



Planning & Development Services

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Memorandum: Critical Areas Ordinance Update

To: Board of County Commissioners
From: Jack Moore, Director
Robby Eckroth, Senior Planner
Date: October 21, 2025
Re: 2025 Critical Areas Ordinance Update

Summary

Planning and Development Services (PDS) is providing this staff report in advance of the October 28, 2025, Board of County Commissioners work session to discuss the 2025 Critical Areas Ordinance (CAO) update.

This memo outlines the additional amendments included in the third draft of the CAO update (**Exhibit A**) and summarizes the comments received on the second draft (**Exhibit B**). It also supplements the June 26, 2025, staff report prepared by Kimley-Horn and Facet (**Exhibit C**), which provides an overview of the more substantial proposed CAO changes and the Planning Commission's recommendation.

Background and History

The Growth Management Act (GMA) requires all cities and counties in Washington to adopt regulations protecting "critical areas". The Washington State Growth Management Act (GMA) requires Skagit County to update its Comprehensive Plans and implementing development regulations every 10 years (RCW 36.70A.130). As part of that update, the County is required to evaluate and, if needed, revise its Critical Areas Ordinance (CAO).

Protecting the environment and critical areas is but one goal of the GMA's 15 goals. In addition to protecting critical areas, the GMA also requires the designation and preservation of natural resource lands (including agricultural lands of long-term commercial significance) and mandates that Skagit County identify sufficient buildable lands in unincorporated areas to accommodate future housing and employment growth. To implement these goals and balance their often-competing priorities, Skagit County is required to adopt a comprehensive plan and development regulations, including a critical areas ordinance, consistent with the GMA and best available science.

PDS began the CAO update process in late 2024. As required by the Washington State GMA, a review of the Best Available Science (BAS) was conducted to support Skagit County's CAO update. The Planning Commission began its review of the CAO update in April 2025.

Following a series of public hearings, deliberations, and a 17-day public comment period, the Planning Commission held a regularly scheduled meeting on June 17, 2025. As part of the 2025 Comprehensive Plan periodic update, the Planning Commission recommended that the Board of County Commissioners adopt the CAO, with several suggested revisions outlined in its recorded motion and recommendation (**Exhibit D**).

The Board of County Commissioners began reviewing the second draft of the CAO in late June. A second public comment period, lasting 18 days, was held in July, followed by a public hearing on July 28, 2025. The CAO was tentatively scheduled for possible adoption on August 4, 2025.

Following the comment period, the Swinomish Indian Tribal Community requested mediation from the Washington Department of Commerce, pursuant to RCW 36.70A.190(6)(b). This statute requires the County to delay final action on any comprehensive plan or development regulation for at least 60 days when mediation is requested. The Department of Commerce notified PDS on July 28, 2025, initiating a mandatory delay period that ended on September 24, 2025. During this time, the County met with Commerce and a mediator to discuss the Swinomish Indian Tribal Community's comments on the CAO. After considering those comments, PDS is proposing additional amendments for inclusion in the third draft, as summarized below.

Summary of Second Draft Public Comments

Skagit County held a public comment period on the second draft of the CAO from July 10, 2025, to July 28, 2025. Below is a summary of the common themes seen in the comments received, organized by subject. This is not an attempt to capture all the comments made in this summary.

- **Stormwater.** Several commenters requested that the County strengthen development standards and critical areas review to better assess offsite impacts and pollutant loads from stormwater runoff. Skagit County has comprehensive stormwater and grading requirements that apply to subdivisions and most other types of development. These regulations include requirements for water quality protection, and stormwater treatment. Additionally, Skagit County complies with the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Stormwater Permit for Western Washington, which requires a multi-faceted approach to control water quality from new development, existing development, and public infrastructure. All development in Skagit County must comply with the Critical Areas Ordinance (SCC 14.24), and the Stormwater Management Code (SCC 14.32) and the Water Pollution Code (SCC 16.32) which aligns with the 2024 Stormwater Management Manual for Western Washington.
- **SCC 14.24.530(1)(c) – Standard Riparian Buffer Widths.** Several comments requested the county to utilize guidance from the Washington Department of Fish and Wildlife, which recommends transitioning from the “stream buffer” concept to “riparian management zones” (RMZs). RMZs are based on the Site Potential Tree Height (SPTH) framework. Buffers based on SPTH are necessarily site specific, which can result in variable and unpredictable buffer widths. Formal determination of the SPTH for a specific site would be costly because it requires the landowner (or the County) to hire a consultant to conduct a critical areas site assessment and determine the buffer width. This uncertainty, when weighed against the marginal gains the increase buffers would provide, would make it more difficult for landowners to comply with the regulation and would make it more difficult for the County to enforce encroachments into the buffers.

Where SPTH would likely result in the largest increase of buffer would be Type N streams (i.e., those not fish bearing), specifically Type Ns streams (i.e., those that have water only seasonally). The SPTH buffers suffer from significant diminishing rates of protection starting at 75 to 80 percent of SPTH (**Exhibit E**). Given the impact an SPTH-based buffer would have on lands containing Type N streams, much of it needed for agriculture and other natural resource uses, or otherwise need to ensure sufficient non-NRL land capacity to accommodate future growth.

Staff recommends that the County adopt wider standard buffer widths and increased native plant coverage in lieu of the SPTH approach. This ensures it is simple to understand what size the buffer is in any given location, which enables landowners to easily comply with buffers and makes it easier for the Code to enforce against any encroachments. Furthermore, it ensures natural resource lands is not needlessly converted to a non-product buffer and that sufficient buildable land exists for future growth that reflects the rural culture that exists in Skagit County. Importantly, the amendments implement increased protection measures in line with Best Available Science. Key changes include a 100% increase in buffer sizes for Type N streams, which WDFW identified as having historically suffered the greatest loss of trees. Additionally, buffers for Type F streams smaller than five feet wide will increase by 50%. For more information, please see the October 13, 2025 memo from the County's consultant, Facet, in **Exhibit E**.

- **SCC 14.24.120 – Ongoing Agriculture.** The Skagit Drainage and Irrigation District Consortium submitted comments to align the Ongoing Agriculture section of the CAO with the Drainage Fish Initiative (DFI) to clarify the information used in determining the presence of salmonids. Staff incorporated many of the suggested comments. Another comment regarding Ongoing Agriculture was received advocating for use of the Skagit County Cattlemen's Literature Review manual as Best Available Science.
- **SCC 14.24.070(2)(j)(i) – Restoration Projects.** SCC 14.24.070 identifies activities that are exempt from standard review, including fish, wildlife, wetland, and riparian buffer enhancement projects that are not required as mitigation. The first and second drafts of the Critical Areas Ordinance (CAO) included a requirement for Director notification of all enhancement activities, and the first draft additionally limited such activities to the use of hand tools when not undergoing formal review. Staff have proposed amending this language which is summarized in the section below.

Summary of Amendments to Second Draft included in Third Draft

Since the County Commissioners meeting in July, PDS staff have reviewed public comments on the second draft of the Critical Areas Ordinance, as well as comments from the Swinomish Indian Tribal Community on the first draft. Based on this review, staff have made minor revisions to the ordinance for administrative, organizational, and clarification purposes.

The following changes are included in the third draft:

- **Ownership of Protective Critical Area (PCA) subdivision tracts or easements.** In the first two drafts, SCC 14.24.090(5)(a) stated: "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." The Swinomish Indian Tribal Community noted that the ownership requirement is overly restrictive. Staff have revised this language to clarify that these entities are examples rather than requirements. The updated language now reads "...transferred to another owner, such as the County...," allowing for greater flexibility in ownership of PCAs.
- **Activities allowed without standard review – Buffer enhancement activities.** In response to public comments requesting the removal of both the hand tool limitation and the Director notification requirement in SCC 14.24.070(2)(j)(i), staff revised the second draft to eliminate the restriction on tool type. In the current proposal, Director notification would only be required when heavy machinery is used for new or expanded restoration projects.

- **Adding forage fish spawning areas to Fish and Wildlife Habitat Conservation Areas.** In response to a comment from the Swinomish Indian Tribal Community, staff have added forage fish spawning areas to SCC 14.24.500 – Fish and wildlife habitat conservation area designations.
- **Ongoing Agriculture.** Staff incorporated many of the suggested amendments from the Skagit Drainage and Irrigation District Consortium to align the Ongoing Agriculture section of the CAO with the Drainage Fish Initiative (DFI) to clarify the information used in determining the presence of salmonids.
- **Corrections of minor grammatical and terminology errors.** This includes addressing comments from the Swinomish Indian Tribal Community:
 - Using “Critical Areas Report” rather than “Site Assessment” throughout the Critical Areas Ordinance.
 - SCC 14.24.150(3) – Adding the word “and” at the end of an item of a list.

Recommendation

Planning and Development Services (PDS) recommends approval of the third draft of the Critical Areas Ordinance (CAO) update.

How to Comment

The public may submit written comments via email to pdscomments@co.skagit.wa.us (preferred) or via US mail starting **October 30, 2025**. All paper comments must be submitted on 8½" x 11" paper to the address below:

Skagit County Planning & Development Services
 re: Comments “Skagit County 2025 Critical Areas Ordinance Update”
 1800 Continental Place
 Mount Vernon, WA 98273

All comments must be received by **November 14, 2025, at 4:30 p.m.** and include (1) your full name, (2) your mailing address. Comments not meeting these requirements will not be considered.

Exhibits

- **Exhibit A** – Third Draft of the 2025 Critical Areas Ordinance Update dated October 14, 2025
- **Exhibit B** – Second Draft Public Comments
- **Exhibit C** – June 26, 2025, Kimley-Horn and Facet Staff Report
- **Exhibit D** – Planning Commission Recommendation and Recorded Motion
- **Exhibit E** – October 13, 2025, Facet Riparian Management Zones Memo