



Skagit County Planning & Development Services

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Staff Report

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Re: Proposed Conservation and Development Incentives (CDI) Program Policies and Code

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Summary

This legislative proposal would implement comprehensive plan policies and development regulations creating a Conservation and Development Incentives (CDI) program in Skagit County. The program would support the voluntary and permanent conservation of private farm, forest, and open space lands while encouraging development in urban areas and certain rural areas best suited for additional growth.

Background

Process Initiation

Skagit County began its current review and consideration of transfer of development rights and related conservation and development incentives programs in 2012. With the help of a state grant, the County established and worked with a TDR Advisory Committee from 2012 to 2014 ([Resolution R20120276](#)); conducted a market analysis looking at the economic underpinnings of such a program here in Skagit County ([Skagit County TDR Market and Economic Analysis](#)); and developed a report evaluating conservation and development incentive options ([Project Findings and Program Recommendations](#)).

In 2014, the Board of County Commissioners reviewed the report and heard directly from a cross-section of Advisory Committee members, including those supportive of implementing a program and those opposed to doing so, as well as from members of the public. Following that review, the Board directed the Department to develop a legislative proposal based largely on the recommendations of the Advisory Committee majority ([Resolution R20140298](#); [Committee Recommendations](#)).

Following another public hearing, the Board added the proposal to the 2014 Docket of Comprehensive Plan Amendments, directing that the proposal move forward for consideration by the public and the Planning Commission in 2015, with final action expected by the Board of County Commissioners before the end of 2015 ([Resolution 20140390](#)).

Purpose and Need for the CDI Program

The basic purpose of the program is to generate a new source of private market support for farm, forest, and open space land conservation to complement existing publicly funded programs such as Farmland Legacy. (See: “Is additional conservation needed?” Chapter 4, p. 29, in the [Project Findings and Program Recommendations](#) report).

Agricultural Land Preservation

After nearly 20 years in existence, as one of the nation’s most successful purchase of development rights (PDR) programs, Skagit County’s Farmland Legacy Program has conserved about 10,000 acres of Ag-NRL land. While that is a very sizable amount of farm land in permanent conservation, it represents only about 15% of the 67,000 acres of land designated Ag-NRL that is estimated to be in agricultural production.

- Looked at another way, at the Farmland Legacy Program’s historic rate of conservation, it would take more than *100 years* to permanently conserve all of the Ag-NRL lands estimated to be in agricultural production. That’s assuming that the land hasn’t been developed in the meantime.¹

¹ The current residential development potential on Ag-NRL is 1 residence that is accessory to a farm operation per 40 acres. However, zoning is not permanent and could be changed over time.

The County's GIS Department estimates an additional 9,500 acres of land in Rural Reserve and Rural Resource-NRL are also used for agricultural production; however, those lands are not eligible for conservation through Farmland Legacy.

While local conservation futures tax dollars dedicated to the Farmland Legacy Program have remained relatively steady over time, fluctuating with the value of assessed property in the County, the federal funds that the program has relied heavily on have declined steeply in recent years, with none received in 2014. Federal dollars now also come with onerous conditions that make conservation easements purchased with those dollars extremely complicated to implement and unpopular with many Ag-NRL land owners.

The Board of County Commissioners has indicated the desire to explore new sources of conservation funding that can supplement Farmland Legacy, support conservation of farmlands not eligible for the Farmland Legacy Program, and conserve forest and open space lands that lack their own dedicated source of conservation.

Forest Land Conservation

Conservation of forest resource lands is important due to significant growth pressures expected on those lands in coming years. According to *The Future of Washington Forests Report*, developed by the University of Washington's College of Forest Resources with significant input from the forest products industry:

Expanding exurban populations are placing increased development pressures on Washington's working forests and are changing these forested landscapes into non-forestry uses. Much of this change is from privately-owned forests converting into residential and commercial development, resulting in significant implications for Washington state, such as the potential decline in a readily available and sustainable timber supply for the forest products industry; a decrease in the quality and quantity of forests available for wildlife habitat, clean water production and storage, carbon sequestration and decreased recreation opportunities.²

The report continues that "forestland along the I-5 corridor will likely undergo the most conversion....[with] areas in Whatcom and Skagit counties are likely to have housing densities increase by 20-40 percent on private forestlands..."

This year has seen historic drought and wildfire conditions in Washington State, and many climate forecasters see similar conditions becoming increasingly common in the future. Against that backdrop, the Skagit County Natural Hazard Mitigation Plan warns of wildfire risks generated by increasing residential development in forested lands:

While there have always been homes built in wooded areas, in recent years, the numbers of people choosing to build in or very near forest areas has increased dramatically as city limits have expanded into previously unpopulated and forested

² University of Washington College of Forest Resources, "Land Conversion and Cascade Foothills Forestry Viability" (Study 4), *The Future of Washington's Forests and Forest Industries: Final Report*, July 31, 2007, p. 239, and p. 273.

areas. As the population of Skagit County increases and people desire to live in more rural or isolated areas outside of the floodplain, development in the wildland-urban interface will continue to expand thereby increasing the potential risk to lives and property from wildland and wildland urban-interface fires.³

Projected growth

Indeed, over the next 20 years, Skagit County is projected to grow by more than 35,000 people, from the present population of about 120,000 to a projected population of more than 155,000 by 2036. That is about as many people as currently live in the City of Mount Vernon. Many of the new residents will be drawn by the County's rural character, including its agricultural landscape, forested hillsides, and open space lands. At the same time, that growth will create pressure for development of some of the same lands and resources cherished by current and new residents alike for their contributions to the local quality of life and to Skagit County's natural resource economy.

With the implementation of the Conservation and Development Incentives Program, that growth can help contribute to the conservation of the farm, forest and open space lands and resources that make Skagit County an increasingly unique setting in Western Washington.

Proposal Overview and Summary

Conservation and Development Incentives Program

The Conservation and Development Incentives (CDI) 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.

³ Skagit County Department of Emergency Management, *Skagit County Natural Hazard Mitigation Plan*, 2014, p. 77.

- 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.

Proposal Structure

The proposal would add policies to the following Skagit County Comprehensive Plan elements:

- Chapter 2, the Urban, Land Use & Open Space Element;
- Chapter 3, the Rural Element; and
- Chapter 4, the Natural Resource Lands Element.

The proposal would also 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. The Records of Survey chapter, which is very brief, would be recodified as Section 14.02.090, under Chapter 14.02 General Provisions.

Program Structure

The structure and terminology of the program have changed somewhat in drafting the policy and code language for the proposed program. The Department sought to avoid the creation of two separate and potentially redundant codes and 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; and one for transfer of development rights transactions, where developers and landowners would buy and sell development rights on the private market. See Exhibit A at the end of this memo.

Instead, the CDI 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.

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 or 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 offers the easement at 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 through 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, in consultation with the 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 database.
- Track conveyances, including sales prices, of any development credits in the database.
- 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.

Analysis and Recommendation

The Department recommends that the Planning Commission **recommend approval** of the proposal to the Board of County Commissioners for the following reasons:

- The Skagit County Comprehensive Plan (and GMA) encourage the use of innovative tools like transfer of development rights and density bonuses to complement the County's existing land use policy and regulatory framework. The concepts underlying the CDI proposal have undergone lengthy review and careful consideration over the past several years. Having invested the time and resources to evaluate those concepts and develop the proposal, the County should take the next step and implement the program.
- The CDI program would help to implement the goals, policies, and objectives of the Growth Management Act and the Skagit County Comprehensive Plan by supporting the voluntary conservation of farm, forest and open space lands; offering incentives to developers to concentrate development in areas best suited for additional growth; and engaging the private market to support land conservation.

- The program would complement the Farmland Legacy Program by providing another means of support for conservation of Ag-NRL lands or other productive farmlands that are not eligible for Farmland Legacy participation. It could also assist in the conservation of forest and open space lands.
- As the development market in Skagit County picks up, the County can show foresight and leadership by implementing a program that can be used as market conditions continue to improve. By implementing a program now, the County can encourage and enable additional cities to participate over time.
- Jurisdictions that plan under the Growth Management Act—including Skagit County and the cities and towns within the County—must plan on a 20-year horizon. Planning decisions made today will guide land use and conservation patterns over the next 20 years. If a conservation and development incentives program is to be successful in the future, it needs to be incorporated into the planning framework now.
- A majority of the members of the Advisory Committee that spent two years evaluating conservation and development incentive programs supported the County implementing such a program. Those members spanned a wide range of interests, including residential development, conservation, farming, farmland preservation, forest policy, and urban planning.
- The CDI program would provide additional options for rural and natural resource land owners who want to permanently conserve their lands. A voluntary program would be landowner friendly, respect private property rights, and provide a new source of revenue for interested landowners.
- Finally, as discussed in the Background section above, the Board of County Commissioners has repeatedly indicated interest in moving forward with implementation of an incentives program like the CDI program.

Consistency

As noted above, the CDI program would be consistent with and help to implement the goals, policies, and objectives of the Growth Management Act and the Skagit County Comprehensive Plan by supporting the voluntary conservation of farm, forest and open space lands; offering incentives to developers to concentrate development in areas best suited for additional growth; and engaging the private market to support land conservation.

The program would complement the Farmland Legacy Program by providing another means of support for the conservation of Ag-NRL lands or other productive farmlands that are not eligible for Farmland Legacy participation. It would also prove beneficial for the conservation of forest and open space lands.

The program encourages and enables cooperation between the County and the cities and towns in terms of establishing development priority areas within those municipalities and identifying city and town conservation priorities within or outside of urban growth areas that can be furthered through such cooperation.

Process

The Skagit County SEPA Responsible Official has issued a Determination of Non-Significance for this non-project legislative proposal.

Public Notices

Skagit County issued the following notices for this project:

- 60-day notice to the Department of Commerce (September 24, 2015)
- Notice of Availability via the PDS email mailing list (September 24, 2015)
- Published legal notice in the Skagit Valley Herald (September 24, 2015)
- SEPA notice distributed to local and state agencies and tribes (September 24, 2015)

Public Comment

The proposal will receive at least one public hearing and written comment period before the Planning Commission, consistent with the process for adoption of plans and land use regulations in SCC Chapter 14.08. That hearing is scheduled for Monday, November 2, 2015. The Planning Commission will subsequently deliberate on the proposal and forward a recommendation to the Board of County Commissioners.

The Board of County Commissioners must approve the final adoption. Information on how to comment is contained in the Notice of Availability document on the project website.

For More Information

Please visit the project website at www.skagitcounty.net/cdip

Exhibit A: Diagram of Proposed Program

Skagit County Conservation and Development Incentives Program

