

RESOLUTION NO. R2007_____

A RESOLUTION ESTABLISHING THE SKAGIT COUNTY SALMON HERITAGE PROGRAM

WHEREAS,

WHEREAS,

WHEREAS,

NOW, THEREFORE, BE IT RESOLVED that the Skagit County Board of Commissioners hereby adopts Attachment 1, **SKAGIT COUNTY SALMON HERITAGE PROGRAM.**

DATED THIS _____ DAY OF _____, 2007.

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

Sharon Dillon, Chair

Ken Dahlstedt

Don Munks

ATTACHMENT 1

SKAGIT COUNTY SALMON HERITAGE PROGRAM

I. Purpose

- A.** Skagit County is determined to protect both agriculture and salmon for future generations. The Skagit County Salmon Heritage Program (SHP) will acquire conservation easements on or fee interests to agricultural lands adjacent to salmon-bearing waters, creating permanent riparian habitat. Hereafter, the term “conservation easement” will include any property interest acquired in this SHP unless otherwise indicated.

The SHP is intended to resolve conflicts between ongoing agricultural activity and riparian habitat needs, including conflicts resulting in litigation over the course of the last decade under the Growth Management Act (GMA), RCW 36.70A.

The SHP is built on six fundamental principles:

- (1) Agriculture is uniquely important to the people of Skagit County;
- (2) Skagit County is committed to protecting and restoring healthy salmon runs;
- (3) State and federal environmental laws aimed at salmon recovery place a particularly heavy burden on agriculture;
- (4) When agricultural landowners benefit the community by volunteering to transfer conservation easements to protect salmon habitat, they should receive just compensation;
- (5) Governmental intrusion onto private property should be minimized; and
- (6) Sufficient funding should continue until all SHP Goals have been met.

- B.** The SHP is an incentive-based program to acquire conservation easements for permanent riparian buffer protection, based on:

- (1) Voluntary cooperation by property owners;
- (2) Implementation of a conservation easement program to protect riparian acreage on each of the four major stream types, with the goal of permanently protecting anadromous fish habitat in the Skagit and Samish River watersheds; and
- (3) Funding provided initially by Skagit County, and matched or supplemented with additional funding from federal, state, tribal and local sources.

II. SALMON HERITAGE BOARD

A. The SHP shall be overseen by the Salmon Heritage Board (SHB), which shall be authorized to receive funding, property, contracts for personnel and services, and accept loans or grants from federal, state, local, tribal, public or private entities.

B. Composition and Appointment. The SHB members shall be appointed by the Board of Skagit County Commissioners, shall serve without compensation from the Salmon Heritage Fund, and shall consist of the following representatives:

(1) Two (2) members who are representatives of the agricultural industry in Skagit County, such as an owner or operator of agricultural lands within the County, or an individual from a local agricultural organization representing agricultural landowners and operators, or and individual with agricultural operations and best management practices expertise, such as a representative from the Skagit Conservation District.

(2) Two (2) members with fisheries expertise from a state, federal, or tribal agency with knowledge of fisheries issues on the Skagit and Samish River watersheds.

(4) One (1) member of the Skagit County Board of Commissioners, or his / her designee.

C. Decision-Making. All decisions made by the SHB shall require the affirmative vote of four out of five of the duly appointed members of the Board at a regularly scheduled meeting. Four members of the Board at a regularly scheduled meeting shall constitute a quorum.

D. Powers. The SHB shall have the following authority to implement the SHP and undertake the following acts:

(1) Intent. The SHP is intended to be a rapid and efficient program that will satisfy the County's obligations under various environmental laws, including but not limited to the GMA, by meeting Salmon Heritage Program Goals (SHP Goals). It is the intent of the Board of Commissioners that after initial formation and program establishment the SHB will serve primarily in a strategic, planning, and oversight role, deferring day-to-day decision-making to a highly empowered and effective Executive Director.

(2) Expenditure of Program Funds. It is the intent of the Board of Commissioners that SHP funds will be used for riparian habitat acquisition, and that such funds will not be used for secondary activities until all primary SHP Goals are met. The SHB is authorized to manage and spend program funds for the following primary activities in the following order of priority:

- a. Acquire riparian buffer conservation easements that meet the minimum requirements of the SHP;

- b. Purchase land in fee simple that furthers SHP Goals to a greater extent than would be provided by a conservation easement;
 - c. Fund any improvements such as buffer fencing as necessary to safeguard and maintain the integrity of conservation easements acquired by the SHP;
 - d. Provide for ongoing maintenance of conservation easements to meet County legal obligations and prevent liability to the SHP, such as management of noxious weeds within the buffer area;
 - e. Fund staff and the administration of the SHP including staff to monitor compliance with conservation easements; and
 - f. As further set forth in Section III (E), the SHB shall also be authorized to expend program funds on secondary salmon recovery projects and activities other than riparian buffer acquisition only to the extent that all SHP Goals as set forth in Sections IV and V have been met.
- (3) Program Implementation. The SHB shall implement the SHP. The SHB shall hire an Executive Director who shall be responsible for the daily operations of the SHP. The Board shall Review and Ratify implementing actions and decisions taken by the Executive Director, including, but not limited to the following tasks:
- a. Oversee education and public outreach efforts;
 - b. Establish baseline information, sample documents, survey data and other information necessary to implement the SHP;
 - c. Determine number of acres in the Overall Acquisition Goal;
 - d. Develop plan for buffer acquisitions to meet the Acquisition Goals and deadlines, including a series of incentives to achieve success;
 - e. Establish partnerships with other organizations for funding and conservation easement acquisition;
 - f. Actively seek additional funding for SHP from all available sources;
 - g. Develop protocols for buffer ownership, maintenance, monitoring and enforcement;
 - h. Evaluate Qualifying Applications; and
 - i. Evaluate and determine those site-specific discretionary activities that may be allowed within conservation easements pursuant to section V.(E).

- (4) Other Actions. The SHB shall take any action and make any decision necessary to implement the intent of this Resolution.
 - (5) No Regulatory Authorization. The SHB has no authority to adopt regulations that would apply to agricultural lands or agricultural operations, including, but not limited to, the Buffer Alternative described in Section VI below.
- E. Appointment of the Board.** The Skagit County Commissioners shall appoint the SHB members on or before November 1, 2007, and after the results of the Salmon Heritage Fund ballot measure have been certified. SHB members shall serve five- year terms. The SHB shall prepare and adopt Articles and Bylaws consistent with the provisions of the SHP on or before December 31, 2007. The Bylaws shall provide for staggered Board terms to best promote program continuity. The Skagit County Prosecuting Attorney shall review and approve the SHB Bylaws.
- F. First Year Work Program.** The SHB shall initiate the following activities in its first year of operation, which is defined as the 2008 calendar year.
- (1) Create Funding. Manage proceeds deposited by the County in Salmon Heritage Fund; submit applications for additional grant funding and pursue additional funding sources.
 - (2) Inventory Existing Conditions. Reconfirm stream-type mapping using County hydrological information and other GIS mapping; assess riparian areas that are already protected to the standards of the SHP and which are to be credited toward the Overall Acquisition Goal; confirm and further define amount of riparian acreage needed to meet Acquisition Goals; confirm amount of riparian acreage where location of roads, buildings and other structures preclude use of acreage for riparian buffers.
 - (3) Develop Education Program. Develop Education and Public Outreach Program, using Farmland Legacy Program as a model and launch Education and Public Outreach Program to encourage maximum participation.
 - (4) Establish Ongoing Application and Acquisition Process. Develop strategies and plans that allow for rapid, efficient, and cost-effective buffer acquisition in accordance with the Overall Acquisition Goals; incorporate acquisition planning that provides incentives and rewards for early sign-up and participation, and that ensures early registrants in the SHP will be given funding priority in the event of limited funding.
 - (5) Establish Optional Fisheries Advisory Panel. The SHB may, at its discretion, convene a Fisheries Advisory Panel consisting of individuals or agency representatives with fisheries expertise and specific knowledge of the Skagit and Samish River watersheds to provide recommendations to the SHB in furtherance of the objectives of the SHP.

- (6) Other Activities. The SHB shall undertake any other activity provided in or that it reasonably determines is necessary to implement the SHP.

III. SALMON HERITAGE PROGRAM FUNDING

- A. Voter-approved Property Tax Increase.** Skagit County will provide a minimum of one million dollars (\$1,000,000) per year to the SHP to achieve the acquisition and other goals of the SHP. Initial funding will come from a new, voter-approved, ten (10) cents per one thousand (1,000) dollar increase in the County Property Tax and, if necessary to meet the minimum funding requirement, additional funds may come from other County sources deemed appropriate by Skagit County. All proceeds shall be deposited in the Salmon Heritage Fund to implement the purposes and achieve the goals of the SHP. Except as otherwise provided in this resolution, voter approval of the proposed property tax increase is required to implement the SHP. Provided, however, Skagit County may continue the SHP by other funding means, including but not limited to, specific legislative authorization.
- B. Additional Funds.** Skagit County will work cooperatively with other stakeholders to obtain additional federal, state, tribal and local funds for the SHP, including, but not limited to, use of SHP funds as matching funds for other federal, state, and private grant programs. The County and the SHB also will actively seek funds from local tribal entities to assist with implementation of this program.
- C. Duration of Funding Commitment.** County funding for the SHP and, to the extent available, funding from all other sources shall, at a minimum, continue until all SHP Goals are met. The County may, at its option, continue the SHP for whatever duration it deems advisable thereafter to provide additional benefits consistent with the purposes and objectives of the SHP and to pay the costs for ongoing conservation easement monitoring and maintenance or may, at its option, terminate or reduce the funding commitment and reduce the overall property tax levy accordingly.
- D. Authorized Primary Purposes Expenditures.** Authorized expenditures from the Salmon Heritage Fund shall be used exclusively for, and limited to, the prioritized Primary Purposes of the SHP set forth in Section II(D)(2), except as set forth in the following section.
- E. Authorized Secondary Purpose Expenditures.** Funds from the SHP may be used for the following secondary purposes, but only to the extent (a) there are funds remaining in the Salmon Heritage Fund after all Primary Purpose Expenditures in subsection II(D)(2) above have been met; and (b) there are no outstanding Qualified Applications for Riparian Buffer Acquisition:
- (1) Active buffer management including tree planting, the removal of derelict vehicles, garbage and any other discarded items on the property, and other active restoration measures within riparian buffers;

- (2) Habitat protection and restoration activities including but not limited to: (a) habitat restoration, (b) the development of new estuarine habitat, (c) monitoring for compliance with federal, state and local laws, (d) research and (e) feasibility studies; and
- (3) Other projects and activities that advance the recovery of salmon, including, but not limited to, the acquisition of lands other than riparian buffers.

Provided, however, nothing about Sections D and E above shall preclude other organizations, individuals and entities from funding and/or carrying out Secondary Purpose Activities on conservation easements or lands acquired by the SHP ("Outside Funded Activities") at any time. All Outside Funded Activities must be done with the consent and approval of the SHB and shall be subject to and shall not exceed the scope of conservation easements and/or deeds over land acquired by the SHB.

G. County Funding Deadlines. The following deadlines for initial funding and establishment of the SHB shall apply:

- (1) The County Property Tax Levy, described in Section III (A) must be approved by the voters and the election results certified by September 5, 2007. If the voters do not approve the tax levy, the SHP shall not take effect unless (a) Skagit County adopts a non-voter approved funding mechanism that provides equivalent funding; or (b) Skagit County secures a reasonably equivalent funding source no later than December 31, 2007.
- (2) Within 30 days from the adoption of this Resolution, the County shall create a separate Salmon Heritage Fund and transfer a minimum of \$75,000.00 from general fund revenues to this fund to allow the County to commence tasks necessary to initiate the SHP during 2007, prior to the elections. If the Property Tax Levy is approved by the voters, these transferred funds shall be repaid out of the Salmon Heritage Fund.
- (3) Upon certification of the election results in (1) above, the County shall transfer a minimum of an additional \$500,000.00 from general fund revenues to this fund to allow the County to continue the tasks necessary to implement the SHP during 2007 and the first quarter of 2008, prior to the receipt of revenues from the Property Tax Levy. These transferred funds shall be repaid out of the Salmon Heritage Fund.

IV. SALMON HERITAGE PROGRAM RIPARIAN BUFFER ACQUISITION GOALS

The SHP Goals consist of three parts: (1) Overall Acquisition Goals for four separate stream types in two separate watersheds; (2) Drainage District Acquisition Goals that only apply if a drainage district does not have a Drainage Agreement in effect pursuant to the terms of the Drainage Fish Initiative (DFI); and (3) Annual Acquisition Goals. The SHP Goals constitute a collective set of goals that must all be met. When any one of the

three parts or any one of the individual goals set forth below has not been met, the SHP Goals will not have been met.

A. Overall Acquisition Goals

- (1) The Overall Acquisition Goals of the SHP are to purchase land or acquire conservation easements on Eighty Percent (80%) of the Ag-NRL and Rural Resource-NRL lands within the riparian areas adjacent to each of the four major stream types (Types I, II, III and IV) in the Skagit and Samish River watersheds, that meet the eligibility requirements for acquisition pursuant to this Section no later than December 31, 2012. The definitions for these stream types are the definitions included in the July 1995 Manual of the Department of Natural Resources and adopted in 1995 as WAC 222-16-030. A copy of these definitions is included in Appendix C and incorporated by reference herein. In any circumstance where the DNR or County mapping of stream types does not match what actually exists at a particular site, the site-specific circumstances should control for determining stream type.
- (2) The Overall Acquisition Goals will be calculated separately for each stream type in each of the Skagit and Samish River watersheds. The following is a list of the eight separate overall acquisition goals:
 - a. Skagit River – Type I
 - b. Skagit River – Type II
 - c. Skagit River – Type III
 - d. Skagit River – Type IV
 - e. Samish River – Type I
 - f. Samish River – Type II
 - g. Samish River – Type III
 - h. Samish River – Type IV
- (3) Lands Eligible for Acquisition towards the Goals under the SHP include only lands that are zoned Ag-NRL and RRc-NRL and are within the buffer widths described in Section V.A., below, except the following lands are not included in lands eligible for acquisition towards the goals:
 - a. lands covered by the alternative provisions of the Drainage Fish Initiative described in Section IV(B)(2-8);
 - b. RRc-NRL lands in OS-timber property tax status; and
 - c. those lands described in Section IV.A.4.a through e, immediately below.
- (4) Each Overall Acquisition Goal is equal to Eighty Percent (80%) of the total number of acres of land capable of providing riparian buffers, which total is calculated by multiplying the total length and specified average buffer width for both sides of the stream in each of the four separate stream types (if the zoning is on both sides of the stream; otherwise only on the side of the stream that has Ag-NRL or RRc-NRL zoning) in each of

the Skagit and Samish River watersheds, and subtracting the acreage of the following areas within those lands where County Roads or other permanent infrastructure prevent the utilization of the associated riparian areas as fully functioning buffers:

- a. Land located beneath existing public roads including road rights-of-ways and all land located on the landward side of the road. Land located between the road (including the road right-of-way) and the water will be included, up to a maximum equal to the maximum buffer width provided in Section V.A. for that stream type, regardless of the distance between the road and water.
 - b. Land located beneath existing dikes constructed as flood control measures along the mainstem of the Skagit and Samish Rivers, including land located within 40 feet of the waterward toe of the dike (the edge of the dike prism) and all land located on the landward side of the dike. Land located between the river and the line 40 feet from the toe of the dike will be included, up to a maximum equal to the maximum buffer width provided in Section V.A for that stream type, regardless of the distance between the 40 foot line and the water.
 - c. Land located beneath existing buildings with a footprint that is at least 400 square feet, plus 20 feet of land on each side of the building and all land on the landward side of the building.
 - d. Land located beneath all public and private utility rights-of-way such as water and sewer lines, above and below ground.
 - e. Land located beneath power lines including land within power line right-of-ways.
- (5) The current estimate of the combined Overall Acquisition Goals for all four stream types in the Skagit and Samish River watersheds is 5,360 acres (6,700 acres x 80%). The total amount (number of acres) of the Overall Acquisition Goal will be more precisely determined by the SHB as the SHP proceeds pursuant to the criteria set forth in Sections IV.A. and B and as further described in the SHB work program. The stream typing and locations shall be as shown on the ***[insert title of map]***, attached to this Resolution as Attachment ____, and incorporated herein by reference.
- (6) If a riparian buffer area has been acquired (whether by land purchase or conservation easement) and the adjacent watercourse subsequently changes location as a result of natural causes, the land acquired will continue to count toward both the Annual and Overall Acquisition Goals. Lands or conservation easements purchased by the SHP shall include any newly formed land that is created by a change in the watercourse between the bank of the original watercourse and the bank of the relocated watercourse (*i.e.*, accretion or reliction). The foregoing provision shall be incorporated in the language of the easement and/or grant deed. Riparian buffer areas that are lost to erosion or avulsion or

newly formed by accretion or reliction shall not be deducted from or added to the amount of land originally credited towards the annual and Overall Acquisition Goals.

- a. Any individual landowner conveying land in fee or by a conservation easement over land pursuant to the SHP that subsequently erodes shall not be required to convey any additional land in fee or subject to a conservation easement. Neither erosion nor avulsion shall affect landowner safe harbor provided by Section V(I). The foregoing provision shall be incorporated in the language of the easement and/or grant deed. This provision shall not preclude the SHB from negotiating the purchase of additional lands or conservation easements for riparian buffer areas in addition to those buffer areas reduced by or with the potential to be reduced by erosion, as the Board deems necessary and appropriate.
- (7) Title to lands and conservation easements purchased with Salmon Heritage Funds may be held by Skagit County, the SHB, or by a non-profit conservation group approved by the SHB, provided that the easement holder agrees to monitor and maintain the conservation easements consistent with the provisions and intent of this SHP and allows access by SHB staff. Because monitoring and enforcement of conservation easements forms a part of the County's compliance with environmental laws, any transfer of easement to a third party easement holder must be revocable to the extent the easement holder is deemed to be inadequately safeguarding riparian function or otherwise failing to adequately protect the objectives for which the easement was acquired.
 - (8) Lands eligible for acquisition under Subsection IV.A.3 above that are held under ownership or are subject to a conservation easement reasonably equivalent to SHP standards shall be (a) included in the amount of acreage subject to the SHP Goals and (b) calculated in the amount of acreage on which permanent riparian buffers have been obtained for purposes of meeting SHP Goals.

B. County Drainage District Goals

- (1) Lands within Dike District 3, Consolidated Dike District 22 (Fir Island), Drainage and Irrigation Improvement Districts 5, 12, 14, 15, 16, 17, 18, 19, 22 (Dodge Valley), and District 25 (collectively, "County Drainage Districts") that have entered into a Drainage Maintenance Agreement with the State Department of Fish and Wildlife and received a Hydraulic Project Approval (HPA) from the Department pursuant to the terms of the Dike and Fish Initiative Agreement (the drainage maintenance agreement and HPA are collectively referred to as a "DFI" Agreement) are not subject to the Acquisition Goals of this program. Any of these districts that have not entered into a DFI Agreement, or whose DFI agreement is not renewed, will be subject to the Annual and Overall Acquisition Goals for each stream type and watershed in Section IV.A., but the dates on

which lands become subject to those goals are subject to the provisions of this Subsection IV.B.

- (2) For the purposes of the SHP, lands within a district and covered by a DFI Agreement are considered adequately protected and are not included in the SHP's Annual and Overall Acquisition Goals so long as the DFI Agreement remains current and in effect. The following Drainage Districts have DFI Agreements that are in effect: Consolidated Dike District 22 (Fir Island), Drainage and Irrigation Improvement Districts 5, 12, 14, 15, 16, 17, 18, 22 (Dodge Valley), and District 25. DFI Agreements must be renewed after five years. Once the Overall SHP Goals have been met, lands within the County Drainage Districts shall not be subject to the acquisition requirements of the SHP, provided that the provisions of the DFI in effect on the effective date of this resolution (or in effect on the date any first-time DFI agreement takes effect for a new geographic area) are not materially reduced.
- (3) Lands within a County Drainage District and not covered by a DFI Agreement that is current and in effect on January 1, 2008 are subject to acquisition goals that are identical to the Annual and Overall Acquisition Goals for lands set forth in Subsections IV.A above and IV.C below, and calculated in the same manner, except for the special buffer requirements for Type IV waters described below in Subsection IV.B.6.
- (4) Lands within County Drainage Districts and not covered by a DFI Agreement that is current and in effect on January 1, 2008, but which are subsequently included in and covered by a DFI Agreement shall no longer be subject to riparian land acquisition goals as of the date the DFI Agreement becomes effective. Any lands within a County Drainage District covered by a DFI Agreement that previously had been acquired for riparian buffers under the SHP when the District was not covered by a DFI Agreement, shall continue to apply toward the Annual and Overall Goals, provided that the terms of any DFI Agreement shall not reduce the protections provided by the acquired conservation easement.
- (5) Lands within a County Drainage District and covered by a DFI Agreement that later is not renewed or is terminated, are subject to the Annual and Overall Acquisition Goals for lands set forth in Section IV.A above and IV.C below and calculated in the same manner; except for the special buffer requirements for Type IV waters set forth in Subsection IV.B.6 below, and the deadline for achieving the Annual and Overall Acquisition Goals set forth in Subsection IV.B.7, below.
- (6) Acquisition goals for drainage district lands (not under a DFI Agreement) adjacent to Type IV waters shall be calculated as follows. The Overall Acquisition Goal is equal to Eighty Percent (80%) of the total number of acres of land capable of providing riparian buffers, located on the Type IV water that is within 300 feet of the confluence of a Type I, II, III or marine water, and within a buffer width of 50 feet. The total number of acres of land capable of providing riparian buffers is calculated by taking 15,000

square feet (300 feet x 50 feet) or .34 acres, the size of the maximum buffer and subtracting the acreage of the lands where County Roads or other permanent infrastructure prevent the utilization of the associated riparian lands as fully functioning buffers. These excluded lands are the same lands as those described in Section IV.A.4.a through e, above.

- (7) The time period for achieving the Annual and Overall Acquisition Goals for lands within a drainage district that is initially covered by a DFI Agreement, but later is not renewed or is terminated, does not commence until the date that the DFI Agreement ends (if not renewed). For example, the second annual goal of thirty-five percent (35%) would not need to be met until three years following the date the DFI Agreement ends and the Overall Acquisition Goal would not need to be met until seven years following the date the DFI Agreement ends.
- (8) Riparian lands within a sub-flood control zone in the County, and not within a Drainage District subject to a DFI Agreement, shall be subject to the Annual and Overall Acquisition Goals for lands set forth in Section IV.A above and IV.C below and calculated in the same manner; except for the special buffer requirements for Type IV waters set forth in Subsection IV.B.6 above, unless the sub-flood control zone has entered into an agreement with WDFW similar to the DFI agreements described in Section (B)(2) above, in which case, the terms of that agreement shall govern and the riparian areas within the sub-flood control zone shall not be included in the acreage for acquisition under the SHP.

C. Annual Acquisition Goals

- (1) In addition to the nine Overall Acquisition Goals, the acquisition of conservation easements that meet the eligibility requirements for acquisition pursuant to Section IV.A., above, must also meet the following combined Annual Acquisition Goals. The following are the dates by which each of the Annual Acquisition Goals must be met, and the percentage of the combined Overall Acquisition Goals and acreage amounts for each of those annual goals. The following acreage amounts, but not the percentage amounts, are subject to change pursuant to Section IV.A.6.

<u>Date</u>	<u>Percent</u>	<u>Total (cumulative) Acreage*</u>
December 31, 2008	***	500 Acres
December 31, 2009	35%	2345 Acres
December 31, 2010	50%	3350 Acres
December 31, 2011	65%	4355 Acres
December 31, 2012	80%	5360 Acres

(*Based on current estimates. Refer to subsection IV(A)(5))

- (2) If the SHP has not acquired sufficient conservation easements to meet one or more of the Annual Acquisition Goals by the date that the Goal

must be met, and if the total acreage of land proposed for sale or an easement in applications pending on the original goal date is sufficient to meet that Goal when added to the total acreage already acquired, the date shall be extended by twelve (12) months. In order to be counted toward the Goal, the location of the land and the terms of the acquisition in any pending application must meet the minimum criteria for riparian land acquisition in this SHP, as set forth in Section IV.D., and V. In order to meet the Annual Acquisition Goal by the extended date, the acreage actually acquired pursuant to those pending applications must, when added to the acreage acquired prior to the original goal date, meet or exceed the Annual Acquisition Goal.

- (3) If the total acreage of land proposed for sale or easement in applications pending on the original goal date would be sufficient to meet an Annual Acquisition Goal when added to the total acreage acquired prior to the original goal date, and the only reason that the Goal was not met is the lack of funds available to acquire the land, the date of that Goal shall be extended until such time that sufficient funds are available to the SHP to purchase such land or conservation easements. In this case, the SHP and the County shall immediately contact any and all appropriate state and federal agencies, tribal entities and private and/or non-profit organizations, and actively solicit additional funding assistance as needed to achieve SHP Goals.
- (4) If the SHP has not acquired sufficient conservation easements to meet one or more of the above Annual Acquisition Goals, the date by which the Annual Acquisition Goal must be met shall be extended by twelve (12) months if the number of acres acquired in the twelve (12) months preceding the goal date, multiplied by the number of years remaining between the goal date and December 31, 2016, would be sufficient to meet the Overall Acquisition Goal for that Goal.

D. Minimum Buffer Requirements. All conservation easements purchased to meet the Annual and Overall Acquisition Goals must meet the minimum buffer requirements set forth in Section V, below.

V. BUFFER REQUIREMENTS

A. Minimum Buffer Requirements. All land and conservation easements purchased to meet the SHP Goals in Section IV, must meet the minimum riparian buffer requirements set forth in this Section V. All buffers shall be measured from the ordinary high water line as defined by RCW 77.55.011(11) on the date of acquisition.

- (1) **Type I Waters:** 150 foot average with maximum range between 125 feet and 175 feet. Alternatively, a 175 foot average with maximum range between 100 feet and 200 feet for contiguous lands adjacent to the watercourse all owned by the same owner. For purposes of calculating the total amount of the acreage that can be credited towards the Annual and Overall Acquisition Goals, the total acreage amount for the

alternative 175 foot buffer average shall not exceed the acreage that would have been acquired if the 150 foot buffer average and associated range of widths had been used.

- (2) **Type II Waters:** 100 foot average with a maximum range between 75 feet and 125 feet.
- (3) **Type III Waters:** 100 foot average with maximum range between 75 feet and 125 feet. Alternatively, a 125 foot average with maximum range between 50 feet and 150 feet for contiguous lands adjacent to the watercourse all owned by the same owner. For purposes of calculating the total amount of the acreage that can be credited towards the Annual and Overall Acquisition Goals, the total acreage amount for the alternative 125 foot buffer average shall not exceed the acreage that would have been acquired if the 100 foot buffer average and associated range of widths had been used.
- (4) **Type IV Waters:** 35 foot average with maximum range between 25 feet and 50 feet.

- B. Responsibility for Noxious Weeds in the Buffer.** Upon acquisition of a conservation easement or fee ownership in the riparian buffer area, the SHP or other easement or fee interest owner shall be responsible for removal of noxious weeds within the buffer area pursuant to the requirements of RCW 17.20, and shall indemnify the landowner/grantee of the buffer easement or fee interest from any liability to any third party for responsibility for or impacts from the presence of noxious weeds within the riparian buffer area. The SHP and the adjacent landowner/grantee may negotiate for alternative responsibility for noxious weeds within the buffer area and may adjust the amount paid for the conservation easement or fee acquisition accordingly.
- C. Responsibility for Fencing.** Upon acquisition of a conservation easement or fee ownership in the riparian buffer area, the SHB, or other easement or fee interest owner shall be responsible for all costs associated with installing and maintaining any fencing required to keep livestock out of the riparian buffer area. The SHP and the adjacent landowner/grantee may negotiate for alternative responsibility for fencing and may adjust the amount paid for the conservation easement or fee acquisition accordingly. The provisions of this section notwithstanding, the grantor-landowner shall be responsible for notifying the SHP within 48 hours after the landowner observes that fencing has been damaged due to falling trees, flooding, or other natural causes or due to any other circumstances not the fault of the landowner or operator or their livestock. If the landowner or operator or their livestock causes damage to the fencing or the landowner fails to notify the SHP within 48 hours of fencing damage that is not the fault of landowner, then the landowner shall be responsible for prompt repair or replacement of the fencing.
- D. Property Taxes.** To the maximum extent permitted by law, SHB shall work with the Skagit County Assessor to make an appropriate adjustment to the assessed

value of the property to account for the reduction in agricultural production due to acquisition of the buffer.

E. Activities and Uses within the Buffer—Conservation Easements or Fee Acquisition. Any conservation easement or fee acquisition that is subject to the provisions of this SHP and credited towards the achievement of the SHP Goals shall prohibit all activities within the buffer area unless specifically allowed by this section:

- (1) **Landowner Activities Permitted.** The grantor-landowner shall be allowed to engage in the following activities within the conservation easement area by the terms of any conservation easement:
 - a. Landowner may remove noxious weeds with hand operated brush clearing equipment (gas powered or otherwise) to the extent the landowner has retained this responsibility pursuant to the terms of the conservation easement;
 - b. Landowner may use hand-operated equipment to create and maintain small footpaths in the buffer not to exceed three (3) feet in width;
 - c. Landowner may permit livestock to enter the conservation easement area for the limited purpose of crossing from one side of a stream to the other side in order to access landowner's property on the other side of the stream. Livestock may only enter a stream at a designated stream crossing not to exceed twenty (20) feet in width and only when actively herded by a person authorized by the land owner for such purpose. Provided, however, that nothing about this provision shall be construed as allowing livestock regular access to streams and/or to graze within buffers bordering riparian areas;
 - d. Activities necessary to convey stock water away from the stream and across the conservation easement area for historic levels of consumption (whether by conveyance or directly out of the stream) consistent with the 1994 Ecology Stock Watering Policy and Attorney General Opinion AGO 2005 No. 17, without requiring Ecology approval of a change in the diversion point if this Ecology policy is altered or rescinded. If this method of stock watering is not possible, then access to the watercourse shall be limited to the amount of time reasonably necessary for watering livestock and any livestock access to the watercourse shall be managed consistent with the applicable best management practices for livestock crossing and livestock watering found in the Natural Resources Conservation Service Field Office Technical Guide Practice Standards;
 - e. Removal of hazard trees in the manner provided in Subsection V(F). below; and
 - f. For lands included within a sub-flood control zone, permitted activities may also include "any flood management activities conducted

pursuant to an approved Hydraulics Project Approval (HPA) from the Washington State Department of Fish and Wildlife (WDFW).

- (2) **Landowner Activities Permitted On Site Specific Basis.** The following limited activities may be permitted within the easement area based upon site specific circumstances when approved by the landowner and the SHB:
 - a. Historic types and levels of access to buildings and other infrastructure on adjacent land; and
 - b. The use of herbicides and pesticides for noxious weed removal when approved in writing by the landowner and the SHP.
 - c. Provided, however, the SHP shall not permit any additional site specific activity that is inconsistent with the protection of riparian functions and values for salmon. Accordingly, the conservation easements and land to be acquired by the SHP are principally to protect and enhance salmon habitat, and this shall be the primary consideration in negotiating additional permitted activities on a site-specific basis.

- (3) **Conservation Easement Owner Activities.** The following activities must be expressly permitted by the terms of the conservation easement:
 - a. Access by staff of the SHP and the conservation easement holder (if different from the SHP) to monitor and inspect for compliance with the terms of the conservation easement. Provided, however, that nothing about this SHP or the conservation easement language shall be construed to require or allow access by the general public;
 - b. Tree planting and other activities to actively restore the riparian buffer by the SHP or the conservation easement holder (if different from the SHP) provided that funds for restoration will not be required of the property owner; and
 - c. Activities by the SHP or the conservation easement holder (if different from the SHP) to protect and enhance natural restoration of the riparian buffer.

- (4) **Access Across Adjacent Property.** Any conservation easement shall include the right to cross land owned by the landowner and located adjacent to the conservation easement for purposes of access to the easement by the staff of the SHP and the conservation easement holder (if different from the SHP). The location and type of access permitted shall be only that deemed reasonably necessary and sufficient to observe the conservation easement area for purposes of maintenance, restoration and monitoring compliance with the terms of the conservation easement, and shall not interfere with the landowner's right to private use and enjoyment of the balance of the landowner's property. Prior to accessing

the conservation easement through the landowner's land, the landowner shall be given reasonable advance notice.

The SHP shall respect grantor-landowner's property rights and privacy to the fullest extent. Other than as set forth in the terms of this paragraph and the language of the conservation easement, nothing about this SHP or the conservation easements it envisions shall require any landowner to provide access to the general public, nor to any governmental entity or agent for any other purpose. Furthermore, the staff of the SHP shall not have general law enforcement authority, and are not authorized to police or enforce any other law, regulation or rule other than the express terms of the easement agreed upon between the SHP and the grantor-landowner.

- (5) **Salmon Heritage Board**. Additional activities and uses may be included in the terms of a specific conservation easement if it is expressly approved by SHB.
- (6) **Easements and Fee Covenants**. All conservation easements and deeds purchased under the SHP shall contain covenants and restrictions within the text of the conservation easement and/or deed as necessary to implement the intent and all relevant provisions of this resolution, and SHP Goals. As soon as practicable, the SHB shall develop standard form conservation easements and deeds that incorporate all relevant requirements set forth by this resolution, which forms shall be reviewed and approved by the Skagit County Prosecutor to ensure such instruments are consistent with the intent and objectives of this resolution.

F. Hazard Trees.

- (1) In the riparian buffer area, removal of hazardous, diseased or dead trees and vegetation by the landowner may be permitted when necessary to:
 - a. Control fire, or
 - b. Halt the spread of disease or damaging insects consistent with the State Forest Practices Act, RCW 76.09, or
 - c. Avoid a hazard such as landslides, or
 - d. Avoid a threat to existing structures or above-ground utility lines.
- (2) Before hazardous, diseased or dead trees and vegetation may be removed by the landowner pursuant to Subsection (1),
 - a. The landowner must obtain prior written approval from the SHP and the easement holder (if different from the SHP), which consent shall be processed promptly and may not be unreasonably withheld. If the SHP fails to respond to a tree

removal request within 5 days, the grantor-landowner's request shall be conclusively deemed allowed under the easement;

- b. The removed tree or vegetation must be left within the riparian buffer area, unless the conservation easement holder and the SHB (if different) agree that the presence of disease or pests warrants its removal to avoid spreading the disease or the pests; and
- c. Any removed tree or vegetation shall be replaced by the landowner with an appropriate native species in appropriate size. Replacement shall be performed consistent with accepted restoration standards for riparian areas within 1 calendar year.

G. Lands in Active Production. When a conservation easement is acquired during the management season for existing crops and contemporaneous farming activities, those crops and activities may be permitted to continue within the conservation easement until the current annual season for those crops and activities has ended. When a conservation easement is acquired on lands where a longer term investment has been made, such as the planting of bush berries (such as raspberries or blueberries), farming activities related to the longer term investment may be allowed to continue for one or more seasons, provided that the acreage for that easement shall not be counted toward the Annual and Overall Acquisition Goals until the date that those activities are prohibited by the terms of the easement. The purchase price of the easement may include compensation for the loss of the longer-term investment in crops, such as bush berries.

H. Valuation. The price to purchase land or acquire a conservation easement shall be based upon either of the following:

- (1) A programmatic valuation for use by the SHP to avoid the need for appraisals on individual parcels of property and to streamline program participation. The programmatic valuation shall be established by the SHB based upon review and recommendation by a qualified appraiser selected by the SHB; or
- (2) A fair market value appraisal by a qualified appraiser selected by the SHB, using standard industry practices for valuation of commercial farmland that includes crop rotation. The appraisal may consider the following when determining fair market value:
 - a. The value of the acreage acquired, taking into consideration crop rotation history and other uses of the land,
 - b. The diminished value of any adjacent property owned by the Seller caused by the sale and severance of the parcel to be acquired;
 - c. The severance value may include, without limitation, the adverse impact that active restoration of the acquired parcel will have on

adjacent lands owned by the Seller, including for example the impact of additional shade caused by the planting or natural growth of trees on the acquired parcel;

- d. The activities permitted or prohibited within the acreage acquired; and
- e. The value of any liability or indemnification provisions (*e.g.*, control of noxious weeds, construction and maintenance of fences).

I. Monitoring and Enforcement. Lands subject to conservation easements purchased as part of the SHP or used to meet the SHP Goals shall be subject to monitoring and enforcement by the SHP and the conservation easement holder (if different from the SHP). The costs of monitoring and enforcement by the SHP shall be paid for with funds from the Salmon Heritage Fund. Because the SHP is intertwined with the County's obligations under various environmental laws and because this SHP represents a significant capital investment by the people of Skagit County, it is the intent of the Board of County Commissioners that the SHP will actively enforce conservation easements to ensure that activities inconsistent with the purposes of the conservation easements and the objectives of this SHP do not occur. Provided, however, that the enforcement powers of the SHP shall not extend beyond the express terms of the conservation easement agreed upon by the landowner and the SHP. Nothing about the SHP intended to give the SHP any regulatory authority beyond enforcement of the conservation easements it negotiates with landowners in the marketplace.

J. Landowner Safe Harbor. The SHP is intended to provide a safe harbor for owners of eligible AG-NRL and RR-NRL land who sell conservation easements or land in fee simple to the SHP. By selling a conservation easement or fee interest in a riparian buffer area that is consistent with the SHP, the County agrees that the landowner shall be deemed in full compliance with the all Skagit County critical areas requirements relating to riparian buffers (SCC 14.24.120 and .530), and no additional best management practices shall be required by the landowner for agricultural activities conducted outside the riparian buffer areas acquired by the SHP. The County and the landowner further agree that conveyance of a conservation easement or fee interest pursuant to this SHP is intended by the County and the landowner to fully satisfy any further riparian buffering requirements arising under the Washington State GMA, the U.S. Endangered Species Act, the U.S. Clean Water Act, any TMDL recommendations adopted by the Department of Ecology for any watercourses within the Skagit or Samish River watersheds, or any other state or federal environmental law or regulation requiring riparian buffers along fish-bearing watercourses, including but not limited to tribal treaty rights.

Provided, however, Skagit County cannot control the operation and enforcement of laws and regulation that are outside the County's jurisdiction, nor can the County control or prevent assertion of claims based on Native American treaty rights. However, Skagit County will stand with agricultural landowners who benefit the community by granting easements under the SHP. Specifically, Skagit County pledges to support the safe harbor intent of this paragraph at the state and federal level in its legislative activities, and will not advocate for any

legislative action inconsistent with this section. Furthermore, Skagit County will, consistent with the Rules of Civil Procedure, seek to intervene in and participate in the defense against any claim brought against a grantor-landowner that seeks to obtain or require additional riparian buffers on lands that have granted a conservation easement or fee simple interests consistent with SHP Goals. The County's obligations under this subsection shall only apply to landowners who are complying with all of the terms of the conservation easement acquired by the SHP and the County shall have no obligation to intervene in, nor participate in the defense against a claim that is based in whole or in part on a failure to comply with the terms of the conservation easement.

- K. No Grant of General Public Access.** Nothing in the SHP nor the terms of any conservation easement granted thereunder shall require the grantor-landowner to provide public access to the riparian area or to the grantor-landowner's adjacent land. The only access intended to be granted by this SHP is access by the conservation easement holder and the SHB (if different) to administer the provisions of the SHP, in a manner consistent with the terms of the conservation easement negotiated between the grantor-landowner and the SHP. The SHB is not empowered to require that landowners grant access to the public as a condition of any conservation easement or deed.

VI. REGULATORY BUFFERS IF ACQUISITION GOALS ARE NOT MET

- A.** If the SHP fails to meet any of the annual or Overall Acquisition Goals described in Section IV(C)(1) by the dates specified, and subject to the provisions for extension described in Section IV, then the County Commissioners shall, within 60 days from the date that a SHP Goal has not been reached, introduce an ordinance that achieves one of the following alternatives:
- (1) Impose mandatory regulatory riparian buffers on all or that portion of the watercourses subject to the SHP necessary to meet the SHP Goal that has not been achieved ("Tributary Specific Buffers"). Said Tributary Specific Buffers shall be consistent with all Buffer Requirements found in Section IV and V of the SHP; or
 - (2) Impose whatever mandatory riparian buffers are required by GMA on all watercourses in the Ag-NRL and RRc-NRL zones consistent with the buffers envisioned by this resolution ("Comprehensive GMA Riparian Buffers"), provided that Comprehensive GMA Riparian Buffers shall not be imposed on any landowner who has already conveyed or entered into a binding agreement to convey a riparian buffer pursuant to the SHP.
- B.** The County shall circulate the proposed ordinance under Section VI.A for public review and comment for 60 days and shall adopt the appropriate requirements within 60 days after the end of the public comment period, thus meeting statutory requirements for public participation and for County ordinance adoption, while proceeding expeditiously to implement those regulatory measures necessary to comply with GMA and protect the integrity of the SHP.

- C.** The SHB shall establish a system to track SHP progress by tributary and stream type, as well as tracking funds and pending transactions. The SHB shall report biannually to the Board of County Commissioners in order to allow effective coordination and implementation of this Section VI.
- D.** The SHP may choose to, but is not required to, provide compensation for any buffers imposed pursuant to Section VI (A). Skagit County may choose to adopt up to a six (6)-month delay in the effective date of regulatory buffers pursuant to Section VI (A) to provide a final opportunity for property owners to enter binding agreements to convey riparian buffer conservation easements or fee interests to the SHB pursuant to the SHP. Property owners who enter option agreements with the County for the sale of a conservation easement or land in fee simple shall be deemed in compliance for the purposes of Section V(J) of this SHP, provided that said option allows for immediate exercise. Any executed transaction under this paragraph shall be deemed acquired for the purposes of Section VI(A)(2).
- E.** The Skagit County Board of Commissioners does not intend to preclude the operation of future legislative action that exempts ongoing agriculture from the critical areas requirements of the GMA. The voluntary acquisition of riparian conservation easements by SHP shall continue until SHP Goals are met, even if there are changes to state or federal law that eliminate current GMA requirements to protect critical areas on lands that are the subject of this SHP. Provided, however, in the event subsequent state or federal legislation and/or judicial authority exempts ongoing agricultural operations from riparian buffer requirements under the critical areas provisions of the GMA, then Section VI(A) of this SHP shall be automatically deemed null and void. To the extent ongoing agriculture is exempted from critical areas requirements by legislative action or judicial decision subsequent to the effective date of this resolution, the SHB may immediately begin expending funds on Authorized Secondary Purpose Expenditures as set forth in Section III(E). Provided, however, the intent of the Board of Commissioners that the SHB will retain sufficient funds on hand to continue acquiring buffers even if Secondary Purpose Expenditures are pursued.