



Skagit County Planning & Development Services

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Staff Report

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Re: Conservation and Development Incentives Program (CDI) policies and code

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Background

The Department last spoke with the Planning Commission about this proposal in early June, when we shared and discussed the proposed policy framework for the Conservation and Development Incentives (CDI) Program. (The May 28 staff report describing the process leading up to that point is available [here](#)).

The Department has since drafted policies and code and is preparing to release the proposal late next week for public review and comment, leading to Planning Commission hearings and deliberations in November.

Since that June discussion with the Planning Commission, the structure and terminology of the program have changed somewhat through the code drafting process; however, the goals, intent and expected outcomes of the program remain largely the same. The Department’s goal in drafting the code was to avoid the creation of two separate and potentially redundant processes: one for so-called density credit transactions, where the County would handle the sale of density credits to developers and the purchase of development rights from landowners interested in conserving their land; and one for transfer of development rights transactions, where developers and landowners would buy and sell development rights on the private market.

Instead, the proposal contains a more integrated framework that allows:

- The purchase of development credits either from the County or from a private seller for the purpose of obtaining additional development potential in designated development priority areas; and
- The sale of residential development rights either to the County or to a private buyer, for the voluntary conservation of farm, forest or open space land in designated conservation priority areas.

Whether the purchase of development credits is from the County or from a private landowner, it is the purchase of those credits, motivated by the incentive of additional development potential in development priority areas, which generates the funds to pay for the conservation of natural resource and open space land.

The proposal is described in greater detail below. Also see the diagram of the proposed program included as [Exhibit A](#) to this memo.

Planning Commission and Public Review

The Department will release the full proposal (policy and code) for public review and comment in the next two weeks (by Thursday, September 24).

Release of the proposal will follow the standard legislative process as described in Skagit County Code 14.08, Legislative Actions, including the following steps:

- Release of the proposal for public review and comment.
- Issuance of a threshold determination under the State Environmental Policy Act (SEPA).
- Written comment period and public hearing before the Planning Commission. The public hearing is tentatively scheduled for the Planning Commission's Monday, November 2 meeting.
- Planning Commission deliberation and development of a recorded motion for transmittal to the Board. Planning Commission deliberations are tentatively scheduled for Tuesday, November 18.
- Review and final decision by the Board of County Commissioners

For More Information

For more information on the background for the project, please visit the project website at www.skagitcounty.net/TDR.

Proposal Overview and Summary

Goals and policies to establish the Conservation and Development Incentives (CDI) Program are proposed to be inserted as Goal H and related policies in Chapter 2 of the Skagit County Comprehensive Plan, the [Urban, Open Space & Land Use Element](#).

The proposal would create a new chapter of code under Title 14: Chapter 14.22 Conservation and Development Incentives Program, replacing the current Chapter 14.22, Records of Survey. Records of Survey would become Section 14.02.090, under Chapter 14.02 General Provisions.

Overview

The proposed policies and code would establish the Skagit County Conservation and Development Incentives Program (CDI) to enable the voluntary and permanent conservation of farm, forest and open space lands while encouraging development in urban areas and certain rural areas best suited for additional growth.

In brief, the program would allow owners of farm, forest or open space lands in designated conservation priority areas to sell their residential development rights directly to the County or to private purchasers, in exchange for placing their land in a permanent conservation easement. The program would also allow developers to purchase development credits either from the County or from private landowners, to access additional development potential in designated development priority areas.

Those development incentives would generate a new source of private-market support for land conservation, thereby complementing existing publicly funded programs such as Farmland Legacy.

Policy Objectives

The program's policy objectives are to:

- Provide options to owners of natural resource and open space lands interested in permanently conserving their lands while retaining the land in private ownership.
- Conserve working farm lands and forest lands and the numerous economic, environmental and open space benefits they provide to the Skagit community.
- Offer incentives to developers to concentrate development in areas best suited for additional growth, while engaging the private market to support land conservation.
- Coordinate with cities and towns interested in helping to conserve natural resource and open space lands in the County, by enabling development within urban areas to support the conservation of natural resource and open space lands in the County.
- Implement the goals, policies, and objectives of the Growth Management Act and the comprehensive plans of Skagit County and participating cities and towns.

Program Structure

Development priority areas

The program designates **development priority areas** where additional residential development potential can be obtained with the purchase of development credits. Development credits can be purchased directly from the County or from private landowners in conservation priority areas who are interested in conserving natural resource or open space land.

Development priority areas in unincorporated Skagit County include:

- Any property approved for a Comprehensive Plan amendment and rezone allowing additional residential development potential.
- Certain infill opportunities in the Rural Intermediate and Rural Village Residential zones.
- Certain CaRD developments where a density bonus can be obtained on a lot otherwise too small for such a bonus; and
- Properties added to urban growth areas where additional residential development potential is created.

The additional residential development potential in these development priority areas can be pursued through the purchase of development credits either from the County or from a private seller.

Conservation priority areas

The program also designates **conservation priority areas** where private landowners are eligible to sell their residential development rights in exchange for placing a permanent conservation easement on their land.

- Landowners may offer development rights for sale directly to the County, or on the private market to individuals interested in accessing additional development potential in development priority areas.
- Whether the development rights are sold to the County or to a private party, the property from which the development rights are sold is conserved through a permanent conservation easement held by the County.

Conservation priority areas include:

- Land in the following natural resource land designations: Ag-NRL, Industrial Forest-NRL within a fire district, Secondary Forest-NRL, and Rural Resource-NRL; and
- Land in the Rural Reserve designation that is enrolled in our meets the eligibility criteria for the current use taxation program.

The Board of County Commissioners may designate additional lands as conservation priority areas by resolution or pursuant to an interlocal agreement or development agreement.

To be eligible to participate in the program, specific parcels or tracts of land within conservation priority areas must meet more specific eligibility requirements, as further described below.

Development credits – purchase and use

Developers interested in accessing additional development potential in designated development priority areas may purchase development credits from the County or from private landowners in conservation priority areas.

- Development credits for sale through the County are offered at a set fee based on the economic value of the additional units of development available.
- Development credits for sale from private landowners are sold at prices negotiated directly between the buyer and the seller.
- For private-market transactions, the County will establish an exchange rate table indicating how many development credits are available in a given development priority area for each development right purchased from a landowner in a particular conservation priority area.
- The exchange rate is intended to roughly equalize the value of the development right being sold and the development credits being purchased, in order to facilitate private market transactions to occur.

Development credits must be submitted to the County when the developer seeks to utilize the additional development potential granted through the CDI program.

- For land division applications, a development credit must be committed to the application and is considered expended at the time of preliminary subdivision approval.
- For Comprehensive Plan map amendments or rezones, a development credit is not required to be committed until the time of the subsequent land division or development.

Eligibility to sell development rights

A property owner must apply for a determination of eligibility to convert development rights into development credits for sale to the County or to a private party.

- To be eligible to sell development rights, a tract of land must meet certain requirements, including: be located within a conservation priority area; meet a minimum size threshold; and be privately owned.
- If the Department determines that the property is eligible, the Department will issue an eligibility report including the number of development rights eligible for sale.
- The number of development rights eligible for sale is the same as the number eligible for building purposes as determined through the County's Lot Certification process, except that

development rights from parcels located entirely in the regulatory floodway or in the Industrial Forest-NRL designation *outside* of a fire district shall not be eligible for sale.

Sale of development rights to County

The owner of eligible property may sell development rights to Skagit County subject to the following:

- Skagit County's selection of development rights to purchase is a competitive process intended to achieve the greatest conservation at the lowest cost.
- The County will rank properties for purchase priority based on ranking criteria to be adopted by the Board of County Commissioners.
- Properties selected by the County will undergo an appraisal by an MAI (Member of the Appraisal Institute) certified appraiser to determine the property's fair market value.
- The County may not pay more than fair market value for a conservation easement. The County may pay less than fair market value for the conservation easement if the landowner is willing to accept a lower price.
- Upon agreeing to the value of the conservation easement, the County and the landowner will execute a conservation easement to close the transaction.

Sale of development rights to private party

An owner of eligible property may also sell its development rights to a private party in the form of development credits, pursuant to the following:

- The owner of eligible property with a valid eligibility report may request conversion of that property's development rights into development credits in exchange for execution of a conservation easement.
- The Department will issue the appropriate number of development credits upon execution of a conservation easement by the property owner.
- Upon receipt of the executed conservation easement, the Department must record the easement with the County Auditor and issue the development credits specified in the agreement.
- The Department will record the development credits in its CDI program data database and issue the property owner a certificate containing the information from the database record.

The holder of a certificate of development credits may sell one or more of the development credits noted on the certificate to another party, provided the conveyance is:

- Submitted with a Real Estate Excise Tax (REET) affidavit for the sale price of the development credits and payment of REET to the County Treasurer; and

- Registered with the Planning and Development Services Department for recording in the conveyance database established under the proposed code.

Conservation easements

Conservation easements used for this program must be in a form approved by the Prosecuting Attorney and the Board of County Commissioners, and completed easements will be held by Skagit County. Easements will:

- Allow customary natural resource management practices on the property.
- Establish a limited building envelop for any existing residence on the property, outside of which new construction is prohibited.
- Outside of this envelop, prohibit the construction of any other buildings, dwellings, structures, or other improvements except customary farm, agricultural, or forestry use structures.
- Stipulate that nothing in the easement may be construed to convey to the public a right of access or use of the property.

The easement must permanently encumber the property but may allow for termination of the easement in a limited set of circumstances beyond the control of the property owner. The County must annually monitor properties subject to easements acquired per this Chapter for compliance with the easement terms.

Partnerships with Cities and Towns

The proposed policies and code encourage and enable cities and towns to partner with the County and the program. Participating cities or towns may designate development priority areas within their municipal boundaries and establish policies, procedures, and regulations for the use of development credits in those areas.

Participating municipalities may also identify conservation priority areas in unincorporated Skagit County where conservation will be supported by development credit purchases occurring within those municipalities.

The terms of the partnership between the County and a particular municipality must be agreed to through an interlocal agreement between the two jurisdictions. Interlocal agreements executed by the County pursuant to this subsection may:

- Provide for the movement of certified development rights from conservation priority areas for use in development projects in specified incorporated areas.
- Identify unincorporated areas that the municipality has an interest in helping to conserve in cooperation with the County; and

- Establish a process for the transfer by a city or town of revenues generated from the sale of development credits in specified incorporated areas, to the County for the purchase of development rights in conservation priority areas.

Administration

The County's administrative duties under the program include the following:

Development credit issuance and tracking

The Department will:

- Issue serially numbered development credits.
- Record issued credits in a data base.
- Track conveyances, including sales prices, of any development credits in the data base.
- Make the data base available on the County website; and
- Maintain an exchange on the County website individuals may indicate their interest in buying or selling development rights or development credits.

Development credit fees and exchange rates

The Board of County Commissioners will adopt a schedule indicating fees for development credits purchased from the County and exchange rates for development credits purchased from private sellers; and will periodically evaluate the fees and exchange rates and re-adopt the schedules at least every five years.

Development credit revenues

The County must use the revenue from sale of development credits in unincorporated development priority areas, or from a municipal program established under the program, to purchase conservation easements from properties in conservation priority areas.

Ranking criteria

The Department will develop criteria to rank properties for purchase priority based on conservation value. The ranking criteria must be approved by the Board of County Commissioners, and may be periodically reviewed at the Board's direction.

Maps

The GIS Department will maintain an interactive map on the County website of conservation priority areas; parcels conserved by conservation easements issued per this Chapter; and development priority areas.

Exhibit A: Diagram of Proposed Program

Skagit County Conservation and Development Incentives Program

