



# PLANNING & DEVELOPMENT SERVICES

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## MEMORANDUM

Date: June 23, 2011  
To: Interested Parties  
From: Gary R. Christensen, AICP, Director  
Re: Skagit County's draft proposal to address federally protected endangered species (Chinook salmon and Orca whales) in "special flood hazard areas"

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New federal rules are in effect to protect the Chinook salmon and the Orca whale, both of which are protected under the Endangered Species Act. In 2008, a lawsuit was filed against the Federal Emergency Management Agency (FEMA) and its regulatory effort, or lack thereof, in protecting endangered species. Prior to the lawsuit, FEMA, who administers the federal government's flood insurance rate program, had been mostly concerned with protecting homes and business, and minimizing the flood risks to communities. Today, FEMA must now also protect salmon and whales.

The lawsuit and judicial decision affects 122 communities throughout the Puget Sound. In response, the National Marine Fisheries Service (NMFS) issued a "biological opinion" which provides guidance and options for local government compliance with Endangered Species Act. All development within "special flood hazard areas" (i.e., floodplain and floodways) must assure that no harm or adverse effect will come to bear on Chinook salmon or Orca whale. Skagit County has land use decision-making authority and regulatory responsibilities for development activities within its jurisdictional boundary.

NMFS "biological opinion" provides regulatory agencies with 3 options, commonly referred to as "doors," to choose from in meeting the federal provisions of the Endangered Species Act. The options are: (1) adopt a model ordinance and its regulatory standards, (2) utilize existing or adopt new local codes, regulations, and standards, or (3) use federal agency "consultation" on each development project, on a project-by-project basis. Skagit County is proposing to use Option 2.

Skagit County will rely on existing and new code provisions within Skagit County Code (SCC) Chapters 14.34 (Flood Damage Prevention) and 14.24 (Critical Areas), a "biological opinion compliance checklist," and an Administrative Official Interpretation (SCC 14.06.040) to protect Chinook salmon and Orca whales and to comply with the Endangered Species Act. For more information on those regulatory mechanisms which are in effect or as might be modified, see the attached documents.

Skagit County’s proposal includes draft documents, which are subject to revisions. The Skagit County Planning Commission will conduct a public meeting work session on June 28, to be followed by a public hearing on July 19, and will deliberate in August, 2011, before forwarding their recommendations to the Skagit County Board of Commissioners. It is expected that the Board of Commissioners will review and take action on the Planning Commission recommendations on, or before, September 22, 2011.

Attachments:

1. Table of Code Amendments
2. Skagit County Code, Chapter 14.34 (Flood Damage Prevention) with proposed amendments
3. Skagit County Code, Chapter 14.24 (Critical Areas) with proposed amendments
4. Biological Opinion compliance checklist
5. Biological Opinion Draft Elements of Administrative Official Interpretation
6. Biological Opinion Draft Elements of Administrative Official Interpretation, Attachment A
7. Biological Opinion Administrative Official Interpretation, Attachment B