

**ORDINANCE NO. O2007 \_\_\_\_\_**

**AN ORDINANCE AMENDING SKAGIT COUNTY CODE (SCC) 14.24.120 ONGOING AGRICULTURE, AMENDING SCC 14.44 ENFORCEMENT AND AMENDING SCC 14.24.530 FISH AND WILDLIFE HABITAT CONSERVATION AREA PROTECTION STANDARDS**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS,**

**WHEREAS**

**NOW THEREFORE, BE IT ORDAINED** that SCC 14.24.120 Ongoing Agriculture is hereby amended to read as shown in Attachment 1.

**BE IT FURTHER ORDAINED** that SCC 14.44 Enforcement is hereby amended to read as shown in Attachment 2.

**BE IT FURTHER ORDAINED** that SCC 14.24.530 Fish and Wildlife Habitat Conservation Area Protection Standards is hereby amended to read as show in Attachment 3.

**IN TESTIMONY WHEREOF, we hereunto set our hands and affix the official seal of our office.**

**DATED this \_\_\_ day of \_\_\_\_\_, 2007**

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

\_\_\_\_\_  
**Sharon Dillon, Chair**

\_\_\_\_\_  
**Kenneth A. Dahlstedt, Commissioner**

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**Don Munks, Commissioner**

**ATTEST:**

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Joanne Giesbrecht, Clerk  
Skagit County Board of Commissioners

**APPROVED AS TO FORM:**

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Will Honea, Chief Civil Deputy  
Skagit County Prosecutor's Office

**APPROVED:**

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Tommy Karsh, Natural Resource Policy Administrator

## ATTACHMENT 1

### **14.24.120 ~~Ongoing agriculture~~ Ongoing Agriculture.**

~~(1) Purpose and Intent. The purpose of this Section is to address 2 mandates under the Growth Management Act (GMA): (a) to protect the existing functions and values of fish and wildlife habitat conservation areas (FWHCAs) in and adjacent to natural, modified natural and artificial watercourses as defined in SCC 14.04.020 (collectively “watercourses”), and (b) to conserve and protect agricultural lands of long-term commercial significance, specifically those lands in ongoing agricultural activity as defined by SCC 14.04.020 that are located adjacent to these watercourses. For purposes of this Section, “existing functions and values” shall mean the following:~~

- ~~(a) Water quality standards identified in Chapter 173-201A WAC.~~
- ~~(b) The existing presence or absence of large woody debris within the watercourse.~~
- ~~(c) The existing riparian buffer characteristics and width, including but not limited to the existing amount of shade provided by the existing riparian buffer.~~
- ~~(d) The existing channel morphology.~~

~~Because many of the areas that are the subject of this Section are located in the Skagit and Samish River deltas or floodplains, where substantial diking, drainage and subflood control zone infrastructure has been constructed and where various diking and drainage districts and subflood control zones have lawful obligations to maintain agricultural and other drainage functions and infrastructure as established in RCW Titles 85 and 86, this Section also must accommodate those ongoing diking, drainage and flood control functions. Agricultural operations on lands which are not included in the definition of ongoing agriculture are required to comply with the other provisions of Chapter 14.24 SCC.~~

~~It is the goal of Skagit County to administer the provisions of this Section consistent with local, State and Federal programs, statutes and regulations to protect the health, welfare and safety of the community, to accommodate continued operation and maintenance of the diking, drainage and flood control infrastructure and to protect agriculture, natural resources, natural resource industries and fish and wildlife habitat conservation areas in and adjacent to watercourses. This Section is intended, to the maximum extent possible, to rely on and coordinate with but not substitute for or duplicate other State and Federal programs, statutes and regulations that address agricultural activities in a manner that protects water quality and fish habitat. This Section is intended to supplement those existing State and Federal programs, statutes and regulations only in those areas where the County has determined existing programs do not fully address GMA requirements to protect FWHCAs in and adjacent to watercourses and to conserve agricultural lands of long-term commercial significance.~~

~~Because this Section only applies to areas in ongoing agriculture, and applies to artificial and modified natural watercourses as defined in SCC 14.04.020 that have been constructed and/or maintained to address drainage and flood control mandates under RCW Titles 85 and 86, most of the existing functions and values of the FWHCAs at issue in this Section no longer contain all of the natural, forested riparian buffer attributes and associated functions and values identified as necessary for fish habitat. As such, this Section is to be applied in conjunction with the monitoring, adaptive management and habitat commitments described in Resolution No. R20030210 to more fully address all of the habitat function and value requirements necessary to make County-wide progress towards the County’s goal to restore, where necessary, and maintain healthy salmon runs in these river systems.~~

~~(2) Applicability. Except as may otherwise be required by ESHB 1933, Chapter 321, Laws of 2003, for agricultural lands located within the jurisdiction of the Shoreline Management Act, Chapter 90.58 RCW, this Section shall apply to the following:~~

- ~~(a) As defined in SCC 14.04.020, all ongoing agriculture (including operation and maintenance of agricultural drainage infrastructure) which is located within 200 feet from a watercourse, or any ongoing agriculture (including operations and maintenance of agricultural drainage infrastructure) which adversely impacts the existing functions and values of a watercourse All Ongoing Agriculture as defined in SCC~~

14.04.020 located on lands within 200 feet of a watercourse, as defined by SCC 14.04.020 shall be subject to the requirements of this ~~Section, SCC 14.24.120.~~section. Isolated, artificial watercourses that have no channelized surface hydraulic connection or no piped hydraulic connection between the artificial watercourse and any natural or modified natural watercourse or any salt water shall not be subject to the requirements of this ~~Section.~~section. Drainage tile used to convey groundwater shall not be considered a piped hydraulic connection.

~~(b)~~ 1) **Riparian Buffer Acquisition.** All lands located within the Ag-NRL and RRC-NRL zones that are located adjacent to a watercourse, as that term is defined in SCC 14.04.020 are subject to riparian buffer acquisition under the Skagit County Salmon Heritage Program as described in Resolution No. \_\_\_\_\_ . Lands are eligible for acquisition under the Salmon Heritage Program whether the agricultural activity on the lands meets the definition of ongoing agriculture under SCC 14.04.020 or not. Any lands zoned Ag-NRL or RRC-NRL, whether or not in ongoing agriculture that are subject to a riparian conservation easement under the Salmon Heritage Program (Resolution No. \_\_\_\_\_ ) shall not be subject to other fish and wildlife habitat conservation area protection standards of SCC 14.24.530.

(2) **No expansion of Agricultural Activity into areas that would otherwise be protected under SCC 14.24.530.** The provisions of this section shall not be interpreted to permit expansion of ongoing agriculture (including agricultural drainage infrastructure) into areas that did not meet the definition of ongoing agriculture on May 13, 1996, including lands that were fallow on that date but had been in agricultural production within 5 years prior to that date, unless such expansion can comply with all of the requirements for critical areas protection found in Chapter 14.24 SCC, including but not limited to, the requirement to adhere to the standard critical areas buffers and setbacks.

~~(c) — In this Section, the term “best management practices (BMPs)” refers to one or all definitions of that term in SCC 14.04.020, depending on which definition is relevant within the context used.~~

~~(3) **No Harm or Degradation Standard.**~~

~~(a) — All ongoing agricultural activities shall be conducted so as not to cause harm or degradation to the existing functional values of FWHCAs in and adjacent to watercourses (the “no harm or degradation” standard). For purposes of this Section the term “no harm or degradation” shall mean the following: (i) — Meeting the water quality standards required by Chapter 90.48 RCW (Water Pollution Control Act) and Chapter 173-201A WAC, including the provisions that apply if a natural or baseline condition already exceeds listed water quality standards; and~~

~~(ii) — Meeting the requirements of any total maximum daily load (TMDL) requirements established by the Department of Ecology (ECY) pursuant to Chapter 90.48 RCW; and (iii) — Meeting all applicable requirements of Chapter 77.55 RCW (Hydraulics Code) and Chapter 220-110 WAC; and~~ **Compliance with other State and Federal Laws Affecting Agricultural Activities or Water Quality Standards.** Nothing in this section shall be interpreted to eliminate, reduce or in any way change any of the requirements that are applicable to agricultural activities under all other applicable state and federal laws relating to agricultural activities and water quality, including but not limited to: Chapter 90.48 RCW (Water Pollution Control Act), Chapter 77.55 RCW (Hydraulics Code), WAC 220-110; WAC 173-201A, Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act), Chapter 90.64 RCW (Dairy Nutrient Management Act) and 7 United State Code (USC) 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act. If the County, either through its program of compliance monitoring

described in SCC 14.44.085, or based on other information, has probable cause to suspect that an agricultural operation is violating state water standards, the County shall notify the Department of Ecology Water Quality Section and shall initiate County enforcement pursuant to Chapter 14.44 SCC.

~~(iv)—Meeting the specific~~

(4) **Watercourse Protections Measures.** In addition to the requirements of the Riparian Buffer Acquisition Program described in (1) above, and the requirement to comply with other applicable state and federal laws described in (3), all agricultural activities on lands subject to this section shall also comply with the following watercourse protection measures~~for ongoing agriculture specified in Subsection (4) of this Section; and~~

~~(v)—No evidence of significant degradation to the existing fish habitat characteristics of the watercourse from those characteristics identified in the baseline inventory described in Resolution No. R20030210 that can be directly attributed to the agricultural activities that are described in this Section.~~

~~(b)—The references to Chapters 77.55 and 90.48 RCW, and Chapters 173-201A and 220-110 WAC contained in this Subsection shall not be interpreted to replace ECY and the Washington Department of Fish and Wildlife (WDFW) authority to implement and enforce these State programs with County responsibility to do so, but rather are intended to provide County input and a supplemental County involvement as needed to implement the County's GMA obligations under this Section.~~

~~(c)—Owners or operators regulated under this Subsection shall conduct their ongoing agricultural operations in a manner sufficient to meet the "no harm or degradation" standard of Subsection (3)(a) of this Section, including, if necessary, developing and implementing BMPs to meet this standard. The owner or operator may choose to, but is not required to consult with the Skagit Conservation District (SCD), the Natural Resource Conservation Service (NRCS), an NRCS technical service provider, the Washington State University Extension Service or other qualified expert as defined in SCC 14.04.020 to determine what combination of BMPs are necessary to meet the "no harm or degradation" standard. BMPs must be designed for site specific conditions and shall include pollution prevention and control measures that effectively address the following management areas:~~

- ~~(i)—Livestock and dairy management;~~
- ~~(ii)—Nutrient and farm chemical management;~~
- ~~(iii)—Soil erosion and sediment control management;~~
- ~~(iv)—Agricultural drainage infrastructure management.~~

~~The County Planning and Permit Center shall maintain a nonexclusive list of BMPs to guide implementation of the requirements of this Subsection.~~

~~(d)—An owner or operator is responsible only for those conditions caused by agricultural activities conducted by the owner or operator and is not responsible for conditions that do not meet the requirements of this Subsection resulting from the actions of others or from natural conditions not related to the agricultural operations. In those situations where the County is presented with data showing a violation of a State water quality standard at a particular location, but where the County cannot identify any condition or practice existing or occurring at a particular agricultural operation that is causing the violation, the County shall refer the information regarding the State water quality violation to ECY and shall follow other procedures described in SCC 14.44.085. Conditions resulting from unusual weather events (such as a storm in excess of 25 year, 24 hour storm), or other exceptional circumstances that are not the product of obvious neglect are not the responsibility of the owner or operator, but shall be subject to the requirements for emergency actions described in SCC 14.24.100(1).~~

~~(4)—Required Watercourse Protection Measures for Ongoing Agriculture. Unless the emergency provisions of SCC 14.24.100(1) apply, the following watercourse protection measures shall be required for ongoing agriculture within 200 feet of a watercourse or ongoing agriculture which adversely impacts existing functions and values of a watercourse, except for isolated artificial watercourses that have no channelized surface hydraulic connection or no piped hydraulic connection between the artificial~~

~~watercourse and any natural or modified natural watercourse or any salt water. Drainage tile used to convey groundwater shall not be considered a piped hydraulic connection. Enforcement of these provisions shall be as provided in SCC 14.44.085, unless the emergency provisions of SCC 14.24.100(1) apply:~~

(a) **Livestock and Dairy Management.** ~~Livestock and dairy operations shall be conducted so as not to contribute any wastes or sediments into a natural or modified natural watercourse in violation of adopted State water quality standards. Livestock and dairy operations shall meet the following minimum watercourse protection measures:~~

~~(i) — Livestock access to watercourses shall be managed consistent with this Subsection. Access to a watercourse for livestock watering and/or stream crossings shall be limited to only the amount of time necessary for watering and/or crossing a watercourse. Livestock watering facilities or access shall be constructed consistent with applicable NRCS conservation practice standards, and shall not be constructed to provide access to agricultural land that does not meet the definition of ongoing agriculture unless that agricultural land and the crossing can meet all requirements of Chapter 14.24 SCC.~~

(i) Access to a watercourse for livestock crossing from one side of a watercourse to the other side to access pasture shall be managed consistent with the applicable best management practices for livestock crossings found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards. Livestock crossing a watercourse to access pasture on the other side shall be actively herded while crossing.

(ii) Wherever possible, livestock watering from a watercourse shall be conducted by conveying stock water away from the stream consistent with the 1994 Ecology Stock Watering Policy and Attorney General Opinion AGO 2005 No. 17, or, if that method of stock watering is not possible, shall be limited to the amount of time reasonably necessary for watering by access to the watercourse. Any livestock access to the watercourse shall be managed consistent with the applicable best management practices for livestock crossings and livestock watering found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards.

~~(iii)~~ (iii) Dairy operations shall comply with the requirements of Chapter 90.64 RCW (Dairy Nutrient Management Act), and the best management practices for dairy operations found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards.

~~(iii) — Livestock pasture shall be managed so as~~ (iv) Livestock pasture areas and minimum vegetative cover in these areas shall be managed consistent with applicable best management practices standards found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards to maintain vegetative cover sufficient to avoid contributing sediments to a watercourse in violation of State water quality standards, adjacent watercourse.

- (~~iv~~) Any existing or new livestock confinement or concentration of livestock areas that is located ~~up gradient from a watercourse which results in bare ground (such as around a watering trough) shall be constructed and maintained to prevent sediment and/or nutrient runoff contaminants from reaching a watercourse in violation of State water quality standards~~ upgradient from a watercourse shall be managed consistent with the applicable best management practices for livestock confinement areas found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards to avoid contributing sediments or manure to the adjacent watercourse.

**(b) Nutrient and Farm Chemical Management.**

- (i) ~~The owner or operator shall not place manure in a watercourse or in a location where such wastes are likely to be carried into a watercourse by any means. Spreading~~ Landowners and operators shall not apply manure to ground that is frozen or saturated. The spreading of manure shall not be permitted within 50 feet (100 feet upslope) of any a watercourse and/or spreading. Spreading of liquid manure on corn ground (recently harvested ground) or bare ground from shall not be permitted between October 31st to March 1st is prohibited; unless otherwise permitted pursuant to: (A) ~~An approved and implemented dairy nutrient management plan (DNMP) and February 15, unless otherwise approved in a Dairy Nutrient Management Plan pursuant to RCW 90.64. In addition all application of manure shall only be permitted during the time periods and in the locations and quantities as are consistent with the best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards or pursuant to an approved Dairy Nutrient Management Plan as prescribed by Chapter 90.64 RCW; or,~~

~~(B) — Approved and implemented BMPs; or~~

~~(C) — In a year when the County determines that conditions support an extension of the deadline as described in Subsection (4)(b)(ii) of this Section.~~

~~(ii) — Each year, prior to March 1st and prior to October 31st, the County shall determine whether this work window should be extended, delayed, or shortened, based on weather, soil and fish run characteristics in that particular year. The County will consult with agencies with expertise in making this determination. The County shall provide notification regarding changes to this work window through media, recorded messages, updates on its web site, and/or other means reasonably calculated to reach the intended recipients.~~ (iii) Agricultural operators shall apply crop nutrients at agronomic rates, which are recommended for that particular crop. by best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards.

- (~~iv~~iii) Farm chemicals shall be applied consistent with all requirements stated on the chemical container labels and all applicable federal and state laws and regulations, such as Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act), and 7 United States Code (USC) 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act). and

consistent with the applicable best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards.

**(c) Soil Erosion and Sediment Control Management.**

- (i) Roads used for ongoing agricultural activities shall be designed such that road surfaces, fill and associated structures are constructed and maintained to avoid contributing sediment to watercourses- consistent with applicable best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards and with other applicable county code regarding filling, grading and drainage.
- (ii) Agricultural equipment operation shall not cause watercourse bank sloughing or other failure due to operation too close to the top of the bank consistent with applicable best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards.
- (iii) ~~Watercourse~~Drainage construction and maintenance shall meet the requirements for drainage operation and maintenance described under subsection ~~(4)(d)~~ \_\_\_\_\_ of this section and consistent with best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards.
- (iv) All V-ditching shall be constructed to drain into a watercourse that does not contain salmonids, unless the topography of the field is such that the only alternative to drain the field by gravity is to drain the V-ditch into a watercourse that does contain salmonids. When draining a V-ditch into a watercourse that does contain salmonids, appropriate ~~BMPs~~best management practices should be used to avoid contributing excess amounts of sediment to the watercourse. For the purpose of determining whether a watercourse contains salmonids, the County will use salmonid distribution based on the “limiting factors analysis” data compiled by the Washington State Conservation Commission.

**(d) Operation and Maintenance of Public and Private Agricultural Drainage Infrastructure-:**

- (i) Public Agricultural Drainage Maintenance Activities shall be conducted pursuant to the terms of an approved Dike and Fish Initiative Agreement (DFI Agreement) approved by the respective Drainage District and the Washington Department of Fish and Wildlife (WDFW) under the terms of *Skagit Drainage and Fish Initiative Memorandum of Understanding Relating to Drainage Infrastructure and Fish Protection in the Skagit and Samish River Deltas By and Between the Washington Department of Fish*



[and Wildlife and the Western Washington Agricultural Association dated February 18, 2005. For any public Drainage District that does not have an approved DFI Agreement, or whose DFI Agreement has lapsed shall be subject to the drainage maintenance requirements that are applicable to private drainage maintenance found in this subsection. Each Public Diking or Drainage District conducting drainage maintenance activities pursuant to a DFI Agreement shall give the County a copy of that Agreement.](#)

(ii) The following practices shall apply to any watercourse that is part of private drainage infrastructure: that is not covered by the terms of a DFI Agreement under (i) above:

~~(A)~~ Regularly scheduled private agricultural drainage infrastructure maintenance that includes dredging or removal of accumulated sediments in any watercourse shall be conducted between June 15th and October 31st, unless this an alternative work window is ~~changed as described in Subsection (4)(d)(A) of this Section. If approved by WDFW as part of an approved hydraulics project permit provides for a different work window, those requirements shall control.~~ If presence of fall or over-winter crops prevents regularly scheduled maintenance during this time period, then the maintenance may be conducted outside this work window; provided, that the person or entity proposing to conduct the maintenance outside the work window can demonstrate that the presence of crops prevents maintenance within the work window and provided the maintenance is conducted using best management practices consistent with applicable best management practices found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards to minimize sediment or other impacts to water quality.

~~(A) — The County shall evaluate this work window each year prior to June 15th and prior to October 31st, to determine whether a different window is justified by current year weather, soil and fish run conditions. The County will consult with agencies with expertise, the drainage districts and other interested parties prior to making this determination.~~

~~(B) If the County determines that a different window is justified, the County shall provide notification of such change through media, recorded messages or updates on its web site, and/or by other means reasonably calculated to reach the intended recipients.~~

~~(C) — Owners or operators shall consult with districts conducting drainage maintenance to schedule their crop rotations for crops that may still be in the field after October 31st so that, to the maximum extent possible, such drainage maintenance can occur in a year when the fall crops are not being raised in the field adjacent to the drainage infrastructure scheduled for drainage maintenance.~~ (ii) — Unless there is no feasible alternative, regularly-scheduled maintenance that includes dredging or removal of accumulated sediments in any watercourse should be conducted at those times when there is no or minimal water flow in the watercourse being maintained to minimize potential for distributing sediments to salmonid-bearing waters.

~~(iii)~~ C Excavation spoils shall be placed so as not to cause bank failures and so that drainage from such spoils will not contribute sediment to the

watercourse.

(ivD) Mowing or cutting of vegetation located within a watercourse that is part of private drainage infrastructure may be conducted at any time; provided, that the cutting is above the ground surface within the channel and in a manner that does not disturb the soil or sediments; and provided, that the cut vegetation does not block water flow. Watercourse bank vegetation shall be preserved or allowed to reestablish as soon as practicable after drainage construction and maintenance are completed to stabilize earthen ditch banks.

~~(v) Districts and subflood control zones subject to this Section, operating pursuant to authority in RCW Title 85 or 86 which are conducting drainage activities shall complete and submit a drainage maintenance checklist to the County by June 1st of each year. The checklist shall describe the intent of the district to comply with the drainage maintenance requirements of Subsection (4)(d) of this Section. The districts may seek assistance from NRCS, SCD and/or the County in completing the checklist or addressing the requirements of this Subsection. The checklist shall be available from the Skagit County Planning and Permit Center, mailed to any entity conducting drainage activities, and shall be submitted to the Planning and Permit Center when completed. The districts may submit modifications to the information in the checklist, if circumstances affecting district maintenance change after the initial submittal.~~

~~(A) The County shall send a written notice to any district or subflood control zone not submitting this completed checklist by June 1st of each year, stating that the County has not received the required checklist and that the district or subflood control zone is not authorized to conduct drainage maintenance activity until the district or subflood control zone has submitted the completed checklist evidencing intent to comply with this Subsection.~~

~~(B) Subsequent commencement of drainage maintenance work without submitting a completed checklist shall be subject to enforcement pursuant to Chapter 14.44 SCC.~~

(iii) Any drainage maintenance activities being conducted with a sub-flood control zone shall be subject to the same requirements as for private drainage maintenance activities in subsection (ii) above, unless the sub-flood control zone work has been authorized by a valid HPA permit from WDFW.

(vi(iv) Immediate measures necessary to drain fields inundated by an unanticipated flooding event or failure of the agricultural drainage infrastructure shall be subject to the requirements for emergency repair described in SCC 14.24.100(1).

**(5) Recognition for Agricultural Owners and Operators Who Have Implemented Extra Watercourse Protection Measures.** ~~This Subsection intends to recognize the extra watercourse protection measures for ongoing agriculture taken by landowners or operators who have implemented an approved dairy nutrient management plan (DNMP) or resource management system plan (RMS plan) (including, but not limited to, CREP) from SCD or NRCS. [deleted]~~

~~(a) Those portions of land upon which owners or operators have sought and implemented an approved DNMP or an RMS plan consistent with the conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water, animals, plants and air) shall be entitled to a presumption of compliance with the “no harm or degradation” standards described in Subsection (3) of this Section. The RMS plan or DNMP must include within the planning unit any watercourses located on the property, as well as all upland areas within the owner’s control that could potentially adversely impact the watercourse and/or associated fish habitat.~~

~~(b) — Such presumption of compliance may be rebutted and enforcement commenced as described in SCC 14.44.085 if the County obtains credible evidence that the agricultural operation is not meeting the no harm or degradation standards of Subsection (3) of this Section. To be entitled to this presumption, the owner or operator shall provide the County with documented evidence of implementation of those elements of the approved plan that are relevant to the resource impact at issue at the time a Request for Investigation (RFI) is presented to the County under SCC 14.44.010.~~

~~(6) Enforcement. Enforcement of the requirements of this Subsection shall be as described in SCC 14.44.085. (Ord. O20030020 (part); Ord. O20020007 (part); Ord. R20020135; Ord. 18069 Appx. A (part), 2000)~~

(5) **Enforcement.** Enforcement of the requirements of this subsection shall be as described in SCC 14.44.080 and .085.

**ATTACHMENT 2**

**Revisions to Chapter 14.44 SCC Enforcement**

**14.44.010 Violations.** No change

**14.44.020 Misdemeanor.** No change

**14.44.030 Civil infractions and penalties.** No change

**14.44.040 Settlement of suits for collection of civil penalties.** No change

**14.44.050 Investigation.** No change

**14.44.060 Land division.** No change

**14.44.070 Flood damage prevention enforcement.** No change

**14.44.080 Enforcement provisions for critical areas.**

(1) no change

(2) no change

(3) Violation of Chapter 14.24 SCC, Critical Areas Ordinance, or of the rules promulgated thereunder, or of any permit or approval or stop work notice or any other order issued pursuant to SCC Titles 14 and/or 15, or of any of the terms or conditions of any critical area buffer or setback, easement or other plat restriction or binding assurance, or of any mitigation plan, or contract or agreement concluded pursuant to Chapter 14.24 SCC or of the “do not harm” standard watercourse protections measures of SCC 14.24.120(4)(3) shall constitute a violation of this Section.

(4) no change

(5) no change

**14.44.085 Critical areas and ongoing agriculture.**

(1) Supplemental Requirements and Coordination with Existing State Agency Enforcement. Violations of the requirements of SCC 14.24.120 relating to ongoing agriculture shall be subject to the additional provisions of this Section, in addition to all other provisions of this Chapter. The provisions contained in this Section are in addition to and not in lieu of any other penalty, sanction, or right of action provided by law. The County shall be responsible for enforcing compliance with the requirements of SCC 14.24.120, including the “no harm or degradation” standard of SCC 14.24.120(3) and the required watercourse protections measures for ongoing agriculture of SCC 14.24.120(4). The County’s responsibility may be carried out through coordination and/or consultation with the Skagit Conservation District (SCD), the Natural Resource Conservation Service (NRCS), the Washington Department of Ecology (ECY) the Washington Department of Fish and Wildlife (WDFW), and/or other State or Federal agencies with jurisdiction or technical expertise. ~~Enforcement shall be consistent with the provisions of Skagit County Resolution No. 16149 and a Compliance Memorandum of Agreement between the Department of Ecology, the Skagit Conservation District and the Washington State Conservation Commission dated May 16, 1989.~~ County enforcement under this subsection may consist of

referral to the ECY for alleged violations of the Water Pollution Control Act, Chapter 90.48 RCW. For alleged violations of the hydraulics code, Chapter 77.55 RCW, County enforcement may consist of referral to the WDFW. The County shall not assume responsibility or jurisdiction to enforce ECY or WDFW obligations under these RCW provisions. However, the County may determine, as part of its enforcement obligations under this Section to pursue additional County enforcement remedies deemed necessary and appropriate to ensure compliance with all of the requirements of this Section, regardless of the outcome of any ECY or WDFW enforcement action.

(2) no change

(3) County Investigation. Subject to the referral of water quality standards violations to ECY pursuant to Chapter 90.48 RCW as described in Subsection (2) of this Section and subject to the procedures applicable to existing farm plans in Subsection (4) of this Section, the County shall investigate all ~~credible~~ RFI that allege watercourse protection measure violations pursuant to the procedures described in SCC 14.44.050.

(a) If determined appropriate to investigate the allegations in the RFI or observations made during the site investigation, the County's investigation may include water quality sampling.

(b) If water quality sampling is conducted by the County under Subsection (3)(a) of this Section, and if that sampling indicates a potential water quality violation then the County shall notify ECY of the potential violation and the results of the County investigation and shall cooperate with ECY on any further ECY enforcement action pursuant to Chapter 90.48 RCW. The affected owner and operator will be copied on all correspondence sent by the County to ECY regarding this matter.

#### NEW SECTION

#### **(4) Ongoing Agriculture Compliance Monitoring.**

(a) The Administrative Official shall undertake a coordinated system of compliance monitoring to ensure that the watercourse protections measures of SCC 14.24.120(4) and any requirements of any enforcement action or any best management practices implemented to correct a violation of SCC 14.24.120 are being followed.

(b) The Ongoing Agriculture compliance monitoring shall include both RFI-driven site visits as well as site visits to a representative sampling of Ag-NRL and RRC-NRL lands within or adjacent to fish and wildlife habitat conservation areas.

(i) The Administrative Official shall conduct a minimum of 100 site compliance visits to Ag-NRL and RRC-NRL sites throughout the year. These sites shall be selected using a statistically valid method of site selection and analysis. The Administrative Official shall consult with parties with expertise to determine an appropriate method of site selection. The site selection shall include a representative sample of the types, sizes and locations of agricultural operations in the County within or adjacent to fish and wildlife habitat conservation areas.

(ii) Twenty-four (24) hours prior to the site visit, the Administrative Official shall give the owner or operator notice of the Administrative Official's intent to inspect the property pursuant to RCW 36.70.500. Any site visit by the County pursuant to this Section shall not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof.

(iii) If, during the site visit, the County identifies site-specific operations or conditions that the County determines may constitute a violation of the watercourse protections measures of SCC 14.24.120(4), or of the BMPs that the owner has agreed to incorporate into its agricultural operations pursuant to an approved RMS or Dairy Nutrient Management Plan to satisfy the requirements of a prior enforcement action, then the County shall initiate a formal enforcement action pursuant to the provisions of SCC 14.44, including, if appropriate, site-specific water quality monitoring to determine whether the actions constitute a violation of RCW 90.48 or the state water quality standards.

(c) The Administrative Official shall prepare annual compliance monitoring reports by January 31 of each year documenting:

- (i) the number of sites visited pursuant to this Section.
- (ii) a description of the method of representative sampling used.
- (iii) the number of site visits that were pursuant to a complaint or pursuant to the representative sampling selection.
- (iv) Whether the site visited has participated in the County's Salmon Heritage Riparian Buffer Acquisition Program and, if so, a summary of the condition of the riparian buffer area and of compliance with the terms of the conservation easement acquired by the Salmon Heritage Program.
- (v) The number of sites visited where the owner or operator was found to be in compliance and the number of sites visited where the owner or operator was not in compliance.
- (vi) For those sites where the owner or operator was not in compliance, the basis(es) of the finding of non-compliance and a description of the actions taken by the County to bring the owner/operator into compliance.
- (vii) The annual compliance monitoring report shall be a public document and available to any party requesting a copy.

(d) If the County determines that the level of non-compliance from the representative sampling site visits exceeds 25%, then the County shall increase the number of sites selected for the next year's representative sample by 25%.

#### **Renumber (4) and (5) to (5) and (6)**

(5) Existing Farm Plans and BMPs.

(a) For all ~~credible~~ RFI's submitted, the County will first ask the owner or operator if they have, since May 13, 1996, implemented a dairy nutrient management plan (DNMP) pursuant to Chapter 90.64 RCW and/or a resource management system farm plan (RMS plan) [including, but not limited to the conservation reserve enhancement program (CREP)], with appropriate best management practices (BMPs) ~~consistent with the requirements of SCC 14.24.120(5).~~

(b) If an implemented DNMP or RMS plan is confirmed, the first step to correct the potential violation is for the County ~~will~~ to send a letter instructing the owner or operator to work with SCD, NRCS, an NRCS technical service provider or other qualified expert to assess whether the BMPs from those plans have been correctly implemented and if resources are being protected

according to NRCS practice standards. The owner or operator shall report back to the County within 1 month from the date of receipt of the letter from the County. The report shall be in writing and include documentation signed by SCD, NRCS, an NRCS technical service provider or other qualified expert as to whether or not the BMPs have been correctly implemented and are sufficient according to NRCS practice standards to protect the resources.

(c) If the BMPs are not being correctly implemented, the County shall identify a reasonable period of time for proper implementation of the BMPs and any monitoring necessary to ensure proper implementation of the BMPs.

(d) If the BMPs were correctly implemented, but determined to be not sufficient to meet the requirements of SCC 14.24.120(3) and (4), the County will give these owners or operators 5 additional months to develop appropriate BMPs consistent with NRCS practice standards for fixing the problem, and a maximum of another 12 months to fully implement those BMPs.

(e) If the landowner does not provide evidence of an approved DNMP or RMS plan or does not provide a report back to the County with confirmation of contact with SCD, NRCS, an NRCS

technical service provider or other qualified expert within one month from the date of receipt of the letter from the County, then the County shall proceed to the investigation procedures and the Notice of Violation procedures of SCC 14.44.110.

(6) County Notice of Watercourse Protection Measure Violation.

(a) If, after County investigation, the County determines that there is ~~credible~~ evidence to support a determination that the required watercourse protection measures of SCC 14.24.120(4) are not being followed ~~and/or the owner or operator is conducting agricultural operations on site in a manner that is causing harm or degradation to a fish and wildlife habitat conservation area in or adjacent to a watercourse~~, then the County shall proceed with the notice and order provisions of SCC 14.44.110. The notice shall include information on the Skagit County Salmon Heritage Riparian Buffer Acquisition Program and encourage the owner to participate.

(b) For those watercourse protection measure violations for which the County can readily determine the corrective measure necessary, the Notice of Violation shall specify the corrective action required to comply and a time frame for compliance pursuant to SCC 14.44.110(1).

(c) For those watercourse protection measure violations for which the County cannot readily determine a corrective measure necessary, the Notice of Violation shall require the owner or operator to consult with SCD, NRCS, an NRCS technical service provider, or other qualified expert within 10 business days from the date on the Notice of Violation. This requirement may be

satisfied by written documentation, signed by SCD, NRCS, the technical service provider or other qualified expert that they will be working with the landowner and/or operator to resolve the problem. Within 6 months of the Notice of Violation, the County must receive written documentation signed by SCD, NRCS, an NRCS technical service provider or other qualified expert that BMPs have been identified that will address the impact and that the BMPs either have been implemented or that implementation has commenced to the extent feasible, given weather, season and other factors that may determine time for BMP implementation. If recommended BMPs cannot be effectively implemented within the 6-month time frame due to factors such as the growing season, then the written documentation must include the specific schedule for implementation and justification for implementation beyond the 6-month deadline. The owner or

operator must then provide to the County supplemental documentation that the BMPs have been implemented according to the schedule provided. Within 12 months of the date on such letter, the

County must receive notice from the same entity that sent the letter that the BMPs have been fully

implemented. The County reserves the right to make site visits during this time period to verify that progress is being made on implementation. Failure to contact SCD, NRCS, an NRCS technical service provider or other qualified expert within the required 10 business days or to meet the timelines specified above, shall result in further County enforcement pursuant to SCC 14.44.110 and immediate notification to ECY and/or WDFW, depending on the nature of the violation.

(d) Depending on the nature of the watercourse protection measure violation, the recommended BMPs may require monitoring to evaluate implementation and to assess compliance with SCC 14.24.120(4). The results of any such monitoring shall be forwarded to appropriate agencies, depending on the nature of the violation. The affected owner and operator will be copied on all correspondence sent by the County to agencies regarding this matter.

(e) For any ~~harm or degradation~~ violation that the County determines was willful or intentional, or for

any enforcement action where the owner or operator has failed to comply with the requirements of Subsection (5)(c) of this Section, the County shall immediately notify the ECY and/or the WDFW, depending on the nature of the violation and the County shall proceed with all applicable

remedies and procedures for enforcement described in this Chapter. At its option, the County may

consult with NRCS, SCD, a technical service provider or other qualified expert to determine appropriate remedies to address the violation. The County's enforcement actions pursuant to this Chapter are not dependent on action by ECY or WDFW and shall proceed independent of such other agency enforcement; provided, that the County may determine that a final compliance order

or consent decree entered as part of a ECY or WDFW enforcement action is sufficient to address compliance and to protect the functional values of the watercourse and to mitigate impacts created by the violation and does not require additional County penalties or other requirements.

For purposes of this subsection "intentional" shall include harm or degradation that was accidental, but then was not corrected by the owner or operator, after the owner or operator receives notice of the accidental harm or degradation. (Ord. O20030020 (part))

**14.44.090 Abatement.** No change

**14.44.100 Alternative remedies.** No change

**14.44.110 Written notices and orders.** No change

**14.44.120 Appeal.** No change

**14.44.130 Supplemental notice and order.** No change



**14.44.140 Enforcement of the final order.** No change

**14.44.150 Permit suspension or revocation.** No change

**14.44.160 Liens.** No change

**ATTACHMENT 3**

**Proposed Amendment to SCC 14.24.530 (based on March 2, 2007 draft):**

**14.24.530(1)** no change

**(2)** no change

**(3)** no change

**NEW (4)** Where a buffer has been established through a Salmon Heritage Program (Resolution No. \_\_\_\_\_) conservation easement or fee conveyance, the buffer shall be as established in that conservation easement or fee conveyance, and not as provided in this section.

**Renumber (4) to (5).**