



# Planning & Development Services

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## Memorandum

To: **Planning Commission**

From: Michael Cerbone, Assistant Director  
Nick Schmeck, Long Range Planning Intern

Date: October 15, 2019

Re: **Planning Commission Workshop – Docket Item P-4**

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### Summary:

Planning and Development Services (PDS) is providing this staff report in advance of the October 22, 2019 Planning Commission workshop on docket item P-4. The proposal asks for code amendments to Skagit County's Critical Areas Ordinance (Skagit County Code 14.24) to identify specific protections for herons and their habitat which include the application of year-round and seasonal buffers that will strengthen protections for Great Blue Heron nesting habitat in the Skagit County.

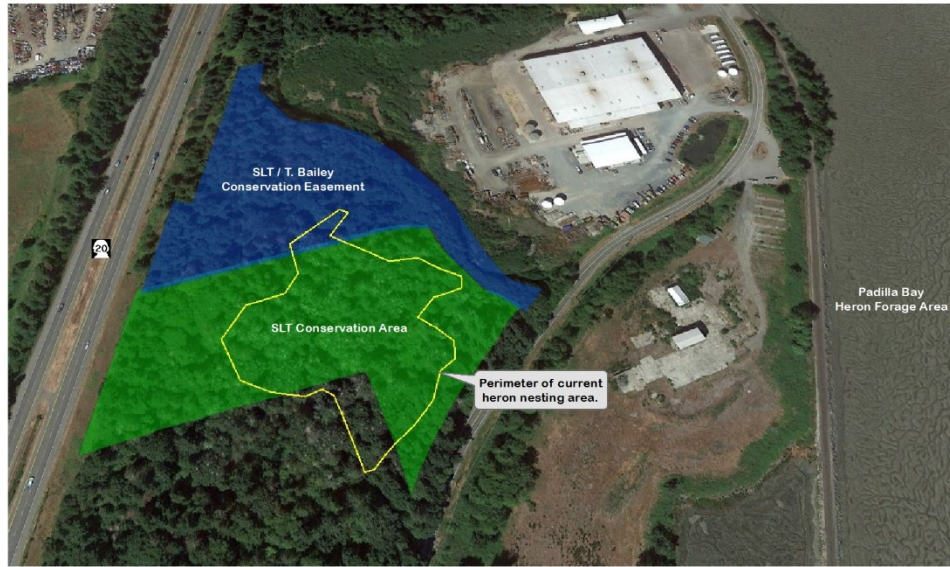
### Action Requested of the Planning Commission:

Action requested from the Planning Commission is a recorded motion approving docket item P-4 to be accepted as a 2019 Comprehensive Plan amendment.

### Background/Discussion:

RCW 36.70A.130 – Comprehensive Plans – Review procedures and schedules – Amendments (GMA), authorizes the County to make revisions to the Comprehensive Plan no more than once per year through the Docket. On March 19, 2019 the 2019 Docket for amendments to the Comprehensive Plan, Zoning Map, and/or Development Regulations was voted into action by Skagit County's Board of County Commissioners (BOCC) via approval of Resolution R20190052. SCC 14.08.080(6) and (7) requires that revisions be reviewed by the Planning Commission.

Great Blue Herons are one of the best known and easily recognizable birds in the State of Washington. Herons typically are found on the edge of a wetland or somewhere near a coastal shore. In Skagit County, Heronries that have more than twenty (20) nesting can be found in three different places: March Point, Barney Lake, and Samish Island (See aerials on next page).



Samish Flower Farm - 37.96 acres, P 47448



In recent years, heron nesting areas have shown signs of stress and disturbance. Skagit Land Trust is concerned that without specific and clear protections, the Great Blue Heron species could face problems in the future. The WDFW have labeled Great Blue Herons as a priority species. According to WDFW:

*“Priority species require protective measures for their survival due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance.”*

For great Blue Herons, their “Priority Species Criteria” and Priority Area” originates from vulnerable aggregations and breeding areas.

### Next Steps:

After the Planning Commission Workshop on October 22, 2019:

- Planning Commission may task PDS with next steps such as research and development
- Planning Commission will host a public hearing prior to deliberating and deciding on a recommendation

- The recommendation will then be passed onto the BOCC's who will host a public hearing and consider the recommendation
- If approved, the comprehensive plan will be updated to reflect the most accurate project information

**Applicable County Policies:****Classification and Designation of Critical Areas**

Classification and designation of critical areas establishes the general distribution, location, extent, and quality of critical areas. In the circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization. Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law.

Goal 5A-1 In cooperation with local, state, federal, and tribal agencies and jurisdictions, Skagit County shall identify, classify, designate, and map critical areas to protect and conserve them.

policy 5A-1.1 Critical areas shall be identified based on the best available science.

(a) The National Wetland Inventory Maps, U.S.D.A. Soil Conservation Service Soil Survey, Washington Department of Fish and Wildlife Priority Habitats and Species Database and aerial photo overlays are examples of the information that shall be utilized in determining the approximate distribution and extent of wetlands in Skagit County.

(b) Soil logs and surveys, geological information, well logs, and geological reports shall be utilized in identifying aquifers and aquifer recharge areas.

(c) Hydrologic information such as Washington Department of Natural Resources water type maps, United States Geological Services streamflow data, and Federal Emergency Management Agency maps should be utilized in identifying frequently flooded areas

(d) Soil, geologic, topographic, seismic, volcanic, and hydrologic data shall be utilized in identifying geological hazardous areas.

(e) Fish and Wildlife Habitat Conservation Areas shall be identified in accordance with Washington State Fish and Wildlife Priority Habitats and Species program, WA State Department of Natural Resource Aquatic Lands and Resources and Nearshore Habitat programs, and other extant programs.

policy 5A-1.2 Critical areas shall be designated by definition and site assessment for conservation and protection.

(a) Critical Areas shall be designated and mapped from general sources of critical area information based on best available science.

(b) Critical areas shall be designated by performance standards or definitions.

(c) Critical areas shall be designated upon completion of a site assessment done by a qualified professional during the process of a permit or development application.

policy 5A-1.3 Critical areas shall be classified for conservation, protection, and risk.

(a) The Washington State Rating System for Western Washington (2014 Update) shall be utilized to classify wetlands according to the function, value and uniqueness of wetlands in Skagit County.

(b) Aquifer recharge areas shall be classified based on their vulnerability, susceptibility to contamination, and potable water quality and quantity.

(c) Frequently flooded areas should be classified utilizing the 100-year floodplain designations as adopted by the Federal Emergency Management Agency and the National Flood Insurance Program.

(d) Geologically hazardous areas (areas subject to erosion, sliding, earthquakes, or other geologic events) shall be classified based on the degree of risk to health, life, property and resources.

(e) "Fish and Wildlife Habitat Conservation Areas" (HCA's) shall be classified according to the type of conservation area which include:

(i) Areas with which endangered, threatened, and sensitive species have a primary association;

(ii) Habitats and species of local importance that have been designated by the County at the time of application;

(iii) All public and private tidelands suitable for shellfish harvest;

(iv) Kelp and eelgrass beds, and herring, smelt, and other forage fish spawning areas;

(v) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;



- (vi) Waters of the state as defined by WAC 222-16;
- (vii) Lakes, ponds, streams, and rivers planted with game fish by a government or Tribal entity;
- (viii) Areas with which anadromous fish species have a primary association and;
- (ix) State Natural Area Preserves, Natural Resource Conservation Areas, and State Wildlife Areas.

## **Intergovernmental Coordination / Cooperation**

Goal 5A-4 Improve communication and seek cooperation and coordination among county, city, state, tribal, federal agencies, and the public to avoid duplication and achieve efficiency and effectiveness in development of standards, policies, regulations, programs, projects, planning and funding efforts that conserve and protect critical areas.

policy 5A-4.1 The use of inter-agency agreements among county, city, state, federal and tribal agencies shall be encouraged for conservation and protection of critical areas when developing regulations, incentives, and monitoring/enforcement strategies.

(a) Local, state, federal and tribal governments shall be consulted in the development of land use plans and development review to identify and protect habitat networks on an inter-jurisdictional basis.

(b) Local, state, federal agencies, tribes and private interests shall be encouraged to plan and implement methods to protect and enhance water quality at commercial, recreational, and subsistence shellfish beds, including controlling potential new pollution sources, reducing pollution from existing sources, and establishing shellfish protection districts.

(c) Coordinate with state and tribal programs to protect plant species and communities listed in the Natural Heritage Program, the Priority Habitats and Species (PHS) Program and plant species of cultural (tribal) significance should be maintained.

## **Protection and Conservation Measures**

Goal 5A-5 Skagit County shall, protect and conserve critical areas in cooperation with federal, state, local, and tribal jurisdictions.

policy 5A-5.1 Critical Areas shall be designated and protected to prevent their continued loss and degradation. Furthermore, priority shall be given to the avoidance of impacts to Critical Areas, followed by the minimization of impacts and full mitigation respectively.

(d) Fish and Wildlife Habitat Conservation Areas

(i) Stream and wetland buffers shall be set so as to protect habitats associated with riparian dependent species.

(ii) Habitat fragmentation shall be minimized to enhance wildlife diversity by protecting important wildlife areas, open space, and interconnecting corridors that form a continuous habitat network.

(iii) Protective measures will be required in all areas that have the potential to introduce sediments into fish bearing streams, unless the applicant can adequately demonstrate that other mitigating measures will avoid impacts to instream resources.

(iv) Habitats or species that have been identified as priority species or priority habitats by the state, federal or tribal governments should not be reduced and should be preserved through regulation, acquisition, incentives and other techniques. The County should determine which habitats are of local importance.

(v) The level of protection for HCAs shall be commensurate with the resource population status and management objectives as determined by appropriate resource managers.

(vi) Native vegetation shall be preferred and retained over exotic species in Fish and Wildlife Conservation Areas.

(vii) Native plant communities should be integrated with land uses wherever possible.

(viii) Give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

**List of Attachments:**

Attachment A: Proposed Code Amendments



## Attachment A

Plain text = existing code with no changes

~~Strikethrough~~ = existing code to be deleted

Underlined = new code to be added

~~Double Strikethrough~~ = existing code moved to another location

Double Underline = existing code moved from another location

*Italics* = instructions to code reviser

### Chapter 14.04 Definitions

#### 14.04.020 Definitions

Great Blue Heron nesting colony: A collection of twenty (20) or more Great Blue Heron nests as shown on the Washington Department of Fish and Wildlife's (WDFW) periodically updated map of Great Blue Heron Colonies. This includes colonies that have been abandoned for up to ten (10) years.

### Chapter 14.24 Critical Areas Ordinance

#### 14.24.500 Fish and wildlife habitat conservation area designations.

(1) Fish and wildlife habitat conservation areas (HCAs) are listed in WAC 365-190-130 and are designated as follows:

- (a) Areas with which endangered, threatened, and sensitive species have a primary association;
- (b) Habitats and species of local importance that have been designated by the County (Subsection (4) of this Section);
- (c) All public and private tidelands suitable for shellfish harvest;
- (d) Kelp and eelgrass beds, herring and smelt spawning areas;
- (e) Naturally occurring ponds under 20 acres with submerged aquatic beds that provide fish or wildlife habitat as further defined in WAC 365-190-130(4)(e);
- (f) Waters of the State as defined by WAC 222-16-030;
- (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

- (h) Areas with which anadromous fish species have a primary association;
- (i) State natural area preserves and natural resource conservation areas;
- (j) Other aquatic resource areas;
- (k) State priority habitats and areas associated with State priority species as defined in WAC 365-190-080; and
- (l) Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program in Chapter 79.70 RCW.

(2) In addition to the HCAs identified in Subsection (1) of this Section, additional habitats and species of local importance may be designated by the Administrative Official based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.

(3) In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:

- (a) Demonstrate a need for special consideration based on:
  - (i) Declining population;
  - (ii) Sensitivity to habitat manipulation; or
  - (iii) Commercial or game value or other special value, such as public appeal; and
- (b) Propose relevant management strategies considered effective and within the scope of this Chapter; and
- (c) Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the Administrative Official and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other local and State agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.

Skagit County will hold a public hearing for proposals found to be complete, accurate, potentially effective and within the scope of this Chapter. Approved nominations will become designated “habitats/species of local importance” and will be subject to the provisions of this Chapter.

(4) The following species and habitats have been designated on a site-specific basis according to the official Habitats and Species of Local Importance Map:

- (a) Great blue heron nest sites;
- (b) Vaux’s swifts communal roosts;
- (c) Pileated woodpecker nest sites;
- (d) Osprey nest sites;
- (e) Townsend big-eared bat communal roosts;
- (f) Cavity nesting duck breeding areas;
- (g) Trumpeter swan concentrations;
- (h) Harlequin duck breeding areas;
- (i) Waterfowl concentrations. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

**14.24.510 Fish and wildlife habitat conservation area water type classification.**

Water types shall be classified according to WAC 222-16-030. Type S streams include shorelines of the State and have flows averaging 20 or more cubic feet per second; Type F streams are those that are not Type S but still provide fish habitat; and Type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow sufficiently to produce a defined channel or bed as indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters. (Ord. O20080014 (part))

**14.24.520 Fish and wildlife habitat conservation area site assessment requirements.**

Any project within 200 feet of a fish and wildlife habitat conservation area outside the special flood hazard area (SFHA) or within the protected review area as defined in SCC 14.34.055 requires a fish and wildlife HCA site assessment. In addition to the requirements of SCC 14.24.080, the following shall be included in the site assessment:

(1) Functions and values analysis, which includes but is not limited to a discussion of water quality/quantity and fish and wildlife habitat; and

(2) An analysis of the riparian buffer areas above the ordinary high water mark including:

(a) Recruitment of large woody debris (LWD) to the stream;

(b) Shade;

(c) Bank integrity (root reinforcement);

(d) Runoff filtration;

(e) Wildlife habitat.

(3) Great Blue Heron nesting colonies shall be protected through the establishment of year-round and seasonal buffers.

(a) Year-round buffers within which certain activities would be restricted throughout the year or, where unfeasible, mitigation would be required subject to SCC 14.24.250(3)(b). Year-round buffers are established for “undeveloped”, “rural” and “urban” settings. Restricted land uses include clearing vegetation, grading, and construction activities.

(i) Undeveloped Buffer: A buffer of 984 feet is applied to areas that have less than 2% of the area within a ¼ mile of the nest colony developed.

(ii) Rural Buffer: A buffer of 656 feet is applied to areas that have between 2% and 50% of the area within a ¼ mile of the nest colony developed.

(iii) Urban Buffer: A buffer of 197 feet is applied to areas that have more than 50% of the area within a ¼ mile of the nest colony developed.

(b) Development within year-round buffers: Clearing vegetation, grading, and construction activity can occur within year-round buffers subject to the following considerations:

(i) There is no other location on the subject property that is outside of the year-round buffer where the proposed development could occur; and

(ii) The development activity is proposed to be located as far as possible from the nests; and

(iii) Visual screening between the nests and the proposed activity is maximized; and

(iv) Clearing vegetation, grading, and construction of the external shell of a structure shall only occur between September 1<sup>st</sup> and February 1<sup>st</sup>

(c) Seasonal buffers extend from the outer edge of the year-round buffers. Within seasonal buffers certain land use and development activities will be restricted during the nesting season, from February 1<sup>st</sup> through August 31<sup>st</sup> of each year.

(i) Primary Buffer: extends 656 feet and restricts uses that would exceed 92 decibels at the outer boundary of the nest colony.

(ii) Secondary Buffer: extends 1,320 feet and restricts blasting.

(4~~3~~) Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292), as revised; a cooperative habitat management plan shall be developed in coordination with the Department of Fish and Wildlife whenever activities that alter habitat are proposed near a verified nest territory or communal roost.

(4) All other fish and wildlife habitat conservation areas, including habitats and species of local importance, shall be protected on a case-by-case basis by means of a habitat management plan based on the Washington State Priority Habitat and Species (PHS) program, as set forth in the site assessment requirements in SCC 14.24.080 and this Section. (Ord. O20110008 (part); Ord. O20090011 Attch. 2 (part); Ord. 17938 Attch. F (part), 2000)