of Heightened habitat review and is not a Buffer. The County's proposal does not Include a 65% retention of native vegetation as The FEMA model ordinance does, but rather The County proposal relies on the vegetation Removal limitations in the CAO.
13	Habitat assessment will be expensive	Randy Good	As presented, if approved by FEMA, assessment cost will be near to that which would already be required.
14	Proposal will prohibit new Ag farm buildings through waiting time and expense of assessments.	Randy Good	While permit timelines and assessment expense are variable based on the project proposed, increases in either area would

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			not normally be prohibitive.
15	NMFS failed to use true field science.	Randy Good	Staff has no response to the science used by NMFS staff.
16	Skagit County already has science to protect endangered species through CAO, approved by State.	Randy Good	Staff agrees, which is why the County proposal relies on current CAO regulations so heavily in this proposal.
17	Outside legal opinion raises legal and practical issues with BiOp.	Randy Good	Staff has no response to comments made by non-County attorneys.
18	County needs to slow down and take more time to consider.	Randy Good	Taking the default requirement into account, staff considers the current proposal to be the least expensive and least restrictive approach. Unfortunately the default requirement will take effect on September 23, 2011 without an opportunity to request more time.
19	County encouraged to discontinue NFIP membership	Randy Good	This is a management decision for the Board of County Commissioners and is outside the scope of this proposal.
20	Additional language should be added to the levee exemption, specifying projects meeting PL84-99 standards of the Corps of Engineers.	John Shultz Dike Dist. 1 & 12	The intent was to exempt repair and maintenance of levees. Other work outside of the levee prism is not intended to be exempt.
21	Permit exemption, including language referring to PL84-99 standards, should be added to exemptions from a habitat assessment.	John Shultz Dike Dist. 1 & 12	Since the work is exempt from a floodplain development permit, it is not necessary to also exempt it from an assessment which could create confusion regarding which exemption would apply.
22	"Activities Affected" on the compliance checklist should include language regarding vegetation removal as part or normal repair and maintenance.	John Shultz Dike Dist. 1 & 12	The compliance checklist is a FEMA product that outlines the BiOp requirements and the reference source in the BiOp and the model ordinance. This checklist is not a County document subject to modification. It's use is only to guide FEMA to the location of required regulations in Skagit County Code.
23	Under "Activities Affected" Recommend removal of new definition language for development specifying substantial amounts of vegetation removal.	John Shultz Dike Dist. 1 & 12	The compliance checklist is a FEMA product that outlines the BiOp requirements and the reference source in the BiOp and the model ordinance. This checklist is not a County document subject to modification. It's use is only to guide FEMA to the location of required regulations in Skagit County Code.

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24	Under "Mapping Criteria" on the compliance checklist, language similar to the PL84-99 language above should be added to the definition of Channel Migration Zone	John Shultz Dike Dist. 1 & 12	The compliance checklist is a FEMA product that outlines the BiOp requirements and the reference source in the BiOp and the model ordinance. This checklist is not a County document subject to modification. It's use is only to guide FEMA to the location of required regulations in Skagit County Code.
25	Under "General Development Standards" on the compliance checklist, language should be added to exempt areas landward of maintained levees subject to annual Corps of Engineers inspections.	John Shultz Dike Dist. 1 & 12	The compliance checklist is a FEMA product that outlines the BiOp requirements and the reference source in the BiOp and the model ordinance. This checklist is not a County document subject to modification. It's use is only to guide FEMA to the location of required regulations in Skagit County Code.
26	The County should require the FEMA assessment standard rather than rely on the CAO FWHCA standard	Tim Hyatt SRSC	The County's proposal, while largely utilizing the CAO FWHCA standard, Will include review of additional functions And values for protected species and Habitat, and ensure the intent of the BiOp Is being met.
27	The CMZ should be mapped and the COE inspected levees should not comprise the limits of the CMZ.	Tim Hyatt SRSC	The CMZ mapping will take place with the Shoreline Master Program update that is currently underway. When mapped and adopted, the CMZ maps will become effective.
28	County should take care that projects exempt from assessment do not have Unintended consequences.	Tim Hyatt SRSC	The County appreciates the comment and intends to provide appropriate review.
29	County should prevent the creation of new lots within the SFHA that would violate the BiOp	Tim Hyatt SRSC	County intends to follow the BiOp requirements for new subdivisions.
30	Vested lots should be subject to the same development standards of the BiOp as newly created lots	Tim Hyatt SRSC	The subject of partial vesting removal is a legal subject and not within the scope of this project.
31	County should not exempt agriculture based on NOAA definition of development.	Tim Hyatt SRSC	The County is following the agricultural exemption provided in the BiOp, however it should be noted that while agricultural activities such as planting and harvesting are exempt, agricultural buildings such as barns are not exempt.

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32	County should establish criteria for qualified professionals to conduct BiOp compliant assessments.	Tim Hyatt SRSC	Comment noted. Some additional training may be necessary.
33	Costs of compliance are being passed on to individual property owners.	Roger Mitchell	The comment is noted. Development in the floodplain is a voluntary activity and may have additional costs due to that development.