STAFF REPORT

SKAGIT COUNTY
CRITICAL AREAS ORDINANCE UPDATE

PROPOSED AMENDMENTS PRESENTED TO THE CITIZENS ADVISORY COMMITTEE

February 23, 2007

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I. INTRODUCTION

Proposal

The proposal is to amend Skagit County Code Title 14, Chapter 14.24 – Critical Areas Ordinance(CAO). In addition, supporting Chapters of Title 14 including Chapter 14.04 – Definitions, Chapter 14.16 – Zoning, and Chapter 14.18 – Land Divisions will be amended to provide consistency with other internal regulatory requirements. The proposed amendments are intended to bring the CAO into compliance with the provisions of the Washington State Growth Management Act (GMA). Specifically the proposed amendments incorporate the use of Best Available Science (BAS), provide special consideration for anadromous fish, and clearly define the role of the County and the requirements for applicants proposing activity in critical areas and associated buffers.

Objectives of the Critical Areas Ordinance Update

1. Fair and Inclusive Process – Skagit County Planning and Development Services (PDS) presented the proposed draft CAO amendments to a Citizens Advisory Committee (CAC) and will be hosting a public open house and public hearing, sending out an all County notification, as well as posting new information on the County website.

2. Policy Integration – Objectives of the process are to update and streamline the regulations; eliminate overlaps, inconsistencies and gaps; integrate information from additional resources including other regulatory and policy documents.

3. Compliance with State Guidelines – The update must be compliant with the Washington State Growth Management Act.

Washington State Growth Management Act

The Growth Management Act mandates that regular updates be made to required comprehensive plans and development regulations. Updates should be made whenever needed depending on local circumstances but must be done at a minimum every seven years to ensure continued compliance with the provisions of the GMA (RCW 36.70A.130).

Definition of Critical Areas
RCW 36.70A.030 defines critical areas to include the following areas and ecosystems:

1. Wetlands
2. Areas with critical recharging effect on aquifers used for potable water
3. Fish and wildlife habitat conservation areas
4. Frequently flooded areas
5. Geologically hazardous areas

GMA Requirements for Critical Areas Ordinance Updates
The GMA requires cities and counties to protect critical areas within their jurisdiction to preserve the natural environment and protect public health and safety. In accordance with RCW 36.70A.060, each county and city is required to adopt development regulations to protect critical areas that are designated per RCW 36.70A.170.

Skagit County's Critical Areas Ordinance (CAO) was developed in response to this mandate in 1996. In 2002, GMA was amended to require jurisdictions to update their comprehensive land use plans and development regulations including CAO's every 7 years. The State mandated deadline for Skagit County to complete the update has been extended to December 1, 2006.

Best Available Science (BAS)
A 1995 regulatory reform amendment to the Washington State Growth Management Act (GMA) requires that all counties and cities planning under GMA include the use of BAS to inform the development and implementation of critical area policies and regulations to protect the functions and values of critical areas (RCW 36.70A.172(1)). In addition, special consideration is required to be given to conservation or protection measures necessary to preserve or enhance anadromous fish populations.

Best available science rules are codified in WAC 365-195-900 through 925 and took effect August 27, 2000. In general, BAS is characterized as current scientific information that has been derived from research, monitoring, inventories, survey, modeling, assessments, synthesis, and expert opinion provided by qualified individuals that is:

1. Peer reviewed
2. Based on accepted scientific methods
3. Based on logical conclusions and reasonable inferences
4. Based on data analyzed by appropriate quantitative or statistical methods
5. Used in appropriate context
6. Well referenced

Skagit County Planning and Development Services prepared a review and analysis of BAS pertinent to Skagit County. The Fish and Wildlife, and Wetlands review and analysis were prepared by the county's consultant the Watershed Company. The BAS review and analysis for the Geohazard section of the CAO was prepared by John Cooper, PDS staff. The review and analysis for the Aquifer Recharge Area section of the CAO was prepared by Corinne Story, Health Department and Gary Stoyka, Public Works Department.

Citizen Participation and Coordination
Counties and cities planning under GMA shall establish and broadly disseminate to the public a public participation program identifying procedures providing for

early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans (RCW 36.70A.140). The following measures have been implemented in order to meet these requirements:

A. Citizen Advisory Committee

In February 2006, the Skagit County Board of County Commissioners appointed a nine member Citizens Advisory Committee (CAC) specifically for the purpose of assisting PDS and their consultant team in reviewing and considering appropriate revisions to the Skagit County Critical Areas Ordinance (CAO). The CAC was composed of the following citizens:

1. Robert Bailey
2. Wayne Crider
3. David Hawkins
4. Ralph Heft
5. Paul Kriegel
6. Jean Shea
7. Stuart VanBuren
8. Andrea Xaver
9. Carrie Youngquist

There were nine meetings of the CAC between March and July 2006 to review and discuss the existing Skagit County CAO, Draft Best Available Science (BAS) Review and Recommendations, as well as the proposed changes to the CAO. The CAC reviewed and commented on information presented in the Draft BAS Review and Draft CAO amendments. Each CAC meeting was open to the public, and the dates, times, and locations were posted on the Skagit County website, legal notices, and press releases. The CAC provided substantive comments and recommendations that have been incorporated into the official public review draft.

B. Public Open House

PDS plans to host two public open houses in the County. The purpose of the workshops is to inform interested citizens of the intent, scope, and status of the CAO update process and provide answers to any questions.

Additional public education and involvement opportunities have included presentations at the 2006 Shoreline Workshops, Skagit County Marine Resources Committee, and other local groups.

C. Public Information

A county web page has been devoted to the CAO update. The page has been maintained and continually updated with the latest information. A county wide mailing will notify landowners of the proposed amendments to the CAO and provide them with information on opportunities to be involved in the process.

D. Public Review Draft
A draft CAO will be released for public review and comment.

GMA Planning Goals
The proposed amendments are generally consistent with and key to implementing the following relevant GMA Planning Goals (RCW 36.70A.020):

(7) Permits. Application for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(9) Open Space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen Participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

Comprehensive Plans
The CAO update must ensure consistency between GMA requirements and the Skagit County Comprehensive Plan. Pursuant to RCW 36.70A.130 (1) (d), any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

The Skagit County Comprehensive Plan seeks to manage growth by protecting natural resource lands, open space and rural areas, and establish Urban Growth Areas where development is directed. One of the major themes of the plan is to protect critical areas.

As part of the mandated 7 year 2005 Growth Management Update process, the Comprehensive Plan is being amended. Proposed amendments include revisions to Chapter 5 (Environment Element) that reflect GMA requirements for Critical Areas Ordinance updates. Specifically, the proposed revisions reflect the use of best available science (RCW 36.70A172) and the requirement to utilize wetland delineation methods in accordance with the Washington State Wetland Rating System for Western Washington (RCW 36.70A.175).

Proposed Amendments to Skagit County Code Title 14

Title 14: Chapter 14.24 Skagit County Critical Areas Ordinance
The proposed updates to the CAO include substantive amendments based on best available science requirements and other minor amendments in an effort to make the CAO more readable and functional.

Some of the organizational amendments include consolidating project review procedures into one section and removing unnecessary and redundant language. The major substantive changes are based on the BAS review and analysis that was done for each type of critical area.

It is not anticipated that the proposed amendments to the CAO will have an adverse effect upon critical areas. The intent of the proposed amendments is to protect critical area functions and values in accordance with RCW 36.70A.172.

Title 14: Chapter 14.04 Definitions
Chapter 14.16 Zoning
Chapter 14.18 Land Division
The proposed amendments to SCC Title 14 Chapters 14.04, 14.18, and 14.16 are intended to clarify procedures for CAO implementation and provide internal regulatory consistency. The subject amendments include:

- Removal of reference to lowflow streams for CaRD land divisions.
- Allowing relief from site assessment requirements for short subdivisions in Ag-NRL or RRc-NRL zoned property with ongoing agriculture activity and no proposed additional development in order to facilitate long-term agricultural land protection.
- Update of definitions.

Best Available Science Documents
With the exception of the Administrative and the Frequently Flooded Section of the CAO, the analysis of the BAS and proposed amendments to the CAO based on the science requirements is considered in separate documents.

- *Best Available Science Report. Use of Best Available Science in Skagit County Critical Areas Ordinance (Wetlands and Fish & Wildlife Conservation Areas)*. Prepared by the Watershed Company.

- *Geologically Hazardous Areas. Discussion and Best Available Science Review*. Prepared by John Cooper, Skagit County Planning and Development Services.

- *Critical Aquifer Recharge Areas. Discussion and Best Available Science Review*. Prepared by Corinne Story, Skagit County Health Department and Gary Stoyka, Skagit County Public Works.

Review of Proposed Changes to the CAO
The analysis of the existing CAO, including the review of BAS requirements, was a collaborative effort between Skagit County Planning and Development Services (PDS), Health Department (SCHD), Public Works Department (SCPW), and the County's consultants.

1. Administrative
Proposed changes to the Administrative Sections of the CAO were developed by PDS with the assistance of BHC Consultants.

2. Wetlands
The BAS review and recommended revisions derived from the science for the Wetland section of the CAO were completed by the Watershed Company. PDS and BHC Consultants analyzed the existing code and proposed changes based on the BAS review and other functional improvements.

3. Critical Aquifer Recharge Areas
The BAS review, existing code analysis, and proposed changes to the Critical Aquifer Recharge Area section of the CAO were completed by SCHD and SCPW.

4. Geologically Hazardous Areas
The BAS review, existing code analysis, and proposed changes to the Geologically Hazardous section of the CAO were completed by PDS.

5. Fish and Wildlife Habitat Conservation Areas
The BAS review and recommended changes derived from the science for the Fish and Wildlife Habitat Conservation Area section of the CAO were completed by the Watershed Company. PDS and BHC Consultants analyzed the existing code and proposed changes based on the BAS review and other functional improvements.

6. Frequently Flooded Areas
The Frequently Flooded Areas Section of the CAO adopts the Flood Damage Prevention Ordinance (SCC 14.34) by reference in order to meet state requirements. SCC 14.34 is currently being updated. Minimal revisions for consistency purposes are proposed in this section of the CAO.

The following sections in this report include a description and staff analysis of the proposed amendments that were reviewed with the Citizens Advisory Committee. A number of issues and concerns that emerged from the CAC's review are also addressed.

II. ADMINISTRATION

Administration Sections

Proposed major revisions to the administration of the CAO presented to the CAC included:

A1. Sections have been reorganized so it is easier to understand and administer
A2. Removed list of State, Regional, Local, and Federal regulations, plans, and programs
A3. Updated mapping section to reflect current administration of code
A4. Allows for minor expansion of existing structures without complete standard review
A5. Added criteria and conditions for hazard tree removal within a critical area or buffer
A6. Added a buffer setback requirement around structures
A7. Removed sections of code that are under utilized or difficult to effectively administer
A8. Eliminated technical team review requirement for every alternative buffer proposal

A1: Sections have been reorganized so the code is easier to understand and administer.

The largest proposed change by PDS is based on feedback from the public and administration of the CAO over the past 10 years. PDS decided it was timely to revisit the entire CAO versus updating only sections that need revisions based on BAS. PDS proposed to reorganize sections, remove unnecessary and redundant language, improve fluidity, and make the CAO more readable and user friendly. The draft code was reformatted to be straightforward and follow a logical process.

CAC Discussion
All six CAC members present during this discussion approved of the reorganization.

A2: Removed list of State, Regional, Local, and Federal regulations, plans, and programs (existing SCC 14.24.040).

PDS proposed removal of the list of State, Regional, Local, and Federal regulations, plans, and programs. The lists are constantly changing and difficult to keep updated and comprehensive. The code clearly states that compliance with County regulations does not eliminate other agency requirements. In addition, PDS proposes adding “Tribal” to the list of agencies.

CAC Discussion
Five of six CAC members present agreed with the proposal to remove the lists. One CAC member wanted to research the issue further.

A3: Updated mapping section to reflect state guidance and current administration of code (existing and draft SCC 14.24.050).
PDS proposed to update the CAO Resource Information and Map section to follow state guidelines (WAC 365-090-040 (d) Mapping) that recommend using maps for information or illustrative purposes only, reflecting how the county is currently utilizing agency natural resource maps. The WAC also encourages counties to utilize performance measures instead of critical area maps for regulatory purposes.

CAC Discussion
All six CAC members present approved of these proposed changes.

A4: Allow for minor expansion of existing structures without standard critical area review (draft SCC 14.24.070).
PDS proposed removing the standard critical area review requirement for minor expansion (or modification) projects of less than 200 sq. ft. of footprint for existing single family residences that do not adversely impact critical areas or their buffers. The proposal would also allow similar modification of other existing structures that does not adversely impact critical areas or buffers, or increase septic effluent. The proposal presented to the CAC had this allowance in the "Activities Allowed Without Standard Review (SCC 14.24.070)" section of the draft CAO.

CAC Discussion
The CAC wanted clarification that there would be no encroachment into a critical area or buffer and wondered how "no impact" would be analyzed without review. The CAC also wondered where the 200 sq. ft. number came from and had concerns that a 200 sq. ft. expansion of building footprint could lead to a 200 ft. expansion of several stories of a structure.

"200 feet" is a number that comes from the International Building Code (IBC) as a threshold which can trigger a building permit requirement for a structure. Staff changed the 200 sq. ft. of footprint to 200 sq. ft. of floor area to address the possibility of an applicant applying this exemption to several stories of a structure.

Based on the CAC input, staff moved the "Expansion Allowance" to the "Standard Critical Areas Review and Site Assessment Procedures" section of the draft CAO. This triggers an initial critical areas review including a site visit by staff to ensure that the expansion does not extend into, or impact a critical area or buffer. If the project does not encroach into, or impact a critical area or buffer then a site assessment by a qualified professional would not be required.

A5: Added criteria and conditions for hazard tree removal within a critical area or buffer (existing SCC 14.24.530(3) and draft SCC 14.24.060).
PDS proposed the addition of conditions that would apply when there is a request for removal of hazardous trees in a critical area or buffer. The proposal would apply these criteria to all critical areas and buffers which had previously been applied to Fish and Wildlife Habitat Conservation Areas only.

The added conditions would prevent abuse of the current hazard tree language which allows complete removal of any trees from a stream buffer within "falling distance" of a structure.

CAC Discussion
Three out of six CAC members present approved of the proposal. A few members of the CAC had concerns about requiring landowners to leave trees and slash in the critical or buffer that could potentially become a fire hazard. Some felt it was fine to leave the tree but felt the slash should be removed to reduce the potential fire hazard.

Based on CAC input, staff added language to this section that allows a landowner to remove any limbs or slash resulting from hazard tree removal that is within 30 feet of a structure to reduce the fire hazard potential.

A6: Addition of a buffer setback requirement around structures (draft SCC 14.24.080(5)).
This change was proposed by PDS to formalize a 15 foot setback around structures near critical areas or buffers that allows for construction and/or maintenance activities without impacting the buffer.

CAC Discussion
The CAC had several concerns regarding this proposal. One concern was that it added a buffer to a buffer. Another concern was that it would be a real burden for landowners on small lots already having difficulty meeting buffer and/or setback requirements. One CAC member felt that the additional buffer would not be necessary for properties that were already maintained with lawn for example, where maintenance access is not a problem. Most did not like calling the setback a buffer and suggested calling this area a "maintenance corridor".

Staff agreed with the CAC on several accounts and changed the name of the buffer setback to a "maintenance corridor" and revised the requirements to be more flexible based on the site assessment for the proposal.

A7: Removal of under utilized section of code "Waiver of Site Assessment Requirements" (existing SCC 14.24.080(6)).

PDS proposed removing this section of the code based on some of the other proposed code changes including the use of the new DOE Rating System as well as staff experience in implementing the CAO over the past 10 years.

This section of the code allowed for a waiver of a site assessment requirement in an area where agriculture is the primary land use and the critical area has been identified as a Category IV wetland or a Type 5 stream. The waiver also required that a NRCS Farm Plan be developed and implemented.

The identification of a Category IV wetland or a Type 5 stream is more complex in the proposed code. Utilization of the new DOE rating system is more difficult and requires both field and office research to identify a Category IV wetland. There are no Type 5 streams in the draft CAO. Type 5 streams will be either Np or Ns streams in the new classification system. The waiver would apply to Ns streams which are not easily identified in the field and require considerable time to investigate.

Currently staff allows for modification of site assessment requirements which may include the review of NRCS Farm Plans as a component. This has provided landowners with flexibility and predictability between agency requirements, while still protecting critical areas. Consultants developing site assessments often work with the Skagit County Conservation District when developing site assessments for properties with an agricultural use.

CAC Discussion
Some CAC members thought the waiver should not be deleted entirely. Some felt the "Waiver" language was too complex and confusing and should be removed. The majority of CAC members voted to eliminate the "Waiver" section.

A8: Eliminates the technical team review requirement for every alternative buffer proposal.
PDS proposed removing the requirement to send every application with a proposal to deviate from standard buffer widths to a technical team consisting of State and Federal agencies and local tribes for review and comment. The process adds several weeks of review time for an applicant. The majority of the time there are no comments received from the technical team.

In the draft CAO, proposals for buffer reductions to 75% of the standard buffer width could be approved by the Administrative Official. A proposed Administrative Variance process will allow for buffer reduction proposals from 75% to 50% of the standard buffer triggering Level 1 review requirements that include public notice and comment periods.

Proposals for reductions below 50% of standard buffers would trigger a Level 2 Hearing Examiner Variance process including public notice, comment periods, and a public hearing.

CAC Discussion
All six CAC members present agreed with this proposal.

III. WETLANDS

Wetlands Section

Proposed substantial improvements and changes to the Wetland section presented to the CAC included:

WL1. Required the use of the new Department of Ecology (DOE) wetland rating system
WL2. Provided criteria for wetland dimensional thresholds
WL3. Revised buffer sizes for compatibility with the new rating system and BAS
WL4. Applied criteria for buffer increasing
WL5. Applied criteria for buffer decreasing
WL6. Revised mitigation ratios to meet BAS requirements

WL1: Utilization of the new DOE rating system (existing and draft SCC 14.24.200).

Skagit County currently uses the Washington State Delineation Manual (DOE Publication 96-94) and the Washington State Wetland Rating System (DOE Publication 93-074). The County is proposing to continue use of the state delineation manual and update to the new Washington State Wetland Rating System for Western Washington (DOE Publication 04-06-25).

Proposed utilization of the new rating system is based on guidance from WAC 365-190 *Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas* that directs counties to consider wetlands protection recommendations from DOE including the model wetlands protection ordinance and the four-tier wetlands rating system. RCW 36.70A.175 also directs counties to delineate wetlands in accordance with the manual adopted by DOE.

The new DOE wetland rating system represents the most current and updated guidance from DOE. The revised rating system reflects recent progress in the understanding of how wetlands function and are valued. The development of the revised rating system involved the participation of a Technical Review Team consisting of wetland scientists and local planners from Western Washington. The revised rating system is considered BAS.

CAC Discussion

All seven CAC members present during this discussion approved the adoption of the new DOE Wetland Rating System.

WL2: Develop criteria for wetland regulatory thresholds (existing SCC 14.24.230(2) and draft SCC 14.24.230(6))

PDS proposed to eliminate blanket dimensional thresholds for regulating wetlands that are based on size criteria only. The Watershed Company BAS

review does not support any dimensional thresholds for exempting wetlands from regulations. However, the BAS review further indicates that DOE recognizes the need to provide some flexibility to wetland regulations pertaining to small Category III and IV wetlands.

In the draft CAO some exemptions from County regulations are still possible for Category III and IV wetlands but must be based on specific performance criteria of the wetland. A site assessment must still be performed by a qualified professional that identifies the wetland as a Category III or IV and demonstrates that it meets the other criteria listed in 14.24.230(6)(a) and/or (b). The proposal does not eliminate DOE or the Army Corp of Engineers jurisdiction.

CAC Discussion
The CAC discussed the need to protect small Category III and IV wetlands as well as the impact to landowners when requiring buffers for small wetlands on small parcels of land. Concerns were also raised about the number chosen for the size threshold as being subjective and not based on BAS.

The CAC voted to accept (4:2) the criteria for exemption thresholds. One CAC member did not have a preference.

WL3: Revise buffer sizes for compatibility with the new DOE rating system and BAS (existing SCC 14.24.240(2) and draft SCC 14.24.230(1)).

Existing Buffer Width Requirements:

Wetland Category	Standard Buffer (feet)
I	150
II	100
III	50
IV	25

Proposed Buffer Width Requirements:

Wetland Category	Standard Buffer (feet) Based on Land Use Intensity
I	150 – 300
II	150 – 300
III	75 – 150
IV	25 – 50

Proposed Optional Buffer Width Requirements
The proposed CAO also provides flexibility for an applicant to choose an "Optional Wetland Buffer" in place of the standard buffer based on a site assessment. This option allows for small changes in buffer width based on

incremental changes in habitat score. This minimizes the potential for a buffer size to change dramatically based on a one or two point change in habitat function.

Optional Buffers		
	Land Use Intensity	
Habitat Score	Moderate	High
31 or higher	225 feet	300 feet
30	200 feet	270 feet
29	175 feet	240 feet
28	155 feet	210 feet
27	135 feet	180 feet
26	115 feet	150 feet
25	105 feet	136 feet
24	95 feet	124 feet
23	85 feet	112 feet
22 or lower	75 feet	100 feet

The County has modified buffer requirements to be compatible with the revised DOE rating system. The proposed buffers are based on guidance documents from DOE and WAC 365-190-080(1) and represents the most current BAS as discussed in the review done by the Watershed Company. The existing buffers do not meet the recommendations from DOE or the Washington State Department of Community, Trade, and Economic Development (CTED) for protecting wetlands.

The proposed standard buffer sizes take into account the functions and values of wetlands, associated land use, and nearby species and habitats. PDS chose to propose a range of buffers based on land use intensity which provides protection on a site by site, project by project basis rather than proposing a large “one size fits all” buffer which would need to provide protection from any potential land use impacts. The “Optional Buffer” standard width also provides added flexibility based on the proposed project and the habitat function of the wetland.

CAC Discussion

The CAC input on the proposed wetland buffers varied. A few of the CAC members wanted to maintain the standard buffer widths in the existing CAO. One CAC member felt that the wetland buffers recommended by DOE should be adopted since they represent BAS and the County would have to prove otherwise. One CAC member felt there should be no minimum buffer width and every proposal should be evaluated individually and apply buffers (if any) based on site specific conditions.

The CAC favored maintaining the standard buffer widths in the existing CAO (4:2). Two CAC members voted in favor of adopting the new buffer requirements as proposed.

Based on the range of CAC opinions, the proposed buffers in the public release draft are the same as those presented to the CAC. The buffers are supported by BAS and the optional buffer widths allow flexibility based on site specific conditions.

WL4: Application of criteria for buffer increasing (draft SCC 14.24.240(1)).
Specific criteria were added to the buffer increasing section that identify when an increase in buffer may be necessary. The added language provides guidance to the consultant and staff about when to require a buffer increase.

This topic was not discussed by the CAC for the Wetland section, but the same criteria were discussed during the Fish and Wildlife discussions. The CAC had concerns about some of the criteria which are addressed in the Fish and Wildlife section.

WL5: Application of criteria for buffer decreasing (draft SCC 14.24.240(3)).
The draft CAO provides more flexibility and specific incentives to the buffer decreasing section allowing the applicant to propose various ways to improve the function of the wetland buffer or maintain an already functioning buffer.

The existing CAO allows buffer reductions to 50% of the standard buffer. A 50% reduction is not supported by the Washington State Department of Community, Trade and Economic Development (CTED) or BAS, however a 25% reduction may be supported depending on site specific conditions. The mitigation sequence must be demonstrated prior to any buffer reduction proposals.

CAC Discussion
The CAC felt that it is important to allow the applicant to reduce to 50% of the standard buffer width if site specific circumstances dictated this need without going through a Level 2 Hearing Examiner Variance.

The CAC suggested the idea of an administrative variance process that would allow an applicant to propose a buffer reduction of greater than 25% but less than 50%. One member of the CAC also felt it was important to maintain the option for a buffer reduction utilizing only buffer enhancement as an option if functions and values are improved.

Some CAC members questioned why someone could get a buffer reduction utilizing the stormwater management incentive option when this may already be a requirement for development.

Staff agreed that all of these recommendations were sound and would improve the intended flexibility of implementing the CAO while still meeting the

requirements of BAS and GMA. Staff has developed code language for administrative variance reductions and added enhancement of the buffer to the list of incentives. The language under incentive options was also modified to not allow the use of a specific incentive measure for a buffer reduction if the measure was required for development approval.

WL6: Update mitigation ratios to reflect BAS (existing SCC 14.24.240(9) and draft SCC 14.24.240(4)).

PDS proposed updating mitigation ratios in the existing code to reflect BAS and the most current guidance from DOE.

CAC Discussion

The CAC noted that Federal and State agencies require notification by applicants when a direct wetland impact such as filling or dredging will occur. The agencies have developed their own regulations including mitigation ratios for these types of impacts. The County usually would defer these requirements to those jurisdictions. The CAC recommended that the County remove the mitigation ratios and rely on the ratios required by either the State or Federal agencies.

Initially, PDS agreed with the CAC regarding the removal of the mitigation ratios. However, after careful consideration, PDS proposes to update the mitigation ratios based on BAS and DOE guidelines. The ratios should remain in the code due to the possibility of other agencies not exerting regulatory authority over a project with proposed direct wetland impacts. In which case, PDS would need ratios in place to address those wetland impacts.

IV. CRITICAL AQUIFER RECHARGE AREAS

MEMORANDUM

TO: Ann Bylin, Associate Planner
Skagit County Planning & Development Services

FROM: Corinne Story, Environmental Health Supervisor
Skagit County Health Department

RE: Staff Analysis – Citizens Advisory Committee Input
CAO - Aquifer Recharge Area

DATE: August 18, 2006

This is to provide a staff analysis regarding the Citizens Advisory Committee (CAC) input into the Aquifer Recharge Section of the Critical Areas Ordinance. A summary of recommendations specific to the code changes proposed can be found beginning on page 9 of the Discussion and Best Available Science Review document in the table entitled "Develop Sections for Update of Skagit County Code, Chapter 14.24 Critical Aquifer Recharge Areas; Sections 14.24.300 through 14.24.360." This table is attached to this document for ease of reference.

Gary Stoyka, Skagit County Hydrogeologist and I met with the CAC on June 28 and July 12, 2006. Gary presented information regarding the Flow Sensitive Basin portion of this section, and I presented the other areas of this section, including well head protection, prohibited activities, etc. We also presented proposed language changes to Chapter 12.48 Skagit County Code (Drinking Water). This chapter will include some of the reporting requirements pertinent to the Skagit instream flow rule agreement and will work in conjunction with the Flow Sensitive Basin section of Chapter 14.24 SCC.

The following areas were noted during the CAC discussions:

"Well field" definition. Language was changed in SCC 14.24.310(1)(a)(iii) to allow the Health Officer or Administrative Official the flexibility to determine when multiple wells in a designated area could have impact on an aquifer. The CAC had concerns that the general nature of this language could be misused.

The issue is that as development pressure increases in Skagit County, project applicants may need to look off the subject property for a water source. Skagit County Health Department has encountered situations of multiple wells, both public and individual, in close proximity to each other. This can cause interference between wells, possible depletion of the aquifer and potential for contamination of the aquifer. By establishing a well head protection area of sorts surrounding a well field, mitigations can help protect this water resource into the

future. The nature of aquifers in Skagit County can be very area specific, therefore, our intention is to use best available science and have the County hydrogeologist review these situations to determine if additional mitigations are necessary.

We will address this issue through policy, as well as in the revision to Chapter 12.48 SCC, Drinking Water, to better define well fields and how to administer the mitigations to this problem.

Identifying parcels within a well head protection area. There was concern that it can be confusing whether a particular parcel is or is not included in a well head protection area.

This project is a long-term data enhancement problem. We currently have a GIS layer depicting well head protection areas, but have not yet been drilled down to parcel specific. We hope to address this situation in conjunction with the data needs necessary to comply with Skagit County's settlement agreement with Department of Ecology regarding the instream flow rule. Presumably, this agreement would allow for additional staff to work on the water data needs for Skagit County.

Definitions of landfills in the prohibited activities within a Category I designated areas. The CAC expressed a desire that the specific solid waste code relating to landfill activities be cited rather than listing specific landfill activities.

The language was changed in SCC 14.24.315(1) to reflect current solid waste regulations.

Flow Sensitive Basins. Two items of concern arose during this discussion;

First, language in proposed SCC 14.24.360(2) (Flow Sensitive Basins, calculating debit from reserve) appeared to grant the Administrative Official and Health Officer powers available only to Department of Ecology. This section's purpose is to delineate when a groundwater withdrawal will not be debited from groundwater withdrawal limits. Mitigation measures to preclude an applicant from having their project counted against the reserve can only be approved by the Department of Ecology. Therefore, the language was changed to indicate these mitigation measures will be agreed upon by Skagit County in coordination with the Washington State Department of Ecology. This matter will be a part of the intergovernmental agreement that Skagit County and the Department of Ecology are proposing.

If an applicant's project is large enough that it will require a water right, and the applicant desires that the project not count against the subbasin reserve (or should the reserve be fully utilized), the applicant will need to work directly with the Department of Ecology for approval of the mitigation measures.

Second, there was discussion regarding impervious surfaces in flow sensitive basins. The current 5% impervious surface in closed or low-flow stream areas was proposed to be increased to 10% in Flow Sensitive Basins. There was discussion regarding effective impervious surface versus a straight percentage. A further review of the literature indicates that up to 20% impervious surface can be achieved.

Nitrates in Land Divisions. One final item that was broached with the CAC, though the language had not fully been completed can be found in SCC 14.24.330(1)(i)(ii) regarding nitrate loading for land divisions. A recent project in Skagit County pointed out the need to be more specific in our code as to when mitigation plans or contingency plans are required for land divisions. The current code was unclear as to whether or not a plat needed to remain below 5 milligrams/liter of nitrate as nitrogen.

The language in this section was changed to delineate:

1. If the nitrate calculation for a plat indicated the on-site sewage disposal systems would result in over 5 mg/L in the aquifer at the point of compliance, the plat developer would need to develop a mitigation plan to reduce nitrates.
2. If the point of compliance, even with mitigation, goes over 10 mg/L, a contingency plan will be required. A contingency plan would require more drastic measures to protect the water resource. It would likely include limiting use of the on-site sewage disposal system until the matter is resolved.

There is sufficient evidence to indicate that on-site sewage disposal systems are significant contributors to nitrate concentrations in groundwater. Other sources include lawn and garden fertilizers and livestock. The on-site sewage system industry is rapidly developing technology to address this issue. With appropriate monitoring and maintenance of on-site sewage disposal systems (as is done through Skagit County's Operations and Maintenance program), we have already started attempting to address this issue.

Thank you for your time and consideration.

enc: Summary Table of Code Recommendations

Proposed Changes to Critical Aquifer Recharge Areas
Skagit County Code Sections 14.24.300 through 14.24.360

Develop Sections for Update of Skagit County Code, Chapter 14.24 Critical Aquifer Recharge Areas
Sections 14.24.300 through 14.24.360
Findings
Finding #9: The model code outline for CARAs in Washington State (Washington Office of Community Development (2002); attached as Appendix A) provides an appropriate basis for updating SCC 14.24.300 – 14.24.360
Finding #10: The revised Skagit in stream flow rule (WAC 173-503) provides the basis for critical area aquifer recharge and protection within flow-sensitive basins.

Recommendations	
14.24.300 - Intent	Addition of reference to Skagit instream flow rule (WAC 173-503), Stillaguamish instream flow rule (WAC 173-505) and Skagit County water code 12.48 and intent to be consistent with DOH wellhead protection guidance.

14.24.310 - Designations *General Sectior*	Addition of susceptibility to designation.
	Note that there are currently no susceptible ground-water management areas, or special protections areas designated in Skagit County.
Section (1) – Closed, Low Flow Streams identified as "Flow Sensitive Basins" and moved to new Section (2)	Changed closed or low-flow streams to designation as Flow Sensitive Basins and created a unique category for flow sensitive basins that is distinct from Category 1 and 2 designations. Flow Sensitive Basins have specific designation and mitigation sections (Sections 14.24.360 through 14.24.380).
Section (1)(a)(iii)	Redefine wellhead protection areas to include Health Officer or Administrative Official determination, thereby allowing flexibility to address potential 'well-field' scenarios requiring Category I CARA review. The purpose of this change is to replace the language that addresses plats with 5 or more individual wells where lot size is less than or equal to two acres, which was found to not be indicative of potential threats to aquifers. Redefine public water system wellhead protection definitions to capture all Group A water system 10-year time-of-travel zones and Group B water system one-year time of travel zones.

OLD SECTON 14.24.320 LISTED EXEMPTIONS AND PROHIBITED ACTIVITIES. PROHIBITED ACTIVITIES NOW HAVE THEIR OWN SECTION (14.24.315) AND EXEMPTIONS ARE NOW LISTED AS SUCH UNDER SITE ASSESSMENT REPORT (NEW SECTION 14.24.320).

14.24.315 – Prohibited Activities	Moved from old Section .320.
Section (1)	This definition has been updated to reflect current solid waste codes.
Section (2) through (6)	Better define and expand activities that are prohibited in Category I areas.

OLD SECTION 14.24.330 (INITIAL PROJECT REVIEW) WAS REMOVED AS THIS IS NOW COVERED UNDER SCC 14.24.080 (CRITICAL AREA REVIEW PROCEDURES GENERALLY). THE SCOPING SECTION (14.24.330(2)) WAS MOVED TO SECTION 1 UNDER THE SITE ASSESSMENT REPORT (NEW SECTION 14.24.320).

14.24.320 – Site Assessment Report	Exempt activities now included in this section. Portions of Section .330 (Initial Project Review) included in this section.
Section(3)(k) – Site Assessment Elements	Change 'closed or low-flow' to Flow-Sensitive Basins.
Section (3)(l) – Site Assessment Elements	Assess seawater intrusion potential. The Skagit County Health Department needs to update Interim Seawater Intrusion Policy and consider placing it in SCC 12.48 (water code).
Section (3)(m) – Site Assessment Elements	Evaluate nitrate loading at full project build-out. (This is not a change from current procedures).
Section (4)(b) - Exemptions	Accessory dwelling units outside Category I areas are exempt from CARA review (ADU's not addressed in previous CAO).
Section (4)(e) - Exemptions	Link with 14.24.100 – activities allowed without critical area review.

14.24.330 - Mitigation *General*	Addition of language "or otherwise necessary per SCC 14.24.310 to determine mitigations necessary as determined by Health Officer or Administrative Official." Reference to mitigation for groundwater withdrawal section (Flow Sensitive Basins) for clarity.
Section (1) and (2)	General mitigation plan and recording sections moved from .350 (6) and (7) to Section .330(1) and (2).
Section (1)(f)	Removal of language '5 or more lots of two acres or less in size and is proposed to be served by individual wells" for reasons described in 14.24.310(1)(a)(iii) above.
Section (1)(i)(ii) – Nitrate Loading Mitigation	Nitrate loading mitigation revised to specify that a mitigation plan for a land division is required at 5 mg/L calculated nitrate loading, and that a contingency plan is required at 10 mg/L at the point of compliance. Also, plat notes required referring to these plans (current practice).
Closed – Low flow Stream Mitigation	Moved to Sections .360 through .380
	Removed public water hook-up requirement as this is more appropriately addressed in SCC 12.48.
	Removed interim well section to be consistent with WAC 173-503 and 173-505.
	Impervious surface section moved to Section .375 for organizational clarity.
	Removed lawn watering restriction to be consistent with WAC 173-503 and 173-505..

OLD SECTION SCC 14.24.360 (AQUIFER RECHARGE AREA PUBLIC NOTICE AND REVIEW) ELIMINATED AS THIS IS COVERED UNDER SCC 14.24.070 WHICH REQUIRES PUBLIC NOTIFICATION UNDER 14.06 (PERMIT PROCEDURES).

14.24.360 – Flow-Sensitive Basins	New designation replacing closed and low-flow streams for basins with instream flow rules to be consistent with WAC 173-503 and 173-505.

Section 1(a) – Flow-Sensitive Basin reservations	Commensurate with WAC 173-503 and 173-505, Skagit in-stream flow rule.
Section 1(b) – Samish Basin	This language reflects the current code. When a Samish instream flow rule is adopted by Department of Ecology, this section will be amended.
Section 1(c)	Refers to groundwater withdrawal limit in Stillaguamish Basin instream flow rule (WAC 173-505).
Section 1(d)	WRIA 1 drainage basin to remain as it is in the current code until such time as an instream flow rule is adopted by Department of Ecology.
Section 2	Reporting requirement and provision for mitigations to not count water use against the sub basin reservation to be consistent with WAC 173-503 and 173-505..
Section 2(a) and (b)	Mitigation measures for groundwater withdrawals are to be approved by the Department of Ecology or Skagit County for Flow Sensitive Basins to be consistent with WAC 173-503 and 173-505..
Section 2(c)	If an applicant proposes a project based on an interruptible water supply, measures to utilize such a water source need to be approved by the Health Officer.

14.24.370 – Flow Sensitive Basin Mitigations	Mitigation measures in addition to SCC 14.24.330
General	Impervious surfaces from old 'in-stream' flow section increased from 5% to 20% based on best available science, and now applicable to projects within Flow Sensitive Basins to be consistent with WAC 173-503 and 173-505.. Current code addresses projects within ½ mile of streams identified as 'closed' or 'low flow.'
Section 1	This section is similar to what is in current code: SCC 14.24.350(5)(a)(iii) addressing impervious surfaces, with the addition of the "Health Officer or Administration Official determination that storm water infiltration will not be deleterious to health or the environment."
Section 2	If water supply comes from outside the basin, compensating recharge for projects on septic systems will be credited to the impervious surface percentage (current code per SCC 14.24.350(5)(a)(iii).
Section 3	Hydrogeological characterization that placement of impervious surfaces will not adversely impact stream flows allows for increase of impervious surface area.
Section 4	Addition of areas subject to tidal influence exempt from impervious surface mitigation requirements.

14.24.380 - Mapping	Maps for flow-sensitive basins to be produced.

V. GEOLOGICALLY HAZARDOUS AREAS

PLANNING & DEVELOPMENT SERVICES

GARY R. CHRISTENSEN, AICP, DIRECTOR
OSCAR GRAHAM, DEPUTY DIRECTOR

PATTI CHAMBERS
Administrative Coordinator

BILL DOWE, CBO
Building Official

MEMORANDUM

To: Ann Bylin, Planning and Development Services
From: John Cooper, PG, Planning and Development Services
Date: December 19, 2006
Re: Staff Report – Proposed Geologically Hazardous Areas Code

On June 14, 2006, Skagit County Planning and Development Services (PDS) met with the critical areas citizens advisory committee (CAC) to discuss changes to the geologically hazardous area section of the critical areas ordinance. Six of the nine members of the CAC were present and included Mr. Bob Bailey, Mr. Ralph Heft, Mr. Paul Kriegel, Ms. Carrie Youngquist, Mr. David Hawkins, and Mr. Stuart VanBuren. PDS proposed nine changes to the geologically hazardous area section of the critical areas ordinance, SCC 14.24.400, and solicited comments on five additional questions to the CAC regarding the Geologically Hazardous Area Code. Each proposed change to the geologically hazardous area code and each question were presented to the CAC for debate and discussion. The following represents each proposed change or question submitted to the CAC, the results of the CAC discussion, and PDS response to the comments generated by the CAC.

Proposed Additions/ Changes to the Geologically Hazardous Area Ordinance.

PDS Proposed Additions & Changes to SCC 14.24.410

- The first change proposed by PDS is based on information from the Soil Survey of Skagit County. During review of the current code language, PDS noted that 8 soil types designated by the Soil Survey as severe erosion hazards had been omitted from the code. As required by WAC 365-190-080, PDS proposed the addition of the 8 soil types as suspect or known erosion hazards. The CAC responded to the proposal by suggesting that this change could be omitted because all these severe erosion hazards in the soil survey occur on slopes exceeding 30%. As 30% slopes are already listed in SCC 14.24.410 as suspect or known erosion hazard areas, the addition of the 8 soil types including the 3 currently listed creates an unnecessary duplication. PDS notes that the CAC is correct in their analysis, however WAC 365-190-080 requires that known or suspect erosion hazards shall at least include those areas identified by the United States Department of Agriculture Soil Conservation Service as having severe erosion hazards. Based on these requirements, PDS concluded that inclusion of the eight additional soil types is mandatory in the geologic hazard section. However, as discussed by the CAC, the 30% slope and severe erosion hazard sections have been combined.

- The second change proposed by PDS is based on the Critical Areas Assistance Handbook from the Washington Department of Community, Trade and Economic Development (CTED). Page 24 of the handbook recommends that suspect or known erosion hazard areas include channel migration zones. Based on the recommendation, PDS added channel migration zones as erosion hazards. Upon review, the CAC concluded that the term "Channel Migration Zone" was too contentious and required definition. Although the CAC offered several valid definitions of a Channel Migration Zone, PDS concluded that the term Channel Migration Zone is currently not favorable terminology and withdrew the proposal in favor of the current erosion hazard language SCC 14.24.410 (1)(e), "*those project areas that may be considered to have an erosion hazard as a result of rapid stream incision and or stream bank erosion*."

- The third change proposed to the Geologically Hazardous Areas section by PDS included moving the reference concerning alluvial fans from "other geologic hazards" section of the current code to the suspect or known landslide hazard area section. Based on scientific literature, PDS determined that alluvial fans are a result of mass wasting events and would be more appropriately located under the landslide hazard section. The CAC concluded that given the source of alluvial fans, the change was appropriate. The CAC supported the change.

- The fourth change proposed to the Geologically Hazardous Areas section by PDS included adding Table 9 of the Soil Survey of Skagit County to the suspect or known landslide hazards section, SCC 14.24.410 (1)(b). Table 9 of the Soil Survey of Skagit County provides information on soils types that may represent a risk for development due to slopes and soil strength characteristics. PDS determined that the information is a valuable resource to the public and proposed to reference Table 9 of the Soil Survey of Skagit County in the suspect or known landslide hazards section, SCC 14.24.410 (1)(b). The CAC reviewed the addition and all members present agreed that the addition was warranted.

- The fifth change proposed by PDS is based on the Liquefaction Susceptibility Map of Skagit County issued by the Washington Department of Natural Resources (DNR). The Liquefaction Susceptibility Map indicates those areas in Skagit County that may be at high risk to liquefaction. Construction in areas of high susceptibility to liquefaction may present a risk to development during seismic events. PDS determined that the information is a valuable resource to the public and proposed to reference the Liquefaction Susceptibility Map of Skagit County in the suspect or known seismic hazards section, SCC 14.24.410 (1)(c). The CAC reviewed the addition and all members agreed that the addition was warranted.

- The sixth change proposed by PDS is based on the Tsunami Hazard Map of the Anacortes-Whidbey Island Area, Washington: Modeled Tsunami Inundation from a Cascadia Subduction Zone Earthquake issued by the Washington Department of Natural Resources (DNR) Division of Geology and Earth Resources. The Tsunami Hazard Map indicates those coastal areas in Skagit County that may be at high risk to tsunami inundation. Construction in areas of potential tsunami inundation may present a risk to development during seismic events. PDS determined that the information is a valuable resource to the public and proposed to reference the Tsunami Hazard Map of the Anacortes-Whidbey Island Area in the suspect or known seismic hazards section, SCC 14.24.410 (1)(c). The CAC reviewed the addition and all but one member of the CAC agreed that the addition was warranted.

CAC Questions Concerning SCC 14.24.410

- The first question submitted to the CAC concerning Geologically Hazardous Areas Section was whether the site assessment threshold of 200 feet was adequate or should it incorporate a greater distance under SCC 14.24.410 (3)? The CAC was not able to reach consensus on the issue. Based on the CAC discussion, PDS did not amend the proposed code to address the question. However PDS notes that SCC 14.24.410 (3) of the proposed code does allow for an increase of the site assessment threshold equal to the vertical relief of the suspect or known landslide hazard area.

- The second question submitted to the CAC concerning Geologically Hazardous Areas section was whether the USGS relative slope stability map of the Port Townsend Quadrangle should be added to the suspect or known landslide hazard areas section as a reference? The CAC was not able to reach consensus on the issue. Based on the CAC discussion, PDS did not amend the proposed code to address the question.

PDS Proposed Additions & Changes to SCC 14.24.420

- The seventh change proposed to the Geologically Hazardous Areas section by PDS included a revision of the definition of a qualified professional. The Washington Department of Licensing now requires that persons performing geologic investigations be licensed by the State of Washington as a geologist or geotechnical (civil) engineer. Based on this requirement, PDS proposed to amend the definition of a geologist to include the requirement of licensing and moved the definition to the definitions section. The CAC reviewed the addition and all but two members of the CAC agreed that the addition was warranted.

- The eighth change proposed to the Geologically Hazardous Areas section by PDS included a simplification of the reporting requirements under SCC

14.24.420. The CAC reviewed the proposal and all members of the CAC agreed that the change was warranted.

CAC Questions Concerning SCC 14.24.420

- The third question submitted to the CAC concerning Geologically Hazardous Areas section was whether Volcanic, Tsunami/Seiche, and liquefactions hazards be exempt from Geologically Hazardous Area site assessment requirements, SCC 14.24.420? All the CAC members except two agreed that tsunami/seiche and volcanic hazards should be exempt from site assessment requirements. However, the CAC was not able to reach consensus on the liquefaction issue except for one recommendation to exempt single family residential construction from site assessment requirements. Based on the results of the CAC discussion, PDS amended the proposed code to exempt volcanic, tsunami and seiche hazards from site assessment requirements and to exempt single family residences from liquefaction site assessment requirements.

PDS Proposed Additions & Changes to 14.24.430

- The ninth and final change proposed to the Geologically Hazardous Areas section by PDS included increasing the minimum buffer from landslide and erosion hazard areas to 50 feet. The change is based on the geologically hazardous area model ordinance from CTED which recommends a 50 foot buffer from landslide and erosion hazard areas. The results of the CAC discussion indicated a difference of opinion by the CAC members with 3 members supporting the change and 3 members opposed to the proposal, in favor of consultant discretion. The discussion included valid comments that the 50 foot minimum setback requirement would be excessive on smaller unstable slopes. Based on the comments from the CAC, PDS revised the proposal to reduce the buffer to 30 feet for landslide/erosion hazard areas with a vertical relief less then 50 feet and require a minimum buffer of 50 feet for landslide/erosion hazard areas with a vertical relief of 50 feet or greater.

CAC Questions Concerning SCC 14.24.430

The minimum buffer discussion closed the meeting on July 14, 2006. In order to complete the discussion, two additional questions were posed to the CAC members via e-mail.

- The fourth question was whether PDS should broaden the vegetation section, SCC 14.24.430(1)(f), to allow planting of non-native species for slope stabilization. The CAC did not respond to this question. PDS comments that the use of non-native vegetation to aid in the stabilization of landslide hazard areas has merit. However, broad application of this suggestion could have a negative adverse impact on slopes as well as ecologic systems. PDS concludes

that some use of non-native vegetation on slopes may be appropriate on a case by case basis.

- The fourth question was whether PDS should restrict residential development on a known active fault line, SCC14.24.430(1)(h & i). The CAC did not respond to this question. PDS comments that documentation was not obtained during the BAS review that a fault system is present in Skagit County exhibiting surficial displacement. In the event that BAS or scientific evidence of an active fault with surficial displacement is present in Skagit County, SCC 14.24.430 (1)(i) of the proposed Geologically Hazardous Areas section should apply which "*prohibits residential structures in geologically hazardous areas that cannot be fully mitigated"*.

VI. FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Fish and Wildlife Habitat Conservation Areas Section

Proposed major revisions to the Fish and Wildlife Habitat Conservation Areas (Fish and Wildlife HCAs) section of the CAO presented to the CAC included the following:

1. Added new Fish and Wildlife HCAs to the list based on guidance from WAC 395-190-080 and BAS requirements
2. Updated Water Typing classification to new typing system adopted by the Washington State Department of Natural Resources per WAC 222-16-030
3. Revision of buffer requirements to correlate with new Water Typing and BAS
4. Revised buffer width requirements on lake and marine shorelines
5. Applied criteria for buffer width increasing
6. Applied criteria for buffer width decreasing
7. Removed alternative "Performance Based Riparian Standards" for tree removal in a stream buffer.

FW1: Add new Fish and Wildlife HCAs to the classification list (existing SCC 14.04 and draft SCC 14.24.500(1)).

Based on guidance from WAC 365-190-050(5) and Washington State Department of Community, Trade and Economic Development (CTED) the following items were added to the list of fish and wildlife HCAs in the draft CAO that was presented to the CAC:

> (k) State Priority Habitats and Areas Associated with State Priority Species as defined in WAC 365-190-080.
> (l) Areas of Rare Plant Species and High Quality Ecosystems referenced in RCW 79.70.
> (m) Land Useful or Essential for Preserving Connections Between Habitat Blocks and Open Spaces as defined in WAC 365-190-080.

Item (k) adds State Priority Habitats and Species to the list of classified fish and wildlife HCA's. Although these habitats and species are the priorities for WDFW by adding them to the CAO it provides protection locally.

Item (l) provides local protection for rare plant species and high quality ecosystems that are identified by the Washington State DNR through the Natural Heritage Program.

Item (m) provides a mechanism to preserve and protect areas that connect fish and wildlife habitat blocks and open spaces.

CAC Discussion

Most CAC members were in general support of adding item (k) and (l) to the list of designated fish and wildlife HCAs but did not like the idea of adding (m)

without further clarification of what constitutes “land useful or essential for preserving connections between habitat blocks and open spaces”.

Based on the CAC input, staff proposes to keep (k) and (l) but not include (m) in the list. Although PDS believes connectivity is an important component of habitat for some species, it can be considered and applied in the buffer increasing portion of the Fish and Wildlife section when applicable.

FW2: Update Water Typing Classification to new Water Typing system adopted by the Washington State Department of Natural Resources per WAC 222-16-030 (existing SCC 14.24.530(2) and draft SCC 14.24.510).

Interim DNR Water Typing System	New DNR Water Typing System
Type 1	Type S
Type 2	Type F
Type 3	Type F
Type 4	Type Np
Type 5	Type Ns

Currently the County utilizes the Washington State Department of Natural Resources (DNR) interim water typing system (WAC 222-16-031) for classifying waters of the state. The proposal presented to the CAC was to adopt the new DNR Water Typing classification scheme. WAC 365-190 *Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas* specifically identifies “Waters of the State” as a fish and wildlife HCA and directs counties to utilize the classification system established in WAC 222, the Washington Forest Practices Rule Book. DNR has adopted the new typing for Western Washington and will not maintain the old system. The County should not consider taking on the responsibility of maintaining the old typing system.

Although there are inherent problems with utilizing the new or old DNR water typing system to classify streams in Skagit County for the purpose of regulating development along streams, there are currently no viable alternatives. The County could develop a local stream classification system that would be more specific to the County landscape including the lowlands. This would be a major undertaking.

CAC Discussion
In the draft presented to the CAC the DNR Water Types S, F, Np, and Ns, were listed and described generally. The general description did not match DNR’s extensive definition of each water type. The CAC suggested not including the general description and referring directly to the WAC for definitions. PDS agreed with the CAC that the descriptions should either match DNR or refer to the WAC

222-16-030. Upon further review, it was clear that the DNR descriptions were too lengthy to add verbatim to the CAO and a reference to the WAC did not supply enough information to an applicant. Staff reworked the general descriptions of Type S, F, and N streams in order to provide the public with some basic information on the various stream types.

The CAC also identified problems associated with the new DNR Water Typing specifically with the modeling and mapping associated with the process. This is part of the reason that the County will not rely on maps for regulatory purposes. Each project within 200 feet of a stream will undergo a site specific analysis to verify stream type.

Four out of seven CAC members supported the adoption of the new DNR Water Typing system. Two CAC members felt the change was tolerable and one CAC member was neutral on the proposed change.

FW3: Revise buffer requirements for consistency with new Water Typing and Best Available Science (existing SCC 14.24.530(2) and draft SCC 14.24.530(1)).

Existing Standard Buffers:

DNR Water Type	Standard Buffer (feet)
Type 1 and 2	200
Type 3	100
Type 4 and 5	50

Proposed Standard Buffers:

DNR Water Type	Standard Buffer (feet)
Type S	200
Type F > 5 feet width	150
Type F ≤ 5 feet width	100
Type Np and Ns	50

Utilization of the new DNR Stream Typing requires adjustments in standard buffers from the existing CAO. The new typing system does not apply the same criteria for classifying a stream as the existing system. The new system has fewer categories. Most, if not all, former Type 2 streams will be classified as Type F streams. Former Type 3 streams will also become Type F streams under the new system. Type 1 streams will become Type S and Type 4 and 5 streams will become Type Np or Ns.

The most significant change will be in the Type F class. There will be many more Type F streams which have a broad range of characteristics. A standard buffer

for the whole range of Type F streams contradicts the application of best available science.

PDS proposed to create sub-categories for Type F streams:

- Streams > 5 feet in width
- Streams ≤ 5 feet in width

The Watershed Company's BAS review document states that buffer widths of 100 feet may be adequate to protect the functions and values of streams with fish habitat if the buffer is of high quality. The document further maintains that by proposing 100 foot buffers on all Type F streams there maybe a decrease in current protection provided by the existing CAO which requires a 200 foot buffer on Type 2 streams.

Creating a subcategory of streams greater than 5 feet in width provides some formerly Type 3 fish bearing streams with more protection than currently exists and enough protection on formerly Type 2 streams, according to the BAS review. Different management recommendations for streams less than or greater than 5 feet in width is supported by the Washington Department of Fish and Wildlife in *Management Recommendations for Washington Priority Habitats (Knutsen and Naef 1997).* WDFW standard recommended Riparian Habitat Areas (RHA) widths are different for Type 3 streams greater than or less than 5 feet wide. The Department of Natural Resources also has different Riparian Management Zones (RMZ's) widths and leave tree requirements for exempt 20 acre parcels for Type F streams that are greater or less than 5 feet in width. CTED has also proposed different buffer widths for Type 3 streams that are greater or less than 5 feet in width in their Model CAO.

There will be increased protection on many formerly Type 4 streams that will be classified as Type F streams under the new typing system.

CAC Discussion

The CAC generally supported the proposed stream setbacks. One CAC member thought that the subcategory break for Type F streams should be at 20 feet width with a gradient of less than 4% based on the former DNR Type 2 definition. This would have again isolated Type 2 streams now classified as Type F streams. The new DNR typing does not support this distinction for breaking the streams out of the Type F category. Staff recommends variable buffer widths depending on channel widths greater or less than 5 feet in width as proposed.

All CAC members felt that site specific conditions, including land use, geology, and topography should be considered when applying a buffer width. Site specific conditions will be considered for every development application. A site assessment done by a qualified professional will be required for every development proposal within 200 feet of a stream. The quality of the buffer,

adjacent land use, and natural conditions will be analyzed for application of buffers.

FW4: Revise buffer requirements on marine and lake shorelines (existing and draft SCC 14.24.530(2)).

Existing Standard Stream Buffers:
In areas adjacent to lakes having Urban or Rural Residential designations under the Skagit County Shoreline Master Program (SMP):

SMP Area Designation	Residential Structure Buffer (feet)
Rural Residential	50 *
Urban	35 *

* Or the average of setbacks for existing dwelling units within 300 feet of side property lines whichever is greater.

Existing Buffers on Marine Shorelines:
Standard buffers on marine shorelines are site specific as determined by the site assessment to protect the functions and values of the fish and wildlife HCA but are no less than the minimum allowed under the SMP.

Proposed Standard Buffers for Lakes and Marine Shorelines Presented to the CAC:

SMP Area Designation	Standard Buffer (feet)
Natural	250
Conservancy	200
Rural	150
Rural (with mature tree stands)	100
Rural Residential	50
Urban	35

The Skagit County SMP has been in place since 1976. The SMP is required to be updated by 2012.

PDS has proposed buffers for marine and lake water bodies intended to bridge the gap between the setbacks identified in the SMP and the proposed riparian buffers identified in 14.24.530 which are supported by BAS. The proposed buffers were also based on existing developed conditions especially in the Rural Residential and Urban shoreline designations.

Guidance from State agencies including the DOE and CTED included a fact sheet to help cities and counties address how the SMP and GMA requirements should be integrated. The fact sheet states that “If the local government updates its critical areas ordinance under the GMA before it updates its Shoreline Master Program then the GMA’s BAS requirements will apply to the critical area update in the shoreline jurisdiction until the SMP is updated”.

CAC Discussion
Two out of seven CAC members wanted to see the Shoreline setbacks unchanged (remain the same as current SMP setbacks). Several members of the CAC felt that the setbacks in the Rural Residential (50ft.) and Urban (35ft.) SMP designations were insufficient to protect fish and wildlife habitat conservation areas. One CAC member expressed concerns that having larger CAO setbacks than SMP setbacks will lead to more variances to get to the same result.

After discussion with the CAC and in order to meet BAS requirements staff has proposed some changes to the setbacks. Staff proposes an increase to 140 feet in the Urban and 100 feet in the Rural Residential shoreline designations. PDS also recommends decreasing the Conservancy buffer to 200 feet which is consistent with BAS as well as the standard jurisdictional area of the SMP.

Proposed Standard Buffers on Marine and Lake Shorelines Based on CAC Discussion:

SMP Area Designation	Standard Buffer (feet)
Natural	200
Conservancy	150
Rural	100
Rural Residential	100
Urban	140

FW5: Application of specific criteria for buffer increasing (draft SCC 14.24.540(1)).
PDS proposed to add specific criteria to the buffer increasing section that identifies when an increase in buffer may be necessary to protect the functions and values of fish and wildlife HCAs. The added language provides guidance to the consultant, applicant, and staff about when to require a buffer increase.

CAC Discussion
The CAC preferred the general language that already existed in the CAO which allowed for a buffer increase. Several CAC members thought that an increase may be important when connectivity of habitats is found to be necessary. They would like this based on a site specific basis that demonstrates what is needed to protect habitat connectivity.

Based on input from the CAC staff eliminated some of the proposed buffer increasing criteria but still provided some site specific criteria for guidance on when buffer increasing may be necessary. Based on experience staff has found that without specific buffer increasing criteria identified in code, site assessments do not include proposals for increasing buffers.

FW6: Application of specific criteria for buffer decreasing (draft SCC 14.24.530(2)).

The proposed draft CAO provides more flexibility and specific mitigation incentive measures to the buffer decreasing section allowing the applicant to propose various ways to improve the function of the fish and wildlife HCA and buffer or maintain an already functioning buffer. The incentive measures have been developed by qualified professionals at the Watershed Company and are based on professional experience with mitigation plans and the effectiveness of various techniques at mitigating potential impacts.

The existing CAO allows buffer reductions to 50% of the standard buffer. A 50% reduction is not supported by BAS however a 25% reduction can be supported depending on site specific conditions. The mitigation sequence must be demonstrated prior to any buffer reduction proposals.

CAC Discussion

The CAC felt that it was important to allow the applicant to reduce to 50% of the standard buffer based on site specific circumstances without triggering the requirement for a Level 2 Hearing Examiner Variance.

The CAC offered the idea of an administrative variance process that would allow an applicant to propose a buffer reduction of greater than 25% but less than 50%. One member of the CAC proposed adding buffer enhancement as an incentive measure if functions and values can be improved.

Staff agreed that both of these recommendations would improve the intended flexibility of implementing the CAO while still meeting the requirements of BAS and GMA. Staff has developed code language for an administrative variance process for reduction proposals (25-50% of standard buffer width) and added enhancement of the buffer to the list of specific incentive measures.

FW7: Removal of Performance Based Riparian Standards for Tree Harvest in a Fish and Wildlife HCA (existing SCC 14.24.530).

In the existing CAO this subsection of the Fish and Wildlife Section provides an allowance for some timber removal in the riparian buffer if certain performance standards can be met.

The Washington State Department of Natural Resources (DNR) processes all non-conversion forest practice applications. The County processes only land conversion applications which convert the land use from forestry to another land use. Landowners can still apply for timber harvesting in riparian buffer areas through the DNR under their regulations, unless the area is already protected under a protected critical area agreement with the County.

PDS recommended that this part of the Fish and Wildlife section be removed. The section was only utilized a few times by applicants in the last 10 years. The section was difficult and expensive for applicants to demonstrate compliance with the performance standards.

CAC Discussion

One CAC member recommended that this section be left in place with possible improvements. It was suggested that the Forestry Advisory Board (FAB) provide recommendations. The FAB reviewed this section and although they did not provide recommendations for improvement they still supports leaving this section in the code.

PDS recommends removal of this section.

VII. FREQUENTLY FLOODED AREAS

Frequently Flooded Areas Section

The Frequently Flooded Areas Section of the CAO adopts the Flood Damage Prevention Ordinance (SCC14.34) by reference in order to meet state requirements (WAC 365-190-080(3). SCC 14.34 is currently being updated and included a citizen committee review.

PDS proposes minimal revisions to the CAO that include changing the name of this section from “Flood Hazard Areas” to “Frequently Flooded Areas” to be consistent with State Guidelines.

RCW 36.70A.030 Definitions:

> *(5) Critical areas include the following areas and ecosystems: (a) Wetlands; (b) areas with critical recharging effect on aquifers used for potable water; (c) fish and wildlife conservation areas; (d) frequently flooded area; and (e) geologically hazardous areas.*

Changes to 14.34 were not discussed with the CAC.