



TO: Jack Moore, Planning and Development Services Director  
Allen Rozema, Assistant Planning and Development Services Director  
Robby Eckroth, Senior Planner  
Tara Satushek, Senior Planner

FROM: Clay White, Director of Planning  
Dan Nickel, Principal of Planning, Facet  
Nell Lund, Sr. Ecologist, Facet  
Kyle Cotchett, Environmental Planner, Facet

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RE: 2025 Periodic Comprehensive Plan Update – Draft Critical Areas Ordinance Staff Report

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## **PROJECT DESCRIPTION & BACKGROUND**

The Growth Management Act (GMA) requires all cities and counties in Washington to adopt regulations protecting “critical areas”. Regulated critical areas include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. The intention of these regulations is to preserve the natural environment, wildlife habitats, and sources of fresh drinking water, while also encouraging public safety by limiting development in areas prone to natural hazards.

The Washington State Growth Management Act (GMA) requires Skagit County to update its Comprehensive Plans and implementing development regulations every 10 years (RCW 36.70A.130). As part of that update, the County is required to evaluate and, if needed, revise its Critical Areas Ordinance (CAO). Skagit County adopted their Critical Areas Ordinance (CAO; Skagit County Code 14.24) in 1996 and was last updated in 2006, which was adopted December 23, 2008 and effective February 1, 2009.

Skagit County is in the process of completing both the Comprehensive Update and Periodic Review of its CAO. The proposed changes to the CAO seek to align with the best available science and to update the code for clarity and efficiency.

## **SUMMARY OF CRITICAL AREA ORDINANCE CHANGES**

As required by the Washington State GMA, the review of the Best Available Science (BAS) was compiled to support Skagit County’s CAO update, a component of comprehensive updates to the unified development code. BAS means the current and best available information that follows a valid scientific process as specified in WAC 365-195-900 through WAC 365-195-900. In addition to BAS, County and Facet staff worked together to review and update the code for clarity and efficiency. Following the Best Available Science (BAS) review, Gap Analysis, and review for clarity, the final Critical Area Ordinance recommendations are described below.

**Overarching changes applicable to multiple sections**

Finding: Across the CAO, it has been found that there are outdated terms no longer consistent with recent updates to the larger Skagit County Code (SCC) as well as with State laws. It has been found that there is a need for clarity of requirements, procedures, and allowances under this code. As updates were made to sections of the CAO, there was a need to make changes to ensure consistent information across sections. Additionally, some sections have been deleted due to redundancy or being outdated.

Conclusion: County and consultant staff have made changes to address terminology consistency and clarity of CAO requirements, procedures, and allowances.

**Introduction, Purpose, and Authority (SCC 14.24.010 - 14.24.050)**

Findings: Through the Gap Analysis (see Section 2.1-2.4), it has been found that there is a lack of clarity regarding the stated purpose of the CAO, the use of critical area reports and agency maps, and the CAO's relationship to other local regulations.

Conclusion: County and consultant staff have made changes to address terminology consistency and clarity of CAO purpose, use of critical area reports and agency maps, and the CAO's relationship to other local regulations.

**Authorizations and Procedures (SCC 14.24.060 - 14.24.080)**

Finding: County and consultant staff found that there is a lack of clarity regarding application sequencing and in some instances, what qualifies for an exemption from the requirements of the CAO.

Finding: Through the Gap Analysis (see Section 2.6), it was found that there is a need to update the evaluation distances by critical area type, standardizing maintenance corridor requirements, and mitigation sequencing requirements.

Conclusion: County and consultant staff have made changes to address clarity and standardization of requirements.

**Protected Critical Area Requirements (SCC 14.24.090)**

Finding: The Gap Analysis (see Section 2.7) found a need to update the requirement for permanent critical area buffer marker spacing for standardization.

Conclusion: County and consultant staff have updated the signage requirements to make a clearer standard.

**Critical Areas Determination and Conditions of Approval (SCC 14.24.100)**

Finding: The Gap Analysis has found the need to update allowances for the reopening of critical area review (see Section 2.8 of the Gap Analysis).

Conclusion: Staff have updated the allowances to include the discovery of newly available information and changing site conditions.

**Ongoing Agriculture (SCC 14.24.120)**

Finding: The section regarding ongoing agriculture generally stays the same. The Gap Analysis (see Section 2.9) suggests a clarifying addition that the determination of the presence of salmonids should include all streams mapped by the Statewide Washington Integrated Fish Distribution database and any other valid source of information.

Conclusion: County and consultant staff have updated language to clarify the information allowable in determining the presence of salmonids.

**Hazard Tree Removal (SCC 14.24.130)**

Finding: The Gap Analysis (see Section 2.10) found the need to update the definition of "Hazard Tree" for consistency with the International Society of Arboriculture (ISA) standard, removal allowances, and clarification of a qualified professional.

Conclusion: County and consultant staff have updated language for alignment with the ISA, hazard tree removal allowances, and for clarity on who is a qualified professional.

**Reasonable Use and Variance (SCC 14.24.140 - 14.24.150)**

Finding: County staff have found that the current County regulations for Reasonable Use Exemption and Variance requests result in the Reasonable Use Exemption process not being viable, and applicants undergoing the Variance process instead.

Conclusion: County staff and consultant staff have made changes to the code that sets clear allowances for residential development when the strict application of the critical area ordinance would result in the loss of all economically viable use of the property. This includes transitioning most of these types of projects to be reviewed under a reasonable use exception rather than a variance process. The intention is to make the reasonable use process an administrative review (Type 2 review process) that benefits both applicants and County staff while still maintaining the critical areas protections and mitigation requirements needed to ensure no net loss of functions and values. The variance allowances have been altered to capture those projects which cannot be achieved under the reasonable use allowances. Variances have been updated to solely fall under the Type 3 review process.

**Wetlands (SCC 14.24.200 - 14.24.250)**

Finding: The Gap Analysis (see Sections 3.1-3.6) has found the need to update CAO sections pertaining to wetlands for BAS regarding:

- Rating systems
- Protection standards
- Buffer alternatives
- Off-site compensation allowances

Conclusion: County and consultant staff have updated regulations pertaining to wetlands for alignment with BAS.

### **Aquifer Recharge Areas (SCC 14.24.300 – 14.24.340)**

Finding: The Gap Analysis (see Sections 4.1-4.4) has found the need to update CAO sections pertaining to critical aquifer recharge areas for BAS regarding:

- Terminology
- Designations and category definitions
- Site assessment criteria

Finding: County staff have found a need to update the chapter for clarity and organization.

Conclusion: County and consultant staff have updated the sections pertaining to critical aquifer recharge areas for alignment with BAS as well as for clarity and organization.

### **Flow Sensitive Basins and Saltwater Intrusion Areas (SCC 14.24.350 – 14.24.380)**

Finding: County staff have found the need to update the title of SCC 14.24.350 and to delete sections SCC 14.24.360 and SCC 14.24.370 as “flow-sensitive basins” is now an outdated term following the adoption by reference State Instream Resource Protection Programs.

Conclusion: County and consultant staff have updated the sections pertaining to critical aquifer recharge areas for alignment with BAS as well as for SCC terminology consistency. SCC 14.24.350 is proposed to be titled “Instream Flow Rules”. Sections SCC 14.24.360 and SCC 14.24.370 have been proposed to be deleted.

### **Geologically Hazardous Areas (SCC 14.24.400 – 14.24.430)**

Finding: The Gap Analysis (see Sections 5.1-5.2) has found the need to update CAO sections pertaining to geologically hazardous areas for BAS regarding classifications of geologically hazardous areas.

Conclusion: County and consultant staff have updated the classifications of geologically hazardous areas for alignment with BAS.

### **Fish and Wildlife Habitat Conservation Areas (SCC 14.24.500 – 14.24.540)**

Finding: The Gap Analysis (see Sections 6.1-6.5) has found the need to update CAO sections pertaining to fish and wildlife habitat conservation areas for BAS regarding:

- Buffer requirements
- Buffer alternatives

Conclusion: County and consultant staff have updated the classifications of fish and wildlife habitat conservation areas for alignment with BAS.

### **Compliance, Administration, and Appeals (SCC 14.24.700 – 14.24.740)**

Finding: County staff have found that sections pertaining to compliance tracking, administration, and appeals need to be updated for consistency across the CAO and the SCC at large.

Conclusion: County and consultant staff have updated these sections for consistency across the CAO and SCC. SCC 14.24.710 has been deleted as the fee schedule is now a separate resolution process.

**Recommendation**

Staff recommend adoption of the proposed CAO changes.

**PLANNING COMMISSION RECOMMENDATION**

On June 17<sup>th</sup>, 2025 the Planning Commission met at their regularly scheduled meeting after a series of hearings and deliberations and a 17-day public comment period on the Critical Areas Ordinance update as part of the Comprehensive Plan periodic update 2025. The Planning Commission recommended that the Board of County Commissioners adopt the Critical Areas Ordinance with a few recommendations.

The Planning Commission recommendation is included as an Exhibit of this report.

In addition to the recommendations provided by staff, the Planning Commission made four (4) additional recommendations summarized below:

1. Incorporate the County staff (Planning and Development Services) Recommendations 1-17 in Attachment C of the June 17<sup>th</sup> Planning Commission Meeting Packet.
2. Amend SCC 14.24.070(7) to clarify language regarding tidal estuaries.
3. Remove “short plat” from the habitat corridor requirement in SCC 14.24.530(5).
4. The Board of County Commissioners direct County staff to improve access of mapping of critical areas.

**CHANGES MADE AND RECOMMENDATION BY STAFF**

Between the May and June Planning Commission meetings, Staff made some minor changes to the Critical Area Ordinance for administrative, organizational, and clarification purposes. Staff is recommending the following changes:

1. Minor organizational and administrative changes in SCC 14.24.010, 14.24.020, 14.24.040-.080, 14.24.100, 14.24.380, 14.24.700, and 14.24.730.
2. Changes to SCC 14.24.090(2)(b)(ii), 14.24.230(4), and 14.24.530(1)(d) per recommendations by the public comment provided by Evergreen Islands.
3. Corrections of language errors in SCC 14.24.120 related to managed watercourse terminology.
4. Flexibility for driveways for reasonable use exceptions (SCC 14.24.140) in cases where the developable area is not immediately adjacent to a public or private road.
5. Minor changes to SCC 14.24.380 for clarity and removal of redundancies.

6. Allowances for designated structures under 200 square feet in public or publicly managed parks as allowed uses within wetland and Fish and Wildlife Habitat Conservation Area (FWHCA) buffers in SCC 14.24.240(6)(b) & 14.24.540(5)(e).
7. Included flexibility for properties with previously established protected critical areas (PCA) in SCC 14.24.230(5) & 530(3).
8. Reinstatement of buffer reduction allowances in SCC 14.24.240(3) and 14.24.540(3) with the clarification that they may only apply to reasonable use exception and variance requests.

## **SUPPLEMENTAL DOCUMENTS**

Accompanying this staff report there are three additional documents to review proposed changes to the Skagit County Critical Areas Ordinance.

- A redlined version of the Skagit County Critical Area Ordinance to see proposed changes from the previous ordinance.
- Best Available Science (BAS) Review, dated February 24, 2025
- Gap Analysis, dated February 25, 2025