

Skagit Audubon Conservation Notes
September 6, 2022
(Revised 9/10/22)

The first four items below were on the agenda for the September 6, 2022, Skagit Audubon board meeting.

1. **Skagit County's Shoreline Master Program - Update**

At the August 20th deadline for the September *Skagit Flyer* newsletter, it appeared the Skagit County Commissioners were directing the Planning & Development Services department to include at least a nod to climate change and sea level rise in the draft Shoreline Master Program (SMP). This followed extensive public requests, including from Skagit Audubon, to address this important issue in the plan. The SMP covers policies and regulations on river, lake, and marine shoreline use and development in the unincorporated parts of Skagit County. Consequently, I reported this improvement to the SMP draft in the *Skagit Flyer's* Conservation Report. It later came out that the Commissioners in fact intend to forward the draft SMP to the Department of Ecology for its review without even these modest improvements despite the concerted public input. The Commissioners' reasoning has not been openly shared. The Department of Ecology (DOE) will review the draft for compliance with the Shoreline Management Act and the Growth Management Act, which unfortunately do not yet require addressing climate change or sea level rise. Legislation to establish such a requirement did not pass in the last session. There remains the stated or implied intent of the county to apply for a Department of Ecology grant to enable the county's planners to develop an amendment to the SMP incorporating climate change and its effects, including sea level rise. Later this year, DOE will open a public comment period on the draft SMP and hold a public hearing. Skagit Audubon, along with other local and state-level conservation groups, will continue to call for incorporating the reality of climate change into the Shoreline Master Program. The county stands to gain nothing by minimizing attention to something as significant for shoreline management as sea level rise and, in the case of the Skagit River, the waning of the Cascade glaciers.

2. **Carbon Capture Foundation Tree Planting Project – Year Two**

In 2021 Skagit Audubon began working with the Carbon Capture Foundation (<https://www.thecarboncapturefoundation.org/>), based in Longview, WA, to distribute tree seedlings to chapter members and friends willing to plant them to sequester carbon. In that first round ten property owners participated and received 375 trees of six native species. The foundation provided about 1500 additional seedlings to Skagit organizations engaged in larger restoration projects. This year, ten landowners or land managers have requested 1,099 seedlings of 4 species, which will be delivered during the coming winter. Skagit Audubon also reached out to the other Audubon chapters west of the Cascades recommending the program, and several have taken up the foundation's offer.

National Audubon encourages us to promote planting native species for avian food and habitat and to combat climate change. The Carbon Capture Foundation provides one avenue for advancing this Audubon goal.

3. Commercial Aviation Coordinating Commission’s “Greenfield” Sites

As stated in the September *Skagit Flyer*’s Conservation Report: “In July, a new challenge to protecting some of the most important bird habitat in western Washington was thrust upon us when the state’s Commercial Aviation Coordination Commission (CACC) included Samish and Skagit Flats among ten sites within 100 miles of Seattle to be considered for a large new airport.” One site is what we generally refer to as Samish Flats. The other is Skagit Flats, between Highway 20 and La Conner. Both areas are very important to significant bird populations as well as to agriculture.

Skagit Audubon submitted a detailed comment letter to the CACC on August 13th. An alert went out to Skagit’s chapter members with message points focused on how developing an airport at either of the two named Skagit sites would impact birds. This resulted in additional comment letters and also reached other Audubon chapters which in turn reached out to their own memberships. Combined with similar efforts by Skagit Land Trust, Indivisible Skagit, and other groups, it is likely the CACC has gotten the message. Nonetheless, we should not put this issue aside until the two Skagit sites are dropped from further consideration. The Commission will narrow its list to two sites in October. Until then it is probably still worthwhile to submit comments concerning the Skagit sites or any of the others on the list of ten.

The Commission’s website is at [Commercial Aviation Coordinating Commission | WSDOT \(wa.gov\)](https://www.wsdot.wa.gov/aviation-coordinating-commission). (The Commission is separate from Washington Department of Transportation but receives administrative support from that agency, which otherwise is the state-level entity responsible for airports.) CACC’s “open house” website has information about each of the ten “greenfield” sites, including the two in Skagit County, and an easy way to comment: [Commercial Aviation Coordinating Commission online open house | WSDOT \(wa.gov\)](https://www.wsdot.wa.gov/aviation-coordinating-commission-online-open-house) (scroll down and click on “Greenfield locations”). There is also a place to submit comments at the bottom of the open house site. Look for the button labelled “Comment and stay involved.” Skagit Audubon message points, for your use in commenting if you wish, are here: [Talking pts re birds related to two Skagit County CACC sites.pdf \(mcusercontent.com\)](https://www.mcusercontent.com/files/2022/08/Talking_pts_re_birds_related_to_two_Skagit_County_CACC_sites.pdf) These points focus particularly on bird-related effects of developing a large airport in Skagit County. There are a variety of other message points on the Skagit Land Trust website: [Land Trust News - Skagit Land Trust](https://www.skagitlandtrust.org/news).

4. Grip Road Proposed Gravel Mine

Please see the April 2022 Conservation Notes (page 5, item 4) on the Skagit Audubon website for background on this issue. The proposed mine has serious potential to degrade the Samish River and its tributaries and the habitat they provide for salmon, birds, and other wildlife. There are also very significant concerns related to safety on the area roads which the gravel trucks would use and to adverse impacts on air quality, greenhouse gas emissions, and more.

The rescheduled public hearing before the Skagit County Hearing Examiner to consider whether a Mining Special Use Permit should be approved took place August 26. Thirty-eight people testified to the likely impacts of the proposed gravel mine, which have been downplayed by both the proponent, Miles Sand & Gravel, and Skagit County. On Monday, August 29th, the Hearing Examiner transitioned to hearing the appeal by Central Samish Valley Neighbors of the County’s Mitigated Determination of Non-significance on the proposed mine. This

determination means the county believes the mine is unlikely to have significant adverse impacts and that while some mitigatory actions need to be taken a full environmental impact analysis and development of alternatives are not required. This hearing may not finish until September 13th. Testimony is restricted to parties to the suit and their attorneys.

See the Central Samish Valley Neighbors website for more information and suggestions of how you can help ([Central Samish Valley Neighbors \(wordpress.com\)](http://CentralSamishValleyNeighbors.wordpress.com)).

More Issues of Interest to Skagit Audubon

1. Skagit County Public Works DeBay Advisory Group

Skagit Audubon is participating in the DeBay Advisory Group convened by Skagit County Public Works as the department examines the potential for restoring salmon rearing habitat at DeBay Slough. See the June 2022 Conservation Notes on the Skagit Audubon website for background information on this issue. Also see the project web page on the Skagit County site: [DeBay Slough Restoration Project \(skagitcounty.net\)](http://DeBaySloughRestorationProject.skagitcounty.net).

The second meeting of the advisory group was on August 15th. A recording and notes from that meeting are on the county website above. The studies underway are focused on determining whether access to chinook rearing habitat in the upper part of DeBay Slough can be established by replacing the culvert under DeBay Island Road without adversely impacting either adjacent private lands or the suitability of the slough as a night roost for Trumpeter Swans. Much of the slough and some of the adjacent uplands belonging to Washington Department of Fish & Wildlife (WDFW) comprise the Johnson-DeBay Swan Reserve. This is an administrative designation by WDFW.

2. State Route 20 Fish Passage & Wildlife Habitat Connectivity Integration Study

In early summer Washington State Department of Transportation invited Skagit Audubon to comment on its *SR 20 Fish Passage & Wildlife Habitat Connectivity Integration Study*. In 2013 a federal court injunction required the state to repair many road culverts within the part of Washington traversed by salmon so that those blocking upstream habitat will be rebuilt to permit fish passage. Thirteen of these culverts lie under State Route 20 between Sedro-Woolley and Marblemount. The subject study considers the potential for designing the new culverts or underpasses to also accommodate wildlife up to the size of elk. Vehicle collisions with elk are a concern in the Skagit Valley. It was discouraging to learn that only two of the 13 fish passage projects have any even remotely realistic potential for creating an elk underpass and in both instances the costs are very high. Skagit Audubon's comment letter encourages WSDOT to do whatever it can to facilitate wildlife underpasses in conjunction with the fish passage projects.

You can read about WSDOT's program to fix these 13 and many other fish passage barriers at [Fish passage | WSDOT \(wa.gov\)](#). As Washington Department of Fish and Wildlife points out, "Correcting fish barriers is vital to salmon recovery." WDFW's website describes the program it leads and with which WSDOT cooperates: [Restoring fish passage | Washington Department of Fish & Wildlife](#). While birds have fewer problems crossing State Route 20, safe passage of fish and other wildlife is relevant to Audubon's mission to preserve and protect wildlife in general.

3. Skagit County Commissioners' Ordinance on Off-site Compensatory Mitigation

On September 6th, the Skagit County Commissioners heard public testimony on whether to make permanent their "emergency" ordinance forbidding compensatory mitigation on Skagit County land zoned AG-NRL (Agriculture-Natural Resource Land). See the county's press release at [Press Release \(skagitcounty.net\)](#) and read the interim ordinance at [O20220007.pdf \(skagitcounty.net\)](#). Compensatory mitigation, as defined by the Environmental Protection Agency (EPA) is, "... the restoration, establishment, enhancement, or in certain circumstances preservation of wetlands, streams or other aquatic resources for the purpose of offsetting unavoidable adverse impacts." ([CMitigation_4-08.pmd \(epa.gov\)](#)). Since 2008 EPA and other federal agencies dealing with environmental impacts have emphasized that compensatory mitigation should be done within the watershed where the adverse impacts occur but not necessarily at the site of those impacts, which had formerly been the rule. Experience proved that successful mitigation (restoration of ecological functions) was not necessarily possible or optimal close to the impact site.

The Commissioners' action in passing the ordinance appears driven by concern that as Seattle City Light works towards its next operating license, the publicly owned utility which operates the three Skagit River dams will use its deep pockets to buy large acreages of Skagit delta farmland for restoration as salmon habitat. Loss of farmland to other uses is ever a concern of the Commissioners and others in the community. The Commissioners further appear to envision this leading to other entities, public and private, needing to do compensatory mitigation buying up and converting to habitat large swathes of rich Skagit farmland. There are in fact already legal mechanisms in place that would block Seattle City Light from doing what the Commissioners seem to fear. And there is perhaps the opportunity for City Light funds to help pay for the acreage of habitat restoration in the Skagit delta to which all stakeholders agreed years ago in the Chinook Recovery Plan and the Tide-gate Initiative. Further, federal policy would block entities causing impacts outside the Skagit watershed from buying land to do compensatory mitigation in this watershed. Compensatory mitigation is to take place in the watershed in which the impacts occurred, though not necessarily at the site of the impacts.

Approximately ten people each testified for 3 minutes, the majority involved with farming in some way, and all depicting the issue as fish versus farms. County attorney Will Honea in his closing comments tried to clarify that the county is not trying to avoid meeting its commitment to support restoring a certain amount of farmland to wetland but wants to block conversion of farmland beyond that commitment of acreage. A representative of the Upper Skagit Indian

Tribe spoke in favor of the ordinance. Representatives of the Swinomish Indian Tribal Community and of Skagit Land Trust spoke in opposition citing inaccuracies, ways in which the ordinance ties the hands of landowners, and policy contradictions.

The interim, “emergency” ordinance will go to the county’s Planning Commission for their recommendation before the Board of County Commissioners decides whether to make it permanent within the next month or two. The twin goals of preserving Skagit farmland (coincidentally important bird habitat) and restoring enough salmon rearing habitat to prevent extinction of listed fish species (also important to Audubon’s mission) have long invited disagreement and controversy. The story is far from over.

4. Judge Rules Against Navy re Violation of NEPA in Relation to Growler Expansion

As reported in the August 4, 2022, *Skagit Valley Herald*, on August 2nd Federal District Court Judge Richard A. Jones, ruled on a suit brought by State Attorney General Bob Ferguson and the Citizens of Ebey’s Reserve. Jones found that the Navy violated the National Environmental Protection Act in analyzing the likely impacts of expanding the number of EA-18G Growlers based at Whidbey Naval Air Station. The state’s suit filed in 2019 mentioned insufficient analysis of various impacts on people and also the inadequate study of impacts to protected bird species. Two years before this suit was filed, Skagit Audubon sent the Navy a comment on its draft Environmental Impact Statement for the Growler increase and particularly focused on the sketchy attention given to how Marbled Murrelets in the waters off Whidbey Island would be affected, the complete absence of attention to the safety hazard to birds and planes posed by Trumpeter and Tundra Swans on the approach to Ault Field, and other concerns. The Navy must now respond as to how it will address the inadequacies of the environmental review.

5. Navy Special Operations (SEAL) Training in State Parks

You may recall that in April of this year, Thurston County Superior Court Judge James Dixon overthrew the 4-3 decision of the Washington State Parks and Recreation Commission which would have allowed Navy SEAL training in 28 coastal state parks, including the state’s busiest, Deception Pass State Park in Skagit and Island Counties. At the close of the allowed 30 days the Commission had not filed an appeal of Judge Dixon’s decision, which means that no permits will be issued allowing covert military training in the state parks. Whidbey Environmental Action Network (WEAN) filed the lawsuit heard by Judge Dixon. Before the Commission’s 4-3 vote, Skagit Audubon and individual members sent detailed comment letters pointing out the potential adverse effects of the proposed training activities on birds and other wildlife as well as on experience the public should be able to have in their parks.

6. Washington Supreme Court Decision on the Mandate of the Department of Natural Resources

Ten years ago when Skagit Audubon sent the first of a series of comment letters on the Washington Department of Natural Resources’ (DNR) draft long-term plan for managing Marbled Murrelet habitat on state trust lands, we argued that DNR’s view of its trust obligation was outdated and overly narrow. The agency referred to the state constitution, perhaps counting on no one actually reading it, and thereby claim a mandate to focus solely on maximizing revenue for the trust beneficiaries by cutting timber. The agency posed this as presenting a

dilemma in the face of the federal Endangered Species Act requirement that DNR act to protect the habitat of the rapidly declining Marbled Murrelet.

Perhaps because of the murrelet but also in light of DNR's also giving short shrift to other values of public lands, Conservation Northwest and others brought suit against DNR over its interpretation of its mandate. On July 22nd, the Washington State Supreme Court ruled that DNR is not obligated to maximize revenue nor to do so through timber cutting alone. As the Washington Conservation Voters stated in a July 22nd email: "... this opinion provides the broader legal interpretation we sought: confirmation that the state can manage public forests for multiple benefits and is not required to maximize revenue above all other objectives."

Other Issues of Interest to Skagit Audubon

For other issues Skagit Audubon has followed or is currently tracking, see earlier Conservation Notes on the Skagit Audubon website: [Skagit Audubon Society - Home](#) under the Conservation tab at the top of the page.

Issues needing action:

Audubon members can advocate for regional and national protection of birds and other wildlife and their habitat by responding to action alerts from Washington Audubon and National Audubon. Enroll in Audubon Washington's Action Network at [Join Our Action Network | Audubon Washington](#) (overwrite with your name and address). The National Audubon website ([Advocacy & Action | Audubon](#)) has abundant information on Audubon's numerous current conservation campaigns. Sign up there to receive national alerts. Also see the Audubon Washington blog for information about a variety of interesting and important issues: [AuduBlog | Audubon Washington](#).