

**ORDINANCE NO. \_\_\_\_\_**

An Ordinance of the Town of Hamilton Amending Ordinance No. 179, to adopt a new section 10.68.170 the Hamilton Floodway Relocation and Mitigation Credit Program.

**WHEREAS**, the Washington State Growth Management Act RCW36.70A.060 requires that development regulations be adopted to protect resource lands and critical areas, and

**WHEREAS**, a local ordinance to authorize a program of transfer or purchase of floodway development rights is a required component of the Hamilton Floodway Relocation and Mitigation Credit program, and

**WHEREAS**, the program to implement the Open Space Comprehensive Plan designation of the existing Floodway portion of the Town of Hamilton is required prior to rezoning the floodway portion of the Town of Hamilton that has been designated Open Space in the Comprehensive Plan, and

**WHEREAS**, Town Council has determined that taking timely action to implement the Hamilton Floodway Relocation and Mitigation Credit program is in the public interest.

**NOW THEREFORE, THE TOWN COUNCIL OF HAMILTON, DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Ordinance No. 179 is hereby amended to add a new Section 10.68.170 Hamilton Floodway Relocation and Mitigation Credit Program to the Hamilton Zoning Code to read as follows:

**“Section 10.68.170            Hamilton Floodway Relocation and Mitigation Credit Program**

**A. Purpose.** The purpose of the Floodway Relocation and Mitigation Credit Program is to provide additional residential density in specific zoning districts in exchange for a fee dedicated to transfer population and purchase development rights through the Hamilton Public Development Authority Town Relocation Program. The program provides a voluntary, incentive-based process for removing homes and structures located in the Skagit River Floodway and permanently preserving Wild and Scenic River Corridor lands that provide a public benefit. The provisions of this Program are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density inside the Town where it can best be accommodated with the least impacts on the natural environment and public services by:

1. Providing an effective and predictable incentive process for Skagit River Floodway property owners to preserve lands with a public benefit;
2. Providing an efficient and streamlined administrative review system to ensure that transfers of population to the receiving sites and purchase of Floodway development rights

are evaluated in a timely way and balanced with other town and county goals and policies, and are adjusted to the specific conditions of each receiving site.

B. Application. The B-C and R zoning district areas as shown on the official zoning map of the Town of Hamilton are a receiving zone for transfers of population from the Floodway and purchase of Floodway Relocation and Mitigation Credits that are assigned towards the purchase of development rights from land designated as Skagit River Floodway and designated as open space (O-S) on the official Town of Hamilton comprehensive plan map of the Urban Growth Area and the Connected Open Space Planning Area Map Exhibit A.

The residential use in the receiving zone shall be permitted at the rate of one additional residential dwelling unit per Hamilton Floodway Relocation and Mitigation Credit. The applicant may opt to acquire development rights from Skagit River Floodway land and transfer those rights into the receiving zone at a rate comparable to the Hamilton Floodway Relocation and Mitigation Credit formula.

C. Definition of Terms Used in This Section.

1. “Hamilton Floodway Relocation and Mitigation Credit Program” means a voluntary program where density of new development may be increased as specified in this Title through the purchase of Floodway Relocation and Mitigation Credits at a set price established by Resolution directly from the Town of Hamilton and the funds are used by the Hamilton Public Development Authority towards the purchase of floodway development rights through an Interlocal Agreement/Contract.

2. “Development right” means one residential unit of credit. This is calculated for unincorporated Skagit County and the Town of Hamilton as one residential unit per house and accessory structures located in the Skagit River Floodway between Sedro-Woolley and Concrete. The Hamilton Public Development Authority will accumulate Floodway Relocation and Mitigation Credits until a willing seller is identified and there is enough funding to acquire one or more development rights from floodway land in the area specified on Map Exhibit A.

3. “Receiving site” means the site in the recipient zoning district that will receive the increased density by purchasing Floodway Relocation and Mitigation Credits at a set fee or transferring development rights from the sending site. Receiving sites in the Town of Hamilton are further described in the B-C and R zoning districts.

4. “Sending site” means the site that is to be preserved as Wild and Scenic River resource land by selling its residential development rights and transferring the population allocation to the Hamilton Public Development Authority or other entity approved by the Hamilton Public Development Authority. Sending sites shall be maintained permanently as Wild and Scenic River open space lands and no structures may be built on the land. Sending sites may not be in public ownership. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed.

For lots on which the entire lot or a portion of the lot has been cleared or graded pursuant to a Class II, III or IV special forest practice as defined in chapter 76.09 RCW within the six years prior to application as a sending site, the applicant must provide an affidavit of compliance with the reforestation requirements of the Forest Practices Act, and any additional reforestation conditions of their forest practice permit. Lots on which the entire lot or a portion of the lot has been cleared or graded without any required forest practices or county authorization, shall not be qualified or certified as a sending site for six years unless the six-year moratorium on development applications has been lifted or waived. See Map Exhibit A for land eligible as sending sites for the purpose of this ordinance.

D. General Requirements.

1. Property eligible for increased residential density is described in the B-C and R zoning districts.
2. Hamilton Floodway Relocation and Mitigation Credits shall be used by the Hamilton Public Development Authority for the acquisition of residential development rights on Wild and Scenic River floodway land in target locations identified on Map Exhibit A.
3. The residential development rights of floodway land shall be considered as interests in real property and may be transferred by sale or gift in part or in total as provided in this section. Once used, credits for residential development rights shall not be used again and the residential development rights of the subject property providing them shall be considered severed forever.
4. Residential development rights on floodway resource land may be transferred to a specific parcel in Hamilton or sold to an individual(s) or other entity such as the Hamilton Public Development Authority.
5. On the receiving site the purchase of Floodway Relocation and Mitigation Credits shall increase the underlying zoning density by one dwelling unit per Floodway Relocation and Mitigation Credit, as further designated in the B-C and R zoning districts. Owners of the parcels within the recipient zone districts gain additional density for their property when they purchase Floodway Relocation and Mitigation Heritage Credits for the receiving site. Detailed use and development standards for the receiving site are specified in each zoning district.
6. Hamilton Floodway Relocation and Mitigation Credits shall be allocated to a specific receiving site.
7. Conservation easements shall be required for land contained in the sending site to indicate development limitations on the sending site.

E. Procedure to sell or transfer development rights from sending site. (*Note: this process may be amended by the Hamilton Public Development Authority.*)

1. The Hamilton Public Development Authority will receive Floodway Relocation and Mitigation Credit fees collected by the town and use those fees to acquire residential development rights on Floodway property in the areas identified on the Connected Open Space Planning Area map.
2. Property owners participating in the floodway preservation program will use the following process to sell or transfer their residential development rights.
  - a. An owner of real property desiring to sell or transfer development rights shall submit an application for severance of development rights (sending site certification) to the Hamilton Public Development Authority or other such entity as the Town Council may nominate. The Hamilton Public Development Authority shall determine the form of the application and the information required for a complete application. The Hamilton Public Development Authority shall determine if the application may be accepted. Responsibility for preparing a completed application rests exclusively with the applicant. Application for sending site certification shall include:
    1. A legal description of the site;
    2. A title report;
    3. A brief description of the site resources and public benefit to be preserved.
    4. A site plan showing the proposed conservation easement area, existing and proposed dwelling units, submerged lands, any area already in a conservation easement or other similar encumbrance and any other area, except setbacks, required by Skagit County to remain open;.
  - b. The applicant shall submit documentation of a residential dwelling unit in the Skagit River floodway and the Hamilton Public Development Authority shall determine that there is a residential development right available for severance.
  - c. A preliminary estimate of value is defined by reviewing the site selection criteria and pricing formula and the estimate is transmitted to the Hamilton Public Development Authority for approval and any additional steps required.
  - d. To sever residential development rights approved by the Hamilton Public Development Authority, the property owner shall execute a restrictive easement,( the “conservation easement”), granting to the Hamilton Public Development Authority or a tax exempt organization or other governmental agency, as approved by the Hamilton Public Development Authority. The conservation easement shall not be executed until all structures are removed and the site restored to open space or funds are set aside to complete that work. If the sending site includes Federal funds, an appraisal is ordered.
  - e. Once development rights have been severed from a sending area property in accordance with this code, the property owner may sell or transfer the development rights by executing and recording with the Skagit County auditor a deed of

residential development rights, using a deed form prescribed by the Hamilton Public Development Authority. The deed shall describe the number of development rights being sold or transferred.

g. The certificate of residential development rights and the restrictive easement shall be recorded by the escrow agent of the Hamilton Public Development Authority with the Skagit County auditor. The owner shall provide a copy of the recorded documents to the Hamilton Public Development Authority. When the documents have been recorded and the recorded documents have been received by the department, the severance is complete.

D. Procedure to acquire and use Hamilton Floodway Relocation and Mitigation Credits.

1. A request to increase residential density within a receiving area by purchasing Floodway Relocation and Mitigation Credits must be part of a land use permit application under chapter 10.68 Hamilton Zoning Code. The site plan must indicate the number of Floodway Relocation and Mitigation Credits necessary to implement the project.
2. Prior to final approval of the site plan, the applicant must buy Floodway Relocation and Mitigation Credits at the rate of one credit per additional dwelling unit.
3. The site plan, referencing the Floodway Relocation and Mitigation Credits, shall be recorded by the owner with the Skagit County auditor.”

**Section 2.** Effective date. This ordinance shall be in full force and effect five days after its passage, approval and publication as provided by law.

**INTRODUCED AND PASSED** and approved at a regular meeting of the Town Council this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

The Town of Hamilton

\_\_\_\_\_  
Timothy A. Bates, Mayor

ATTEST:

\_\_\_\_\_  
Delilah Sutton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Filed with the Town Clerk:  
Passed by the Town Council:  
Signed by the Mayor:  
Published:  
Effective Date:

**NOTE: THIS IS THE BASIC REZONE LANGUAGE IN THE HAMILTON CODE**

**10.68.160 Reclassification of property including rezone and contract rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.**

A. Initiation of Amendments.

1. Zoning Map.

- a. One or more property owners of the property may submit an application requesting a reclassification of the property;
- b. The city council, upon its own motion, may request the planning commission to conduct a public hearing on the reclassification of property;
- c. The planning commission, as part of a citywide project to implement the comprehensive plan, may upon its own motion call for a public hearing on the reclassification of property.

2. Text.

- a. The city council, upon its own motion, may request the planning commission to conduct a public hearing to amend any portion or all of this title;
- b. The planning commission may upon its own motion call for a public hearing to amend any portion or all of this title;
- c. Any resident or property owner of the city may petition the city to request an amendment to the text of this title.

B. Review Criteria. When the planning commission is considering recommendations for reclassifications, or when the city council is considering approval of reclassifications, the planning commission or the city council shall investigate the request for reclassification and shall consider, among other questions, the following:

1. Is the request compatible with the city's comprehensive plan and development goals?
2. Are public utilities, public facilities and other services currently adequate to serve the proposed district?
3. Would the proposal adversely affect the health, safety, or welfare of the adjacent area of the area being considered?
4. Is the reclassification or land development needed at this time?
5. What are the economic impacts of the proposed action?
6. Are the arguments of support or opposition by local citizens valid?
7. Have conditions of the area substantially changed since the original zoning to justify a rezone?

C. Amendments to Rezone Requests. A requested rezone may be changed, conditioned or modified by the city council without requiring additional hearings subject to the following:

1. The modification or change shall not result in a more intense zone than the one requested.
2. The area of the request shall not be enlarged, however, the area may be lessened.

D. Contract Rezones - General.

1. In order to mitigate any impacts that may result from a rezone the city may enter into a property use and development agreement with the property owner. The agreement shall outline the conditions of approval and the obligations of the property owner. The contract shall be binding upon the owner and his/her heirs, assigns and successors. The agreement shall run with the land, be signed by the property owner(s) and be recorded with the Skagit County auditor real property records within 120 days of adoption of the ordinance accepting the agreement.
2. The ordinance rezoning the property shall provide for acceptance of the agreement and shall not be effective until the agreement has been executed by the owner.
3. Amendment of Contract Rezones. Agreements required as a condition to map amendments may be amended by agreement between the owner and the city, provided that the amended agreement shall be approved by the council. Amendments which are within the spirit and general purpose of the prior decision of the council may be approved by the council by ordinance after receiving any advice which it deems necessary. Written notice and an opportunity to comment shall be provided by the council at least 14 days prior to council consideration of the amendment request to persons who submit written or oral comments on the original rezone decision. Amendments which in the judgment of the council represent a major departure from the terms of the agreement shall not be approved until the council has received the recommendations from the planning commission after a public hearing held in the same manner and pursuant to the same notice provided for map amendments