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Memorandum

To: Gary Christensen, Director, Planning and Development Services
From: Ryan Walters, Civil Deputy Prosecuting Attorney
Date: April 7, 2009
Re: Wetland Mitigation Banking Ordinance

On February 9, 2009, the Board of County Commissioners adopted an interim ordinance declaring a moratorium on the acceptance of new special use permit applications for wetland mitigation banks on Ag-NRL lands. The moratorium is effective for six months, and will therefore expire on August 8 without additional action to renew it or adopt a permanent ordinance. I have been asked to prepare a simple ordinance that would prohibit private wetland mitigation banks on lands zoned Ag-NRL.

Current Code

Wetland mitigation banks are currently allowed in Ag-NRL, as well as several other zones, as "habitat enhancement and/or restoration projects" as defined in Skagit County Code 14.04.020:

Habitat enhancement and/or restoration project: any project, including mitigation banks, private projects or public projects, designed to create, restore and/or enhance habitat for fish, birds and/or mammals and includes the alteration of the landscape by excavation or sculpting of soil and/or the alteration of hydrology. This does not include required on-site mitigation projects associated with permitted development activities pursuant to Chapter 14.24 SCC or projects consisting exclusively of planting vegetation.

"Mitigation bank" and "mitigation banking" are also defined in 14.04.020 and are limited by their definitions to banks that create or restore wetlands.

In Ag-NRL, habitat enhancement and/or restoration projects are Hearing Examiner Special Uses. Such projects must therefore be approved by the Hearing Examiner after a public hearing and potentially lengthy process designed to ensure public participation.

Proposed Ordinance

The proposed ordinance language below accomplishes the goal of prohibiting private wetland mitigation banks on lands zoned Ag-NRL with minimal changes to Skagit County Code. In short, private mitigation banks would be specifically disallowed in the list of Ag-NRL uses, and a new definition of *private* mitigation banks would be added to distinguish from any banks owned and operated by government agencies.

Skagit County Code 14.04.020, Definitions, is amended to add the following term and definition:

Mitigation bank, private. A mitigation bank not owned and operated by a government agency.

Skagit County Code 14.16.400(4), Hearing Examiner Special Uses in Agricultural—Natural Resource Lands (Ag-NRL), is amended to read as follows:

- (4) Hearing Examiner Special Uses.
 - (a) – (b) [No Change.]
 - (c) Habitat enhancement and/or restoration projects, except “private mitigation banks” as defined by SCC 14.04.020.
 - (d) – (m) [No Change.]