An Ordinance Adopting Changes to SCC 14.04 and SCC 14.24 and Enrolling Skagit County in the ESHB 1886 Voluntary Stewardship Program for Critical Areas Protection

Whereas the Washington State Legislature, through Engrossed Substitute House Bill 1886, effective July 22, 2011, created a Voluntary Stewardship Program ("VSP") for protection of critical areas in areas of agricultural activities while safeguarding Skagit County's agricultural industry from litigation and excessive regulatory burden.

Whereas, over the course of the past fifteen years, Skagit County has incurred more than $5,000,000 in legal costs defending Skagit Valley's agricultural industry against lawsuits over critical areas;

Whereas, pursuant to ESHB 1886, counties that wish to enroll must do so by January 22, 2011;

Whereas ESHB 1886 makes enrollment in the VSP "an alternative to protecting critical areas in areas used for agricultural activities through development regulations";

Whereas Skagit County is currently under order from the State Growth Management Hearings Board to make the County's Critical Areas Ordinance for Ongoing Agriculture compliant with the Growth Management Act by December 28, 2011;

Whereas, on August 9, 2011, the Board of County Commissioners adopted Resolution R20110239, creating a work program and schedule for consideration of enrollment in the VSP;

Whereas, on August 23, 2011, the Planning Commission held a workshop to review the current Critical Areas Ordinance, and a work session on October 4, 2011, to review the Voluntary Stewardship Program;

Whereas Skagit County Planning & Development Services ("PDS") created a webpage for this project that includes the background, the proposal, meeting information, and many other related documents and video links;

Whereas, in advance of the Planning Commission workshop, PDS provided broad notice to the community and stakeholders, mailing a a postcard to approximately 340 stakeholders; emailing the text of that postcard to the County's press release email list, the PDS community email list, and the County's Salmon Strategy email list;

Whereas, on October 4, 2011, the Planning Commission held a work session to review the Voluntary Stewardship Program with staff and representatives from the Skagit County Agriculture Advisory Board, Skagit County Conservation District, and Washington State Conservation Commission;

Whereas, on October 12, the County's Agricultural Advisory Board voted 7-1 to support enrollment in the VSP and to recommend nomination of both the Samish and Skagit as state priority watersheds;

Whereas, on October 13, 2011, PDS released for public comment proposed modifications to the Critical Areas Ordinance for Ongoing Agriculture as currently codified in SCC Chapter 14.04 ("definitions") and SCC Chapter 14.24 ("critical areas");

Whereas the SEPA Responsible Official has issued a Determination of Non-Significance for this non-project proposal to amend SCC 14.04 and 14.24;

Whereas, pursuant to ESHB 1886 § 4(2)(b), Skagit County invited agricultural and environmental groups and local tribes to confer regarding County enrollment in the VSP.

Whereas, on November 1, 2011, the Planning Commission held a public hearing on the proposal;

Whereas, on November 15, 2011, the Planning Commission deliberated on the proposal and voted 8-0 to recommend enrollment and adoption of amendments to SCC 14.04 and 14.24 as reflected in the attached Planning Commission Recorded Motion;

Whereas PDS and Skagit County Public Works prepared an analysis of the costs and benefits of enrollment in the Voluntary Stewardship Program, as well as an analysis of the factors identified in ESHB 1886 § 4(3) for identification of watersheds to participate in the program and in § 4(4) for nomination of priority watersheds;

Whereas the Board of County Commissioners considered those factors in deliberations on this ordinance;

Now Therefore Be It Ordained That The Board of County Commissioners:

Section 1. Elects to enroll the entirety of unincorporated Skagit County, and all of its watersheds, in the Voluntary Stewardship Program established by Engrossed Substitute House Bill 1886 (2011).

Section 2. Nominates the Samish and Skagit watersheds for consideration by the State Conservation Commission as priority watersheds.

Section 3. Adopts the amendments to SCC 14.04 and 14.24 as recommended by the Planning Commission in the attached Recorded Motion dated November 15, 2011.

Section 4. Directs the Public Works Department, in coordination with PDS and Health Department, to begin implementing the Voluntary Stewardship Program. Public Works should implement aspects of the Program that do not rely on external funding as soon as possible, and work to integrate existing watershed programs into the VSP to avoid duplication of effort and maximize effectiveness.

Witness Our Hands and the Official Seal of Our Office this 19 day of December, 2011.

Board of County Commissioners
Skagit County, Washington

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Sharon D. Dillon, Commissioner

SKAGIT COUNTY COMMISSIONERS SEAL COURT STATE OF WASHINGTON

ATTEST:

Linda Hammons, Clerk
Skagit County Board of Commissioners

APPROVED AS TO CONTENT:

Gary R. Christensen, Director
Planning & Development Services

APPROVED AS TO FORM:

Ryan Walters, Civil Deputy
Skagit County Prosecutor's Office

Skagit County Planning Commission's Recorded Motion Recommending Changes to the Critical Areas Ordinance for Ongoing Agriculture and Enrollment in the ESHB 1886 Voluntary Stewardship Program

WHEREAS, Skagit County is currently under order from the State Growth Management Hearings Board to make the County's Critical Areas Ordinance for Ongoing Agriculture compliant with the Growth Management Act by December 28, 2011;

WHEREAS, the Washington State Legislature, through Engrossed Substitute House Bill 1886, effective July 22, 2011, created a Voluntary Stewardship Program ("VSP") for protection of critical areas in areas of agricultural activities;

WHEREAS, the legislation makes enrollment in the VSP "an alternative to protecting critical areas in areas used for agricultural activities through development regulations";

WHEREAS, pursuant to ESHB 1886, counties that wish to enroll must do so by January 22, 2011;

WHEREAS, on August 9, 2011, the Board of County Commissioners, through Resolution R20110239, found it in the best interest of Skagit County, its agricultural community, and the needs of Skagit River basin fish and wildlife, including anadromous fisheries, to evaluate the potential enrollment in the ESHB 1886 Voluntary Stewardship Program;

WHEREAS, through Resolution R20110239, the Board of County Commissioners instructed County staff to develop a draft ordinance for consideration by the Planning Commission that complies with ESHB 1886 §4(1)(b) and integrates the Voluntary Stewardship Program into the County's Critical Areas Ordinance;

WHEREAS, on August 23, 2011, the Planning Commission held a public workshop to consider enrolling in the Voluntary Stewardship Program and to provide input into the development of draft ordinance language. Notice for this workshop was made by mailing a postcard to approximately 340 individuals and organizations from the ag-fish postal mailing list, sent electronically to subscribers of the County's press release email list, the PDS email list, and the Salmon Strategy email list;

WHEREAS, on October 12, the County's Agricultural Advisory Board voted 7-1 to support enrollment in the VSP and to recommend nomination of both the Samish and Skagit as state priority watersheds;

WHEREAS, on October 13, 2011, a notice of availability, SEPA determination of nonsignificance, and public hearing notice was issued and published and mailed to interested parties;

WHEREAS, on October 14, 2011, the same notice along with supporting documents, was posted on the County website and sent to the Department of Commerce, in accordance with RCW 36.70A.106(3)(b);

WHEREAS, pursuant to ESHB 1886 § 4(2)(b), Skagit County invited agricultural and environmental groups and local tribes to confer about County enrollment in the VSP;

WHEREAS, on November 1, 2011, the Skagit County Planning Commission held a public hearing and received public testimony and comments through the end of the public hearing; and

WHEREAS, on November 10, 2011, the Department published responses to those comments on the County website;

WHEREAS, on November 15, 2011, the Skagit County Planning Commission met to review the public comments, consider the Department's recommendation, and to deliberate on the proposed action.

Now Therefore Be It Resolved:

After duly considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendation to the Board of County Commissioners:

Findings of Fact and Reasons for Action

1. The viability of agriculture, as well as the recovery of salmon populations, is of critical importance to Skagit County and its citizens.

2. The long history of expensive litigation surrounding Skagit County's critical areas ordinance for ongoing agriculture has not benefited agriculture or salmon.

3. The Voluntary Stewardship Program ("VSP") established by Engrossed Substitute House Bill 1886 (2011) offers a new opportunity for real progress to be made toward protection of salmon and riparian habitat, without imposing new mandatory requirements on agriculture.

4. By creating "an alternative to protecting critical areas in areas used for agricultural activities through development regulations," enrollment in the VSP offers an exit to costly litigation and sets the stage for a new cooperative approach to salmon recovery and enhancement of agricultural lands.

5. Local drainage and irrigation districts and the Western Washington Agricultural Association worked with many agencies, including WDFW, NOAA-NMFS, and the US Army Corps of Engineers, to develop the Drainage-Fish Initiative (DFI) and the Tidegate-Fish Initiative (TFI) under which the impacts on critical areas from the maintenance of drainage infrastructure are mitigated.

6. In order to be successful with any work plan later adopted to implement the VSP, all parties must commit to the difficult task of working cooperatively, in good faith, with a steady focus on the outcome of balancing critical areas protection and preservation of agriculture.

7. Enrollment in the Voluntary Stewardship Program is consistent with Comprehensive Plan policies and Countywide Planning Policies regarding conservation of agriculture and sustainable use of natural resources, as well as policies encouraging incentive-based methods of protecting fish and wildlife habitat conservation areas.

Recommendation

Based on the above findings and reasons for action, Dave Hughes moved and Annie Lohman seconded that the Skagit County Planning Commission recommend that the Board of County Commissioners:

1. Adopt the proposed code amendments to SCC Title 14.04 and 14.24 as reflected in Attachment A.
2. Enroll the entirety of Skagit County, and all of its watersheds, in the Voluntary Stewardship Program established by Engrossed Substitute House Bill 1886 (2011).
3. Nominate the Samish and Skagit watersheds for consideration by the State Conservation Commission as priority watersheds.

Commission Vote	Support	Oppose	Absent	Abstain
Jason Easton, Chair	✓			
Mary J. McGoffin, Vice Chair	✓			
Josh Axthelm	✓			
Carol Ehlers	✓			
Dave Hughes	✓			
Annie Lohman	✓			
Matt Mahaffie	✓			
Elinor Nakis	✓			
	8	0	0	0

SKAGIT COUNTY PLANNING COMMISSION
SKAGIT COUNTY, WASHINGTON

Jason Easton, Chair — Date 11/15/11

Gary R. Christenson, Secretary — Date 11/15/11

Attachment A
Recommended Changes to Critical Areas Ordinance for Ongoing Agriculture (SCC 14.04.020, 14.24.070, 14.24.120)

14.04.020 Definitions

[The following definitions in SCC 14.04.020 are hereby modified as follows:]

Agriculture or agricultural activity: the use of land for commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, cottonwood trees, Christmas trees (not subject to excise tax imposed by RCW ~~84.33.100 through~~ 84.33.140), or livestock, including those activities directly pertaining to the production of crops or livestock including, but not limited to, cultivation, harvest, grazing, on-site animal waste storage and disposal, fertilization, the operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities, or improved areas. ~~Activities that bring an area into agricultural use are not considered agricultural activities. In addition, in order for parcels of land under 20 acres to qualify under this definition, they must meet the criteria of RCW 84.34.020(2)(b) and (c).~~

Agronomic rates: means a quantity of animal waste, process wastewater, or other crop nutrients that, when added to the soil by mechanical means, will achieve crop production goals. The determination of agronomic rate shall take into account the nutrient requirements of the crop production system, including crop nutrient requirements, amounts of nutrients applied as waste or wastewater and commercial fertilizer, amounts of irrigation water, amounts present in the soil, and losses of nutrients through denitrification, ammonia volatilization and leaching, and State water quality standards.

Artificial watercourse: ditches and other water conveyance systems, not constructed from natural watercourses, which are artificially constructed and actively maintained for irrigation and drainage. Artificial watercourses include lateral field ditches used to drain farmland where the ditch did not replace a natural watercourse.

Best management practices (BMPs), agricultural: practices or structures designed to reduce the quantities of pollutants such as sediment, nitrogen, phosphorus, and animal wastes that are washed by rain and snow melt from farms into nearby surface waters such as lakes, creeks, streams, rivers, and estuaries. Agricultural BMPs can include fairly simple changes in practices such as fencing cows from streams to keep animal waste out, planting grass in gullies where water flows off a planted field to reduce the amount of sediment that runoff picks up as it flows to rivers and lakes, reducing the amount of plowing in fields where row crops are planted to reduce soil erosion and nitrogen and phosphorus loss from fertilizers applied to the crop land. BMPs can also involve building structures, such as large animal waste storage tanks that allow farmers to choose when to spread manure on their fields as opposed to spreading it based on accumulated volume.

Best management practices (BMPs), critical areas: physical or structural tools and/or management practices which, when used singularly or in combination, prevent or reduce adverse impacts to critical areas or their buffers. When used in the context of agricultural activities, BMPs refers to the most current conservation practice standards developed by the Natural Resource Conservation Service (NRCS) and contained in the Field Office Technical Guide, or other practices identified by NRCS, an NRCS technical service provider, or other qualified ~~expert~~ professional as adequately addressing the applicable resource impact issues to meet the requirements of the Critical Areas Ordinance, Chapter 14.24 SCC. In cases where new standards have been developed to address requirements under the Endangered Species Act, these new standards shall apply. Where no new standard has been developed, the existing NRCS standard shall apply. BMPs are used in various voluntary Federal programs that provide technical support and funding incentives.

Ongoing agriculture: the continuation of any existing agricultural activity on Agricultural—Natural Resource lands or Rural Resource—Natural Resource lands, including crop rotations; provided, however, that for lands in RRc-NRL that are subject to the provisions of SCC 14.24.120, any property owner who applies for and receives CaRD approval under SCC 14.18.300 through 14.18.330 shall, at the time of CaRD approval, automatically be subject to the buffer requirements of SCC 14.24.530 and shall no longer be subject to the provisions of SCC 14.24.120. Activities undertaken for the first time after May 13, 1996, the date Skagit County adopted Ordinance 16156, the Critical Areas Ordinance, do not constitute "ongoing agriculture"; provided, that any lands that were fallow on May 13, 1996, but had been in agricultural production within 5 years prior to May 13, 1996, shall be considered "ongoing agriculture" for purposes of this definition. Activities that bring an area into agricultural use are not considered ongoing agriculture. In addition, in order for parcels of land under 20 acres to qualify under this definition, they must meet the criteria of RCW 84.34.020(2)(b) and (c).

~~Qualified expert: a person having substantial demonstrated experience as a practicing specialist and who has a degree in a related field from an accredited college or university or who has equivalent training.~~

Qualified professional: a person with experience and training in the applicable field or critical area. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geology or related field, and 2 years of related work experience.

(1) A qualified professional for watercourses, wetlands, and wildlife habitat conservation areas must have a degree in biology or related field and relevant professional experience in functional assessment and mitigation techniques.

(2) A qualified professional for preparing geotechnical reports and geotechnical design recommendations must be a professional geologist or geotechnical engineer, licensed in the State of Washington.

(3) A qualified professional for critical aquifer recharge areas must be a hydrogeologist or professional engineer, licensed in the State of Washington, who is trained and qualified to analyze geologic, hydrologic, and groundwater flow systems.

Request for investigation: is the written statement filed as described in SCC 14.44.010.

Resource management system conservation plan (RMS plan): is a plan that has been prepared in consultation with the Skagit Conservation District or the Natural Resources Conservation Service (NRCS), may or may not include enrollment in the ~~conservation reserve enhancement program~~ Conservation Reserve Enhancement Program (CREP), and includes conservation practices and resource management objectives that meet the NRCS Field Office Technical Guide minimum resource protection standards of Section 4 thereof and quality criteria of Section 3 thereof for each natural resource (soil, water, animals, plants and air).

Technical service provider: is an individual, nonprofit organization, private entity or public agency that has been certified or "conditionally certified" by the Natural Resources Conservation Service to provide technical assistance on behalf of the United States Department of Agriculture in conservation planning and the design, layout, and checkout of approved conservation practices.

V-ditching: is the practice of cutting ditches into a field after the crop has been harvested in the fall where necessary to drain surface and groundwater from the field during the winter months. This practice is necessary to allow sufficient time in the spring for the fields to dry out before planting and to prevent the inundation of over-wintering crops. V-ditches are then plowed under when the field is planted in the spring.

Watercourse: shall include all natural watercourses, modified natural watercourses, and artificial watercourses, as defined by this Section.

~~Water quality standards violation: is a violation of the standards in SCC 14.24.120(3)(a)(i) through (iii).~~

Watercourse protection measure violation: is a violation of the required watercourse protection measures for ongoing agriculture in SCC 14.24.120(4).

14.24.070 Activities allowed without standard review.

(1) [No change]

(2) [No change]

(3) [No change]

(4) [No change]

(5) [No change]

(6) [No change]

(7) Provided the requirements of SCC 14.24.120(4)(d) are met for ongoing agriculture, the lawful operation and maintenance of public and private diking and drainage systems which protect life and property along the Skagit and Samish Rivers and tidal estuaries in Skagit County. This exemption ~~shall apply~~ applies to the existing structures and design prism of levees, dikes, and artificial watercourses ~~and the following subflood control zones: Britt Slough SFCZ, Dunbar SFCZ~~ 40 feet landward of the landward toe of the structure or facility and 40 feet waterward of the waterward toe of the structure, measured horizontally from the face of the levee, dike or bank of the artificial drainage structure toward the ordinary high water mark. The exempt area for operation and maintenance may be managed to meet federal standards for funding assistance established by the United States Army Corps of Engineers under Public Law 84-99 or other laws and regulations adopted to guide the diking and drainage functions. This exemption ~~shall~~ does not apply to public or private activities ~~which~~ that expand the levee, dike, or drain beyond its design characteristics as of June 1, 1999, ~~at~~ the time of adoption of this ~~Critical Areas Ordinance,~~ paragraph; ~~and~~ nor activities ~~which~~ that expand or create new facilities ~~shall not be exempt~~.

(8) [No change]

(9) [No change]

(10) [No change]

(11) [No change]

(12) [No change]

14.24.120 Ongoing agriculture.

(1) Purpose and Intent. The purpose of this Section is to address 2 mandates under the Growth Management Act (GMA): (a) to protect the existing functions and values of fish and wildlife habitat conservation areas (FWHCAs) in and adjacent to natural, modified natural, and artificial watercourses as defined in SCC 14.04.020 (collectively "watercourses"), and (b) to conserve and protect agricultural lands of long-term commercial significance, specifically those lands in ongoing agricultural activity as defined by SCC 14.04.020 that are located adjacent to these watercourses.

(a) For purposes of this Section, "existing functions and values" ~~shall~~ means the following:

(i) Water quality standards identified in Chapter 173-201A WAC, including the provisions that account for natural or baseline conditions.

(ii) The existing presence or absence of large woody debris within the watercourse.

(iii) The existing riparian buffer characteristics and width, including but not limited to the existing amount of shade provided by the existing riparian buffer.

(iv) The existing channel morphology.

(b) Because many of the areas that are the subject of this Section are located in the Skagit and Samish River deltas or floodplains, where substantial diking, and drainage ~~and subflood control zone~~ infrastructure have been constructed and where various diking and drainage districts ~~and subflood control zones~~ have lawful obligations to maintain agricultural and other drainage functions and infrastructure as established in RCW Titles 85 and 86, this Section also must accommodate those ongoing diking, drainage, and flood control functions. ~~Agricultural operations on lands which are not included in the definition of ongoing agriculture are required to comply with the other provisions of this Chapter.~~

(c) It is the goal of Skagit County to administer the provisions of this Section consistent with local, State, and Federal programs, statutes and regulations to protect the health, welfare, and safety of the community, to accommodate continued operation and maintenance of the diking, drainage, and flood control infrastructure and to protect agriculture, natural resources, natural resource industries, and fish and wildlife habitat conservation areas in and adjacent to watercourses. This Section is intended, to the maximum extent possible, to rely on and coordinate with but not substitute for or duplicate other State and Federal programs, statutes, and regulations that address agricultural activities in a manner that protects water quality and fish habitat. This Section is intended to supplement those existing State and Federal programs, statutes, and regulations only in those areas where the County has determined existing programs do not fully address GMA requirements to protect FWHCAs in and adjacent to watercourses and to conserve agricultural lands of long-term commercial significance.

~~(d) Because this Section only applies to areas in ongoing agriculture, and applies to artificial and modified natural watercourses as defined in SCC 14.04.020 that have been constructed and/or maintained to address drainage and flood control mandates under RCW Titles 85 and 86, most of the existing functions and values of the FWHCAs at issue in this Section no longer contain all of the natural, forested riparian buffer attributes and associated functions and values identified as necessary for fish habitat. As such, this Section is to be applied in conjunction with the monitoring, adaptive management and habitat commitments described in Resolution No. R20030210 to more fully address all of the habitat function and value requirements necessary to make County-wide progress towards the County's goal to restore, where necessary, and maintain healthy salmon runs in these river systems.~~

(d) Skagit County hereby elects to enroll the entirety of unincorporated Skagit County, and all its watersheds, in the Voluntary Stewardship Program established by Engrossed Substitute House Bill 1886 (2011). Skagit County intends the Voluntary Stewardship Program, in conjunction with the provisions of this Section and Chapter, to protect critical areas in areas of agricultural activity.

(2) Applicability. Except as may otherwise be required by ESHB 1933, Chapter 321, Laws of 2003, for agricultural lands located within the jurisdiction of the Shoreline Management Act, Chapter 90.58 RCW, this Section shall apply to the following:

(a) As defined in SCC 14.04.020, all ongoing agriculture (including operation and maintenance of agricultural drainage infrastructure) which is located within 200 feet from a watercourse, or any ongoing agriculture (including operations and maintenance of agricultural drainage infrastructure) ~~which~~ that adversely impacts the existing functions and values of a watercourse, ~~shall be~~ is subject to the requirements of this Section. Isolated, artificial watercourses that have no channelized surface hydraulic connection or no piped hydraulic connection between the artificial watercourse and any natural or modified natural watercourse or any salt water shall not be subject to the requirements of this Section. Drainage tile used to convey groundwater shall not be considered a piped hydraulic connection.

(b) The provisions of this Section shall not be interpreted to permit expansion of ongoing agriculture (including agricultural drainage infrastructure) into areas that did not meet the definition of ongoing agriculture on May 13, 1996, including lands that were fallow on that date but had been in agricultural production within 5 years prior to that date, unless such expansion can comply with all of the requirements for critical areas protection found in this Chapter, including but not limited to the requirement to adhere to the standard critical areas buffers and setbacks.

(c) In this Section, the term "best management practices (BMPs)" refers to one or all definitions of that term in SCC 14.04.020, depending on which definition is relevant within the context used.

~~(c)~~(d) Agricultural operations ~~on lands which are not included in~~that do not meet the definition of ongoing agriculture are required to comply with the other provisions of this Chapter.

(3) No Harm or Degradation Standard.

(a) All ongoing agricultural activities ~~shall~~ must be conducted so as not to cause harm or degradation to the existing functions and values of FWHCAs in and adjacent to watercourses (the "no harm or degradation" standard). For purposes of this Section, the ~~term~~ phrase "no harm or degradation" ~~shall~~ means the following:

(i) Meeting the state water pollution control laws~~water quality standards required by Chapter 90.48 RCW (Water Pollution Control Act) and Chapter 173-201A WAC, including the provisions that apply if a natural or baseline condition already exceeds listed water quality standards~~; and

(ii) Meeting the requirements of any total maximum daily load (TMDL) ~~requirements~~ water quality improvement projects established by the Department of Ecology (ECY) pursuant to Chapter 90.48 RCW; and

(iii) Meeting all applicable requirements of Chapter 77.55 RCW (Hydraulics Code) and Chapter 220-110 WAC (Hydraulics Code Rules); and

(iv) Meeting the specific watercourse protection measures for ongoing agriculture specified in Subsection (4) of this Section; and

(v) No evidence of significant degradation to the existing fish habitat characteristics of the watercourse from those characteristics identified in the baseline inventory described in Resolution No. ~~R20030210~~ R20040211 that can be directly attributed to the agricultural activities that are described in this Section.

(b) The references to Chapters 77.55 and 90.48 RCW and Chapters 173-201A and 220-110 WAC contained in this Subsection shall not be interpreted to replace ECY and the Washington Department of Fish and Wildlife (WDFW) authority to implement and enforce these State programs with County responsibility to do so, but rather are intended to provide County input and a supplemental County involvement as needed to implement the County's GMA obligations under this Section.

(c) Reserved. ~~Owners or operators regulated under this Subsection shall conduct their ongoing agricultural operations in a manner sufficient to meet the "no harm or degradation" standard of Subsection (3)(a) of this Section, including, if necessary, developing and implementing BMPs to meet this standard. The owner or operator may choose but is not required to consult with the Skagit Conservation District (SCD), the Natural Resource Conservation Service (NRCS), an NRCS technical service provider, the Washington State University Extension Service or other qualified expert as defined in SCC 14.04.020 to determine what combination of BMPs are necessary to meet the "no harm or degradation" standard. BMPs must be designed for site-specific conditions and shall include pollution prevention and control measures that effectively address the following management areas:~~

~~(i) Livestock and dairy management;~~

~~(ii) Nutrient and farm chemical management;~~

~~(iii)Soil erosion and sediment control management;~~

~~(iv) Agricultural drainage infrastructure management.~~

~~Planning and Development Services shall maintain a nonexclusive list of BMPs to guide implementation of the requirements of this Subsection.~~

(d) An owner or operator is responsible only for those conditions caused by agricultural activities conducted by the owner or operator and is not responsible for conditions that do not meet the requirements of this Subsection resulting from the actions of others or from natural conditions not related to the agricultural operations. In those situations where the County is presented with data showing a violation of a State water quality standard at a particular location, but where the County cannot identify any condition or practice existing or occurring at a particular agricultural operation that is causing the violation, the County shall refer the information regarding the State water quality violation to ECY and shall follow other procedures described in SCC 14.44.085. Conditions resulting from unusual weather events (such as a storm in excess of 25-year, 24-hour storm), or other exceptional circumstances that are not the product of obvious neglect are not the responsibility of the owner or operator, but shall be subject to the requirements for emergency actions described in SCC 14.24.070(1).

(4) Required Watercourse Protection Measures for Ongoing Agriculture. Unless the emergency provisions of SCC 14.24.070(1) apply, the following watercourse protection measures ~~shall be~~ are required ~~for ongoing agriculture within 200 feet of a watercourse or ongoing agriculture which adversely impacts existing functions and values of a watercourse, except for isolated artificial watercourses that have no channelized surface hydraulic connection or no piped hydraulic connection between the artificial watercourse and any natural or modified natural watercourse or any salt water. Drainage tile used to convey groundwater shall not be considered a piped hydraulic connection. Failure to comply with these mandatory watercourse protection measures for ongoing agriculture shall result in enforcement as provided in SCC 14.44.085~~.

(a) Livestock and Dairy Management. Livestock and dairy operations ~~shall be conducted so as not to~~ must not contribute any wastes or sediments into a natural or modified natural watercourse in violation of adopted State water ~~quality standards~~ pollution control laws. ~~Livestock and dairy operations shall meet the following minimum watercourse protection measures:~~

(i) Livestock access to watercourses ~~shall~~ must be managed consistent with this Subsection. Access to a watercourse for livestock watering and/or stream crossings ~~shall~~ must be limited to only the amount of time necessary for watering and/or crossing a watercourse. Livestock watering facilities or access ~~shall~~ must be constructed consistent with applicable NRCS conservation practice standards, and ~~shall~~ must not be constructed to provide access to agricultural

land that does not meet the definition of ongoing agriculture unless that agricultural land and the crossing can meet all requirements of Chapter 14.24 SCC.

(ii) Dairy operations ~~shall~~ must comply with the requirements of Chapter 90.64 RCW (Dairy Nutrient Management Act).

(iii) Livestock pasture ~~shall~~ must be managed so as to maintain vegetative cover sufficient to avoid contributing sediments to a watercourse in violation of State water ~~quality standards~~pollution control laws.

(iv) Any existing or new livestock confinement or concentration of livestock areas that is located upgradient from a watercourse which results in bare ground (such as around a watering trough) ~~shall~~ must be constructed and maintained to prevent sediment and/or nutrient runoff contaminants from reaching a watercourse in violation of State water ~~quality standards~~pollution control laws.

(b) Nutrient and Farm Chemical Management.

(i) The owner or operator ~~shall~~ must not place manure in a watercourse or in a location where such wastes are likely to be carried into a watercourse by any means. Spreading of manure within 50 feet of any watercourse, and~~/or~~ spreading of liquid manure on bare ground, is prohibited from October 31st to March 1st ~~is prohibited~~; unless otherwise permitted pursuant to:

(A) An approved and implemented dairy nutrient management plan (DNMP) as prescribed by Chapter 90.64 RCW; or

(B) ~~Approved and implemented BMPs~~A farm plan prepared or approved by the Conservation District~~; or~~.

~~(C) A year when the County determines that conditions support an extension of the deadline, as described in Subsection (4)(b)(ii) of this Section.~~

~~(ii) Each year, prior to March 1st and prior to October 31st, the County shall determine whether this work window should be extended, delayed, or shortened, based on weather, soil and fish run characteristics in that particular year. The County will consult with agencies with expertise in making this determination. The County shall provide notification regarding changes to this work window through media, recorded messages, updates on its website, and/or other means reasonably calculated to reach the intended recipients.~~

~~(iii)~~(ii) Agricultural operators ~~shall~~ may not apply crop nutrients other than at agronomic rates ~~which are~~ recommended for that particular crop.

~~(iv)~~(iii) Farm chemicals ~~shall~~ may only be applied consistent with all requirements stated on the chemical container labels and all applicable Federal and State laws and regulations, such as Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act), and 7 ~~United States Code (~~USC~~)~~ 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act).

(c) Soil Erosion and Sediment Control Management.

(i) Roads used for ongoing agricultural activities ~~shall~~ must be designed such that road surfaces, fill, and associated structures are constructed and maintained to avoid contributing sediment to watercourses.

(ii) Agricultural equipment operation ~~shall~~ must not cause watercourse bank sloughing or other failure due to operation too close to the top of the bank.

(iii) Watercourse construction and maintenance ~~shall~~ must meet the requirements for drainage operation and maintenance described under Subsection (4)(d) of this Section.

(iv) ~~All~~ V-ditching ~~shall~~ must not be constructed to drain into a watercourse that ~~does not~~ contains salmonids, unless the topography of the field is such that the only alternative to drain the field by gravity is to drain the V-ditch into a watercourse that does contain salmonids. When draining a V-ditch into a watercourse that does contain salmonids, appropriate BMPs should be used to avoid contributing excess amounts of sediment to the watercourse. For the purpose of determining whether a watercourse contains salmonids, the County will use salmonid distribution based on the "limiting factors analysis" data compiled by the Washington State Conservation Commission.

(d) Operation and Maintenance of Public and Private Agricultural Drainage Infrastructure. The following practices ~~shall~~ apply to any watercourse that is part of drainage infrastructure, except those practices performed pursuant to a fully-executed Drainage-Fish Initiative or Tidegate-Fish Initiative agreement:

(i) Regularly scheduled agricultural drainage infrastructure maintenance that includes dredging or removal of accumulated sediments in any watercourse shall be conducted between June 15th and October 31st~~, unless this work window is changed as described in Subsection (4)(d)(A) of this Section~~. If an approved hydraulics project permit provides for a different work window, those requirements ~~shall~~ control. If presence of fall or over-winter crops prevents regularly scheduled maintenance during this time period, then the maintenance may be conducted outside this work window; provided, that the person or entity proposing to conduct the maintenance outside the work window can

demonstrate that the presence of crops prevents maintenance within the work window and provided the maintenance is conducted using best management practices to minimize sediment or other impacts to water quality.

~~(A) The County shall evaluate this work window each year prior to June 15th and prior to October 31st, to determine whether a different window is justified by current-year weather, soil and fish run conditions. The County will consult with agencies with expertise, the drainage districts and other interested parties prior to making this determination.~~

~~(B) If the County determines that a different window is justified, the County shall provide notification of such change through media, recorded messages or updates on its website, and/or by other means reasonably calculated to reach the intended recipients.~~

~~(C)~~(A) Owners or operators shall consult with districts conducting drainage maintenance to schedule their crop rotations for crops that may still be in the field after October 31st so that, to the maximum extent possible, such drainage maintenance can occur in a year when the fall crops are not being raised in the field adjacent to the drainage infrastructure scheduled for drainage maintenance.

(ii) Unless there is no feasible alternative, regularly scheduled maintenance that includes dredging or removal of accumulated sediments in any watercourse should be conducted at those times when there is no or minimal water flow in the watercourse being maintained to minimize potential for distributing sediments to salmonid-bearing waters.

(iii) Excavation spoils ~~shall~~ must be placed so as not to cause bank failures and so that drainage from such spoils will not contribute sediment to the watercourse.

(iv) Mowing or cutting of vegetation located within a watercourse that is part of drainage infrastructure may be conducted at any time; provided, that the cutting is above the ground surface within the channel and in a manner that does not disturb the soil or sediments; and provided, that the cut vegetation does not block water flow. Watercourse bank vegetation shall be preserved or allowed to reestablish as soon as practicable after drainage construction and maintenance are completed to stabilize earthen ditch banks.

(v) Districts ~~and subflood control zones~~ subject to this Section, operating pursuant to authority in RCW Title 85 or 86, which are conducting drainage activities shall complete and submit a drainage maintenance checklist to the County by June 1st of each year. The checklist shall describe the intent of the district to

comply with the drainage maintenance requirements of Subsection (4)(d) of this Section. The districts may seek assistance from NRCS, SCD and/or the County in completing the checklist or addressing the requirements of this Subsection. The checklist shall be available from Skagit County Planning and Development Services, mailed to any entity conducting drainage activities, and shall be submitted to Planning and Development Services when completed. The districts may submit modifications to the information in the checklist, if circumstances affecting district maintenance change after the initial submittal.

(A) The County shall send a written notice to any district ~~or subflood control zone~~ not submitting this completed checklist by June 1st of each year, stating that the County has not received the required checklist and that the district ~~or subflood control zone~~ is not authorized to conduct drainage maintenance activity until the district ~~or subflood control zone~~ has submitted the completed checklist evidencing intent to comply with this Subsection.

(B) Subsequent commencement of drainage maintenance work without submitting a completed checklist shall be subject to enforcement pursuant to Chapter 14.44 SCC.

(vi) Immediate measures necessary to drain fields inundated by an unanticipated flooding event or failure of the agricultural drainage infrastructure shall be subject to the requirements for emergency repair described in SCC 14.24.070(1).

(5) Recognition for Agricultural Owners and Operators Who Have Implemented Extra Watercourse Protection Measures. This Subsection intends to recognize the extra watercourse protection measures for ongoing agriculture taken by landowners or operators who have implemented an approved dairy nutrient management plan (DNMP) or resource management system plan (RMS plan) (including, but not limited to, CREP) from SCD or NRCS.

(a) Those portions of land upon which owners or operators have sought and implemented an approved DNMP or an RMS plan consistent with the conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water, animals, plants and air) ~~shall be~~are entitled to a presumption of compliance with the "no harm or degradation" standards described in Subsection (3) of this Section. The RMS plan or DNMP must include within the planning unit any watercourses located on the property, as well as all upland areas within the owner's control that could potentially adversely impact the watercourse and/or associated fish habitat.

(b) Such presumption of compliance may be rebutted and enforcement commenced as described in SCC 14.44.085 if the County obtains credible evidence that the agricultural operation is not meeting the no harm or degradation standards of Subsection (3) of this Section. To be entitled to this presumption, the owner or operator shall provide the County with documented evidence of implementation of those elements of the approved plan that are relevant to the resource impact at issue at the time a Request for Investigation (RFI) is presented to the County under SCC 14.44.010.

(6) Enforcement. ~~Enforcement of the requirements of this Subsection shall be as described in SCC 14.44.085.~~ The Department is directed to enforce the requirements of this Subsection, including the mandatory watercourse protection measures, as described in SCC 14.44.085.