

May 5, 2009

Skagit Planning County Commission  
1800 Continental Place  
Mount Vernon, WA 98273

### VIA Hand Delivery

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RE: Prohibition of wetland mitigation banks on Ag-NRL zoned lands within Skagit County.

Dear members of the Planning Commission:

Thank you for the opportunity to comment on the proposed amendments to SCC 14.04, Definitions and 14.16.400, Zoning.

Skagitonians to Preserve Farmland (SPF) has been a consistent voice of concern regarding the placement of wetland mitigation banks on prime farmland in Skagit Valley and has advocated at the state level as well as locally for wetland mitigation bank policies, procedures and regulations that do not trade one resource land for another.

SPF does not believe the placement of wetland mitigation banks, public or private, on prime farmland, even by hearing examiner special use, is consistent with state and local policies to protect and conserve prime agricultural land and supports a permanent amendment the Skagit County's zoning code to prohibit wetland mitigation banks on lands zoned Ag-NRL within Skagit County.

### Washington State Policy

The state Growth Management Act (RCW 36.70) requires the designation of agricultural lands of long-term commercial significance. Goal 8 (Natural resource industries) "... Encourages the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses." RCW 36.70A.170. requires that "***A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.***" (emphasis added). By definition, a wetland mitigation bank is a non-agricultural use. In addition, Governor Gregoire's Puget Sound Initiative calls for a "no net loss of farmland" to ensure the region's environmental quality over the next 20 years.

#### STAFF

Allen Rozema  
*Executive Director*

Susan Macek  
*Development Director*

Maureen Carlson  
*Office Manager*

## **Skagit County Policy**

Previous and newly adopted county policies all point to conservation of agricultural land as a high priority and a presumption that once so designated, these lands will remain in agricultural production.

### **Agricultural Resource Land Policies (*excerpts from 2007 Comprehensive Plan*)**

“...Skagit County is committed to preserving and enhancing the agricultural land base and promoting economic activities and marketing support for a strong agricultural industry. The agricultural community faces significant challenges in preserving the agricultural land base and a viable agricultural industry, including: conversion of agricultural lands to development and inappropriate habitat restoration; conflict with neighboring residential uses; drainage impacts; and other disruption of agricultural lands functions and values. The following policies are intended to ensure the stability and productivity of agriculture in Skagit County.”

### **GENERAL POLICY GOALS: AGRICULTURAL RESOURCE LANDS**

Protect the agricultural land resource and farming in Skagit County; endeavor to minimize the loss of the resource; mitigate unavoidable losses; and replace lost resources whenever possible. These principles shall guide Skagit County's actions to:

- *Preserve agricultural land for agricultural uses;*
- *Limit new non-agricultural uses and activities on agricultural resource lands;*
- *Resolve conflicts between agricultural and environmental objectives; and*
- *Monitor the long-term achievement of the goals and policies.*

### **GOAL A-3: PRESERVE AGRICULTURAL LAND BASE AND USE**

Promote preservation of agricultural land for agricultural uses, minimize non-farming uses on agricultural lands; and develop incentive programs to promote farming.

#### **Policy 4A-3.1 Long-Term Designation of Agricultural Lands**

Designation of Agricultural Lands is intended to be long-term. De-designation is discouraged, but may be considered only when compelled by changes in public policy, errors in designation, new information on resource lands or critical areas, circumstances beyond the control of the landowner, or an overriding benefit to the agricultural industry.

### **GOAL A-4: ALLOWABLE LAND USES**

Land uses allowed on designated agricultural land shall promote agriculture, agricultural support services, and promote diverse agricultural industries.

#### **Policy 4A-4.1 Agricultural Production**

Agricultural production is the highest priority use in designated agricultural resource lands.

### **GOAL A-5: MINIMIZE LAND USE CONFLICTS**

Minimize land use conflicts and promote mitigation of conflicts on the lands adjacent to agricultural resource lands.

#### **Policy 4A-5.1 Right to Manage Agricultural Resource Lands**


Goal E, Right to Manage Natural Resource Lands, applies to all lands designated Agricultural Resource Lands to protect agricultural landowner rights to manage their lands for agricultural uses.

We have had an opportunity to review the proposed amendments by County staff and feel the proposed amendments do not meet the intent of the emergency moratorium passed by the Board of County Commissioners nor are they consistent with the SEPA Environmental Checklist and SEPA Threshold Determination, as the proposed definition "*private mitigation bank*" interjects a distinction that did not and does not exist anywhere in the current County Code (please refer to the definitions for mitigation bank and mitigation banking under SCC 14.04) or the moratorium passed by the Board of County Commissioners.

SPF maintains that "mitigation banks" as currently defined by SCC 14.04, whether private or public, do not belong on Ag-NRL zoned lands and we offer a proposed amendment to SCC 14.04 that we believe addresses the issue (please refer to Exhibit A attached).

Thank you again for allowing us this opportunity to provide public comment. If you have any questions about our comments please do not hesitate to contact me by phone at 360-336-3974 or by e-mail at [allenr@skagitonians.org](mailto:allenr@skagitonians.org).

Sincerely,



Allen Rozema  
Executive Director

attachment

## Exhibit A

### **Existing**

**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.

### **Proposed amendment**

**Habitat enhancement and/or restoration project:** any public or private project, but not including public or private 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.

Skagit County Planning Commission  
1800 Continental Place  
Mount Vernon, WA 98273

5 May 2009

Re: Wetland Mitigation Banks in Skagit County -  
A Proposal to Establish a Transfer of Development Rights  
Program in Lieu of Banks.

Honorable Planning Commissioners:

Thank you for the opportunity to comment on this action by the county. Many people have taken the time in a number of forums and hearings to voice their concerns over this program and the appropriateness of its use in Skagit County.

We had hoped the moratorium would give county planning staff the time and opportunity to develop standards and a process for the review and appropriate siting of wetland mitigation banks. It came as a shock to many that what is proposed is simply the insertion of a weakly worded "definition" of "private banks" and a minor addition to the habitat restoration section regarding hearings before the Examiner.

Some time ago, nine local organizations asked the county to use the unclassified use process to assess the impacts and set appropriate standards and locations for wetland mitigation banks. For some reason, the county refused. This is now the time to go through that process.

Wetlands banks, particularly as they have been submitted in Skagit, are certainly not habitat restoration. One does not restore anything by destruction. Each bank proposal in this county has had as its primary element the excavation of hundreds of thousands of cubic yards of soil. This is not restoration; it is mining.

In his explanation of the emergency moratorium, Mr. Honea stated that the county had erred in reviewing these applications as habitat restoration, so the proposed code changes are certainly not sufficient to remedy the situation. There should to be an entire new section with clear standards written regarding mitigation banking.

Wetlands banks are merely the first category of banking to be proposed in the county; the state initiated a process in 2008, called Mitigation That Works (MTW), that is proposing a broad range of what they call “conservation banking” facilities. More to the point, they are proposing a Puget Sound In Lieu Fee Program that would apply to a variety of “ecosystem services” and tradable environmental commodities.

Numerous articles have discussed how Skagit County is the “appropriate place to mitigate” for the many ills of the Puget Sound watershed given its many remaining acres of agricultural land. This is their intent in the MTW proposal, and the county must now develop standards and a process to review the appropriateness of these future proposals. The county cannot allow itself to again be a victim of poorly thought out state policy, as it has been for the first two wetland bank applications.

We have to ask whether further wetland destruction in Skagit County is a sensible thing. Wouldn't it make more sense to find equitable ways to avoid wetland destruction and thus avoid the need for banks that fail on a larger scale than on-site wetland replacement. You have heard reference to the rates of wetland restoration and establishment failure; the new rule proposed by the Department of Ecology does nothing to improve the potential performance of these regulatory projects, so Skagit should find a better way.

If Skagit allows more destruction of wetlands for development, the regulatory hurdles on the remaining Skagit landscape will only increase. This is like a dog chasing its tail –and you know that outcome. Farmers can only make up for the environmental impacts they create; yet more and more regulatory requirements are placed upon them to “offset” other non-agricultural impacts. This will not work in the long run, and our county's family farms may fall victim to this circular regulatory logic.

The state's wetland banking approach is too expensive for the county. The Clear Valley Bank, for example, has paid under \$5000 in fees to process its permits. We would estimate that the county has spent over \$200,000 in the review and defense of appeals on this same project. This is nonsense, especially when the outcome, if the bank is permitted, has a 50/50 chance of success. As someone said at a prior hearing, “You wouldn't build a bridge with those odds.” Why are we giving up our vital wetland resources to a gamble?

There is a better way. We can create a transfer of development rights program that allows developers to transfer the rights

from parcels encumbered by wetlands. We are told the need for mitigation arises in our cities and urban growth areas. This is where we want most of our future growth to go, so we could even give the developers a density bonus to move the right to another site within the city or UGA.

We've attached a one-page description of how TDR for wetlands could work. Please give this concept consideration. But please do not let the state institute yet another environmental banking program that sets up Skagit as a victim without it's own standards or review process. Please instruct planning staff to assess the proposal for multi-use conservation and mitigation banks and have them develop a Skagit approach that preserves Skagit's many vital natural resource lands.

Sincerely,

Mary Heinrich

## **Transfer of Development Rights to Achieve Environmental and Fiscal Integrity in Skagit County**

The county adopted a critical areas ordinance and other regulations aimed at preserving the ecosystem services of natural resource areas. These programs require a high level of staff participation to administer, cost applicants time and money, and the result has been that the county continues to lose vital resources to development.

One failing of mitigation banking is that ecosystem services are transferred out of urban areas, resulting in a lower environmental quality of urban life and diminished urban biodiversity. The “success” rate is estimated at about 50% for all mitigation and the Department of Ecology admitted that they have no studies to indicate that banking will have any higher rate of “success.” It seems a fruitless technique to employ.

The county has spent much more money to administer mitigation than it has gained in either fees or environmental benefit. Given the focus on environmental responsibility in Skagit and the challenges of meeting ESA and other mandates, we must devise another approach.

Skagit designed a transfer program for Bayview Ridge and worked cooperatively with the City of Burlington on density credits to implement agricultural preservation. It is a natural next step to develop a similar program to protect wetland and critical area resources. This approach would minimize the need for risky approaches like mitigation, save money on administrative oversight, and target new development to areas appropriate for additional development.

To demonstrate: Developer Jones has a residential parcel with wetlands that would require he use mitigation to develop the parcel. He could remove the residential development right and transfer it to another residential parcel in his ownership in a designated receiving area, or he could sell that development right to another developer to use in a designated receiving area.

To make this more attractive, a bonus development right or an additional density credit might be added to the transfer. The parcel not developed could be sold or donated (for tax deductions and other benefits) to the county or city to help meet the open space requirements in urban areas and to retain vital urban ecosystem services.

This approach meets multiple needs – environmental preservation, guiding development to appropriate locations, reservation of natural open space within urban areas, and reduction of costs to the taxpayers of Skagit County.





April 23, 2009

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Commissioners Ken Dahlstedt, Sharon Dillon & Ron Wesen  
Skagit County Administration Building  
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Mount Vernon, WA 98273

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*People dedicated to  
preserving Skagit County's  
rural character by protecting  
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supporting sustainable,  
resource-based economies; and  
promoting livable urban  
communities for present and  
future generations.*

Dear Commissioners:

By this letter, Friends of Skagit County requests that the Board of County Commissioners reconsider its decision to authorize certification of the Mitigation Banking Instrument for the Nookachamps Wetland Mitigation Bank, taken on March 17, 2009 by resolution.

Since the resolution is not available on the county website, we have not reviewed the document. However, this request for reconsideration comes from various agency requirements under RCW's for Rule-making in Washington State.

RCW 34.05.322 *Scope of Rule-making authority* states "...an agency may not rely solely on the section of law stating a statute's intent or purpose, or on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for its statutory authority to adopt the rule..." **(emphasis added)**.

The Department of Ecology is required to complete the additional requirements of this RCW in order to operate a program under the draft rule. DOE does not have the authority to simply state that because they support wetland mitigation banks that a local government must support the banking program and/or proposed wetland mitigation banks. DOE has not completed the requirements under this RCW which would allow the agency to require Skagit County to support the proposed wetland mitigation banks. Skagit County can deny bank certification based upon DOE's failure to comply with this rule-making requirement.

Section (1)(d) states that an agency must "Determine that **the probable benefits of the rule are greater than its probable costs**, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented..." **(emphasis added)**.

To our knowledge DOE has not provided ANY analysis of probable benefits which would be data, science, economic analysis or other information for the Nookachamps Bank. Nor has DOE provided any quantitative or qualitative estimate of benefits of the project. Skagit County does not have to certify the Nookachamps Bank until it receives this information from DOE.

Section (1)(f) states: "...**Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law...**" **(emphasis added)**.

The Department of Ecology is requiring the proponents of the Nookachamps Bank, the Board of County Commissioners, the Department of Planning and Development Services and other county staff to violate, at a minimum, the State Growth Management Act, the Skagit County Comprehensive Plan, local development codes and other state and local laws associated with planning and development which require the identification and protection of resource lands (farmland) and critical areas. This appears to violate the above Section (1)(f).

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Section (1)(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity...and determine that the difference is justified by....

- (i) A state statute that explicitly allows the agency to differ from federal standards; or
- (ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives (of the rule); and
- (j) Coordinate the rule, to the maximum extent practicable, with other federal, **state and local laws applicable to the same activity or subject matter....**” (emphasis added).

DOE has ignored public comments and comments by elected officials concerning how the draft wetland mitigation banking rule violates the State’s Growth Management Act and local planning laws. The agency has not added language to the draft rule to justify how the draft rule does not violate GMA or local planning. To our knowledge, the DOE has not consulted with Skagit County to discuss how the draft rule does not violate local planning laws. If such consultation was held, there was no public notification of this discussion.

DOE has not considered the public interest in its rule-making process. No evaluation has been done of the cost of risk or failure to the public of wetland mitigation banks.

*RCW 34.05.328 Public Participation – Concise explanatory statement.* (6)(a) Before filing an adopted rule with the Code Reviser, an agency shall prepare a concise explanatory statement of the rule:...

- (ii) Describing the differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing, stating the reasons for differences; and
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments or why it fails to do so...”

To our knowledge, the requirements of Section 6(a) have not yet been addressed.

We request that the Board of County Commissioners rescind the resolution which approves the Nookachamps Wetland Mitigation Bank’s banking instrument and reconsider the wisdom of approval of wetland mitigation banks in Skagit County.

Yours sincerely,

Ms. Ellen Bynum  
Director

EB/

cc: FOSC Board; Gail Terzi, USACE; Lauren Driscoll, DOE; Governor Christine Gregoire; Legislative Representatives and Senators 10<sup>th</sup>, 39<sup>th</sup> & 40<sup>th</sup> Districts; Gary Christensen, Skagit County Planning & Development Services.

# FRIENDS of Skagit County

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Olympia

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September 23, 2008

## FARMLAND ACRES CONVERTED TO OTHER USES IN SKAGIT COUNTY.

28 acres – New School in Burlington - SVHerald Aug. 26, 2007.

48 acres – Widen State Route 20 –WSDOT phone call & SVH April 30, 2007.

58 acres – construction of SR 20/SR536 interchange per WSDOT conversation.

300 acres – WDFW fisheries/wildlife projects – WDFW releases May 5, 2008, July 9, 2008, Sept. 26, 2002, Dec. 29, 2006.

400 acres – WDFW new purchase for habitat, Padilla Bay – Committee report on options for use of the property.

313 acres Nookachamps Wetland Mitigation Bank; SVH article, Sept. 30, 2008.  
80 acres – East Mount Vernon annexation to Urban Growth Area – proposed in list of annexed properties in public notice.

400 acres Skagit Environmental Bank removed from dairy production and sold to developer. Skagit County Assessors parcel records.

Estimated at 1,500 acres – conservation easements and recreational activities – status of some projects unknown.

Ducks Unlimited website– South Padilla Bay Projects – 40 ? acres; Skagit Wildlife Area Projects – 270 acres; 95 acres; 100 acres; No Name Slough – Drainage District – est. 10 acres; Gun Clubs - estimated at 1,000 acres; Farming for Wildlife - TNC-EPA grant flooding farmland test (temporary – 3 years) – est. 50 acres. SVH, Dec. 21, 2006.

### Subtotal - 3047

## FARMLAND ACRES PROPOSED FOR CONVERSION.

1,500 acres– Mount Vernon expansion Riverbend and South of Hickok Road.  
(after public hearing, City Council voted not to annex either area this year).  
SVH April 26, 2008.

396 acres – Skagit Environmental Bank (400 acres) – total land removed 800. SVH article August 30, 2008.

2,700 acres –tidegate mitigation, Fir Island. Tidegate Fish Initiative. SVH Feb. 17, 2008.

16 acres annexed from UGA to City of Sedro Woolley to site Deluxe Transfer station.  
SVH article Sept. 23, 2008.

5,400 acres – habitat buffers recommended by State fisheries. Shared Strategies reports, per Mike Rundlett.

### Subtotal – 10,012

Note: Skagit Conservation District CREP program – estimated total 500 acres prime ag soils which are not longer farmed. For example: Skagit Fisheries Enhancement – CREP project– 33 acres east Nookachamps. Per Carolyn Kelly, July 9, 2008.

## TOTAL ESTIMATE – 13,559

## COMMENTS SKAGIT COUNTY PLANNING COMMISSION MAY 5, 2009 | 6 PM

Good evening, commissioners. My name is Diane Freethy, president of Skagit Citizens Alliance for Rural Preservation. My comments will be brief.

[1] The proposed moratorium is a classic case of closing the barn door long after the cows have escaped.

[2] The large majority of Skagit County Citizens are opposed to wetland mitigation banking and have filed their objections many times over the last 3 or 4 years. The Board of County Commissioners has had ample opportunity to put a moratorium in place long before now.

[3] Moreover, the Board's ill-advised approval of the Mitzel/Wildlands mitigation banking instrument — without benefit of public process — has already set a precedent for permitting this type of commercial enterprise in Skagit County. Legal challenges to the proposed moratorium could become a problem.

[4] The County Code's references to wetland mitigation banking include the Code's reliance on WAC 173.500 — an unapproved draft rule which received an almost unanimous "thumbs down" from local citizens at last month's Dept. of Ecology hearing in Mount Vernon.

[5] Whether the County's missteps in handling wetland mitigation permits along the way have been deliberate or not, there surely is an air of conspiracy that needs to be addressed.

Before you make a recommendation to the Board, we ask that you take a long, hard look at this proposal, and attempt to understand the motive behind it.