

Critical Areas Ordinance 14.24 Code Updates 2025

Changes Captured in “Track Changes”

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

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another location

Italics = Instructions for code reviser/reviewer

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Chapter 14.24

CRITICAL AREAS ORDINANCE*

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Sections:

14.24.010	Introduction.	447
14.24.020	Title and purpose.	447
14.24.030	Authority.	558
14.24.040	Applicability, jurisdiction and coordination.	558
14.24.050	Resource information and maps.	658
14.24.060	Authorizations required.	669
14.24.070	Activities allowed without standard review.	769
14.24.080	Standard critical areas review and site assessment procedures.	9811
14.24.090	Protected critical areas (PCA) requirements.	131114
14.24.100	Critical areas determination and conditions of approval.	161417
14.24.110	County regulation of forest practices for the protection of critical areas.	171518
14.24.120	Ongoing agriculture.	181619
14.24.130	Hazard tree removal.	232124
14.24.140	Variances.	242124
14.24.150	Reasonable use exception.	282326
14.24.160	Public notice and records.	292427
14.24.170	Incentives.	292427
14.24.200	Wetlands designations.	Error! Bookmark not defined.2528
14.24.210	Wetlands classification.	312528
14.24.220	Wetlands site assessment requirements.	312528
14.24.230	Wetland protection standards.	322629
14.24.240	Wetland performance-based buffer alternatives and mitigation standards.	342831
14.24.250	Wetland alternative compensation projects.	362932
14.24.300	Aquifer recharge areas intent.	303033
14.24.310	Aquifer recharge areas designations.	393134
14.24.320	Aquifer recharge areas prohibited activities.	403235
14.24.330	Aquifer recharge areas site assessment requirements.	423336
14.24.340	Aquifer recharge areas impact mitigation.	443437

14.24.350	Flow-sensitive basins.	483 41
14.24.360	Flow-sensitive basin water withdrawal mitigation.	534 144
14.24.370	Delineation of flow-sensitive basins.....	534 245
14.24.380	Seawater intrusion areas.	534 245
14.24.400	Geologically hazardous areas designations.	304 447
14.24.410	Geologically hazardous areas known or suspected risk.	584 548
14.24.420	Geologically hazardous areas site assessment requirements.	604 649
14.24.430	Geologically hazardous area mitigation standards.	614 750
14.24.500	Fish and wildlife habitat conservation area designations.	634 952
14.24.510	Fish and wildlife habitat conservation area water type classification.	645 154
14.24.520	Fish and wildlife habitat conservation area site assessment requirements.	645 154
14.24.530	Fish and wildlife habitat conservation area protection standards.	655 154
14.24.540	Fish and wildlife habitat conservation area performance-based buffer alternatives and mitigation standards.	685 356
14.24.600	Frequently flooded areas designations.	635 659
14.24.610	Frequently flooded areas initial project review.	715 659
14.24.620	Frequently flooded areas development requirements.	715 659
14.24.630	Frequently flooded areas protection standards.	725 760
14.24.700	Compliance tracking.	725 760
14.24.710	Fees.	725 760
14.24.720	Director Administrative Official.	735 861
14.24.730	Appeals from the Director Administrative Official.	735 861
14.24.740	Interdisciplinary team.	735 861

* Prior legislation: Ordinances 17938 (Atch. F.), 18069 Appx. A, R20020135, O20020007, O20030020, O20040011 and O20070009.

14.24.010 Introduction.

The ordinance codified in this Chapter was developed under the directives of the Growth Management Act to designate and protect critical areas. "Critical areas" are defined as wetlands, [critical](#) aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas [\[RCW 36.70A.030\(6\)\]](#). ~~Some of these areas, such as geologic hazards and frequently flooded areas, are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands, are critical because of their public value. Critical areas regulations are designed to protect these lands to protect the public from threats to human safety, to protect the environment and enhance quality of life, and to preserve environmentally sensitive areas that provide ecological functions valuable to the public.~~

Critical areas are dynamic natural systems that are a part of Skagit County's changing landscape. Critical areas ~~will be~~ designated by definition, ~~and then~~ classified ~~through site assessments, and assigned~~ [protections](#) ~~so that they can be identified~~ using scientifically based criteria ~~and protected~~. [Critical area assessment reports commonly rely on agency issued maps and site-specific studies as applicable.](#) The use of [site critical area assessments reports conducted by a qualified professional to confirm the actual presence and classification of critical areas](#) is central to the management approach developed under this Chapter.

This Chapter ~~authorizes~~ ~~allows~~ the staff of Planning and Development Services to provide site ~~visits~~ [inspections](#), preliminary reviews, and pre-application meetings to assist in the identification of critical areas ~~and to condition develop permits, approvals, and compliance actions in accordance with the provisions of this Chapter~~. In the event that hardships and grievances occur, this Chapter contains provisions to allow for ~~variances~~, reasonable use exceptions, [variances](#), and appeals. Through this Chapter, Skagit County will work with the landowner in the management of critical areas.

~~This Chapter represents a significant step in the management of critical areas. Incentives will play an ever-increasing role in entisting landowner participation in conservation programs. A Countywide education program may be developed to alert the community to the valuable functions and formidable hazards associated with critical areas. Local, State and Federal governments must continue to work towards the consolidation and coordination of regulatory requirements.~~ (Ord. O20080014 (part))

14.24.020 Title and purpose.

This Chapter shall be known as the Critical Areas Ordinance (CAO) of Skagit County, Washington, and is adopted to assist in conserving the value of property, safeguarding the public welfare, [ensuring no net loss of ecological functions](#) and providing protection for the following critical areas:

- (1) Wetlands. Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance and erosion control, while also providing fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research opportunities and other public benefits. It is the purpose of this Chapter to protect these functions and values.
- (2) Frequently Flooded Areas. ~~It is~~ the purpose of this Chapter ~~is~~ to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas according to the provisions established under Chapter 14.34 SCC (Flood Damage Prevention).
- (3) [Critical](#) Aquifer Recharge Areas. Potable water is an essential life-sustaining element. Much of Skagit County's drinking water comes from groundwater supplies, which also provide base flows to protect aquatic resources, [including fish habitat](#). Once groundwater is contaminated or depleted, it is difficult, costly, and sometimes impossible to clean up or to recharge. It is the purpose of this Chapter to prevent contamination

Commented [KC2]: Introduction updated for clarity in explaining intent of the CAO and use of consistent terminology.

Commented [KC3]: Updated for inclusion of no net loss and for terminology consistent with State regulations.

and depletion of groundwater, and to avoid exorbitant cleanup costs, hardships and potential physical harm to people and aquatic resources.

(4) Geologically Hazardous Areas. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited or when land disturbing activities occur in areas of a hazard. It is the purpose of this Chapter to protect life, property, and resources. ~~When~~ Steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas ~~will~~ shall be prohibited.

(5) Fish and Wildlife Habitat Conservation Areas. ~~Skagit County currently supports the highest wildlife species diversity and population numbers of any County in Washington State.~~ In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. It is the purpose of this Chapter to protect fish and wildlife populations and their associated habitats and provide special consideration to conservation or protection measures necessary to preserve or enhance anadromous species. (Ord. O20080014 (part))

14.24.030 Authority.

The ordinance codified in this Chapter is adopted under the authority of Chapters 36.70 and 36.70A RCW, and Article 11 of the Washington State Constitution. (Ord. O20080014 (part))

14.24.040 Applicability, jurisdiction and coordination.

(1) Applicability. The provisions of this Chapter ~~must~~ shall be consistently applied to ~~any all~~ land uses ~~or development~~ under County jurisdiction within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this Chapter.

(2) Relationship to other Local Regulations. When any other chapter of the Skagit County Code conflicts with this chapter or when the provisions of this chapter are in conflict, the provision that provides more protection to environmentally critical areas apply unless specifically provided otherwise in this chapter or unless the provision conflicts with federal or state laws or regulations. Nothing in these regulations eliminates or otherwise affects the responsibility of an applicant or property owner to comply with all other applicable local, state, and federal regulations and permits that may be required

(3) Relationship to other Federal, State, Tribal and Local Jurisdictional Agencies' Regulations. Many State, Federal and regional regulations apply to projects conducted within critical areas. Applicants and landowners are responsible for complying with all applicable local, state, and federal regulations and permit requirements, apart from the process established in this chapter. ~~Uses otherwise allowed by County codes do not eliminate other agency regulatory requirements.~~

(4) Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the ~~Director~~ Administrative Official that the permit conditions satisfy the requirements of this Chapter, those requirements may substitute for the requirements of this Chapter. Such requirements ~~will~~ shall be a condition of critical areas approval and be enforceable by the County. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, and Fish and Wildlife Service; local Tribes, and the Washington State Department of

Commented [KC4]: Updated for clarity in the CAOs relationship to other local regulations, specifically the SMP.

Ecology, Department of Natural Resources and Department of Fish and Wildlife. The County ~~must~~[shall](#) notify the applicant in writing when any such substitution is made.

(54) Jurisdictional Coordination. In addition to the provisions established in this Chapter, the County ~~will~~[shall](#) coordinate its own programs with those of other public and private organizations to enhance management of Critical Areas in Skagit County. [Coordination may apply to development applications, code enforcement, and emergencies.](#) (Ord. O20080014 (part))

14.24.050 Resource information and maps.

(1) With the exception of the Flood Insurance Rate Map used to designate certain frequently flooded areas, ~~wellhead protection area maps maintained by Washinton State Department of Health, Sole Source Aquifers designated by the United States Environmental Protection Agency, and~~ the Skagit County Final Shoreline Area Designation Map (5/83 or as revised) ~~and maps of flow-sensitive basins prepared by the Administrative Official pursuant to SCC 14.24.370,~~ Skagit County's critical areas maps are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations in Skagit County. The actual locations and boundaries of critical areas, as well as their quality and quantity, ~~must~~[shall](#) be based upon the presence of the features applicable to each critical areas element in this Chapter. Maps ~~will~~[shall](#) not be considered a regulatory standard or substitute for site-specific assessments. The application of definitions, methodologies and performance standards pursuant to the ~~site assessment~~[critical areas report](#) requirements provided in this Chapter is the controlling factor in determining the actual presence and extent of critical areas.

(2) Skagit County will utilize data from natural resource agencies as a source of best available science (BAS) ~~when reviewing sites and critical areas reports to develop critical areas maps. Maps will be updated when new data becomes available from resource agencies.~~ (Ord. O20080014 (part))

Commented [KC5]: Updated with minor changes to mapping resources

14.24.060 Authorizations required.

With the exception of activities identified as allowed without standard review under SCC 14.24.070, any land use activity that can impair the functions and values of critical areas or their buffers, including suspect or known geologically hazardous areas, through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation, ~~will~~[shall](#) require critical areas review and written authorization pursuant to this Chapter. Authorizations required under this Chapter overlay other permit and approval requirements of the Skagit County Code. Regardless of whether a County development permit or approval is required, any ~~proposed~~ alteration that can adversely affect a critical area or its standard buffer must comply with the substantive and procedural requirements of this Chapter. Critical areas review pursuant to this Chapter ~~must~~[shall](#) be conducted ~~prior to or during review of a development application, as part of the underlying permit or approval,~~ where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain County authorization prior to commencing such activities.

(1) No land use development permit, land division, development approval, or other County authorization required by County ordinance ~~will~~[shall](#) be granted until the applicant has demonstrated compliance with the applicable provisions of this Chapter.

(2) Conflicts with Other Provisions. If any provision of this Chapter conflicts with any other applicable provision of the Skagit County Code, the more restrictive ~~will~~[shall](#) apply unless specifically excepted in this Chapter.

Commented [KC6]: Minor edits for sequencing clarification.

(3) SEPA Compliance. The goals, policies and purposes set forth in this Chapter ~~will~~shall be considered policies of Skagit County under the State Environmental Policy Act. When applicable the applicant must meet SEPA requirements pursuant to SCC Chapter 16.12.

(4) Other Permits Required. ~~It is recognized that many~~Other City, County, State, and/or Federal permit conditions may apply to the proposed action, and that compliance with the provisions of this Chapter may not necessarily constitute compliance with other such requirements. (Ord. O20080014 (part))

14.24.070 Activities allowed without standard review.

The following developments, land use activities and associated uses are allowed without standard critical areas review; provided, that they are consistent with other applicable provisions of this Chapter and other chapters of the Skagit County Code. Some of the activities listed within this Section may, however, require a floodplain development permit if within the special flood hazard area (SFHA), and therefore require a habitat impact assessment pursuant to SCC 14.34.220. All activities that do not require standard critical areas review ~~will~~shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be allowed without standard review does not give permission to destroy a critical area or ignore risk. Proponents of such activities ~~will~~shall be responsible for notifying the ~~Director~~Administrative Official if any damage occurs and ~~must~~shall provide all necessary restoration or mitigation.

(1) Emergencies That Threaten ~~the~~ Public Health, Safety and Welfare. An “emergency” is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this Chapter. Emergency actions that create an impact to a critical area or its buffer ~~must~~shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party ~~must~~shall restore the critical area and buffer after the emergency to the extent feasible. The person or agency undertaking such action ~~must~~shall notify the ~~Director~~Administrative Official within 1 working day or as soon as practical following commencement of the emergency activity. Following such notification, the ~~Director~~Administrative Official ~~shall~~will determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the ~~Director~~Administrative Official determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions of Chapter 14.44 SCC (Enforcement/Penalties) ~~will~~shall apply.

(2) Existing activities defined as ongoing agriculture on designated agricultural land, including related ~~existing~~ development and activities which do not result in expansion into a critical area or its buffer and which do not result in significant adverse impacts to a critical area or its buffer; provided, that such activities comply with the provisions of SCC 14.24.120.

New development and/or expansion of existing agricultural operations ~~shall~~must comply with both the substantive and procedural provisions of this Chapter. Existing and ongoing agricultural activities that result in significant adverse impacts ~~to or increase the degree of existing nonconformity within~~ a critical area or its buffer ~~will~~shall not be allowed without standard review under this Chapter.

(3) Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, detention/retention ponds, or public and private roads and driveways associated with pre-existing residential or commercial development, provided any maintenance or repair activities ~~shall~~must use best management practices (BMPs) with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer ~~must~~shall be restored after the maintenance to the extent feasible.

Commented [KC7]: Minor edits for clarity on exemptions.

(4) Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use established prior to June 13, 1996, or otherwise established in accordance with the CAO, provided any maintenance or repair activities ~~shall~~must use reasonable methods with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer ~~shall~~must be restored after the maintenance to the extent feasible. This allowance ~~must~~shall not be construed as applying to agricultural activities undertaken outside of the Agriculture-NRL zoning district.

(5) Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint and does not adversely impact critical areas or their buffers. This allowance does not apply to replacement of a single-family residence as defined by SCC 14.04.

(6) Modification of an existing structure other than a single-family residence which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions in Chapter 14.16 SCC, and does not adversely impact critical areas or their buffers. This allowance does not apply to replacement of an existing structure as defined by SCC 14.04, nor does it exclude review for compliance with CARA requirements as changes of use; it may include risks to groundwater contamination.

(7) Provided the requirements of SCC 14.24.120(4)(d) are met for ongoing agriculture, the lawful operation and maintenance of public and private diking and drainage systems which protect life and property along the Skagit and Samish Rivers and tidal estuaries in Skagit County. This exemption applies to the existing structures and design prism of levees, dikes, and artificial watercourses 40 feet landward of the landward toe of the structure or facility and 40 feet waterward of the waterward toe of the structure, measured horizontally from the face of the levee, dike or bank of the artificial drainage structure toward the ordinary high water mark. The exempt area for operation and maintenance may be managed to meet Federal standards for funding assistance established by the United States Army Corps of Engineers under Public Law 84-99 or other laws and regulations adopted to guide the diking and drainage functions. This exemption does not apply to public or private activities that expand the levee, dike, or drain beyond its design characteristics as of June 1, 1999, the time of adoption of this Subsection; nor activities that expand or create new facilities.

(8) Education and scientific research activities which do not adversely impact critical areas or their buffers.

(9) Site investigation work necessary for land use applications such as surveys, soil logs and other related activities which does not adversely impact critical areas or their buffers. In every case, critical areas impacts ~~must~~shall be minimized and disturbed areas ~~must~~shall be immediately restored.

(10) Activities in or adjacent to artificial watercourses which are constructed and actively maintained for irrigation and drainage; provided, that any activity ~~must~~shall comply with Chapter 77.55 RCW by securing written approval from the State Department of Fish and Wildlife; and provided further, that the activity must also comply with all applicable State and local drainage, erosion and sedimentation control requirements for water quality. The operator ~~must~~shall notify the ~~Director~~Administrative Official in writing regarding the location and nature of anticipated activities a minimum of 14 days prior to commencing any such activity. Such notification ~~will~~shall be a condition for allowance of this activity without standard review. This allowance only applies to activities not subject to SCC 14.24.120(4)(d).

(11) Maintenance activities such as mowing and normal pruning; provided, that such maintenance activities are limited to existing landscaping improvements established prior to June 13, 1996, or otherwise established in accordance with the CAO, and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity. This allowance ~~must~~shall not be construed as applying to agricultural activities undertaken outside the Agriculture-NRL zoning district.

(12) Fish, wildlife, wetland and/or riparian buffer enhancement activities not required as mitigation such as native plant and mulch installation and/or reasonable removal of non-native vegetation provided all of the following apply:

- (a) Enhancement work will be restricted to handheld equipment. Handheld equipment includes shovels, tillers, clippers, loppers, weed wrenches, and brush cutters and any handheld gas or electric equipment;
- (b) A planting restoration plan must be submitted to the Director for review and approval prior to any disturbance to the buffer. The plan must include the area to be restored, method of removal, a detailed native planting plan with a plant list and schedule for commencement and completion of the project;
- (c) The subject property is not located in a high landslide hazard area; and
- (d) The project is consistent with the chapter and does not harm critical areas or their buffers.

provided, that the project is ¹³⁾ Fish, wildlife, wetland and/or riparian buffer enhancement activities not required as mitigation approved by the U.S. Department of Fish and Wildlife, U.S. Army Corps of Engineers, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology. (Ord. O20110013 Attch. A (part); Ord. O20110008 (part); Ord. O20080014 (part))

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14.24.080 Standard critical areas review and site assessment procedures.

(1) Determination That an Activity Requires Standard Review. All applications for approval of activities requiring written authorization pursuant to SCC 14.24.060 will ~~shall~~ require ~~the submission of a critical areas checklist completed and filed by the applicant on the forms provided by Planning and Development Services apply for Standard Critical Areas Review.~~ If not otherwise required, all applications for critical areas review must ~~shall~~ include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical areas indicators. Upon receipt of the application, the ~~Administrative Official~~ Director ~~shall~~ will determine whether the proposed activity fits within any of the activities allowed without standard review found in SCC 14.24.070. If the proposed activity is so allowed and meets the associated conditions for such an allowance, no other ~~further~~ critical areas review ~~shall~~ will be required, except as necessary for the ~~Administrative Official~~ Director to ensure that any conditions for such an allowance are met in practice. The ~~Administrative Official~~ Director ~~shall~~ must note this determination in the application file and provide written authorization for the project or activity to proceed as proposed in the application when undertaken in accordance with any conditions for such an allowance.

(2) Review Procedures. Upon determination that the proposed activity is not allowed without standard review, ~~and upon receipt of a completed critical areas checklist or and~~ a complete critical areas review application is received, the ~~Administrative Official~~ Director ~~shall~~ must use the following method to determine whether critical areas or their required buffers are within ~~200-300~~ feet or a distance otherwise specified in this Chapter or may be affected by the proposed activity:

- (a) Review the critical areas ~~checklist~~ application together with the publicly available maps and other critical areas resources identified in the relevant sections of this Chapter; and
- (b) Complete the Critical Areas Staff Checklist; and
- (c) Inspect the site; and
- (d) Complete the Critical Areas ~~Field Indicator~~ Inspection Checklist form.

Commented [KC8]: 1.Minor edits for consistent terminology with recent SCC code updates and common to the region (See Section 2.6 of the Gap Analysis).
2.Edits to restructure code language regarding the specified review distance for requiring an assessment of a critical area.
3.Relocation/minor updates to mitigation sequencing requirements.

(3) Determination ~~T~~That Critical Areas ~~A~~are ~~N~~not ~~P~~present or ~~A~~affected.

(a) If the ~~Administrative Official~~Director determines that critical areas or critical area buffers are not present within ~~200-300~~ feet of the proposed activity or within a distance otherwise specified in this Chapter; or

(b) The project is a subdivision pursuant to SCC 14.16.860 that does not include additional development as defined under SCC 14.04.020;

(i) All subsequent development on the segregated home site and/or remainder parcel will require complete standard critical areas review pursuant to this Chapter; or

(c) The project does not expand an existing single-family residence by more than 200 square feet of floor area, and does not adversely impact or encroach into and is not located closer to critical areas or their buffers and, does not alter the use or increase septic effluent; or

(c) The project does not expand an existing structure, other than a single-family residence, by more than 200 square feet of floor area, does not alter the use or increase septic effluent, pursuant to the nonconforming use and structure provisions of Chapter 14.16 SCC, and does not adversely impact or encroach into critical areas or their buffers; then

(d) The review required pursuant to this Chapter is complete. The ~~Administrative Official~~Director ~~shall~~will ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. The determination ~~—shall~~will be noted in the application file and written authorization ~~shall~~will be provided. This determination ~~shall~~does not constitute approval of any use or activity nor its compliance with the requirements of this Chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application ~~shall~~will be subject to further review under this Chapter.

(4) Determination ~~T~~That Critical Areas ~~A~~are ~~P~~present or ~~A~~affected. Either prior to or during review of a development application, the ~~Administrative Official~~Director will make an initial assessment based on a site inspection and other information as to whether:

(a) Wetland indicators are present within 300 feet of the proposed development. If a site inspection does not indicate the presence of a wetland indicators on the subject property or within 300 feet of the subject property, no additional wetland assessment will be required.

(b) If aAny other critical area type described in SCC 14.24.020 is present within 200 feet of the proposed development. If a site inspection does not indicate a critical area on or within 200 feet of the subject property, no additional critical area assessment will be required.

(c) IfA project site is within the Special Flood Hazard Area, and a regulated watercourse is within 250 feet of the subject property.

If the ~~Administrative Official~~Director determines that critical area indicators are present within 200 feet of the proposed activity or within a distance otherwise specified in this Chapter, then the ~~Administrative—Official~~Director ~~shall~~will note this determination in the application file and the applicant ~~shall~~will be required to provide the critical areas ~~site assessment~~report specified in this Chapter.

(5) Critical Area Report. —DevelopmentPreparation of a critical area reportsite assessment may precede a County site visit; provided, that no disturbance of vegetation or land surface occurs prior to County authorization. If the applicant chooses, the site assessment may be limited to 300 feet surrounding a proposed development only if there are no other activities occurring or proposed on the remainder of the parcel which ~~are in conflict with~~are relevant to this Chapter. If the applicant, together with assistance from the ~~Director~~Administrative Official, cannot obtain permission for access to properties within 300 feet of the project area, then the site assessment ~~may also be limited accordingly~~will estimate off-site critical areas and

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potential on-site buffer encumbrances. The ~~site assessment~~critical area report ~~shall~~must be completed as follows:

- (a) The site assessment ~~shall~~must be prepared by a qualified professional for the type of critical area or areas involved and ~~shall~~must contain the information specified for each type of critical area. The qualified professional may consult with the ~~Administrative Official~~Director prior to or during preparation of the site assessment to obtain County approval of modifications to the contents of the ~~site assessment~~critical areas report.
- (b) The site assessment ~~shall~~must use scientifically valid methods and studies in the analysis of critical areas data and field reconnaissance and reference the source of science used.
- (c) The ~~site assessment~~critical areas report ~~shall~~must include:
 - (i) Project description that includes a detailed narrative describing the project or land disturbing activity, its relationship to the critical area and its potential temporary and permanent impacts to ~~the critical areas~~ and other relevant information; and
 - (ii) A copy of the site plan for the project proposal including a map to scale depicting critical areas, buffers, the development proposal, and any areas where land disturbance, including clearing and grading is proposed, to be cleared; and
 - (iii) Identification and characterization of all critical areas and buffers ~~adjacent to the proposed project~~within the specified area of review area; and
 - (iv) An assessment of the probable direct and indirect impacts to the critical area(s) and buffer(s) as well as the cumulative impacts to critical areas resulting from the existing – development of the site and the ~~and~~ proposed development; and
 - (v) A conceptual description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations; and
 - (vi) A ~~description of efforts made to apply~~detailed analysis demonstrating the proposal meets mitigation sequencing requirements pursuant to Subsection (5)(~~ab~~) of this Section; and
 - (vii) If necessary, A proposed compensatory mitigation plan including estimated cost for financial assurance, land use restrictions and landowner management, maintenance and monitoring responsibilities; and
 - (viii) Regulatory analysis including a discussion of any Federal, State, Tribal, and/or local requirements, including but not limited to the Shoreline Management Master Program, or special management recommendations which have been developed for species and/or habitats located on the site.
 - (ix) ~~If necessary, D~~ designate a maintenance corridor to provide an area for construction and maintenance of buildings and other structures. The standard width of the maintenance corridor ~~shall is be~~ 15 feet. ~~This distance may be modified with approval of the Administrative Official. The following may be allowed within the maintenance corridor area:~~

~~(A) — Landscaping with non-invasive species only;~~

~~(B) — Uncovered decks;~~

~~(C) — Building overhangs if such overhangs do not extend more than 18 inches into the setback area;~~

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~~(D) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; and~~

~~(E) Traits:~~

~~(x) If necessary, a critical aquifer recharge area protection plan.~~

(d) If necessary to ensure compliance with this Chapter, the ~~Administrative Official~~ Director may require additional information from the applicant, separate from the critical areas ~~site assessment~~ report.

(6) Mitigation Sequencing Requirement.

(a) The sequence of mitigation is defined below:

(i) Avoid the impact altogether by not taking a certain action or parts of an action;

(ii) Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(iii) Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;

(iv) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;

(v) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

(vi) Monitor required compensation and take remedial or corrective measure when necessary.

(5) General Mitigation Requirements.

(a) Mitigation. All proposed alterations to critical areas or associated buffers ~~shall~~ require compensatory mitigation sufficient to provide for and maintain the functions and values of the critical area or to prevent risk from a critical areas hazard and ~~must~~ shall give adequate consideration to the reasonable and economically viable use of the property.

~~(b) Mitigation Sequence. The sequence of mitigation is defined below:~~

~~(i) Avoid the impact altogether by not taking a certain action or parts of an action;~~

~~(ii) Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;~~

~~(iii) Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;~~

~~(iv) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;~~

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~~(v) — Compensate for the impact by replacing, enhancing, or providing substitute resources or environments:~~

(68) Financial Assurance. The ~~Administrative Official~~ Director ~~will~~ shall require the mitigation proposed in the ~~site assessment~~ critical areas report to be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of \$10,000 or more, the ~~Administrative Official~~ Director ~~shall~~ will require financial assurance which will guarantee compliance with the mitigation plan if the mitigation proposed in the ~~site assessment~~ critical areas report cannot be completed prior to final approval of the development permit. Financial assurance ~~shall~~ must be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the County Prosecuting Attorney, ~~must~~ shall be in the amount of 125% of the estimated cost of the uncompleted actions or construction, and ~~shall~~ must be assigned in favor of Skagit County Planning and Development Services. The term of the financial assurance ~~shall~~ must remain in place until the required mitigation is complete. (Ord. O20230001 § 1 (Att. 2); Ord. O20080014 (part))

14.24.090 Protected critical areas (PCA) requirements.

Commented [KC9]: Updates for required permanent critical area buffer markers.

(1) PCA. Approval of projects which trigger a development permit and/or other land use activities that require critical areas ~~site assessment~~ report(s) ~~shall~~ require the identification and designation of PCAs. PCAs ~~shall~~ must include all critical areas and their associated buffers as well as all areas on the parcel not investigated for critical areas. PCAs ~~shall~~ must be depicted on a site plan, suitable for recording, and ~~shall~~ include all critical areas and associated buffers which have been identified through the ~~site assessment~~ critical areas report process. ~~The designation of PCAs does not exclude non-designated critical areas and buffers sites from additional or updated assessment the protection following the requirements established by this Chapter.~~

(a) The PCA ~~is to~~ must be left undisturbed in its natural state. No clearing, mowing, grading, filling, logging, or removal of woody material; building; construction or road construction of any kind; planting of non-native vegetation or occupation by livestock is allowed within the PCA areas except as specifically permitted by Skagit County on a case-by-case basis.

(2) PCA Field Identification and Buffer Edge Markers.

(a) Temporary Markers. During construction phases of development, distinct temporary marking consisting of flagging and/or staking ~~shall~~ must be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings ~~will~~ shall be inspected by the ~~Administrative Official~~ Director or qualified professional. Written confirmation is to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

(b) Permanent Buffer Edge Markers. Except as provided under Subsection (2)(b)(i) of this Section, the outer edges of all PCAs, with the exception of critical aquifer recharge areas, ~~shall~~ must be clearly marked on-site by the applicant or landowner with permanent stakes and critical areas markers. Critical areas markers ~~may~~ must be ~~either County-approved critical areas signs or inexpensive steel posts painted a standard color approved by the Administrative Official that is clearly identifiable as a critical areas marker.~~ Installation of permanent markers ~~is~~ shall be the responsibility of the landowner.

(i) The ~~Administrative Official~~ Director may waive or modify the requirement for permanent buffer edge markers; provided, that any such decision ~~will~~ shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult

without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas.

(ii) Where such permanent markers are required, the ~~Administrative Official~~ Director shall will specify their frequency of placement and general location. Permanent markers ~~shall~~ must be placed to locate the edge of the PCA ~~to an approximate accuracy of within 5 percent of the specified buffer width or within 5 feet, whichever is larger~~ smaller. ~~The spacing intervals of the markers shall must be such as to provide comparable accuracy of line-of-sight determination of buffer edges.~~ The permanent markers must be placed every 50 feet along the buffer edge, or one per lot, whichever is greater. The spacing intervals of the markers must be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required ~~stakes~~ markers or fences shall must be shown on the plat map or site plan recorded with the Auditor.

(c) Signs or Fencing Required as Part of Critical Area Mitigation. The ~~Administrative Official~~ Director shall will require permanent signs or fencing where the ~~Administrative Official~~ Director determines that it is a necessary component of a mitigation plan. The intent is to provide clear and sufficient notice, identification and protection of critical areas on-site where damage to a critical area or buffer by humans or livestock is probable due to the proximity of the adjacent activity.

(d) Sign, Marker and Fence Maintenance. It is the responsibility of the landowner, or any subsequent landowner, to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. "Maintenance" includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the ~~Administrative Official~~ Director is shall be considered a violation of this Chapter.

(3) PCA Recording and Binding Agreements.

(a) All PCAs must shall be recorded with the County Auditor in accordance with the procedures established under this Section. The applicant ~~shall be is~~ responsible for all fees and other costs associated with recording of PCAs.

(b) Binding Agreements. For each project or activity that requires recording of PCAs, the following information ~~shall must~~ be recorded with the Auditor, using forms provided by Planning and Development Services, as part of a binding agreement between the landowner and the County which ~~shall will~~ run with the land and be readily available to the public upon request:

(i) Binding agreement signed by the landowner and the ~~Administrative Official~~ Director which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;

(ii) Reference to the County file containing the completed CAO review ~~complete record of~~ information pertaining to approval of the project or activity.

(4) PCAs on Pre-Existing Lots.

(a) For development proposals and other land use activities on pre-existing lots, not part of a proposed land division, ~~planned unit development (PUD)~~ or other form of multiple lot development, PCAs must shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). All PCAs ~~shall must~~ include the necessary labeling to show calculated area (in square feet or acreage), and type or category of critical area designated. ~~The site plan may be prepared by the~~

~~applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus 5 feet.~~

(b) Ingress and Egress. Owners of PCAs ~~shall~~ must grant ingress and egress by the ~~Administrative-Official~~ Director for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

(5) PCA Designations for New Land Divisions.

(a) For land divisions ~~and PUDs~~ where critical areas have been identified through ~~site assessment~~ critical areas reports, all PCAs ~~shall~~ must be placed into separate tracts or easements, whose uses ~~shall~~ will be regulated by the provisions of this Chapter. Areas within a PCA can be included in the total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the County, homeowners association, or land trust. See SCC 14.24.170 regarding incentives that may be available for lands designated as PCAs.

(b) If the development project is a CaRD application and is within a natural resource land, the remainder parcel ~~must~~ shall be put into Os-PA or Os-NRL and ~~shall~~ will have all of the constraints that are set forth in this Chapter.

~~(i) — If the development project is a short subdivision conducted pursuant to SCC 14.16.060 (Agricultural land preservation) which segregates an existing single-family residence on a substandard lot while preserving the remainder of the parcel under a County-approved agricultural preservation agreement, said short subdivision shall not include additional development as defined under SCC 14.04.020 and subsequent development on the segregated home site and/or remainder parcel shall require standard review pursuant to this Chapter.~~

(c) Recording. PCA designations ~~shall~~ must be recorded with the Auditor as part of the plat approval process. The Auditor file number referencing the ~~agreement PCA easement~~ shall must be on the face of the plat and its provisions ~~shall~~ must run with the land.

(d) PCA Plat Map Descriptions. The location of PCAs ~~shall~~ must be clearly identified on preliminary and final plat maps. PCAs ~~shall~~ must be labeled using the letters A through Z, or another labeling system approved by the ~~Administrative-Official~~ Director. If a survey was not used to map the critical area, a note on the final plat map ~~shall~~ must be recorded stating that a legal survey was not performed to delineate the critical area and that the surveyor is not incurring liability for the exact boundaries of the critical area on the plat map. All PCAs ~~shall~~ must include the necessary labeling to show calculated area (in square feet or acreage), and type and/or category of critical areas within each lot. This information ~~shall~~ must be noted on the face of the approved plat.

(e) PCA Maintenance. The PCA is to be left undisturbed in its natural state. No clearing, grading, filling, logging, ~~mowing~~, or removal of woody material; building; construction or road construction of any kind; planting of non-native vegetation or occupation by livestock is allowed within the PCA areas except as specifically permitted by Skagit County on a case-by-case basis.

(f) Ingress, Egress and Use. Owners of PCAs ~~shall~~ must grant ingress and egress by the ~~Administrative-Official~~ Director for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. (Ord. O20090010 Attch. 1 (part); Ord. O20080014 (part))

14.24.100 Critical areas determination and conditions of approval.

Based on the critical areas site assessment, [critical areas reports](#), and other available critical areas information, the ~~Administrative Official~~[Director](#) ~~shall~~[will](#) make a determination on the proposed activity. A determination to approve a proposal ~~shall~~[will](#) include designation of protected critical areas (PCAs) pursuant to SCC 14.24.090 and stipulation of binding conditions and required [protection](#), mitigation, monitoring, maintenance or other conditions of approval pursuant to this Chapter.

(1) If the ~~Administrative Official~~[Director](#) determines that there are no conditions under which the proposed activity could be approved, then the ~~Administrative Official~~[Director](#) ~~shall~~[must](#) deny the proposal.

(2) Formal determinations made by the ~~Administrative Official~~[Director](#) ~~shall~~[must](#) include the basis and rationale for the determination, as well as detailed specification of related conditions of approval, land use prohibitions, and required landowner mitigation, management, monitoring and/or maintenance.

(3) Complete Record. A complete record of all formal determinations by the ~~Administrative Official~~[Director](#), along with related ~~critical areas checklists~~, ~~site assessments~~[critical areas reports](#), binding agreements, conditions of approval, land use prohibitions and required mitigation ~~shall~~[must](#) be maintained by the County and made available to the public upon request, pursuant to Chapter 40.14 RCW.

(4) [Option to Apply for a Reasonable Use Exception. If the strict application of this Chapter would deny all reasonable and economically viable use of the property, then the applicant may apply for a reasonable use exception pursuant to SCC 14.24.140.](#)

~~-Option to Apply for a Variance. If, as a result of the critical areas site assessment report and determination, the applicant believes that he or she is eligible for a variance from one or more of the dimensional requirements of this Chapter, then the applicant may request a variance as described in SCC 14.24.140-150.~~

(5) [Option to Apply for a Variance. If the strict application of this Chapter would result in an unreasonable and unusual hardship, then the applicant may request a variance from one or more of the dimensional requirements of this Chapter as described in SCC 14.24.150](#) ~~Option to Apply for a Reasonable Use Exception: If, as a result of the critical areas site assessment report and determination, the applicant believes that the requirements of this Chapter, including any request for a variance from the requirements of this Chapter, still leave the applicant with no reasonable and economically viable use of his or her their property, then the applicant may apply for a reasonable use exception pursuant to SCC 14.24.150-140.~~

(6) Reopening of Review Process.

(a) If at any time prior to completion of the public input process on the associated permit or approval, the ~~Administrative Official~~[Director](#) receives new evidence that a critical area or a critical area buffer may be present within ~~200-300~~feet of the project area or within a distance otherwise specified in this Chapter, then the ~~Administrative Official~~[Director](#) ~~will~~[shall](#) reopen the critical areas review process pursuant to this Chapter and ~~will~~[shall](#) require whatever level of critical areas review and mitigation as is required by this Chapter.

(b) Once the public input process on the associated permit or approval is completed and the record is closed, then the ~~Administrative Official's~~[Directors](#) determination [for the permit or approval](#) regarding critical areas pursuant to this Chapter ~~must~~[shall](#) be final, unless appealed as described in SCC 14.24.730; provided, however, that the ~~Administrative Official~~[Director](#) ~~will~~[shall](#) not be prevented from reopening the critical areas review process if County staff relied on misinformation provided by the applicant in the application or checklist, [site conditions have changed, or if new information is available](#). Prior to reopening a critical areas review under this Subsection, the ~~Administrative Official~~[Director](#)

Commented [KC10]: 1.Minor edits for terminology consistent with recent SCC updates.
2.Updates to RUE and Variances references (see new SCC chapters 14.24.140 and .150 below).
3.Updates regarding reopening of critical area review (see Section 2.8 of the Gap Analysis).

~~must~~ ~~shall~~ make a site visit. No critical areas review ~~will~~ ~~shall~~ be reopened ~~for a permit or approval~~ under this Section unless the ~~Administrative Official~~ ~~Director~~ determines, after the site visit, that the applicant provided misinformation, ~~site conditions have changed, or if new information is available~~.

(c) If a critical areas review ~~for a permit or approval~~ is reopened under this Subsection after a permit or approval is granted, the burden of proof on whether the applicant submitted misinformation at the time of the submittal of the checklist ~~will~~ ~~shall~~ be on the ~~Administrative Official~~ ~~Director~~. The fact that the applicant no longer owns the subject property at the time the ~~Administrative Official~~ ~~Director~~ discovers the misinformation, ~~site conditions have changed, or if new information is available~~ ~~will~~ ~~shall~~ not inhibit reopening critical areas review. (Ord. O20080014 (part))

14.24.110 County regulation of forest practices for the protection of critical areas.

Forest practices governed under Chapter 76.09 RCW are subject to the provisions of this Section as follows:

~~(1) All Class IV-General forest practices that propose conversion to a use other than commercial timber production shall be subject to all of the provisions of this Section.~~

~~(2) Any request for County approval of a Conversion Option Harvest Plan (COHP) shall be subject to all of the provisions of this Section.~~

~~(3) The County shall coordinate the review of forest practice applications within the urban growth areas (UGAs) of incorporated cities and towns through interlocal agreements; provided, that the County shall continue to condition forest practices within all UGAs to the full extent of this Chapter until such time as its jurisdictional responsibility is amended by interlocal agreements.~~

~~(4) The following shall be subject to a 6-year moratorium on all future activities which require a permit or land use approval from the County:~~

~~(a) Forest practices of any class governed by Chapter 76.09 RCW that:~~

~~(i) Do not fall under Subsection (1), (2) or (3) of this Section; and~~

~~(ii) Where no significant threat to the public safety or welfare is indicated; and~~

~~(iii) Where no indications exist of future conversion to uses other than forest practices; or~~

~~(b) Where an undeclared conversion of forest land to a specified use has occurred under a non-conversion forest practice application (FPA) without an approved COHP in good standing; or~~

~~(c) When harvesting takes place without an FPA. In this case, the moratorium shall begin on the date the harvest activity was discovered by the DNR or the County.~~

~~(5) Waiver of the 6-Year Moratorium. The applicant may apply to the County for a waiver of the 6-year moratorium. The 6-year moratorium may be waived for a lot of record where such activity complies with all applicable County ordinances. Such waiver may be issued by the Administrative Official as a Level I process where a finding can be made that granting the waiver meets the criteria noted below. Before acting on the request for waiver of the moratorium, the Administrative Official shall issue a notice of development application (NODA) consistent with the procedures under SCC Chapter 14.06, including a 15-day comment period, and review the project for consistency with SEPA under SCC Chapter 16.12; provided further, where the initial critical areas review and site visit concludes that no critical areas have been impacted, or do not~~

Commented [KC11]: This Section has been deleted as the information here is covered in SCC 14.22.

exist, the Administrative Official may waive the NODA requirement and issue the waiver. The following shall provide the criteria for considering a waiver:

(a) — A critical areas site assessment must be prepared where warranted by this Chapter following initial review and site visit of the use proposed for the property subject to the moratorium. The site assessment/critical areas report shall determine the level of impacts to County-regulated critical areas and associated buffers that have occurred due to logging and any associated conversion activity. The site assessment/critical areas report shall also include an estimated time needed for recovery of the critical area to a state comparable to what it was before the forest practice took place.

(b) — If, based on the prepared site assessment/critical areas report and comments received, the Administrative Official determines that recovery of the critical area(s) and associated buffers can be achieved, then a mitigation plan shall be prepared and implemented consistent with this Chapter and the moratorium shall be lifted. If, however, critical areas and their buffers cannot be restored to a level of critical areas function comparable to what it was prior to the logging activity during the moratorium period, the request for a waiver of the moratorium shall be denied and the County shall not accept applications for development permits for the duration of the moratorium.

(6) — In situations where a request for waiver has been denied based on the evidence provided in the site assessment/critical areas report and public comment, restoration to the extent feasible shall occur within the critical areas and their standard buffers (including reforestation); and no further land use approvals shall be issued for the duration of the moratorium. (Ord. O20110007 Atten. 1 (part); Ord. O20090010 Atten. 1 (part); Ord. O20080014 (part))

14.24.120 Ongoing agriculture.

(1) Purpose and Intent. The purpose of this Section is to address 2 mandates under the Growth Management Act (GMA): (a) to protect the existing functions and values of fish and wildlife habitat conservation areas (FWHCAs) in and adjacent to natural, modified natural, and artificial watercourses as defined in SCC 14.04.020 (collectively “watercourses”), and (b) to conserve and protect agricultural lands of long-term commercial significance, specifically those lands in ongoing agricultural activity as defined by SCC 14.04.020 that are located adjacent to these watercourses.

(a) For purposes of this Section, “existing functions and values” means the following:

- (i) Water quality standards identified in Chapter 173-201A WAC, including the provisions that account for natural or baseline conditions.
- (ii) The existing presence or absence of large woody debris within the watercourse.
- (iii) The existing riparian buffer characteristics and width, including but not limited to the existing amount of shade provided by the existing riparian buffer.
- (iv) The existing channel morphology.

(b) Because many of the areas that are the subject of this Section are located in the Skagit and Samish River deltas or floodplains, where substantial diking and drainage infrastructure have been constructed and where various diking and drainage districts have lawful obligations to maintain agricultural and other drainage functions and infrastructure as established in RCW Titles 85 and 86, this Section also must accommodate those ongoing diking, drainage, and flood control functions.

(c) It is the goal of Skagit County to administer the provisions of this Section consistent with local, State, and Federal programs, statutes and regulations to protect the health, welfare, and safety of the

Commented [KC12]: Changes made regarding information used in the determination of the presence of salmonoids as well as terminology for WDFW hydraulic permit approvals (HPA). See section 2.9 of the Gap Analysis.

community, to accommodate continued operation and maintenance of the diking, drainage, and flood control infrastructure and to protect agriculture, natural resources, natural resource industries, and fish and wildlife habitat conservation areas in and adjacent to watercourses. This Section is intended, to the maximum extent possible, to rely on and coordinate with but not substitute for or duplicate other State and Federal programs, statutes, and regulations that address agricultural activities in a manner that protects water quality and fish habitat. This Section is intended to supplement those existing State and Federal programs, statutes, and regulations only in those areas where the County has determined existing programs do not fully address GMA requirements to protect FWHCAs in and adjacent to watercourses and to conserve agricultural lands of long-term commercial significance.

(d) Skagit County hereby elects to enroll the entirety of unincorporated Skagit County, and all its watersheds, in the Voluntary Stewardship Program established by Engrossed Substitute House Bill 1886 (2011). Skagit County intends the Voluntary Stewardship Program, in conjunction with the provisions of this Section and Chapter, to protect critical areas in areas of agricultural activity.

(2) Applicability. Except as may otherwise be required by ESHB 1933, Chapter 321, Laws of 2003, for agricultural lands located within the jurisdiction of the Shoreline Management Act, Chapter 90.58 RCW, this Section ~~shall~~will apply to the following:

(a) As defined in SCC 14.04.020, all ongoing agriculture (including operation and maintenance of agricultural drainage infrastructure) which is located within 200 feet from a watercourse, or any ongoing agriculture (including operations and maintenance of agricultural drainage infrastructure) that adversely impacts the existing functions and values of a watercourse, is subject to the requirements of this Section. Isolated, artificial watercourses that have no channelized surface hydraulic connection or no piped hydraulic connection between the artificial watercourse and any natural or modified natural watercourse or any salt water ~~shall~~will not be subject to the requirements of this Section. Drainage tile used to convey groundwater ~~shall~~will not be considered a piped hydraulic connection.

(b) The provisions of this Section ~~shall~~must not be interpreted to permit expansion of ongoing agriculture (including agricultural drainage infrastructure) into areas that did not meet the definition of ongoing agriculture on May 13, 1996, including lands that were fallow on that date but had been in agricultural production within 5 years prior to that date, unless such expansion can comply with all of the requirements for critical areas protection found in this Chapter, including but not limited to the requirement to adhere to the standard critical areas buffers and setbacks.

(c) In this Section, the term “best management practices (BMPs)” refers to one or all definitions of that term in SCC 14.04.020, depending on which definition is relevant within the context used.

(d) Agricultural operations that do not meet the definition of ongoing agriculture are required to comply with the other provisions of this Chapter.

(3) No Harm or Degradation Standard.

(a) All ongoing agricultural activities must be conducted so as not to cause harm or degradation to the existing functions and values of FWHCAs in and adjacent to watercourses (the “no harm or degradation” standard). For purposes of this Section, the phrase “no harm or degradation” means the following:

- (i) Meeting the State water pollution control laws; and
- (ii) Meeting the requirements of any total maximum daily load (TMDL) water quality improvement projects established by the Department of Ecology (ECY) pursuant to Chapter 90.48 RCW; and

(iii) Meeting all applicable requirements of Chapter 77.55 RCW (Hydraulics Code) and Chapter 220-110 WAC (Hydraulics Code Rules); and

(iv) Meeting the specific watercourse protection measures for ongoing agriculture specified in Subsection (4) of this Section; and

(v) No evidence of significant degradation to the existing fish habitat characteristics of the watercourse from those characteristics identified in the baseline inventory described in Resolution No. R20040211 that can be directly attributed to the agricultural activities that are described in this Section.

(b) The references to Chapters 77.55 and 90.48 RCW and Chapters 173-201A and 220-110 WAC contained in this Subsection ~~shall must~~ not be interpreted to replace ECY and the Washington Department of Fish and Wildlife (WDFW) authority to implement and enforce these State programs with County responsibility to do so, but rather are intended to provide County input and a supplemental County involvement as needed to implement the County's GMA obligations under this Section.

(c) Reserved.

(d) An owner or operator is responsible only for those conditions caused by agricultural activities conducted by the owner or operator and is not responsible for conditions that do not meet the requirements of this Subsection resulting from the actions of others or from natural conditions not related to the agricultural operations. In those situations where the County is presented with data showing a violation of a State water quality standard at a particular location, but where the County cannot identify any condition or practice existing or occurring at a particular agricultural operation that is causing the violation, the County ~~shall will~~ refer the information regarding the State water quality violation to ECY and ~~shall must~~ follow other procedures described in SCC 14.44.085. Conditions resulting from unusual weather events (such as a storm in excess of 25-year, 24-hour storm), or other exceptional circumstances that are not the product of obvious neglect are not the responsibility of the owner or operator, but ~~shall will~~ be subject to the requirements for emergency actions described in SCC 14.24.070(1).

(4) Required Watercourse Protection Measures for Ongoing Agriculture. Unless the emergency provisions of SCC 14.24.070(1) apply, the following watercourse protection measures are required:

(a) Livestock and Dairy Management. Livestock and dairy operations must not contribute any wastes or sediments into a natural or modified natural watercourse in violation of adopted State water pollution control laws.

(i) Livestock access to watercourses must be managed consistent with this Subsection. Access to a watercourse for livestock watering and/or stream crossings must be limited to only the amount of time necessary for watering and/or crossing a watercourse. Livestock watering facilities or access must be constructed consistent with applicable NRCS conservation practice standards, and must not be constructed to provide access to agricultural land that does not meet the definition of ongoing agriculture unless that agricultural land and the crossing can meet all requirements of Chapter 14.24 SCC.

(ii) Dairy operations must comply with the requirements of Chapter 90.64 RCW (Dairy Nutrient Management Act).

(iii) Livestock pasture must be managed so as to maintain vegetative cover sufficient to avoid contributing sediments to a watercourse in violation of State water pollution control laws.

(iv) Any existing or new livestock confinement or concentration of livestock areas that is located upgradient from a watercourse which results in bare ground (such as around a watering trough)

must be constructed and maintained to prevent sediment and/or nutrient runoff contaminants from reaching a watercourse in violation of State water pollution control laws.

(b) Nutrient and Farm Chemical Management.

(i) The owner or operator must not place manure in a watercourse or in a location where such wastes are likely to be carried into a watercourse by any means. Spreading of manure within 50 feet of any watercourse, and spreading of liquid manure on bare ground, is prohibited from October 31st to March 1st; unless otherwise permitted pursuant to:

(A) An approved and implemented dairy nutrient management plan (DNMP) as prescribed by Chapter 90.64 RCW; or

(B) A farm plan prepared or approved by the Conservation District.

(ii) Agricultural operators may not apply crop nutrients other than at agronomic rates recommended for that particular crop.

(iii) Farm chemicals may only be applied consistent with all requirements stated on the chemical container labels and all applicable Federal and State laws and regulations, such as Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act), and 7 USC 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act).

(c) Soil Erosion and Sediment Control Management.

(i) Roads used for ongoing agricultural activities must be designed such that road surfaces, fill, and associated structures are constructed and maintained to avoid contributing sediment to watercourses.

(ii) Agricultural equipment operation must not cause watercourse bank sloughing or other failure due to operation too close to the top of the bank.

(iii) Watercourse construction and maintenance must meet the requirements for drainage operation and maintenance described under Subsection (4)(d) of this Section.

(iv) V-ditching must not be constructed to drain into a watercourse that contains salmonids, unless the topography of the field is such that the only alternative to drain the field by gravity is to drain the V-ditch into a watercourse that does contain salmonids. When draining a V-ditch into a watercourse that does contain salmonids, appropriate BMPs should be used to avoid contributing excess amounts of sediment to the watercourse. For the purpose of determining whether a watercourse contains salmonids, the County will use:

(A) ~~S~~salmonid distribution based on the “limiting factors analysis” data compiled by the Washington State Conservation Commission; and

(B) The Statewide Washington Integrated Fish Distribution database; and

(C) Any other valid source of information which may confirm salmonid presence.

(d) Operation and Maintenance of Public and Private Agricultural Drainage Infrastructure. The following practices apply to any watercourse that is part of drainage infrastructure, except those practices performed pursuant to a fully-executed Drainage-Fish Initiative or Tidegate-Fish Initiative agreement:

(i) Regularly scheduled agricultural drainage infrastructure maintenance that includes dredging or removal of accumulated sediments in any watercourse ~~shall~~must be conducted between June 15th and October 31st. If ~~an~~ Washington Department of Fish and Wildlife-issued approved

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hydraulics project ~~permit~~~~approval~~ provides for a different work window, those requirements control. If presence of fall or over-winter crops prevents regularly scheduled maintenance during this time period, then the maintenance may be conducted outside this work window; provided, that the person or entity proposing to conduct the maintenance outside the work window can demonstrate that the presence of crops prevents maintenance within the work window and provided the maintenance is conducted using best management practices to minimize sediment or other impacts to water quality.

(A) Owners or operators ~~shall~~~~must~~ consult with districts conducting drainage maintenance to schedule their crop rotations for crops that may still be in the field after October 31st so that, to the maximum extent possible, such drainage maintenance can occur in a year when the fall crops are not being raised in the field adjacent to the drainage infrastructure scheduled for drainage maintenance.

(ii) Unless there is no feasible alternative, regularly scheduled maintenance that includes dredging or removal of accumulated sediments in any watercourse should be conducted at those times when there is no or minimal water flow in the watercourse being maintained to minimize potential for distributing sediments to salmonid-bearing waters.

(iii) Excavation spoils must be placed so as not to cause bank failures and so that drainage from such spoils will not contribute sediment to the watercourse.

(iv) Mowing or cutting of vegetation located within a watercourse that is part of drainage infrastructure may be conducted at any time; provided, that the cutting is above the ground surface within the channel and in a manner that does not disturb the soil or sediments; and provided, that the cut vegetation does not block water flow. Watercourse bank vegetation ~~shall~~~~must~~ be preserved or allowed to reestablish as soon as practicable after drainage construction and maintenance are completed to stabilize earthen ditch banks.

(v) Districts subject to this Section, operating pursuant to authority in RCW Title 85 or 86, which are conducting drainage activities ~~shall~~~~must~~ complete and submit a drainage maintenance checklist to the County by June 1st of each year. The checklist ~~shall~~~~must~~ describe the intent of the district to comply with the drainage maintenance requirements of Subsection (4)(d) of this Section. The districts may seek assistance from NRCS, SCD and/or the County in completing the checklist or addressing the requirements of this Subsection. The checklist ~~shall~~~~will~~ be available from Skagit County Planning and Development Services, mailed to any entity conducting drainage activities, and ~~shall~~~~must~~ be submitted to Planning and Development Services when completed. The districts may submit modifications to the information in the checklist, if circumstances affecting district maintenance change after the initial submittal.

(A) The County ~~shall~~~~must~~ send a written notice to any district not submitting this completed checklist by June 1st of each year, stating that the County has not received the required checklist and that the district is not authorized to conduct drainage maintenance activity until the district has submitted the completed checklist evidencing intent to comply with this Subsection.

(B) Subsequent commencement of drainage maintenance work without submitting a completed checklist ~~shall~~~~will~~ be subject to enforcement pursuant to Chapter 14.44 SCC.

(vi) Immediate measures necessary to drain fields inundated by an unanticipated flooding event or failure of the agricultural drainage infrastructure ~~shall~~~~will~~ be subject to the requirements for emergency repair described in SCC 14.24.070(1).

(5) Recognition for Agricultural Owners and Operators Who Have Implemented Extra Watercourse Protection Measures. This Subsection intends to recognize the extra watercourse protection measures for ongoing agriculture taken by landowners or operators who have implemented an approved dairy nutrient management plan (DNMP) or resource management system plan (RMS plan) (including, but not limited to, CREP) from SCD or NRCS.

(a) Those portions of land upon which owners or operators have sought and implemented an approved DNMP or an RMS plan consistent with the conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water, animals, plants and air) are entitled to a presumption of compliance with the “no harm or degradation” standards described in Subsection (3) of this Section. The RMS plan or DNMP must include within the planning unit any watercourses located on the property, as well as all upland areas within the owner’s control that could potentially adversely impact the watercourse and/or associated fish habitat.

(b) Such presumption of compliance may be rebutted and enforcement commenced as described in SCC 14.44.085 if the County obtains credible evidence that the agricultural operation is not meeting the no harm or degradation standards of Subsection (3) of this Section. To be entitled to this presumption, the owner or operator ~~shall~~ **must** provide the County with documented evidence of implementation of those elements of the approved plan that are relevant to the resource impact at issue at the time a Request for Investigation (RFI) is presented to the County under SCC 14.44.010.

(6) Enforcement. The Department is directed to enforce the requirements of this Subsection, including the mandatory watercourse protection measures, as described in SCC 14.44.085. (Ord. O20110013 Attch. A (part); Ord. O20080014 (part))

14.24.130 Hazard tree removal.

(1) In a critical area or critical area buffer, removal of hazardous, diseased, or dead trees and vegetation by the landowner may be permitted ~~when necessary to~~ **in the following circumstances:**

- (a) ~~To~~ **Control** fire; or
- (b) ~~To~~ **H**alt the spread of disease or damaging insects consistent with the State Forest Practice Act, Chapter 76.09 RCW; or
- (c) ~~To~~ **A**void a hazard such as landslides; or
- (d) ~~To~~ **A**void a threat to existing structures or aboveground utility lines; ~~or.~~
- (e) ~~To avoid a threat to human life or public safety; and~~
- (f) ~~The hazardous condition of the tree cannot be lessened with reasonable and proper arboricultural practices.~~

(2) Before hazardous, diseased or dead trees and vegetation may be removed by the landowner pursuant to Subsection (1) of this Section:

- (a) Unless there is an emergency pursuant to SCC 14.24.070(1), the landowner ~~shall~~ **must** obtain prior written approval from Planning and Development Services. This consent ~~shall~~ **will** be processed promptly and may not be unreasonably withheld. If the ~~Administrative Official~~ **Director** fails to respond to a hazard tree removal request within 10 business days, the landowner’s request ~~shall be~~ **is** conclusively allowed; and

Commented [KC13]: The “hazard tree” definition has been updated for consistency with the International Society of Arboriculture (ISA) standard. A provision has been added that prioritizes the reasonable retention of standing dead trees and snags that can reasonably to accommodate the preservation of wildlife habitat. See Section 2.10 of the Gap Analysis for more information.

(b) Unless the Director, or a qualified professional, warrants its removal to avoid spreading the disease or pests, the removed tree or vegetation should be left within the critical areas or buffer unless the ~~Administrative Official~~ Director, or a qualified professional, warrants its removal to avoid spreading the disease or pests. ~~If standing dead trees and snags can reasonably and safely be left in place they should be prioritized over the retention of logs in order to accommodate the preservation of wildlife habitat;~~ and

(c) Any removed tree or vegetation ~~shall~~must be replaced by the landowner with ~~an~~ appropriate native species in appropriate size ~~and numbers. For removal of one (1) tree, replace with three (3) native trees at least six (6) feet in height at the time of planting.~~ Replacement ~~shall~~must be performed consistent with accepted restoration standards for critical areas within 1 calendar year;

(d) For this Section only, a “qualified professional” ~~shall mean~~means an ~~certified~~ arborist certified by the International Society of Arboriculture (ISA) and American Society of Consulting Arborists (ASCA) that are trained and qualified in tree risk assessment such as through the Tree Risk Assessment Qualification (TRAQ) or equivalent; ~~or certified forester or landscape architect.~~ (Ord. O20080014 (part))

14.24.140 Reasonable use exception.

- (1) Reasonable Use Standards. An applicant who is unable to comply with the specific standards of this chapter without forfeiting all economically viable use of the property may seek approval of a "reasonable use" exception for single-family residential development under this section.
- (2) To qualify as a reasonable use, the director must find that the proposal meets the following criteria:
 - (a) Application of this chapter will deny all economically viable use of the subject property. In making this determination, the director must also find that:
 - (i) the subject property is an existing legal lot of record and the inability to derive reasonable use of the subject property is not the result of the applicant's actions or that of previous property owners' in segregating, adjusting one or more boundary lines, dividing or creating the undevelopable condition on the site after June 13, 1996; and
 - (ii) the inability to derive reasonable use of the subject property is not the result of prior actions taken in violation of this title or any other local, state, or federal law or regulation; and
 - (b) The proposed development activity meets all other requirements of this title, does not otherwise constitute a nuisance, or pose a threat to public health, safety, and welfare on or off the site.
- (3) Reasonable Use Process - The application must be made on a form provided by the department. The reasonable use exception will be considered under a Type 2 review process of Chapter 14.06 and must follow the public notification procedures described therein. The Director must ensure the opportunity for public comment, including that from appropriate Federal, State, and Tribal natural resource agencies, to ensure the use of best available science before deciding on reasonable use exception requests and must develop and maintain a public record on each reasonable use exception request which includes all findings, assessments, and public comments. Such record will be made available to the public before the reasonable use decision is complete.
- (4) Submittal Requirements – As part of the reasonable use exception request application the applicant must submit a critical area report pursuant to SCC 14.24.080- prepared by a qualified critical area professional approved by the County. The report must include the following:
 - (a) An analysis of how the proposal meets requirements for mitigation sequencing specified in SCC 14.24.080(6). If the impact can be avoided, then it is not eligible for a reasonable use exception. Only the minimum necessary impact to accommodate reasonable use is eligible for a reasonable use exception;

Commented [KC14]: The Reasonable Use Exception chapter has been updated with the following:

1. Relocated to a position ahead of the variance provisions of the CAO.
2. For clarity and usability. Sets clear allowances for residential development when this chapter would otherwise deny all economically viable use of the subject property. Clearly specifies what information is needed as part of the application package.

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- (b) Demonstration that the issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for the reasonable use exception;
- (c) A description of the site design and construction staging for the proposal that will have the least impact to the critical area and critical area buffer;
- (d) A site plan showing:
 - (i) The critical area, critical area buffer, and structure setback required by this chapter;
 - (ii) The proposed area of disturbance both on and off the subject property pursuant to the disturbance area limitations of subsection (5) of this section;
 - (iii) All proposed structures and improvements meeting the conditions of subsection (5) of this section, including:
 - 1. Building footprints, including garages and other storage structures;
 - 2. Parking areas;
 - 3. Driveways;
 - 4. Paved surfaces, such as walking paths;
 - 5. Patios, decks, and similar structures;
 - 6. Utility, septic, and storm water improvements;
 - 7. Yard landscaping;
 - 8. Retaining walls and rockeries;
 - 9. All other hard surfaces including gravel.
- (e) A description of protective measures that will be undertaken, including pollution prevention and protection of native vegetation and natural soil and hydrologic conditions, and a schedule of the construction activity to avoid interference with wildlife and fisheries rearing, nesting, or spawning activities;
- (f) An analysis of the impact that the proposed development would have on the critical area and critical area buffer;
- (g) Demonstration that the proposal mitigates for impacts to the critical area and critical area buffers. All remaining buffer areas must be fully vegetated with suitable native vegetation for approval of a reasonable use exception;
- (h) Demonstration that the proposal minimizes net loss of critical area functions to the greatest extent possible;
- (i) An analysis of whether the improvement is located as far away as possible from the critical area and the critical area buffer;
- (j) An analysis of whether the improvement is located to avoid the removal of existing native vegetation with emphasis on preservation of conifers greater than or equal to 24 inches diameter at breast height (dbh), deciduous trees greater than or equal to 20 inches dbh, and forested areas with established duff soil layers; and
- (k) Such other information or studies as the Director may reasonably require.
- (5) Allowed Use and Maximum Disturbance Limits –The amount of area that will be disturbed by structure placement and all land alteration associated with single family residential development, including but not limited to clearing and grading, utility installation, decks, driveways, paved areas, and landscaping, must not exceed the following limits:
 - (a) RUE will only be applicable to sites that do not have an area of 4000 square feet or more available for development outside the standard buffer.
 - (b) When buffer impacts are allowed through RUE the maximum total combined development area outside the buffer and within the critical area or critical area buffer will be 4000 square feet. All —area

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available for development outside the standard buffer must be utilized before any buffer impacts can be approved.

(c) The amount of allowable disturbance will be that which will have the least impact on the critical area and the critical area buffer given the characteristics and context of the subject property, critical area, and buffer.

(d) To the maximum extent feasible, the disturbance area must be located away from the critical area and critical buffer and to avoid the removal of existing native vegetation with emphasis on preservation of conifers greater than or equal to 24 inches diameter at breast height (dbh), deciduous trees greater than or equal to 20 inches dbh, and forested areas with an established duff layer.

(6) Decision Criteria - If the director determines that a project proposal meets the requirements of SCC 14.24.140(2), the application may be approved where the director finds:

(a) After review of the project under this chapter, there is no other economically viable permitted use of the property with less impact on wetlands, fish and wildlife habitat conservation areas, or buffers;

(b) The proposed alteration of a wetland, fish and wildlife habitat conservation area, or buffer is the minimum necessary to allow for reasonable use of the property. Activities must be located as far away as possible from wetlands, fish and wildlife habitat conservation areas, and buffers and low impact development techniques must be used to the maximum extent possible. In all cases, disturbance of a wetland, stream, marine water, or lake may only occur if no reasonable use can be achieved by limiting the disturbance to the buffer associated with that feature;

(c) The proposed activity is located to minimize impacts to priority habitats and species identified by the Washington Department of Fish and Wildlife;

(d) It has been demonstrated that the issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for the reasonable use exception. This section does not relieve an applicant from the obligation of complying with applicable variance procedures set forth in SCC 14.10 as they may relate to zoning;

(e) The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter;

(f) The proposed development is on an existing legal lot;

(g) The inability to derive reasonable use is not the result of the applicant's actions or that of previous property owners; and

(h) The granting of the reasonable use exception will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.

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14.24.1540 Variances.

(1) If the strict application of this Chapter is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity, due to special circumstances applicable to the subject property, including size, shape, and topography, and reasonable use cannot be achieved through the RUE process specified in SCC 14.24.140, a critical areas variance may be authorized as provided in Chapter 14.10 SCC; provided however, that those surrounding properties that have been developed under regulations in effect prior to the effective date of the ordinance codified in this Chapter ~~shall will~~ not be the sole basis for the granting of the variance.

~~(a) Standard buffer widths may be reduced by more than 25% but not more than 50% through an administrative variance. The administrative variance shall be processed as a Level I application pursuant to SCC 14.06.110. Critical Areas Variances are will be determined through the process outlined for Type 3 applications in Table 14.06.150-1.~~

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Commented [KC15]: The variance chapter has been relocated to be subsequent to the RUE allowances. The variance will now be utilized in scenarios where RUE allowances are exhausted.

Commented [KC16R15]: Updates to Table 14.06.150-1 will be required for application type change.

~~(b) Standard buffer widths may be reduced by more than 50% through a Hearing Examiner variance. The Hearing Examiner variance shall be processed as a Level II application pursuant to SCC 14.06.120.~~

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(2) The ~~Hearing Examiner~~ Approving Authority ~~shall~~ must ensure the opportunity for public comment, including that from appropriate Federal, State, and Tribal natural resource agencies, to ensure the use of best available science before deciding on variance requests and ~~shall~~ must develop and maintain a public record on each variance request which includes all findings, assessments and public comments. Such record ~~must~~ shall be made available to the public before the variance decision is made.

(3) Variances to the setback and buffer requirements of this Chapter may only be issued by the ~~Hearing Examiner~~ Approving Authority following review of the requirements listed in Subsections (3)(a) through (h) of this Section. The ~~Hearing Examiner~~ Approving Authority ~~shall~~ must make a finding for each of the requirements.

(a) The issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for the critical areas regulated by this Chapter; and

(b) Preparation of a ~~site assessment~~ critical areas report and mitigation plan by a qualified professional pursuant to the requirements of SCC 14.24.080 and all other applicable sections of this Chapter. The ~~site assessment~~ critical areas report and mitigation plan ~~shall~~ must be prepared ~~utilizing~~ using best available science; and

(c) The conclusions of the ~~site assessment~~ critical areas report must ~~utilize~~ use best available science to support a modification of the dimensional requirements of this Chapter; and

(d) The ~~site assessment~~ critical areas report and mitigation plan demonstrate that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property; and

(e) The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and

(f) The granting of the variance will be consistent with the general purpose and intent of this Chapter, and will ~~ensure no net loss of ecological functions of the associated critical areas~~ not create significant adverse impacts to the associated critical areas or otherwise be detrimental to the public welfare; provided, that if the proposal is within the special flood hazard area (SFHA), the applicant must demonstrate that the proposal is not likely to adversely affect species protected under the Endangered Species Act, or their habitat; and

(g) The inability of the applicant to meet the dimensional standards is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line after the effective date of the ordinance codified in this Chapter; and

(h) The granting of the variance is justified to cure a special circumstance and not simply for the economic convenience of the applicant.

(g) Reasonable use cannot be achieved through the RUE process described in SCC 14.24.140.

- (4) In granting any variance, the ~~Hearing Examiner~~ ~~Approving Authority shall will~~ prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts and to ensure that impacts to critical areas or their buffers are mitigated to the extent feasible utilizing best available science. The ~~Hearing Examiner~~ ~~Approving Authority shall must~~ consider and incorporate, as appropriate, recommendations from Federal, State, and Tribal resource agencies.
- (5) The ~~County~~ ~~Approving Authority shall will~~ maintain a record of all decisions made on requests for variances. Such record ~~shall must~~ include the basis and rationale for any such decision as well as any comments provided by Federal, State, or Tribal natural resource agencies. Such record ~~shall must~~ be made available to the public upon request.
- (6) A variance ~~shall will~~ expire if the use or activity for which it is granted is not commenced within three years of final approval by the Approving Authority. Knowledge of the expiration date is the responsibility of the applicant.
- (7) Appeals of the ~~Hearing Examiner~~ ~~Approving Authority~~ decisions on variance requests ~~shall must~~ be made pursuant to the provisions of Chapter 14.06 SCC. (Ord. O20110008 (part); Ord. O20080014 (part))

14.24.150 Reasonable use exception:

~~The Approving Authority shall ensure the opportunity for public comment, including that from appropriate Federal, State, and Tribal natural resource agencies, to ensure the use of best available science before deciding on variance requests and shall develop and maintain a public record on each variance request which includes all findings, assessments and public comments. Such record shall be made available to the public before the reasonable use decision is made.~~

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~~(1) If the application of this Chapter would result in denial of all reasonable and economically viable use of a property, and if such reasonable and economically viable use of the property cannot be obtained by consideration of a variance pursuant to SCC 14.24.140, then a landowner may seek a reasonable use exception from the standards of this Chapter. Reasonable use exceptions shall only apply to legal lots of record established prior to June 13, 1996. Reasonable use exceptions are intended as a last resort when no plan for mitigation and/or variance can meet the requirements of this Chapter and allow the applicant a reasonable and economically viable use of his or her property. The reasonable use exception shall follow the variance and public notification procedures of Chapters 14.06 and 14.10 SCC.~~

~~(2) The Hearing Examiner shall only grant a reasonable use exception under all of the following conditions:~~

- ~~(a) The application of this Chapter would deny all reasonable and economically viable use of the property so that there is no reasonable and economically viable use with a lesser impact on the critical area than that proposed; and~~
- ~~(b) The proposed development does not pose a threat to the public health and safety; and~~
- ~~(c) Any proposed modification to a critical area will be evaluated by the Hearing Examiner through consideration of a site assessment and mitigation plan prepared by a qualified professional pursuant to the requirements of this Chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property. The site assessment and mitigation plan shall be prepared utilizing best available science; and~~
- ~~(d) The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line, thereby~~

~~creating the undevelopable condition, after the effective date of the ordinance codified in this Chapter;—
and~~

~~(e) —The applicant has requested and been denied a variance under the provisions of SCC 14.24.140;—
and—~~

~~(3) —The Hearing Examiner may issue conditions of approval including modifications to the size and—
placement of structures and facilities to minimize impacts to critical areas and associated buffers. The—
Hearing Examiner may also specify mitigation requirements that ensure that all impacts are mitigated to the—
maximum extent feasible utilizing best available science; and~~

~~(4) —The Hearing Examiner shall provide opportunity for public comment before a decision on a request for
a reasonable use exception is made, including comments from appropriate Federal, State and Tribal natural
resource agencies. The Hearing Examiner shall maintain a record of all information, including public—
comments, which were used in making a decision on a request for a reasonable use exception. This record—
shall be made available to the public upon request.~~

~~(5) —A reasonable use shall expire if the use or activity for which it is granted is not commenced within—
three years of final approval by the Approving Authority. Knowledge of the expiration date is the responsibility
of the applicant.~~

~~(6) —Decisions issued by the Hearing Examiner on requests for reasonable use exceptions may be—
appealed pursuant to the provisions of Chapter 14.06 SCC. (Ord. O20080014 (part))~~

14.24.160 Public notice and records.

~~(1) —Public notice for projects subject to the provisions of this Chapter shall be provided pursuant to—
Chapter 14.06 SCC (Permit Procedures) and SCC 14.24.350 (Flow-sensitive basins).~~

~~(2) —Records of all critical area assessments and related land use approvals and conditioning shall be—
maintained by the County and be made available to the public upon request. (Ord. O20080014 (part))~~

Commented [KC17]: Deleted .160 as public noticing requirements are captured within subchapters where necessary.

14.24.170 Incentives.

(1) The following incentives are intended to minimize the burden ~~to~~[on](#) individual property owners from application of the provisions of this Chapter and assist the County in achieving the goals of this Chapter:

(a) Open Space. Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for a current use property tax assessment on that separate tract pursuant to Chapter 84.34 RCW. The County ~~shall~~[must](#) develop current use tax assessment programs for agricultural and small forest lands less than 20 acres and other open spaces.

(b) Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming the County or its qualified designee under RCW 64.04.130 as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in Subsection (1)(a) of this Section. The purpose of the easement ~~shall be~~[is](#) to preserve, protect, maintain, restore, and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and ~~shall~~[must](#) be approved by the property owner and the County.

Commented [KC18]: Minor edits for clarity.

(c) Density Credit. On lands containing critical areas or their associated buffers, the County ~~shall~~will allow a transfer of density for residential uses from the portion of the property containing the critical areas or buffers to that portion of the property that does not contain critical areas or buffers; provided, that the resulting density on the portion of the property does not contain critical areas or their buffers; and

(i) Does not create any adverse impacts to the critical area that cannot be adequately mitigated; and

(ii) Does not create a density greater than that allowed under SCC 14.18.310(2); and

(iii) All other development regulations can be met on site.

(d) Conservation Futures Fund. The County has established a conservation futures property tax fund as authorized by RCW 84.34.230. Properties containing critical areas or their associated buffers may be considered for acquisition under a purchase of development rights with these funds. Acquisitions ~~shall~~must be done through the Farmland Legacy Program as recommended by the Conservation Futures Advisory Committee, under the provisions of Ordinance No. 16380 and Resolution No. 16766.

(2) For any tract placed into or encumbered with a PCA, the County ~~shall~~will use its best efforts to assist the property owner in obtaining open-space tax status ~~on~~ that portion of the property pursuant to Chapter 84.34 RCW and/or in dedicating that property to a nonprofit land trust organization to eliminate or minimize property tax burdens.

(3) The County ~~shall~~will seek to educate the public regarding critical areas, the beneficial functions of critical areas, and the requirements of this Chapter in an effort to encourage citizen understanding, compliance, and stewardship.

(4) The County ~~shall~~will, where practical, provide incentives to landowners to restore critical areas or their buffers that have been adversely affected by previous land use activities. (Ord. O20080014 (part))

14.24.200 Wetlands designations.

(1) Wetlands, as defined in RCW 36.70A.030(~~2148~~), are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

(2) Designation. Wetlands ~~shall~~will be identified and designated through a site ~~visit~~inspection and/or an approved site assessment conducted by a qualified professional in compliance ~~accordance~~ with ~~WAC 173-22-035~~ the 1987 Wetland Delineation Manual by the U.S. Corps of Engineers (Corps), and the applicable regional supplement, 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: — Western Mountains, Valleys, and Coast Region (Version 2.0) current or as amended. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

Commented [KC19]: Updated for reference/codify the current wetland delineation method manuals.

14.24.210 Wetlands classification.

Wetlands ~~shall will~~ be rated according to the Washington State Wetland Rating System for Western Washington 2014 Update, Version 2.0 (Department of Ecology Publication No. ~~23-06-00914-06-029~~) current or as amended. This document contains the definitions, methods and a rating form for determining the categorization of wetlands below:

- (1) Category I wetlands are those wetlands of exceptional value in terms of protecting water quality, storing flood and stormwater, and/or providing habitat for wildlife.
- (2) Category II wetlands are those wetlands that provide high levels of some functions which are difficult to replace. wetlands do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered.
- (3) Category III wetlands are those wetlands that provide a moderate level of functions. They are typically more disturbed and have less diversity or are more isolated from other natural resources in the landscape. These wetlands can often be adequately replaced with a well-planned mitigation project. wetlands have important resource value.
- (4) Category IV wetlands are those wetlands that provide the lowest level of function and are often heavily disturbed. While the ability to replace these wetlands is likely achievable, it cannot be guaranteed and these wetlands may still provide some important functions. wetlands are of limited resource value. They typically have vegetation of similar age and class, lack special habitat features, and/or are isolated or disconnected from other aquatic systems or high quality upland habitats. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

Wetland ratings must be completed by a qualified professional. Wetland ratings are valid for five years; after such date the County shall must determine whether a revision or additional rating is necessary.

14.24.220 Wetlands site assessment report requirements.

Any proposed high impact land use within 300 feet of wetland indicators, and any other proposed land use within 225 feet of wetland indicators, requires a wetland ~~s~~ site assessment completed by a qualified professional. In addition to the requirements of SCC 14.24.080, the following ~~shall must~~ be included in a wetland ~~s~~ site assessment report:

- (1) A wetland delineation ~~shall must~~ be performed as part of a site assessment. The delineation ~~shall must~~ be performed by a qualified professional trained in conducting delineations in accordance with the methodology specified under SCC 14.24.200; and
- (2) Wetland classification category rating, including Cowardin and hydrogeomorphic (HGM) classification, and rating in accordance with SCC 14.24.210; and
- (3) A site plan indicating wetland and buffer boundaries and the locations of all data points; and
- (4) Functions and values analysis based on the wetland rating, which includes but is not limited to a discussion of water quality, fish and wildlife habitat hydrologic regime, flood and stormwater control, base flow and groundwater support, cultural and socioeconomic values; and
- (5) All data sheets and rating forms used to assess the wetland conditions on and off site. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

Commented [KC20]: Update to category definitions to better reflect Ecology classification language and for inclusion of need for a qualified professional to rate wetlands.

Commented [KC21]: Update for inclusion of need for a qualified professional to perform site assessment. Other minor changes for terminology and verbiage.

14.24.230 Wetland protection standards.

(1) Wetland Buffer Widths.

(a) Standard Wetland Buffers. Standard buffers are based on land use impact. The following standard buffers ~~shall~~will be required for regulated wetlands unless otherwise provided for in this Section:

Table 14.24.230-1. Standard Buffers

Standard Buffers			
Wetland Rating	Land Use Impact		
	Low	Moderate	High
Category I	150 feet	225 feet	300 feet
Category II	150 feet	225 feet	300 feet
Category III	75 feet	110 feet	150 feet
Category IV	25 feet	40 feet	50 feet

(b) Optional Wetland Buffers. The applicant may choose to have the optional wetland buffers in Section 8C.2.3 (as updated in 2014) of Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, apply in place of the standard buffers in Subsection (1)(a) of this Section, provided a site assessment is completed by a qualified professional pursuant to SCC 14.24.080.

Table 14.24.230-2. Optional Buffers

Wetland Rating	Habitat Score	Land Use Impact		
		Low	Moderate	High
Category I	Standard Buffers only			
Category II	8—9	150'	225'	300'
	5-6 —7	75'	110'	150'
	<3-5	50'	75'	100'
Category III	8—9	150'	225'	300'
	6-5 —7	75'	110'	150'
	3-<5	40'	60'	80'
Category IV	Standard Buffers only			

(c) Vegetated buffer standards: All wetland buffer widths presume the buffer is densely vegetated with a native plant community appropriate for the ecoregion, consisting of an average of 80% native cover comprised of trees, shrubs and groundcover plants. If the existing buffer is sparsely vegetated or vegetated with invasive species, the buffer must either be enhanced through an approved mitigation plan or increased per SCC 14.24.240(1)(c) to ensure the buffer provides adequate functions.

Commented [KC22]: Changes to SCC 14.24.320 include:

- 1.Impact minimization language.
- 2.Habitat scoring update.
- 3.Requirement of a structure setback from buffer edge per BAS.
- 4.Existing buffer vegetation requirements per BAS.
- 5.Update to exemptions for small wetland to align with Ecology guidance.

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Commented [NL23]: Updated habitat score ranges per Ecology guidance (2018).

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(d) High impact land use projects may apply moderate intensity buffers if measures to minimize impacts to wetlands from high impact land uses are implemented. Some of the measures that may be used can be found in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Appendix 8C (as updated in 2018).

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(2) Wetland buffers ~~shall be~~ are measured horizontally in a landward direction from the wetland edge, as delineated in the field, ~~pursuant to the requirements of SCC 14.24.210.~~ Where lands abutting a wetland display buffer ends within a continuous slope of ~~25~~ 30% or greater, the buffer ~~shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer must~~ be extended to a point 25 feet beyond the top of the bank of the sloping area.

(3) Any wetland created, restored, or enhanced as mitigation for approved wetland alterations ~~shall must~~ also include the standard buffer required for the category of the created, restored, or enhanced wetland.

(4) Setback. A 15-foot wide structure setback is required from the upland edge of the entire buffer to provide an area for construction and maintenance of buildings and other structures. This distance may be modified with approval of the Director. The following may be allowed within the structure setback:

(a) Landscaping with non-invasive species only;

(b) Uncovered decks;

(c) Building overhangs if such overhangs do not extend more than 18 inches into the setback area;

(d) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; and

(e) Trails.

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~~(54)~~ (5) Where a buffer has been previously established ~~after June 13, 1996~~, through a County development review and is permanently recorded on title or placed within a separate tract or easement, the buffer ~~shall will~~ be as previously established provided: ~~Additional review may be requested by the applicant or required by the Administrative Official to determine whether or not conditions on site have changed resulting in the previously established buffer no longer being applicable.~~

(a) It is equal to or greater than 50 percent of the current required standard buffer width for the wetland classification; and

(b) It is densely vegetated with native plants and invasive plant cover is low; or it is restored to meet vegetated buffer standards (SCC 14.24.230(1)(c)); and

(c) Impact minimization measures are applied (Table 14.24.230-3).

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If provisions a through c above are not met, then current wetland buffer widths per SCC 14.24.230(1) apply. Additional review may be requested by the applicant or required by the Director Administrative Official to determine whether or not conditions on site have changed resulting in the previously established buffer no longer being applicable.

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~~(65)~~ (6) Where a legally established and constructed public roadway private roads, and legally established development ~~as determined by the Director~~ transsects functionally disconnects a wetland buffer as demonstrated in a critical area report, the ~~Administrative Official~~ Director may approve a modification of the standard buffer width to the edge of the development ~~roadway~~, provided:

(a) The isolated part of the buffer does not provide additional protection of the wetland; and

(b) The isolated part of the buffer provides insignificant biological, geological, or hydrological buffer functions relating to the wetland; and

(c) If the resulting buffer distance is less than ~~50~~ 75% of the standard or optional buffer for the applicable wetland category, no further reduction ~~shall will~~ be allowed.

(d) The legally established development includes hard surfaces a minimum of 20 feet wide that completely isolates the project area from the critical area.

(76) Category ~~III and~~ IV wetlands less than 4,000 square feet that have been identified through a site assessment may be exempted or partially exempted from the provisions of this Chapter ~~and may be altered by filling or dredging~~ as outlined below:

(a) Category ~~III and~~ IV wetlands less than ~~4~~ 4,000 square feet are exempt from ~~County regulation the mitigation sequencing requirement to first avoid impacts~~ buffer provisions in this chapter where:

(i) The wetland is isolated; and

(ii) The wetland is not associated with a riparian corridor; and

(iii) The wetland is not part of a wetland mosaic, as described in the Washington State Wetland Rating System for Western Washington (Department of Ecology Publication No. ~~14-06-029~~ 23-06-009); and

(iv) The wetland does not score 6 or more points for habitat functions based on the Washington State Wetland Rating System for Western Washington (Department of Ecology Publication No. 23-06-009); and

(iv) The wetland does not contain Department of Fish and Wildlife-designated priority species or habitat identified as essential for local populations of priority species.

(v) The wetland is not required to mitigate drainage, flooding, or water quality problems in the watershed.

(vi) The project impacts are fully mitigated and applicable permit approvals are obtained in accord with SCC 14.24.060.

(b) ~~Category III and IV w~~Wetlands ~~between less than 1,000 and 4,000~~ square feet may be exempted from ~~buffer provisions contained in this Chapter. the mitigation sequencing requirement to first avoid impacts where:~~

~~(i) The wetland meets the criteria listed in Subsection (6)(a) of this Section; and~~

~~(ii) The project impacts are fully mitigated. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))~~

Commented [NL24]: SCC 14.24.230(7) updated to align with 2022 Ecology sample regulations on this topic.

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14.24.240 Wetland performance-based buffer alternatives and mitigation standards.

Buffer widths may be increased, decreased, or averaged in accordance with the following provisions. All mitigation proposed ~~shall~~ must be consistent with State and Federal wetland regulations.

(1) Buffer Width Increasing. The ~~Administrative Official~~ Director may require the standard or optional buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:

(a) To maintain viable populations of existing species listed by the Federal or State government as endangered, threatened, or sensitive; or

(b) To protect wetlands against severe erosion that standard erosion control measures will not effectively address; or

Commented [KC25]: Updates here relate to BAS. These include the allowance for the Director to require buffer increases in areas which lack native vegetation, and therefore, are unable to provide the expected functions, as well as the removal of buffer decrease allowances.

(c) To protect the function and value of that wetland by compensating for a poorly vegetated buffer that has not been addressed through a sufficient replanting plan by increasing the buffer required to the next greater land use impact buffer requirement or increase the width by 33%, whichever is greater.

(d) When a Category I or II wetland is located within 300 feet of:

- (i) Another Category I, II or III wetland; or
- (ii) A fish and wildlife HCA; or
- (iii) A Type S or F stream; or
- (iv) A high impact land use that is likely to have additional impacts.

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect wetland and habitat functions. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

(2) Buffer Width Averaging. Buffer averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. Averaging of required buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:

- (a) Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available; and
- (b) Averaging width will not adversely impact the wetland functions and values; and
- (c) The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
- (d) The buffer width ~~shall will~~ not be reduced below 75% of the standard buffer width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

(e) Compensatory buffer enhancement is provided for degraded buffers and buffers lacking vegetation components.

~~(3) Buffer Width Decreasing. Prior to considering buffer reductions, the applicant shall must demonstrate application of mitigation sequencing as required in SGC 14.24.080. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall must include replanting with native vegetation in the degraded portions of the remaining buffer area and shall must include a five-year monitoring and maintenance plan.~~

~~(a) High impact land use projects may apply moderate intensity buffers if measures to minimize impacts to wetlands from high impact land uses are implemented. Some of the measures that may be used can be found in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Appendix 8C (as updated in 2014).~~

(4) Any person who alters or proposes to alter regulated wetlands ~~shall must~~ reestablish, create, rehabilitate and/or enhance areas of wetland ~~in order~~ to compensate for wetland losses at the ratios described in mitigation ratios for projects in Western Washington in Table 8C-11 (as updated in 2018~~4~~) in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Section 8C.32.13.

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Commented [NL26]: Language recommended by Ecology in the 2022 sample wetland regulations.

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Commented [KC27]: We recommend that Skagit County consider removing buffer reduction allowances through administrative permitting channels. See Section 3.5 of the Gap Analysis for more information.

Commented [NL28R27]: Note: BAS-based buffer widths presume the buffer is densely vegetated with native trees, shrubs and groundcover plants. Therefore, buffer reduction with enhancement is not supported by the science.

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(5) ~~Buffer Width Variance. Standard and optional buffer widths may be reduced by more than 25% through a variance pursuant to SCC 14.24.140.~~

(6) Allowed Uses in Wetlands or Wetland Buffers. The following activities may be permitted within wetlands or their buffers but ~~shall~~ **must** comply with SCC 14.24.080 and 14.24.220:

(a) Roads, Bridges, driveways, and Utilities. Road, bridge and utility construction may be permitted across ~~Category I wetlands and/or their buffers only with a variance in accordance with SCC 14.24.140, and across Category II, III or IV wetlands and/or their buffers~~ under the following conditions:

- (i) It is demonstrated to the ~~Administrative Official~~ Director that there are no alternative routes that can be reasonably used to achieve the proposed development; and
- (ii) The activity will have minimum adverse impact to the wetland area; and
- (iii) The activity will not significantly degrade surface or groundwater; and
- (iv) The intrusion into the wetland area and its buffers is fully mitigated.

(v) The need to intrude into the wetland or buffer was not created by a development action or land division that occurred after June 13, 1996.

(vi) A mitigation plan prepared by a qualified professional demonstrating compliance with mitigation sequencing is provided and provided and approved by the Director.

(b) Low impact uses and activities which are consistent with the purpose and function of the buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the wetland involved; provided, that such activity ~~shall~~ **must** not result in a decrease in wetland functions and values and ~~shall~~ **must** not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, and viewing platforms less than 200 square feet which may be covered but not enclosed.

(c) Stormwater discharges to wetlands ~~shall~~ **must** be controlled and treated in accordance with the currently adopted Stormwater Management Manual. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

14.24.250 Wetland alternative compensation projects.

(1) Off-Site Compensation. On-site compensation is generally preferred over off-site compensation. Off-site compensation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. The following conditions apply to off-site compensation:

(a) Off-site compensation ~~shall~~ **must** occur within the same drainage basin of the same watershed where the wetland loss occurs; ~~provided, that Category IV wetlands may be replaced outside of the watershed if there is no reasonable alternative. In such instances, the s~~

Stormwater storage function provided by Category IV wetlands must be provided for within the design of the development project.

(b) Off-site compensation can be allowed only under 1 or more of the following circumstances:

- (i) On-site compensation is not feasible due to hydrology, soils, or other physical factors;
- (ii) On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State or local public safety directive;
- (iii) Potential functions and values at the site of the proposed restoration are greater than the lost wetland functions and values;
- (iv) When the wetland to be altered is of a limited function and value and is degraded, compensation ~~shall~~must be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functions and values possible.

(v) Off-site mitigation is required by state and/or federal permitting agencies and is demonstrated to support watershed health.

(2) Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of Subsection (3)(a) of this Section and the mitigation sequence outlined in SCC 14.24.080.

(3) Selecting Compensation Sites. Except in the case of cooperative compensation projects in selecting compensation sites, applicants ~~shall~~must pursue locations in the following order of preference:

- (a) Restoring wetlands on upland sites that were formerly wetland. This action includes reestablishment and rehabilitation;
- (b) Creating/establishing wetlands on disturbed upland sites, such as those with vegetative cover consisting primarily of nonnative species;
- (c) Preserving/maintaining a wetland to remove threat or prevent decline, such as purchasing land. Preservation does not result in gain of wetland acres; or
- (d) Enhancing significantly degraded wetlands.

~~(a) Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;~~

~~(b) Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists;~~

(4) Innovative Wetland Mitigation Projects. The ~~Administrative Official~~Director may encourage, facilitate, and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of innovative compensation projects allowed under the provisions of this Section wherein 1 or more applicants, or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:

- (a) Creation of 1 or several larger wetlands may be preferable to many small wetlands; and
- (b) The group demonstrates the organizational and fiscal capability to act cooperatively; and
- (c) The group demonstrates that long-term management of the compensation area will be provided; and
- (d) There is a clear potential for success of the proposed compensation at the identified compensation site; and

Commented [KC29]: We recommend that Skagit County match Ecology's guidance and definitions in compensation site selection and that hydrologic impacts are assessed in small basins with inadequate drainage as wetlands are filled. See Section 3.6 of the Gap Analysis.

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(e) Wetland mitigation banking programs consistent with the provisions outlined in the Department of Ecology's publications No. 06-06-011A and No. 06-06-011B (Wetland Mitigation in Washington State, Part 1 and Part 2), Chapter 90.84 RCW and Chapter 173-700 WAC will be considered as a method of compensation for unavoidable, adverse wetland impacts associated with future development. (Ord. O20080014 (part))

14.24.300 Critical aAquifer recharge areas intent.

(1) This Section establishes areas determined to be critical in maintaining functions and values of both groundwater quantity and quality, with the purpose of protecting potable water supplies and preserve groundwater supplies to anadromous fish habitat. This Section specifies regulatory requirements— in accordance with RCW 36.70A.170 for development within these areas and provides a methodology by which Skagit County will determine the level of review and any mitigation performance standards measures required. The intent of this Section is to:

(a) Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use; and

(b) Identify groundwater resources at risk and activities/uses that impact groundwater quality; and

(b) Identify practices, alternatives, and mitigation protection measures that can minimize prevent the adverse impacts of proposed projects; and

(c) Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity.

(2) Existing and future beneficial uses of groundwater ~~shall must~~ be maintained and protected. Degradation of groundwater quality that would interfere with or become injurious to beneficial uses ~~shall must~~ be avoided, ~~or minimized.~~

(3) Wherever groundwater is determined to be of a higher quality than the criteria established for said waters under this Section, the existing water quality ~~shall must~~ be protected, and contaminants that will reduce the existing quality thereof ~~shall will~~ not be allowed to enter such waters, ~~except in those instances where it can be demonstrated that:~~

~~(a) —An overriding consideration of the public interest will be served; and~~

~~(b) —All contaminants proposed for entry into said groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.~~

(4) It is also the intent of this section regulation to:

(a) Comply with and implement the requirements of Chapter 90.48 RCW, Chapters 173-200, 173-201A, 173-160, 246-290 and 246-291 WAC, Chapter 12.48 SCC; and

(b) Carry out powers in manners which are consistent with Chapter 90.54 RCW and Chapters 173-503, WAC 173-501, and 173-505 WAC, as amended; and

(c) Comply with the Washington State Department of Health's wellhead protection guidance; and (Ord. O20080014 (part))

(d) Maintain groundwater dependent flow in anadromous fish habitat.

Commented [KC30]: March 2025 CARA Update Strategy
- Keep basic structure largely in place but update with more meaningful changes and cut much of Low Flow sections.

14.24.300 - Updates for terminology consistency with State regulations and chapter purpose/intent.

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14.24.310 Critical aquifer recharge areas designations.

There are ~~two~~ categories of critical aquifer recharge areas. These categories are designated to assist the ~~Administrative Official~~ Director in determining the level of assessment necessary to evaluate land use proposals. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use, with consideration given to hydrogeological susceptibility and vulnerability. All designated areas are subject to change as data and information are updated or become available.

(1) Categories.

- (a) Category I areas are those so designated because of the need for protection due to a pre-existing land use, or because they are identified by the County, State, or Federal government as areas in need of aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability. Category I areas ~~are shown on the aquifer recharge area map and are subject to change.~~
Category I areas include:

- (i) ~~Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act and/or shown on the Environmental Protection Agency's (EPA) Interactive Map of Sole Source Aquifers. Areas served by groundwater which have been designated as a "sole source aquifer area" under the Federal Safe Drinking Water Act; and~~
- (ii) ~~Areas identified by the County as potential or existing sea water intrusion areas; and~~
~~Areas within 1/2 mile of a surface water source limited (SWSL) stream as designated in SCC 14.24.340(3)(c). Areas designated as "wellhead protection areas" pursuant to WAC Chapter 246-290 and the groundwater contribution area, or otherwise recognized by the Health Officer or Director as needing wellhead protection. Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with:~~
 - (A) ~~The 10-year groundwater time of travel for all Group A public water systems; or~~
 - (B) ~~The 1-year groundwater time of travel for all Group B public water supply wells.~~
- (iv) ~~Areas within 1/2 mile of a surface water source limited (SWSL) stream as designated in SCC 14.24.340(3)(c). Areas with susceptible soils based on the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) data, specifically:~~
 - a. ~~Areas with excessively drained and somewhat excessively drained soils; or~~
 - b. ~~Areas with shallow aquifers/depths to the seasonal high water table.~~
- (v) ~~Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act and/or shown on the Washington State Department of Health (DOH) Source Water Assessment Program (SWAP) Map. Areas designated for wellhead protection must, for the purpose of this section, include the identified recharge areas associated with:~~
 - a. ~~Protective areas associated with public drinking water sources established by water systems and approved or assigned by the DOH as defined in WAC 365-190-030(23).~~
 - b. ~~A six-hundred-foot radius around the well site designating the primary short-term groundwater contribution area for Group B public water systems as defined in WAC 246-291-125(3)(d)(ii).~~

- (b) Areas throughout the County not identified as Category I areas are designated as Category II areas.

- (c) When any portion of the ~~proposed project~~ parcel area is located ~~partly~~ within a Category I area, the proposed project ~~shall~~ may be subject to the additional level of scrutiny of the potential impacts within a provided for Category I area.

Commented [KC31]: Changes include clarifications to Category I CARAs and updates to data and mapping sources.

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~~(2) In order to protect aquatic resources, each watershed drainage area identified in SCC 14.24.350 is hereby designated as a "flow-sensitive basin." Flow-sensitive basins may include areas that also are designated Category I or Category II areas. (Ord. 020160004 § 6 (Att. 6); Ord. 020080014 (part))~~

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~~14.24.320 Critical a~~ **Aquifer recharge area standards prohibited activities.**

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Commented [KC32]: SCC 14.24.320 has undergone restructuring to move from only listing prohibited activities to stating best management practices within CARAs and setting performance standards for specified land use activities. The prohibited activities list has been maintained, but shifted to the end of the chapter.

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- (1) Best Management Practices. Within both Category I and Category II CARAs, all commercial, industrial, institutional, and multi-family residential sites, along with home-based businesses, and other activities that generate pollution or handle materials that could pollute groundwater must employ best management practices (BMPs) to prevent groundwater pollution. As a condition of land-use or permit approval, the Director may require appropriate structural and operational BMPs. Operational BMPs must be specified in an approved Source Control Plan, which includes a Spill Prevention and Response Plan. BMPs specified in the Ecology Stormwater Management Manual for Western WA (2024 or as updated), developed as part of a Pollution Prevention Plan in accordance with WAC 173-307, or otherwise developed in accordance with best available science may be included in the Source Control Plan.
- (2) Non-Hazardous Uses. Subdivision of land, multi-family residential structures and all commercial and industrial sites or activities that do not include or involve hazardous substance processing are allowed subject to the following performance standards:
 - (a) Stormwater treatment and control must be provided in conformance with the Skagit County Stormwater Code.
 - (b) Floor drains must not be allowed to drain to the stormwater system, surface water, or ground water.
 - (c) If any roof venting carries contaminants, then the portion of the roof draining this area must go through pretreatment.
 - (d) All vehicle washing done somewhere other than at a residence must be self-contained or be discharged to a sanitary sewer system, if approved by the sewer utility.
 - (e) For new or changes in regulated activities served by on-site sewage systems, the applicant may be required to demonstrate to the Director that nitrate levels at the down-gradient property line will not exceed 5 mg/L. Refer to WAC 246-272A-0320 for details on calculations.
 - (f) Additional protective measures may be required if deemed necessary by the Skagit County Public Health Department to protect public health or safety.
- (3) Agricultural Activities. New agricultural activities that do not involve hazardous substance handling or application are allowed within an aquifer recharge or wellhead protection area subject to the following:
 - (a) The applicant is required to submit a farm management plan prepared by the USDA, NRCS, Skagit Conservation District, or Washington State University, Cooperative Extension Office that certifies that water quality and quantity within the aquifer recharge area is maintained. The farm management plan must at a minimum address the following:
 - i. The limits of the proposed agricultural activities.
 - ii. The proposed scope of agricultural activities, including the use of any pesticides, fertilizers, or other chemicals.
 - iii. The existing nitrate levels on the site and any proposed increases in nitrate levels.
 - (b) Integrated Pest Management (IPM) practices for pest control and Best Management Practices (BMPs) for the use of fertilizers, as described by the Washington State University.
 - (c) Nitrate levels at down-gradient property line must not exceed 5 mg/L or, if the background nitrate concentration exceeds 5 mg/L, that the concentration will not be increased more than 0.1 mg/L.
 - (d) Additional protective measures may be required if deemed necessary by the Department or to protect public health or safety.
- (4) Hazardous Uses. Proposals for hazardous substance processing or handling including but not limited to hazardous waste treatment and storage facilities, animal containment areas, dry cleaners, funeral services, boat repair shops, furniture stripping, photographic processing, creosote and asphalt manufacture and treatment, golf courses, wood product preserving, motor vehicle service garages,

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sawmills, printing and publishing shops, and solid waste facilities that require a Solid Waste Handling Permit from the Skagit County Public Health Department in an aquifer recharge and/or wellhead protection area must submit a hydrogeologic assessment that is subject to review and approval of by the Director. The Director has the authority to apply standards deemed necessary to mitigate any negative impacts that may be associated with the proposed development. At a minimum, the activity must employ AKART (all known, available, and reasonable treatment) to protect ground water quality.

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(a) Additional Standards. The following additional standards apply in all CARAs:

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i. Storage Tanks. In addition to the requirement to submit a hydrogeologic assessment, the following standards apply to storage tanks in an aquifer recharge and/or wellhead protection area:

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(A) Underground Tanks. All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous waste must be designed and constructed so as to:

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(1) Prevent releases due to corrosion or structural failure for the operational life of the tank; and

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(2) Be protected against corrosion, constructed of non-corrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and

(3) Use material in the construction or lining of the tank which is compatible with the substance to be stored; and

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(4) The installation of underground storage tanks will also be subject to other state and local permit requirements.

(B) Aboveground Tanks. All new aboveground storage facilities used or to be used for the aboveground storage of hazardous substances or hazardous waste must be designed and constructed with a double walled tank and a secondary containment system separate from the tank that will hold 110 percent of the tank's capacity. The secondary containment system or dike system must be designed and constructed to contain material stored in the tank(s).

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ii. Pesticides, herbicides and fertilizers must be applied in accordance with state and federal law.

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iii. Vehicle repair and servicing.

(A) Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment if leaks occur.

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(B) No Class V stormwater infiltration wells are allowed in CARAs on sites for vehicle repair and servicing unless oil water separators are installed. Dry wells on the site prior to the facility establishment must be decommissioned using techniques approved by the Department of Ecology or an oil water separator will need to be installed prior to commencement of the proposed facility.

iv. Commercial, industrial, and institutional activities, including home-based businesses that include potential pollution generating activities:

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(A) A spill response and prevention plan will be required for development approvals.

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(B) Best management practices which meet the requirements of SCC 14.32 Stormwater Management and SCC 16.32 Water Pollution and other applicable requirements established by the Director.

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(C) Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that it is an environmental, safety or public health hazard must be decommissioned in accordance with WAC 173-160-381 to prevent groundwater contamination.

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(5) Prohibited Activities in Category I. The following activities are prohibited in Category I areas due to the probability or potential magnitude of their adverse effects on groundwater:

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(a) (1) Landfills, including, but not limited to, hazardous or dangerous waste disposal facilities as defined in Chapter 173-303 WAC, municipal solid waste landfills as defined in Chapter 173-351 WAC, and limited purpose landfills as defined in Chapter 173-350 WAC.

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- (b) ~~(2)~~ — Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells, such as:
- (i) Industrial process water and disposal wells; and
 - (ii) Radioactive waste disposal.

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- ~~(a) — Agricultural drainage wells;~~
- ~~(b) — Untreated sewage waste disposal wells;~~
- ~~(c) — Cesspools;~~
- ~~(d) — Industrial process water and disposal wells; and~~
- ~~(e) — Radioactive waste disposal.~~

- (c) ~~(3)~~ — Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- ~~(a)(d)~~ ~~(4)~~ — Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).
- ~~(b)(e)~~ ~~(5)~~ — Facilities that store, process, or dispose of radioactive substances.
- ~~(f)~~ ~~(6)~~ — Other activities that the Director or Health Officer determines would significantly degrade groundwater quality or reduce the recharge to aquifers currently or potentially used as a potable water source or that may serve as a significant source of base flow to a flow-sensitive basin stream. The determination must be made based on credible scientific information. (Ord. O20240005 § 1 (Exh. A); Ord. O20080014 (part))

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14.24.330 ~~Critical~~ Critical ~~Aquifer~~ Aquifer ~~Recharge~~ Recharge Areas **site assessment requirements.**

Commented [KC33]: Minor updates to terminology consistency and exemptions list. BAS updates to site assessment elements.

(1) Except as provided in Subsection (4) of this Section, the level of study for a site assessment which will be required of the applicant by the ~~Administrative Official~~ Director for a given development will be based on an initial project review by Skagit County Planning and Development Services that may also include staff from the Health Department and a County staff hydrogeologist. The standard site assessment requirements are provided in Subsection (2) of this Section. The reporting requirements for a particular project can be ~~reduced~~ modified, at the discretion of the ~~Administrative Official or Health Officer~~ Director, if it is determined that the preparation of a site assessment is not likely to provide additional information that will aid in the assessment of likely impacts to groundwater quality or quantity.

(2) Site Assessment Requirements. Unless the scope of the site assessment has been ~~reduced~~ modified by the ~~Administrative Official or the Health Officer~~ Director, the site assessment ~~shall~~ must satisfy the requirements of SCC 14.24.080, and ~~shall~~ must include:

- (a) A site plan acceptable to the ~~Administrative Official~~ Director or Health Officer, which indicates the approximate location of known or geologically representative wells (abandoned and active), springs, and surface watercourses within 1,000 feet of the project property.
- (b) A description of the site-specific hydrogeological characteristics regarding potential impact(s) to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the

lithology, depth and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map, ~~and~~

(c) Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient and within 1,000 feet of the project or as otherwise directed by the ~~Administrative Official or Health Officer~~ Director.

(3) Additional Site Assessment Elements. After the initial project review, ~~one~~ or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeological conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional site assessment elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors. Additional site assessment elements include:

(a) ~~Lithologic characteristics, and stratigraphic relationships, depth to water, chemical retardation factors, adsorption, and the presence or absence of an impermeable layer~~ of the affected aquifer(s) and overlying geologic units and soil types including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.

(b) Delineation of identified structural features such as faults, fractures, and fissures.

(c) Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage coefficient, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).

(d) Estimate of precipitation and evapotranspiration rates for the project area.

(e) Preparation of appropriate hydrogeological cross sections depicting underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.

(f) Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s) with consideration to advection, dispersion, and diffusion of contaminants in the groundwater.

(g) Delineation of areas potentially affected by contaminant migration on the ground surface and/or through potentially affected aquifer(s).

(h) Determination of background or existing groundwater quality underlying the project area.

(i) Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s).

(j) ~~Development of a spill plan and/or contingency plan, which meets the requirements of SCC 14.32 Stormwater Management and SCC 16.32 Water Pollution,~~ describing the specific actions which will be taken if ~~proposed equipment or materials may introduce contaminants,~~ a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).

(k) Determination of the degree of continuity between groundwater and nearby surface water including potential impacts to flows in surface water source limited (SWSL) streams ~~and flow-sensitive~~

Commented [KC34]: We recommend adding depth to water, chemical retardation factors, adsorption, and the presence or absence of an impermeable layer (ECY, 2021) to (3)(a). See Section 4.3 of the Gap Analysis.

Commented [KC35]: We recommend that projects in CARAs be required to also have a spill prevention plan if equipment or materials are used that may introduce contaminants. Spill prevention requirements under SCC 14.32 Stormwater Management and SCC 16.32 Water Pollution could be cross-referenced here. See Section 4.3 of the Gap Analysis.

~~basins~~ from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.

(l) Assessment of the potential for pumping-induced seawater intrusion.

(m) Nitrate Loading Assessment. For projects that have the potential to adversely impact groundwater quality by nitrate loading, the applicant ~~shall~~ must test existing wells and/or required test wells for nitrate as nitrogen and calculate the current and projected future groundwater nitrate concentrations at full project build-out, at an appropriate point of compliance, as determined by project characteristics, and in a methodology approved by the County. If the calculated nitrate loading in the intended water supply equals or exceeds 5 milligrams per liter nitrate as nitrogen, the applicant ~~shall~~ must develop a mitigation plan with the point of compliance determined based on project characteristics.

(4) Exemptions. The following activities ~~are exempted from the provisions~~ may be exempted from the assessment requirements of this Section:

(a) Activities that legally existed on or before June 13, 1996. Expansions or changes in use ~~shall~~ must comply with the applicable provisions of this Section.

(b) Activities allowed without standard critical areas review pursuant to SCC 14.24.070. (Ord. O20080014 (part))

(c) Residential uses, including accessory building permits and accessory dwelling units (ADU) building permits, other than those having activities covered in SCC 14.24.320(4). ~~Single-family residential building permits, including accessory building permits and accessory dwelling unit (ADU) building permits, which are outside Category I areas.~~

~~(c) Residential short plats outside Category I areas where each lot is 2.5 acres or greater.~~

(d) Single-family residential building permits where a site assessment was required to be completed for the land division. To meet the conditions of this exemption, the applicant must comply with the recorded plat notes and the applicable mitigation measures contained in the site assessment.

~~(e) Activities allowed without standard critical areas review pursuant to SCC 14.24.070. (Ord. O20080014 (part))~~

(e) Activities already permitted and regulated by the state or the Skagit County Health Department to incorporate best management practices.

14.24.340 Critical Aquifer ~~R~~ recharge ~~A~~ areas ~~impact~~ Protection Plans ~~mitigation~~.

The ~~Administrative Official and Health Officer~~ Director will ~~shall~~ review development proposals to assess aquifer(s) vulnerability and establish needed mitigation measures. Where determined to be necessary through the site assessment process, or otherwise required under SCC 14.24.310(1)(a)(~~viii~~), development approvals ~~shall~~ must include conditions designed to prevent ~~significant~~ degradation of water quality or reduction in recharge to underlying aquifer(s). ~~Mitigation for groundwater withdrawals is presented in SCC 14.24.360.~~ The project ~~shall~~ must not cause exceedance of the water quality standards specified in WAC Chapter 173-200 or otherwise violate the anti-degradation requirements of WAC Chapter 173-200.

(1) ~~Mitigation-CARA Protection~~ Plan Elements. ~~For proposals requiring aquifer recharge area impact mitigations, in~~ In addition to adhering to any of the required ~~mitigation~~ protection measures identified above,

Commented [KC36]: The title and contents of SCC 14.24.340 has transitioned from “mitigation” language to “protection” as a more appropriate way of addressing CARA needs. WA Dept. of Health has made it clear that there is no mitigation for CARAs.

the applicant ~~shall~~must develop for approval by the ~~Administrative Official and the Health Officer~~Director a ~~mitigation~~ plan for the proposed development. All ~~mitigation~~ conditions applied to permits ~~shall~~must be based on all known, available, and reasonable methods of prevention, control, and treatment. Compliance with the ~~mitigation~~ plan ~~shall~~will be enforceable by the ~~Administrative Official~~Director or Health Officer. The applicant may amend the plan with the approval of the ~~Administrative Official and Health Officer~~Director. The ~~Administrative Official and Health Officer~~Director may, based on performance criteria and monitoring results, require additional amendments to the plan. The ~~mitigation~~ plan ~~shall~~must contain the project's permit conditions and, as applicable:

- (a) A description of the ~~mitigation~~ measures to be taken, how they will be implemented, and performance criteria.
- (b) An environmental monitoring plan describing the monitoring program, maintenance, and reporting requirements.
- (c) A contingency plan describing corrective actions to be taken if monitoring results indicate that ~~required mitigation~~ measures are not effectively protecting groundwater resources and human health. The ~~Health Officer or the Administrative Official~~Director ~~shall~~has have the authority to impose additional required corrective actions where such measures are necessary to protect groundwater resources or human health. Where appropriate contingencies are not feasible and result in an activity posing unacceptable risk to the groundwater resources or human health, the ~~Administrative Official or Health Officer~~Director ~~shall~~must deny the proposal.
- (d) Multiple-stage (or phased) development must consider the total build-out of the project in terms of critical aquifer recharge areas protection to allow for an assessment of the cumulative impacts of the entire development.
- (e) Conditions that would precipitate ceasing the project operation altogether.
- (f) Wellhead Protection ~~Mitigation~~. Where a wellhead protection plan addressing the project area exists, the ~~Administrative Official or Health Officer~~Director ~~shall~~must use the recommendations contained in the wellhead protection plan as a basis for formulating required mitigation measures. In the absence of such a ~~mitigation~~ plan, the ~~Administrative Official or the Health Officer~~Director ~~shall~~will contact the owner of the public water system impacted by the proposed project and jointly develop ~~mitigation protection~~ measures, a summary of which ~~shall~~must be signed by the applicant and recorded with the applicant's property title.
- (g) Seawater Intrusion. ~~Protection Mitigation~~ must be consistent with SCC 14.24.380, Seawater intrusion areas.
- (h) "Sole Source Aquifer" ~~Mitigation~~. See SCC 14.18.310(2). There will be no density bonus for CaRD developments in areas designated as a "sole source aquifer," except where the source of water is from a public water system whose source is outside the designated area or from an approved alternative water system pursuant to SCC Chapter 12.48.
- (i) Nitrate Loading ~~Mitigation~~.
 - (i) General Requirements. If a calculated nitrate loading concentration for a project at the designated point of compliance per SCC 14.24.330(3)(m) is equal to or greater than 5 milligrams per liter nitrate as nitrogen, then the applicant ~~shall~~must be required to place a notification on the documents of title for the property affected and a monitoring plan ~~shall~~must be developed to monitor the nitrate level and include a contingency plan to be implemented if the nitrate level exceeds 10 milligrams per liter nitrate as nitrogen.

(ii) Land Divisions. If the calculated nitrate loading concentration for a land division at the designated point of compliance per SCC 14.24.330(3)(m) is equal to or greater than 5 milligrams per liter nitrate as nitrogen, then the applicant ~~shall~~must:

- (A) Develop a ~~mitigation~~ plan to minimize the nitrate loading rate; and
- (B) Develop a contingency plan to be implemented if the nitrate concentration exceeds 10 milligrams per liter nitrate as nitrogen; and
- (C) Place notification on the plat stating that ~~mitigation~~groundwater protection and contingency plans exist.

(iii) Mitigation of nitrate in groundwater from on-site septic systems may include decreasing the density of septic system drainfields.

(2) Recording of ~~Mitigation~~ Plan Summaries/Title Notices.

(a) General Requirements. The ~~Administrative Official or Health Officer~~Director may require that the applicant record a County-approved summary of the ~~mitigation protection/contingency~~ plan on the property title. A copy of the recorded summary ~~shall~~must be provided to the ~~Administrative Official or Health Officer~~Director. If a property owner can demonstrate, to the satisfaction of the ~~Administrative Official or Health Officer~~Director, that ~~mitigation protection~~ measures are no longer necessary, the ~~Director~~Administrative Official or Health Officer ~~must~~shall approve the addition of language on the title for the property nullifying the ~~mitigation~~ requirements.

(b) Land Divisions. The ~~Administrative Official~~Director ~~shall~~will require the applicant for a land division to record the ~~mitigation~~ plan/notice as part of the plat notes. If the ~~mitigation~~ plan is not recorded as or referenced by a plat note, the applicant ~~shall~~must record the ~~mitigation~~ plan on the affected property title(s).

(3) Surface Water Source Limited (SWSL) Stream ~~Mitigation~~Protection.

(a) If a project, excluding additions to a single-family dwelling unit that rely on an existing domestic groundwater system, is located within 1/2 mile of any of the streams identified in Subsection (3)(~~cd~~) of this Section as SWSL streams the following mitigation measures ~~shall~~will be required, as applicable:

(i) Public Water. If an existing public water system, the source for which is located outside of the watershed containing the project, is timely and reasonably available to a project property within a SWSL watershed, and where the water provider is willing and able to provide safe and reliable potable water service, then the project ~~shall~~will be required to connect to the public water supply as a condition of project approval.

(ii) Interim Groundwater Withdrawals. If public water is not timely and reasonably available, as specified in Subsection (3)(a)(i) of this Section, the applicant may utilize groundwater withdrawn from the SWSL watershed on an interim basis, providing that the property ~~shall be~~is subject to mandatory participation in a local utility district (LUD) or special improvement district that will provide potable water service to the property if and when that occurs. The property owner ~~shall~~will be required to sign a written agreement with the County agreeing not to protest the LUD or special improvement district, and have those conditions recorded on the property title before a County permit or land division is approved. The property owner ~~shall~~must also agree through the above written agreement to connect all water fixtures to this public water system as soon as it is timely and reasonably available, and ~~shall~~must decommission any well(s) utilized for interim groundwater withdrawals in accordance with applicable State and County rules and regulations expeditiously following connection to the public system.

(iii) Lawn Watering. Lawn water restrictions or other water use conservation measures ~~shall will~~ be required for properties included in land divisions approved after the date of adoption of the ordinance codified in this Chapter. Lawn watering restrictions for interim groundwater withdrawals ~~shall will~~ not apply under the following conditions:

(A) The proposed development connects to an existing public water supply as described in Subsection (3)(a)(i) of this Section; or

(B) The proposed development is drawing water from an aquifer that meets the demonstration standard as specified in Subsection (3)(d) of this Section.

(iv) Public Water Lines. The County should encourage extension of new public water lines to serve existing legal lots of record in SWSL watersheds through establishment of a utility improvement district or other shared funding mechanism provided any such extension outside of an urban growth area is consistent with the County's Comprehensive Plan.

(v) Comprehensive Plan. Where economically feasible, the County ~~shall will~~ consider as part of its Comprehensive Plan limitations on the uses and densities within designated SWSL stream corridors to limit new individual wells as necessary to protect tributary base flows.

(b) If a project is located within 1/2 mile of any of the streams identified in Subsection (3)(~~d~~c) of this Section as SWSL onsite stormwater dispersion or infiltration will be required using BMP designs specified by SCC 14.32. ~~then the total impervious surface of the proposed project shall be limited to 5% of the total lot area, unless the proposed development provides mitigation that will collect runoff from the proposed development, treat that runoff, if necessary to protect groundwater quality, and discharge that collected runoff into a groundwater infiltration system on site. The impervious surface limitation may be waived under the following conditions:~~

~~(i) A project is connected to a public water system that has a source of water located outside of the watershed and if the project uses an approved on-site sewage disposal system and it is determined that the on-site sewage disposal system is providing acceptable compensating recharge to the aquifer; or~~

~~(ii) The project is located in an area that the County Engineer determines is not suitable for stormwater infiltration; or~~

~~(iii) The limitation is inconsistent with applicable stormwater regulations.~~

(c) Samish River basin. There will be no density bonus for CaRD developments that rely on groundwater as the water source and where the well is located within 1/2 mile of the Samish River or Friday Creek.

(~~d~~e) For the purposes of implementing this Chapter, the following streams are designated as surface water source limited streams:

- (i) Carpenter Creek;
- (ii) Coal Creek;
- (iii) Diobsud Creek;
- (iv) Friday Creek;
- (v) Grandy Creek;
- (vi) Jones Creek;
- (vii) Lake Erie;

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- (viii) Nookachamps Creek;
- (ix) Samish River;
- (x) Whitehall Creek.

(e) Exceptions. Projects are exempt from the ~~mitigation~~ measures described in Subsections (3)(a) and (b) of this Section under the following conditions:

- (i) The applicant demonstrates, through an appropriate hydrogeologic characterization, that any groundwater withdrawal proposed for the project will not adversely impact stream flows deemed critical to salmonids in a SWSL stream; provided, that a ~~mitigation~~ report referencing the hydrological determination ~~shall~~ must be recorded on the plat and/or title; or
- (ii) If the project is located outside of the watershed of the streams listed in Subsection (3)(c) of this Section; or
- (iii) If the project is located in an area where groundwater is under tidal influence. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

14.24.350 ~~Flow-sensitive basins.~~ Instream Flow Rules

(1) Except as provided in Subsection (2) of this Section, average daily groundwater withdrawals for projects initiated after the effective dates indicated below ~~shall~~ will be limited in each ~~instream-flow-sensitive~~ basin with Instream Flow Rules to the amounts indicated below. The ~~Director-Health Officer~~, in coordination with the Washington Department of Ecology, ~~shall~~ will be responsible ~~for tracking water uses in flow-sensitive basins in accordance with~~ for ensuring compliance with WAC 173-501, WAC 173-503, & WAC 173-505. ~~Chapter 12.48 SGC.~~

(a) Skagit River Basin is regulated under WAC 173-503. Skagit County adheres to the rules and regulations listed in the Instream Resources Protection Program, identified as Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4).

(i) Effective Date. Groundwater withdrawals that were established after April 14, 2001, will be subject to WAC 173-503.

~~(a) Skagit River Basin.~~

~~(i) Flow-Sensitive Basins:~~

Lower Skagit Flow-Sensitive Basins	Groundwater Withdrawal Limit (gallons per day)
Alder Creek	81,430

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Commented [KC37]: SCC 14.24.350 has been altered to no longer include tables of flow sensitive basins and instead now makes reference to state regulations for the Skagit River, Stillaguamish River, Nooksack River Basins Instream Resources Protection Programs. This has also resulted in the title change.

Commented [KC38]: We recommend that Groundwater Withdrawal Limit (gallons per day) be reviewed to comply with BAS and Washington State rules regarding flow-sensitive basins. See Section 4.5 of the Gap Analysis.

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Lower Skagit Flow- Sensitive Basins	Groundwater Withdrawal Limit (gallons per day)
Anderson/Parker/Sorenson Creeks	29,934
Gareys Creek	11,633
Carpenter/Fisher Creeks	11,633
Childs/Fank Creeks	18,096
Goat Creek	18,742
Gumberland Creek	25,851
Day Creek	131,839
Gilligan Creek	25,851
Hansen Creek	98,130
Jones Creek	67,212
Loretta Creek	11,633
Mannser Creek	15,511
Morgan Creek	13,572
Muddy Creek	28,436
Nookachamps Creek—East Fork	14,218
Nookachamps Creek— Upper	12,279
O'Toole Creek	23,266
Red Cabin Creek	42,653
Salmon/Stevens Creek	5,170
Wiseman Creek	18,095

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Upper Skagit Flow- Sensitive Basins	Groundwater Withdrawal Limit (gallons per day)
Alden Creek	25,85†
Alt Creek	25,85†
Bacon Creek	25,85†
Barr Creek	25,85†
Big Creek	25,85†
Boulder Creek	25,85†
Boyd Creek	25,85†
Clark Creek	25,85†
Gorkindate Creek	25,85†
Diobsud Creek	25,85†
Everett Creek	25,85†
Finney Creek	25,85†
Flume Creek	25,85†
Grandy Creek	147,350
Gravel Creek	25,85†
Hitt Creek	25,85†
Hobbit Creek	25,85†
Illabot Creek	25,85†
Irene Creek	25,85†
Jackman Creek	25,85†
Jordan Creek	25,85†
Mill Creek	25,85†

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Upper Skagit Flow-Sensitive Basins	Groundwater Withdrawal Limit (gallons per day)
Miller Creek	25,851
O'Brian Creek	25,851
Olson Creek	25,851
Ossterman Creek	25,851
Prairie Creek	25,851
Pressentin Creek	25,851
Rinker Creek	25,851
Rocky Creek	25,851
Savage Creek	25,851
Sutter Creek	25,851
Tenas Creek	25,851
White Creek	25,851

(ii) ~~Effective Date. Groundwater withdrawals from the flow-sensitive basins listed in Subsection (1)(a)(i) of this Section that were established after April 14, 2001, will be debited from the respective groundwater withdrawal limits.~~

(b) ~~Samish River Basin. There shall be no density bonus for CaRD developments that rely on groundwater as the water source and where the well is located within 1/2 mile of the Samish River or Friday Creek.~~

(b) ~~Stillaguamish River Basin is regulated under WAC 173-505. Skagit County adheres to the rules and regulations listed in the Instream Resources Protection Program, identified as Stillaguamish Water Resources Inventory Area (WRIA 5).~~

(i) ~~Flow-Sensitive Basins:~~

Flow-Sensitive Basin	Groundwater Withdrawal Limit (gallons per day)
Stillaguamish River and tributaries	302,400

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~~(ii) — Effective Date. Groundwater withdrawals from the flow-sensitive basins listed in Subsection (1)(c)(i) of this Section that were established after September 26, 2005, will be debited from the respective groundwater withdrawal limits.~~

(c) Nooksack River Basin is regulated under WAC 173-501. Skagit County adheres to the rules and regulations listed in the Instream Resources Protection Program, identified as Nooksack Water Resources Inventory Area (WRIA 1).

(i) Effective Date. Groundwater withdrawals that were established after June 27, 2020, will be subject to WAC 173-501-065.

(2) Mitigation option: ~~The Director shall report to the Health Officer the number of new residential connections or the estimated amount of consumptive water use for non-residential projects that will be created for each building permit or lot that relies on a groundwater withdrawal in a flow-sensitive basin. Groundwater withdrawals shall not be debited from the groundwater withdrawal limits established in Subsection (1) of this Section; where:~~

~~(a) — The proposed groundwater withdrawal is exempt from permitting in RCW 90.44.050; and~~

~~(i) — The Health Officer, using criteria developed in coordination with the Washington Department of Ecology, determines that the groundwater withdrawal will not adversely impact stream flows deemed critical to salmonids in a flow-sensitive basin; or~~

~~(ii) — The applicant adopts mitigation measures approved by the Health Officer, using criteria developed in coordination with the Washington Department of Ecology, to prevent the groundwater withdrawal from adversely impacting stream flows deemed critical to salmonids in instream-flow flow-sensitive basins. The Mitigation Plan must provide mitigation that fully offsets the consumptive impacts of future water use.; or~~

~~(b) — The proposed groundwater withdrawal is not exempt from permitting in RCW 90.44.050 and the proposed withdrawal for a project is included in a water right permit issued by the Washington Department of Ecology and is covered by a mitigation plan approved by the Washington Department of Ecology; or~~

~~(c) — The groundwater withdrawal is from an interruptible source and the applicant provides measures to supply adequate water at all times necessary for the project applied for, subject to the approval of the Health Officer; or~~

~~(d) — Groundwater use for projects initiated prior to the effective date of the corresponding flow-sensitive basin designated in SCC 14.24.350, by:~~

~~(i) — The applicant filing with the Director a complete application for a building permit pursuant to Chapter 15.04 SCC or for approval of a land division pursuant to Chapter 14.18 SCC prior to the effective date of the corresponding flow-sensitive basin groundwater withdrawal limit; or~~

~~(ii) — The applicant filing a well log with the Washington Department of Ecology prior to the effective date of the corresponding flow-sensitive basin groundwater withdrawal limit indicating the applicant's intent to rely on a groundwater withdrawal that is exempt from permitting in RCW 90.44.050; or~~

~~(iii) — The Washington Department of Ecology issuing a water right permit or certificate with a priority date that is earlier than the effective date of the respective flow-sensitive basin groundwater withdrawal limit designated in this Section.~~

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~~(3) — In addition to the provisions for public notice provided under SGC 14.06.150 and notice of decision under SGC 14.06.200, the Director shall provide electronic notice to the public, by use of the County's official website or otherwise, of all building permit and short subdivision applications and approvals in flow-sensitive basins. (Ord. 020080014 (part))~~

14.24.360 Flow-sensitive basin water withdrawal mitigation.

~~If a project hydrologically is located within a flow-sensitive basin, in addition to conditions imposed by the Health Officer pursuant to Chapter 12.48 SGC, mitigation measures required in SGC 14.24.340 and groundwater withdrawal mitigation measures required by the Washington State Department of Ecology, the total impervious surface area of the project containing the project shall be limited to 20%, unless:~~

- ~~(1) — The applicant implements mitigation measures that collect stormwater runoff from the proposed development, treat that runoff, if necessary to protect groundwater quality, and discharge that collected runoff into a groundwater infiltration system on site, providing that the project is located in an area that the Administrative Official or Health Officer determines is suitable for stormwater infiltration; or~~
- ~~(2) — The project will be served by a public water system the source for which is located hydrologically outside of a flow-sensitive basin, and wastewater will be disposed in an approved on-site wastewater treatment system that the Health Officer or Administrative Official determines will provide adequate compensating recharge to the aquifer for the total amount of impervious surface proposed; or~~
- ~~(3) — The applicant demonstrates, through an appropriate hydrogeological characterization, that the placement of the proposed impervious surfaces will not adversely impact stream base flows in the subject tributary basin; or~~
- ~~(4) — The applicant demonstrates that the project is located in an area where groundwater and/or surface water is influenced by tidal fluctuation. (Ord. 020080014 (part))~~

14.24.370 Delineation of flow-sensitive basins.

~~The Administrative Official shall produce maps delineating the boundaries of flow-sensitive basins, which are hereby incorporated by reference. The Administrative Official shall update maps of flow-sensitive basins as provided in SGC 14.24.050 and WAC 173-503-116. (Ord. 020080014 (part))~~

14.24.380 Seawater intrusion areas.

~~(1) — Applicability. This Section applies to wells and applications for building permits; special use permits; shoreline substantial development, variance, and conditional use permits; and land divisions in the following areas: in order to protect groundwater quality and quantity as directed by the Growth Management Act (GMA), and in accordance with Groundwater Antidegradation policy as described in WAC 173-200-030, and RCW 90.48 and RCW 90.54.020:~~

(1) Designations:

- (a) Seawater intrusion protection areas:

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Commented [KC41]: Minor changes made to the administration of this code. This includes clarification on designations, application requirements, and relocation of public water connection requirements for areas experiencing seawater intrusion.

(i) ~~(ii)~~ Areas within one-half mile of a marine shoreline; and

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(ii) ~~(iii)~~ The entirety of Guemes, Sinclair, Cypress, and Vendovi Islands.

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(b) At risk seawater intrusion protection areas:

(i) Areas within 1000 feet of existing individual groundwater sources with a history of chloride analyses above 100 mg/L.

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(c) High risk seawater intrusion protection areas:

(i) Existing individual groundwater sources with a history of chloride analyses above 200 mg/L.

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(ii) Areas within 1,000 feet of a groundwater source with a history of chloride analyses above 200 milligrams per liter (mg/L).

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(2) Application Requirements.

(a) For Wells. An application proposing use of a well, must include all of the following, ~~which must be~~ submitted for review prior to drilling any new well:

(i) A site plan to scale, including:

(A) A dedicated inland well site location;

(B) Estimated depth of proposed well;

(C) An estimated land elevation of the well, ~~except that if the well is within 250 feet of the shoreline, or if determined by a hydrogeologist engaged or employed by the County, the elevation of the well must be surveyed by a licensed surveyor;~~

(D) Depth, chloride levels, and horizontal distance from ~~and chloride levels of~~ surrounding wells within 1000 feet of proposed well;

(ii) A drilling plan as provided by a licensed driller or qualified professional that includes, at a minimum the expected substrate to be encountered, expected depth to target aquifer, method of construction including monitoring salinity and/or specific conductivity during drilling, and any other applicable information;

(iii) Payment of applicable fees.

(b) For Alternative Water Sources other than groundwater wells. An application proposing use of an alternative water source must include the following:

- (i) Documentation of system design consistent with this Section and SCC 12.48.250;
- (ii) Payment of applicable fees.

(c) For Land Divisions. In addition to any applicable requirements above, an application for a land division proposing use of a well must include the following:

- (i) An assessment of the available groundwater, including a report from a demonstration well located so that it will represent the groundwater under the entire land division and with consideration to where other wells will be located in the land division;
- (ii) If the proposed land division is within an area of documented chlorides in excess of 25 ppm, all well locations must be specified and spaced 100 feet or more from any other well, including wells on neighboring properties. If the proposed land division is located in areas where chloride levels exceed 100 ppm, all wells must receive approval of the State health department.

(d) ~~For Wells in a Sole Source Aquifer Area. Prior to drilling any new well in an area designated a sole source aquifer, the information set forth in Subsection (2)(a) of this Section must be submitted to the Department.~~

(e) Groundwater wells must be tested for chlorides, conductivity, and the static water level in April and September of each year and make records available annually to Planning & Development staff. Test results must be reported by an Ecology-accredited laboratory.

(3) Development Standards for Alternative Water Sources.

- (a) Where a known seawater intrusion problem exists, alternative sources of water other than groundwater wells are encouraged, but must comply with the requirements of SCC 12.48.250.
- (b) Reverse Osmosis (RO) Systems. Any reverse osmosis (RO) system must be designed to:
 - (i) Use seawater collected from the open sea as the water source; and
 - (ii) Discharge effluent only to the open sea.

(4) Development Standards for Wells.

(a) ~~Generally~~ For both existing and new wells, a well driller must:

- (i) Install a wellhead source meter;
- (ii) Install a sounding tube to allow water level measurements;
- (iii) Set the maximum pumping rate consistent with Table 14.24.380-1 by installing a valve restrictor or other permanent flow restrictive equipment;

~~(iv) Conduct a pump test under the supervision of a licensed well driller or licensed hydrogeologist, consistent with the following:~~

~~(A) Use the conservative maximum pumping rate defined in Table 14.24.380-1, or if the well driller proposes to use more than the maximum pumping rate in Table 14.24.380-1, include a hydrogeological assessment (including pump tests) using observation wells;~~

~~(B) Pump a minimum of 350 gallons from the formation during the test;~~

Commented [KC42]: We recommend land divisions located in areas where chloride levels exceed 100 ppm be highly restricted or only permitted under approval of the health department as these are considered medium risk areas. See Section 4.7 of the Gap Analysis for more information.

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~~(C) — Continue the pump test for at least four hours after water level stabilization has occurred, or for the timespan determined by a hydrogeologist engaged or employed by the County, whichever is longer.~~

(b) Before final inspection, the applicant must have an elevation survey of the land at the well head as reported by a licensed surveyor.

~~(c)(b)~~ Documentation of Installation. The ~~well driller~~applicant must submit the following ~~after the pump test~~:

- (i) Well report with tag ID;
- (ii) Proof of installation of the sounding tube ~~installation~~;
- (iii) Proof of installation of a valve restrictor or other permanent flow restrictive equipment in accordance with Table 14.24.380-1;

~~The maximum pumping rate set;~~

(iv) Chloride and conductivity test results from a raw water sample as reported from an Ecology-approved laboratory; and

(v) Elevation survey.

~~A record of the static water level depth prior to starting the pump test;~~

~~(v) — Pumping rates during the pump test;~~

~~(vi) — Drawdown measurements recorded throughout the pumping test in intervals as approved by a hydrogeologist engaged or employed by the County;~~

~~(vii) — The time of day when the drawdown measurement was observed;~~

~~(viii) — Exact time of pump start and stop;~~

~~(ix) — Any changes in pumping rate during the test;~~

~~(x) — Measurement of water level following pump shutoff until the water level in the well recovers to at least 95 percent of its pre-pumping level, including time of measurement.~~

~~(c) — Documentation of Elevation. Before final inspection, the applicant must submit a land elevation of the well as surveyed by a licensed surveyor.~~

~~(d)~~ Maximum Pumping Rates.

(i) The maximum pumping rate for wells must be set consistent with the following table.

(ii) A maximum pumping rate other than that in the table may be set if approved by a licensed hydrogeologist ~~engaged or employed~~ or qualified professional approved by the County.

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Table 14.24.380-1. Maximum pumping rates.

Location	Chloride level		
	0—24 ppm	25—99 ppm	100—250* ppm
less than 1/2 mile from the coast for areas in Subsection (1)(a) of this Section	as determined or approved by a hydrogeologist engaged or employed by the County		
less than 1/2 mile from the coast for islands in Subsection (1)(b) of this Section	3 gpm	2 gpm	1 gpm
greater than 1/2 mile from the coast for islands in Subsection (1)(b) of this Section	3 gpm	3 gpm	3 gpm

~~(Ord. O20230001 § 1 (Att. 2); Ord. O20160004 § 6 (Att. 6))~~

(5) Public Water. If connection to an existing public water system is timely and reasonably available to a project property within a Seawater Intrusion Area, and where the water provider is willing and able to provide safe and reliable potable water service, then the project will be required to connect to the public water supply as a condition of project approval.

(6) No ADUs are allowed when groundwater chloride test results are greater than 25 ppm per SCC 14.16.360.

~~(Ord. O20230001 § 1 (Att. 2); Ord. O20160004 § 6 (Att. 6))~~

(7) Authority for Denial. If chloride levels are equal to or above 250 mg/L from a groundwater source, development cannot utilize that water source.

14.24.400 Geologically hazardous areas designations.

Geologically hazardous areas ~~shall~~ **must** be designated consistent with the definitions provided in WAC 365-190-030 and 365-190-120. These include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction in, above, and below geologically hazardous areas should be avoided. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

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14.24.410 Geologically hazardous areas known or suspected risk.

Geologically hazardous areas ~~shall be~~ classified as “known or suspected risk” or “unknown risk.” Areas of known or suspected risk are indicated in Subsections (1) through (5) of this Section.

(1) The following are considered known or suspected erosion hazards:

- (a) Areas with gradients greater than or equal to 30%.
- (b) Areas located within the following map units: No. 1 Andic Cryochrepts, Nos. 3 and 4 Andic Xerochrepts, No. 13 Birdsvew, Nos. 47 and 48 Dystric Xerochrepts, Nos. 50 and 51 Dystic Xerorthents, Nos. 63 and 65 Guemes, No. 69 Hoogdal, No. 90 Lithic Haploxerolls, No. 91 Marblemount, No. 99 Mundt and Nos. 150 and 151 Typic Cryorthods or mapped severe erosion hazard, as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA (1989 [or as revised](#)).
- (c) Coastal beaches or bluffs.
- (d) Areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 [or as revised](#)) as U (Unstable), ~~UB (Unstable Bluff)~~, URS (Unstable Recent Slide), or UOS (Unstable Old Slide).
- (e) Areas susceptible to rapid stream incision and stream bank erosion.

(2) Landslide hazards are areas potentially subject to landslides based on a combination of geologic, topographic and hydrologic factors. The following are known or suspected landslide hazards:

- (a) Areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978 [or as revised](#)) as U (Unstable), ~~UB (Unstable Bluff)~~, URS (Unstable Recent Slide), or UOS (Unstable Old Slide).

- (b) [Areas with all three of the following characteristics:](#)

[\(i\) Slopes steeper than 15 percent;](#)

[\(ii\) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and](#)

[\(iii\) Springs or groundwater seepage.](#) ~~Slopes having gradients of 15% or greater;~~

~~(i) — That intersect geologic contacts with permeable sediments overlying low-permeability sediment or bedrock and springs or groundwater seepage are present; or~~

~~(ii) — That are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;~~

- (c) Slopes of 40% or steeper and with a vertical relief of 10 feet or more.
- (d) Areas of previous failure such as earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other failures as observed in the field or as indicated on maps or in technical reports

Commented [KC44]: Changes of definitions to align with state definitions in the WAC and updated mapping reference.

Commented [KC45]: Ecology’s current iteration of the Coastal Zone Atlas is a web application that no longer distinguishes “UB (Unstable Bluff)” as a separate category. See Section 5.1 of the Gap Analysis.

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published by the U.S. Geological Survey, the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies.

- (e) Potentially unstable areas resulting from rapid stream incision, stream bank erosion, and undercutting by wave action.
- (f) Coastal bluffs.
- (g) Slopes with a gradient greater than 80% and subject to rock fall.
- (h) Areas that are at risk from snow avalanches.
- (i) Areas designated on the Skagit County Alluvial Fan Study Orthophoto Maps as alluvial fans or as identified by the ~~Administrative Official~~ [Director](#) during site inspection.
- (j) Areas located in a narrow canyon potentially subject to inundation by debris flows or catastrophic flooding.
- (k) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service Soil Survey of Skagit County as "severe" (Table 9) limitation for building development.
- [\(l\) Areas that have shown movement during the holocene epoch \(from 10,000 years ago to the present\) or which are underlain or covered by mass wastage debris of this epoch;](#)
- [\(m\) Slopes that are parallel or subparallel to planes of weakness \(such as bedding planes, joint systems, and fault planes\) in subsurface materials;](#)

(3) Seismic hazard areas are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting. The following are known or suspected seismic hazards:

- (a) Areas located within a high liquefaction susceptibility as indicated on the [Washington Department of Natural Resources' Washington Geologic Information Portal Liquefaction Susceptibility Map of Skagit County issued by Washington Department of Natural Resources dated September 3, 2004, or as amended thereafter](#). A site assessment is not required for high liquefaction hazard areas for single-family residence proposals unless other criteria provided in this Section apply.
- (b) Areas located within 1/4 mile of an active fault as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies, or as identified during site inspection.
- (c) Those known or suspected erosion and landslide hazards referenced in Subsections (1) and (2) of this Section.
- (d) Tsunami and seiche hazard areas include coastal areas and lake shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal or inland wave action generated by seismic events or other geologic events. Suspect tsunami hazard areas are indicated on the Tsunami Hazard Map of the Anacortes-Whidbey Island Area, Washington: Modeled Tsunami Inundation from a Cascadia Subduction Zone Earthquake. A site assessment is not required for tsunami and seiche hazard areas but they are addressed through ~~the frequently flooded section of this-~~ [Chapter SCC 14.34 - Flood Damage Prevention](#).

Commented [KC47]: WADNR now contains all liquefaction data in a web application called the Washington Geologic Information Portal. This portal also contains updated information for tsunamis, including a 2022 study which is used as the data source. See Section 5.1 of the Gap Analysis.

(4) Volcanic hazard areas are subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, mudflows, lahars or related flooding resulting from volcanic activity. Suspect volcanic hazards include those areas indicated in the United States Geologic Survey Open-File Report 95-499 as the volcanic hazard zone for Glacier Peak, Washington; or in the United States Geologic Survey Open-File Report 95-498 as the volcanic hazard area of Mount Baker, Washington. A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.

(5) Mine hazard areas as designated on the Department of Natural Resources Map: Coal Measures of Skagit County (1924) or within 200 feet of any other current or historic mine operations determined to be a suspect or known geologically hazardous area by the ~~Administrative Official~~Director. (Ord. O20080014 (part))

14.24.420 Geologically hazardous areas site assessment requirements.

Commented [KC48]: Minor edits for terminology consistency across the CAO.

(1) If the ~~Administrative Official~~Director determines that the proposed development activity is located within 200 feet of an area of known or suspected risk as indicated in SCC 14.24.410, or within a distance from the base of a landslide hazard area equal to the vertical relief, and that the geologic condition may pose a risk to life and property, or other critical areas on and off the project area, a geologic hazard site assessment as indicated in this Section ~~shall will~~ be required. This site assessment ~~shall must~~ be prepared by a qualified professional.

(2) The geologically hazardous area site assessment ~~shall must~~ classify the type of geologic hazard(s) in accordance with SCC 14.24.400 and 14.24.410. In addition to the requirements of SCC 14.24.080, the site assessment ~~shall must~~ include the following:

- (a) A site plan depicting the height of slope, slope gradient, and cross section indicating the stratigraphy of the site. The site plan ~~shall must~~ indicate the location of all existing and proposed structures and any significant geologic features such as outcrops, springs, seeps, ponds, streams, or other water bodies; and
- (b) An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils ~~shall must~~ be described in accordance with the Unified Soil Classification System; and
- (c) A description of load intensity, surface and groundwater conditions, public and private sewage disposal systems, fills and excavations, and all structural development; and
- (d) A description of the extent and type of vegetative cover including tree attitude; and
- (e) For potential coastal bluff geologic hazards: estimate of the bluff retreat rate, which recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event; and
- (f) For potential landslide hazards: estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the ~~Administrative Official~~Director; and
- (g) Additional site assessment elements may be required by the ~~Administrative Official~~Director.

(3) Properties containing geologically hazardous conditions identified by the ~~Administrative Official~~Director and the qualified professional ~~shall~~ require a geologically hazardous area mitigation plan. (Ord. O20080014 (part))

14.24.430 Geologically hazardous area mitigation standards.

Commented [KC49]: Minor edits for terminology consistency across the CAO.

The mitigation plan ~~shalt~~ must be prepared by a qualified professional and include a discussion on how the project has been designed to avoid and minimize the impacts discussed under SCC 14.24.420. The plan ~~shalt~~ must also make a recommendation for the minimum setback from the geologic hazard. Mitigation plans ~~shalt~~ must include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan, and/or other means for maintaining long-term stability of geologic hazards. The plan ~~shalt~~ must also address the potential impact of mitigation on the hazard area, the subject property, and affected adjacent properties. The mitigation plan must be approved by the ~~Administrative Official~~ Director and be implemented as a condition of project approval.

One or more of the following mitigation standards, as required by the ~~Administrative Official~~ Director, must ~~shalt~~ be included as components of a mitigation plan pursuant to the requirements of SCC 14.24.420. Mitigation standards, other than those listed below, may be required by the ~~Administrative Official~~ Director depending on the geologic hazard and the site conditions.

(1) Mitigation Standards.

- (a) A construction stormwater pollution prevention plan per SCC Chapter 14.32 (Stormwater Management).
- (b) A plan for the collection, transport, treatment, discharge, and/or recycling of stormwater in accordance with the requirements of SCC Chapter 14.32, as amended. Surface drainage ~~shalt~~ must not be directed across the face of a landslide hazard (including marine bluffs or ravines). If drainage must be discharged from the hazard area into adjacent waters, it ~~shalt~~ will be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.
- (c) All proposals involving excavation and/or placement of fill ~~shalt~~ must be subject to structural review under the appropriate provisions of the International Building Code (IBC) as amended by Skagit County.
- (d) Critical facilities as defined under Chapter 14.04 SCC ~~must~~ ~~shalt~~ not be sited within designated geologically hazardous areas with the exception of volcanic hazard areas. No critical facilities shall be located within 1/4 mile of an active fault.
- (e) All infiltration systems, such as stormwater detention and retention facilities and curtain drains utilizing buried pipe or French drains, are prohibited in geologically hazardous areas and their buffers unless the mitigation plan indicates such facilities or systems will not affect slope stability.
- (f) Existing vegetation ~~shalt~~ must be maintained in landslide and erosion hazard areas and associated buffers. Any replanting that occurs ~~shalt~~ must consist of native trees, shrubs, and ground cover that is compatible with the existing surrounding native vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival. Normal nondestructive pruning and trimming of vegetation for maintenance purposes; or thinning of limbs of individual trees to provide a view corridor, ~~shalt~~ will not be subject to these requirements.
- (g) A minimum buffer width of 30 feet ~~shalt~~ must be established from the top, toe, and all edges of all landslide and erosion hazard areas. For landslide and erosion hazard areas with a vertical relief greater than 50 feet, the minimum buffer ~~shalt~~ will be 50 feet. The buffer may be increased by the ~~Administrative Official~~ Director for development adjacent to a marine bluff or ravine which is designated as Unstable in the Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978 ~~or as revised~~) or where the ~~Administrative Official~~ Director determines a larger buffer is necessary to prevent risk of damage to existing and proposed development.

- (h) Structural development proposals within seismic hazard areas ~~shall~~must meet all applicable provisions of the IBC as amended by Skagit County. The ~~Administrative Official~~Director ~~shall~~will evaluate documentation submitted pursuant to SCC 14.24.420(2) and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions ~~shall~~must be based on known, available, and reasonable methods of prevention, control, and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.
 - (i) No residential structures ~~shall~~will be permitted~~be located~~ in geologically hazard areas or their buffers if that hazard cannot be fully mitigated.
- (2) Landslide or Erosion Hazard Buffer Reduction. Buffers of landslide or erosion hazard areas may be reduced to a minimum of 10 feet for development meeting all of the following criteria:
- (a) No reasonable alternative to buffer reduction exists; and
 - (b) A site assessment is submitted and certifies that:
 - (i) There is a minimal hazard in the vicinity of the proposed development as proven by evidence of no landslide activity in the past; and
 - (ii) A quantitative slope stability analysis indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified; or the development proposal can be designed so that the hazard is eliminated. The quantitative analysis ~~shall~~must include the minimum setback allowed for development as indicated by a slope stability model with respect to a minimum factor of safety of 1.5 for static conditions, 1.25 for seismic conditions, or 10 feet, whichever results in the greater setback. The elements of the quantitative site assessment ~~shall~~will be determined by the ~~Administrative Official~~Director and may include 1 or more of the following:
 - (A) Subsurface exploration, to include at least 1 boring with sample collection for laboratory analysis.
 - (B) Laboratory analysis ~~shall~~will assess the soil characteristics and include sieve analysis, moisture, angle of internal friction, and cohesion.
 - (C) Utilizing the information from the subsurface exploration and laboratory analysis, the quantitative site assessment ~~shall~~must include slope stability modeling with factor of safety analysis. The analysis ~~shall~~must indicate the factor of safety within 50 feet of the top and toe of geologic hazards; and
 - (iii) The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions; and
 - (iv) The development will not decrease slope stability on adjacent properties; and
 - (v) Such alterations will not adversely impact other critical areas.
- (3) Failed Mitigation Plans. Mitigation plans which do not fulfill the performance requirement based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this Chapter ~~shall~~must be revised and the subject development brought into compliance with the revised mitigation plan.
- (4) Mitigation Plan Verification. Upon completion of the project, a qualified professional ~~shall~~will verify that the mitigation plan has been properly implemented. The verification ~~shall~~will be required prior to final approval of the project by the ~~Administrative Official~~Director. (Ord. O20160004 § 6 (Att. 6); Ord. O20080014 (part))

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 [RCW 90.48.020 and Typed Waters as defined by](#) WAC 222-16-0630;
- (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 [or documented in the Washington State Department of Fish and Wildlife Priority Habitats and Species List](#); 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~~ [Director](#) 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

Commented [KC50]: Updated for reference to Washington State Department of Fish and Wildlife Priority Habitats and Species List.

- (c) Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the ~~Administrative Official~~[Director](#) 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~~[Washington Department of Fish and Wildlife Priority Habitats and Species List, 2023 or as amended, and/or the County's List of 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~~[must](#) 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))

Commented [KC51]: No change.

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~~[must](#) be included in the site assessment:

Commented [KC52]: Minor edits to include reference to federal acts and USFWS and WDFW.

- (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;
 - (f) Microclimate;
 - (g) Nutrient inputs.
- (3) Bald eagle habitats ~~shall must~~ be protected pursuant to the ~~Washington State federal~~ –Bald and Golden Eagle Protection ~~Rules (WAC 232-12-292) Act and the Migratory Bird Treaty Act~~, as revised; a cooperative habitat management plan ~~shall must~~ be developed in coordination with the U.S. Fish and Wildlife Service with support from the Washington Department of Fish and Wildlife 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 must~~ 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)

14.24.530 Fish and wildlife habitat conservation area protection standards.

- (1) Riparian Buffers. Riparian buffers apply only to streams and rivers.
 - (a) Intent of Riparian Buffers. The intent of riparian buffers is to protect the following 5-basic riparian forest functions that influence in-stream and near-stream habitat quality:
 - (i) Recruitment of Large Woody Debris (LWD) to the Stream. LWD creates habitat structures necessary to maintain salmon/trout and other aquatic organisms' productive capacity and species diversity.
 - (ii) Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout and other aquatic organisms.
 - (iii) Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and in-stream hiding cover for salmon/trout and other aquatic organisms.
 - (iv) Runoff ~~Filtration~~Pollutant Removal. Buffers reduce nonpoint source pollutants, including Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) through biogeochemical cycles that help maintain water quality.

Commented [KC53]: Updates to intent section as well as the inclusion of existing buffer vegetation and structure setback requirements.

(v) Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

(vi) Microclimate. Riparian vegetation creates small-scale microclimates upon which plants, fish, and wildlife depend.

(vii) Nutrient inputs. Riparian vegetation supports substantial populations of insects, which are important for the diet of marine fishes like juvenile salmon.

(b) Standard Riparian Buffers Measurement. Riparian buffer areas shall be measured horizontally in a landward direction from the ordinary high water mark. Where lands adjacent to a riparian area display a stream buffer is within a continuous slope of 25% or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank of the sloping area. Riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees within established dike districts along the Skagit and Samish Rivers.

(c) Standard Riparian Buffer Widths. Riparian areas have the following standard buffer widths:

DNR Water Type	Riparian Buffer
S	200 feet
F > 5 feet wide*E	150 feet
F ≤ 5 feet wide*	100 feet
Np	100 feet
Ns	100 feet

*Bankfull width of the defined channel (WAC 222-16-010).

i. Standard riparian buffer widths presume the buffer is densely vegetated with a native plant community appropriate for the ecoregion, consisting of an average of 80% native cover comprised of trees, shrubs and groundcover plants. If the existing buffer is sparsely vegetated or vegetated with invasive species, the buffer must either be enhanced through an approved mitigation plan or increased by 33%.

(d) A 15-foot wide structure setback is required from the upland edge of the entire buffer to provide an area for construction and maintenance of buildings and other structures. This distance may be modified with approval of the Director. The following may be allowed within the structure setback:

- (i) Landscaping with non-invasive species only;
- (ii) Uncovered decks;
- (iii) Building overhangs if such overhangs do not extend more than 18 inches into the setback area;
- (iv) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; and
- (v) Trails.

(2) Lake and Marine Shoreline Buffers. Lake and marine shoreline areas have the following standard buffer widths, based on the shoreline area designations defined in the Shoreline Master Program (Chapter 14.26 SCC):

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Shoreline Area Designations	Shoreline Buffer
Natural	200 feet
Conservancy	150 feet
Rural	100 feet
Rural Residential	100 feet
Urban	140 feet

Natural Ponds less than 20 acres — 100 feet if non-fish bearing, 150-feet if fish-bearing.

(3) Where a buffer has been previously established after June 13, 1996, through a County development review and is permanently recorded on title or placed within a separate tract or easement, the buffer ~~shall~~will be as previously established provided: Additional review may be requested by the applicant or required by the Administrative Official to determine whether or not conditions on site have changed resulting in the previously established buffer no longer being applicable. If stream location has changed since the previous review, additional review should occur.

- (a) It is equal to or greater than 50 percent of the current required standard buffer width for the wetland classification; and
- (b) It is densely vegetated with native plants and invasive plant cover is low; or it is restored to meet vegetated buffer standards (SCC 14.24.230(1)(c)); and
- (c) If stream location has changed since the previous review, additional review should occur.

If provisions a through c above are not met, then current riparian buffer widths per SCC 14.24.530(1) apply. Additional review may be requested by the applicant or required by the Director to determine whether or not conditions on site have changed resulting in the previously established buffer no longer being applicable.

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(4) Where a legally established and constructed public roadway, private roadway, or driveway~~other legally established development transects functionally isolates~~ a riparian buffer, the Department may approve a modification of the standard buffer width to the edge of the ~~roadway~~development, provided:

- (a) The isolated part of the buffer does not provide additional protection of the riparian area; and
- (b) The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the riparian area; and
- (c) If the resulting buffer distance is less than 50% of the standard buffer for the applicable stream type or shoreline designation, no further reduction ~~shall~~will be allowed. (Ord. O20090011 Atch. 2 (part); Ord. O20080014 (part))

(d) The legally established development includes hard surfaces a minimum of 20 feet wide that completely isolates the project area from the critical area.

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14.24.540 Fish and wildlife habitat conservation area performance-based buffer alternatives and mitigation standards.

(1) Buffer Width Increasing. The ~~Administrative Official~~Director may require the standard buffer width to be increased or to establish ~~a nonriparian buffer~~habitat corridors, when such buffers are necessary for 1 of the following:

- (a) To protect priority fish or wildlife using the HCA.
- (b) To provide connectivity when a Type S or F water body is located within 300 feet of:
 - (i) Another Type S or F water body; or
 - (ii) A fish and wildlife HCA; or
 - (iii) A Category I, II or III wetland;

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the habitat.

(2) Buffer Width Averaging. Buffer width averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. Averaging of required buffer widths ~~shall~~will be allowed only where the applicant demonstrates to the ~~Administrative Official~~Director that all of the following criteria are met:

- (a) Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available; and
- (b) The habitat contains variations in sensitivity due to existing physical characteristics; and
- (c) Averaging will not adversely impact the functions and values of fish and wildlife conservation areas; and
- (d) Averaging meets performance standards for protecting fish species; and
- (e) The total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
- (f) The buffer width ~~shall~~will not be reduced below 75% of the standard buffer width.

(g) Compensatory mitigation is provided to address degraded buffers.

~~(3) Buffer Width Decreasing. Buffers may be reduced when buffer reduction impacts are mitigated and result in equal or greater protection of the HCA functions and values. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in SGC 14.24.080. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a 5-year monitoring and maintenance plan.~~

~~(4) Buffer Width Variance. Standard buffer widths may be reduced by more than 25% through a variance pursuant to SGC 14.24.140.~~

Commented [KC54]: Changes include the omission of buffer decreasing allowances (per BAS), no net loss provisions, and clarification on the need for reports prepared by qualified professionals.

(5) Allowed Uses in HCAs or Buffers. The following activities may be permitted within fish and wildlife HCAs, provided the activities comply with SCC 14.24.080, 14.24.520, and Chapter 14.34 SCC, where applicable.

(a) Roads, Bridges and Utilities, and driveways. Road, bridge and utility construction may be permitted across an HCA and/or its buffer under the following conditions:

- (i) It is demonstrated to the ~~Administrative Official~~ Director that there are no alternative routes that can be reasonably used to achieve the proposed development; and
- (ii) The activity will have minimum adverse impact to the fish and wildlife HCA; and
- (iii) The activity will not significantly degrade surface or groundwater; and
- (iv) The intrusion into the fish and wildlife HCA and its buffers is fully mitigated.

(v) The need for placing a driveway within an HCA buffer was not created by a development action or land division after June, 13, 1996.

(vi) A mitigation plan prepared by a qualified professional demonstrating compliance with mitigation sequencing is provided and approved by the Director.

(b) Docks. Docks designed to facilitate low-impact uses, such as education and/or private, noncommercial recreation, may be permitted within fish and wildlife HCAs ~~under~~ when a FWHCA report prepared by a qualified professional demonstrates that the project meets the following conditions the following conditions:

- (i) The activity will have minimum adverse impact to the fish and wildlife HCA; and
- (ii) The activity will not significantly degrade surface or groundwater; and
- (iii) The intrusion into the fish and wildlife HCA and its buffers is fully mitigated; and
- (iv) The activity ~~shall~~ must be consistent with the provisions of Chapter 14.26 SCC.

(c) Bulkheads. Bulkheads designed to protect existing single-family residences may be permitted within fish and wildlife HCAs a FWHCA report prepared by a qualified professional demonstrates that the project meets the following conditions ~~under the following conditions~~:

- (i) The activity will have minimum adverse impact to the fish and wildlife HCA; and
- (ii) The activity will not significantly degrade surface or groundwater; and
- (iii) The intrusion into the fish and wildlife HCA ~~shall~~ must be fully mitigated; and
- (iv) The activity ~~shall~~ must be consistent with the provisions of Chapter 14.26 SCC.

(d) Limited park or recreational access to an HCA or its required buffer; provided, that a FWHCA report prepared by a qualified professional demonstrates that the project meets the following conditions ~~all of the following are satisfied~~:

- (i) The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function; and
- (ii) The access is limited to the minimum necessary to accomplish the recreational function; and

(iii) The access and the balance of the development are consistent with other requirements of SCC Title 14; and

(iv) The proponent obtains written approval from the County for the limited access and associated mitigation.

(e) Low-impact uses and activities which are consistent with the purpose and function of the buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity ~~shall will~~ not result in a decrease in riparian functions and values and ~~shall will~~ not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails and viewing platforms less than 200 square feet in size which may be covered but not enclosed. [A FWHCA report prepared by a qualified professional may be required](#)

(f) Stormwater discharges ~~shall must~~ be controlled and treated in accordance with [currently adopted](#) the Stormwater Management Manual for Western Washington (2024 or as revised), ~~Department of Ecology publication Nos. 05-10-029 through 05-10-033;~~

(g) To allow for greater flexibility in a development proposal, an applicant has the opportunity to remove timber within the standard buffer widths shown above if the applicant's mitigation measures incorporate all of the performance standards based upon water type listed in the table below. In conformance with professional standards used by the Washington Department of Natural Resources for forest practices in sensitive areas, all removal of timber within HCA buffers ~~shall will~~ be subject to conditioning specified by the ~~Administrative Official~~ [Director](#) in conjunction with an on-site technical team review in which participation by representatives of the proponent, Ecology, WDFW, WDNR and natural resource representatives of affected Indian tribes is solicited. [No net loss of ecological functions must be demonstrated through the critical area report process.](#)

The intent of this Section is to provide an additional opportunity for an applicant to propose some level of timber removal within the riparian habitat zone, as long as it can be demonstrated that the function of the buffer can be maintained at the levels described below. If the buffer, in its current state, cannot meet these standards, then the ~~Administrative Official~~ [Director](#) will not be able to give its approval for any activity which would inhibit recovery of or degrade the current buffer.

The current performance of a given buffer area is compared to its potential performance as rated by the Soil Conservation Service, Soil Survey of Skagit County, 1989. In consultation with a representative from the Natural Resource Conservation Service, Soil Conservation District or professional forester, the applicant will determine the capability of the site for woodland management, using the most suitable tree species according to the soil survey, and establish the stand characteristics that would be expected from a mature stand of those species established on site:

If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. For Type S streams, an alternative method may be utilized to allow limited timber harvest within the outer 100 feet of a buffer:

Commented [KC55]: This should be updated and include a provision to adopt the current versions as revised. See Section 6.5 of the Gap Analysis.

PERFORMANCE-BASED RIPARIAN STANDARDS*

(These standards must be exceeded before additional activity can be permitted within the riparian zone.)

Watertype	Performance Standards
Type S	Maintain 95% of total LWD recruitment expected to enter the stream from a mature stand; and Maintain 85% of the trees which are greater than 24 inches DBH within 100 feet of stream; and Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge). The applicant may further request some limited timber harvest of up to 30% of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest: (a) Does not reduce the LWD and canopy requirements; and (b) The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall must retain a minimum of 50% of the total number of trees with 25% of the total trees left having a diameter at breast height (DBH—4-1/2 feet) greater than 12 inches; and (c) No more than 50% of the dominant trees in the outer 100 feet may be harvested.
Type F	Maintain 85% of total LWD recruitment expected to enter the stream from a mature stand; and Maintain 85% of the trees which are greater than 18 inches DBH within 100 feet of stream; and Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).
Types Np and Ns	Maintain 50% of total LWD recruitment expected to enter the stream from a mature stand; and Maintain 85% of the trees which are greater than 24 inches DBH within 50 feet of stream; and Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).

* Note: Applicants electing to employ performance-based mitigation in accordance with the above matrix ~~shall~~**must** include appropriate analysis and justification in their site assessment/habitat management plan.

(Ord. O20110008 (part): Ord. O20080014 (part))

14.24.600 Frequently flooded areas designations.

Frequently flooded areas ~~shall be~~**are** designated as those areas identified as A, AO, AH, A1—10, A12, A14, A16, A18, A21—22, V1 and V4 zones on the official Flood Insurance Rate Map for Skagit County, as amended. Cumulatively these zones represent the floodway and 100-year floodplain. (Ord. O20080014 (part))

Commented [KC56]: Minor verb change.

14.24.610 Frequently flooded areas initial project review.

Project review ~~shall will~~ be conducted in accordance with the procedures and requirements for reviewing an application for a permit under Chapter 14.34 SCC as amended. (Ord. O20080014 (part))

Commented [KC57]: Minor verb change.

14.24.620 Frequently flooded areas development requirements.

Development criteria and associated engineering requirements for frequently flooded areas ~~shall will~~ be addressed under the provisions of Chapter 14.34 SCC. (Ord. O20080014 (part))

Commented [KC58]: Minor verb change.

14.24.630 Frequently flooded areas protection standards.

- (1) All development ~~shall~~must conform to the provisions of Chapter 14.34 SCC and the International Building Code, which contain structural safeguards to reduce risk to human life, health and property from flooding.
- (2) Any use or development ~~shall~~must not alter the normal movement of surface water in a manner that would cause the unnatural diversion of floodwater to otherwise flood-free areas.
- (3) The applicant ~~shall~~must demonstrate that the development is not likely to adversely affect species protected under the Endangered Species Act, consistent with the provisions of Chapter 14.34 SCC and this Chapter. (Ord. O20110008 (part); Ord. O20080014 (part))

14.24.700 Compliance tracking.

- (1) The ~~Administrative Official~~Director will undertake a coordinated system of compliance tracking to ensure that conditions of approval, mitigation requirements, and required landowner maintenance and/or monitoring responsibilities are being met.
- (2) Compliance tracking efforts ~~shall~~must include complaint-driven site visits and review on an annual basis by a representative monitoring of projects or activities having received critical areas approval a minimum of 10 months prior to the monitoring date. Results of such monitoring ~~shall~~must be included in the permanent record for the project or activity and shall be utilized for enforcement purposes.
- (3) If, based on compliance tracking efforts, the ~~Administrative Official~~Director discovers violations of this Chapter, such violations ~~shall~~will be subject to the enforcement provisions set forth under Chapter 14.44 SCC.
- (4) If the ~~Administrative Official~~Director determines that increased compliance tracking is warranted based on unacceptably high levels of noncompliance, the number of projects or activities to be monitored ~~shall~~will be increased. (Ord. O20080014 (part))

Commented [KC59]: Minor verb and terminology change for consistency across CAO.

14.24.710 Fees.

~~The Board of County Commissioners by resolution after a public hearing shall establish fees for projects requiring additional services by the County, to be on the basis of all direct costs incurred by the County, including, but not limited to, the following:~~

- ~~(1) Costs of inspection time;~~
- ~~(2) Costs for testing completed facilities;~~
- ~~(3) Costs for administration;~~
- ~~(4) Costs of engineering review time;~~
- ~~(5) Costs for evaluation of noncompliant activities, for determination of associated mitigation requirements, and for implementation of required mitigation if undertaken by the County;~~
- ~~(6) Any other special costs attributable to the project. (Ord. O20080014 (part))~~

Commented [KC60]: This section has been deleted as the fee schedule is now a separate resolution process.

14.24.720 Administrative Official Director.

(1) The ~~Administrative Official or duty authorized agent~~ Director ~~shall will~~ administer and enforce this Chapter. The ~~Director Administrative Official shall must~~ apply the provisions of this Chapter consistent with the Washington State Growth Management Act (Chapter 36.70A RCW), the Skagit County Comprehensive Plan, the Skagit County Countywide Planning Policies and the goals of this Chapter. In all instances where administrative discretion is exercised, the ~~Director Administrative Official shall must~~ document the basis for such determinations. Such documentation ~~shall must~~ be included in the official file for the proposed project or activity and be made available to the public upon request.

(2) If the ~~Administrative Official~~ Director finds that any of the provisions of this Chapter are being violated, he or she ~~shall must~~ notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The ~~Director Administrative Official shall must~~ take all actions authorized by this Chapter to ensure compliance with or to prevent violation of its provisions, including referring violations to the prosecutor's office. (Ord. O20080014 (part))

Commented [KC61]: Terminology change for consistency across CAO.

14.24.730 Appeals from the Administrative Official Director.

~~Any decision made by the Director pursuant to this chapter may be a~~ Any decision made by the Director pursuant to this chapter may be appealed ~~s may be taken~~ to the Hearing Examiner by ~~any aggrieved party affected the County, the applicant, or a party of record by any decision of the~~ any aggrieved party affected the County, the applicant, or a party of record ~~Administrative Official under this Chapter.~~ Such appeals ~~shall must~~ be filed and processed consistent with the applicable provisions of Chapter 14.06 SCC. (Ord. O20080014 (part))

Commented [KC62]: Updated to be consistent with the appeal provisions of SCC 14.06.

14.24.740 Interdisciplinary team.

The ~~Director Administrative Official~~, Hearing Examiner, or other appropriate hearing body may, as they deem necessary, utilize an interdisciplinary team to provide technical assistance where necessary to assess a proposal or make a determination.

(1) Members of the interdisciplinary team ~~shall will~~ be selected by the ~~Administrative Official~~ Director, Hearing Examiner or appropriate hearing body. Selection of the team ~~shall must~~ include the proponents (upon their request) and local, State, Tribal or Federal representatives with expertise in the field and/or independent professionals with expertise relating to the critical areas issue.

(2) The functions of the interdisciplinary team are to field-check and verify critical areas determinations by reviewing the information included with an application, identify areas of concern, and help focus the preparation of subsequent reports and environmental documentation on the most relevant issues.

(3) The ~~Director Administrative Official~~, Hearing Examiner or appropriate hearing body will coordinate this effort and pursue a consensus process in seeking advice from the team.

(4) A complete public record will be maintained of written opinions submitted by individual team members. (Ord. O20080014 (part))

Commented [KC63]: Terminology change for consistency across CAO.