

## **Robby Eckroth**

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**From:** Marlene Finley <marlenefinley17@gmail.com>  
**Sent:** Thursday, May 8, 2025 10:50 AM  
**To:** PDS comments  
**Cc:** Evergreen Islands Board of Directors; Kyle Loring (LoringAdvising)  
**Subject:** 2025 Development Regulations and Critical Areas Ordinance Update

To: Skagit County Planning Commission, Planning and Development Services Staff  
From: Evergreen Islands ([evergreen.islands@outlook.com](mailto:evergreen.islands@outlook.com))  
Date: May 8, 2025  
Re: 2025 Development Regulations and Critical Areas Ordinance Update  
Comments on Proposed Update to Critical Areas and Development Regulations

Evergreen Islands respectfully submits the following comments to address the changes that Skagit County staff and consultants have proposed to the Critical Areas and Development regulations. Evergreen Islands is a local, nonprofit organization that has worked to protect, preserve and defend the saltwater islands and environment of Skagit County for over 48 years.

As an initial matter, while Evergreen Islands appreciates the opportunity to provide public comments on the proposed changes, we feel compelled to note that the County offered just 17 days to provide public comments on nearly 500 pages of densely-packed reports and regulations. This would be too cramped a time even if members of the public could neglect their families for the 17 days and dedicate their attention to just reviewing and providing feedback on the materials. We hope that the County will allocate a more reasonable amount of time of at least 30 days to public review once the Planning Commission has formulated and forwarded their recommendations to the Board of County Commissioners.

### **CRITICAL AREAS ORDINANCE**

Notwithstanding the rushed opportunity for review, Evergreen Islands supports numerous proposed changes to the Critical Area Ordinance (CAO), including the express direction to ensure **No Net Loss of Ecological Functions**. In addition, we recommend that the County take this opportunity to add defensible space for wildland fire protection, to protect all wetlands, to prevent known seawater intrusion, and to protect Riparian Management Zones as Fish and Wildlife Habitat Conservation Areas. The following sections identify the changes we support, changes we oppose, and additional changes we recommend.

#### **A. Changes That Should Be Adopted.**

14.24.010 Introduction. We support the clarity provided by the revisions to the introductory language.

14.24.040 Applicability, jurisdiction and coordination. We appreciate and support the addition of subsection (2), which clarifies which local rule applies in the event of a conflict.

14.24.070(11) Maintenance activities such as mowing and normal pruning. We support the insertion of a date to guide the application of this provision.

14.24.080(2) Distance for critical areas review. We support the change to 300 feet for the distance that must be considered when determining whether a proposal will impact critical areas, since this coincides with the potential buffer for the most sensitive wetlands. Although, we do agree with other commenters that the **CAO should include a provision that precludes the discharge of untreated stormwater either directly or indirectly into critical areas like wetlands and Fish and Wildlife Habitat Conservation Areas.**

14.24.230(4). Wetland protection standards. Setback. We support the proposal to include structural setbacks as a practical matter for home repairs, gutter cleaning, and other needs to use the land surrounding structures. **Toward that end, we recommend removal of “uncovered decks” from the list of activities that can occur within the full extent of the setback because the construction of these decks likely would require some construction activity staged in the adjacent buffer.**

14.24.240(1). Wetland protection standards. We support the buffer width increasing provision that has been proposed.

14.24.300 Critical Aquifer Recharge Areas. We support the language at SCC 14.24.300 to (1)(b) Identify groundwater resources at risk and activities/uses that impact groundwater quality, the second (1)(b) to add the words “protection” and “prevent,” and at (4)(d) Maintain groundwater dependent flow in anadromous fish habitat.

14.24.380 Seawater Intrusion Areas. We recommend against allowing new wells that will contribute to saltwater intrusion. We support denying wells if chloride levels in groundwater exceed a certain level. Please make sure that the limit you set is prudent and protects water quality.

14.24.530 (1)(c) FWHCA protection standards. Riparian Buffers. As discussed below, we recommend that the County protect its riparian areas through the adoption of a Riparian Management Zone (“RMZ”) structure. In the meantime, we support increasing the buffer width on Np and Ns streams from 50 feet to 100 feet, though we encourage the buffers to extend a full site potential tree height, consistent with current BAS. WDFW recommends applying RMZs to all streams because they “found no evidence that full riparian ecosystem functions along non-fish-bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams.”

14.24.530(1)(d) FWHCA protection standards. Setback. As with the wetland protections, we support the practical proposal to include structural setbacks. We recommend removal of “uncovered decks” from the list of activities that can occur within the full extent of the setback because the construction of these decks likely would require some construction activity staged in the adjacent buffer.

## **B. Changes That Should Be Declined.**

14.24.130 Hazard Tree Removal. While we appreciate and support the language regarding dead trees and snags, the proposal to delete the 3:1 replacement ratio (replace 3 trees for every 1 cut) should be declined, consistent with the GAP analysis. Absent this guidance, it is not clear what ratio would be used and a lesser ratio would not achieve No Net Loss as a 100% survival rate of newly planted trees is unrealistic.

In addition, the authorization to cut trees “[t]o avoid a threat to human life or public safety,” must be

defined to avoid the unintended arbitrary application of that provision. For example, it could be revised by adding the underlined, bold text below:

(e) To avoid a threat to human life or public safety. **A hazard tree threatens human life or public safety when it poses an imminent threat of falling in an area regularly and frequently used by members of the public, such as public roads and gathering spaces.**

14.24.230(7) Wetland Protection Standards. Category IV wetland exemption. While we appreciate that the CAO update would exempt fewer wetlands, neither Growth Management Hearings Board decisions nor the Best Available Science (“BAS”) support the exemption of smaller wetlands. Evergreen Islands does not support the exemption from buffer requirements for all wetlands less than 1,000 square feet and the exemption of Category IV wetlands less than 4,000 square feet from mitigation sequencing to avoid impacts. Both exemptions are likely to cause a net loss and therefore, not meet the goal of No Net Loss of Ecological Functions.

Further, Growth Board decisions have repeatedly recognized the importance of wetlands of all sizes in striking provisions that allow development of wetlands. In Hood Canal, the Board rejected an exemption for even very small, truly isolated and poorly functioning wetlands where there was no evidence of the likely number of exempt wetlands, or of the potential cumulative impacts to those wetlands, adaptive management, or monitoring to assure no net loss. Similarly, in Larson Beach Neighbors v. Stevens County, the Board held that exemptions for certain wetland sizes did not comply with the GMA in the absence of BAS showing that such actions would protect their functions and values. And in Pilchuck, the Board held that the structure, value, and functions of CAs are inviolate and that a county’s discretion to craft regulations that might result in some localized impacts or even loss should be “wielded sparingly and carefully for good cause” and that no circumstances would allow “the net loss of the structure, value and functions of such natural systems within a watershed or other functional catchment area.” The exemption to develop smaller wetlands also conflicts with the BAS. The development of smaller wetlands would impact each of the four basic functions and values they perform: (1) water purification; (2) maintenance of hydrologic functions and soil stability; (3) providing habitat; and (4) landscape beautification. Development adversely impacts these functions by altering hydrology with impervious surfaces, removing vegetation, constructing ponds, grading, and disturbing soil. Wetlands also can lose their capacity to filter pollutants once overloaded.

The BAS strongly supports protecting wetlands of all sizes, and emphasizes the importance of smaller wetlands. Ecology’s wetlands guidance states that “[t]he scientific literature does not support exempting wetlands that are below a certain size.” Earlier Ecology literature noted that **“the loss of small wetlands is one of the most common cumulative impacts on wetlands and wildlife in Washington.”**

14.24.350 Instream Flow Rules. We recommend **against deleting the local flow-sensitive basins and groundwater withdrawal limits for the Skagit River Basin** at SCC 14.24.350(1)(a). While the state regulations may address flows within the Stillaguamish and Nookachamps basins, they do not address the instream flows at the fine scale needed for the Skagit River Basin. Instead, they address flows at only a handful of locations and thus fail to capture the necessary flows along scores of creeks that Skagit County currently identifies.

14.24.380(4)(a)(iv) Seawater Intrusion Areas. We recommend against deleting the pump test requirements for a new well in a potential seawater intrusion area unless the initial testing indicates that it suffers from seawater intrusion. A pump test is an essential element in ensuring that a new well can provide an adequate water supply to a property.

14.24.540(5)(g) Timber harvest in buffers. **We firmly oppose allowing Timber Harvest in Riparian Buffers.** Consistent with the BAS, Evergreen Islands objects to allowing timber harvest within the standard buffer width (riparian management zone or RMZ). The proposed CAO continues to allow for removal of timber within the standard buffer width and this must be eliminated. The GAP analysis maintains that logging within the RMZs leads to a loss of ecological functions

### **C. Additional Recommended Changes.**

14.24.090(2)(b)(ii) PCA Field Identification and Buffer Edge Markers. Consistent with the Best Available Science and the gap analysis, we recommend that all buffer edges be permanently marked. Consequently, the first sentence should be removed from subparagraph (ii) referenced above, which states, “Where such permanent markers are required, the Director will specify their frequency of placement and general location.” This change would also be consistent with the remainder of the paragraph, which expressly dictates the location and frequency of those markers.

14.24.140 Reasonable Use Exception. To add clarity, we recommend adding the following as a Decision criterion:

(i) The project meets the criteria set forth in the provisions of SCC 14.24.140 above.

14.24.150 Variances. For consistency with other variance criteria, we recommend the addition of the following criterion:

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

14.24.230(c) Wetland Protection Standards. Vegetated buffer standards. The GAP analysis and BAS review do not provide a justification for the proposal to use “an average of 80% native cover” to impliedly define “densely vegetated.” The County should explain how it determined that 80% cover qualifies as densely vegetated, and whether that means 80% canopy cover or 80% ground cover. To the extent that it is intended to refer to canopy cover, then 80% would not qualify as densely-vegetated.

14.24.240 Wetland performance-based buffer alternatives and mitigation standards. The term “decreased” should be deleted from the first paragraph under this section, consistent with the proposed removal of the buffer reduction provisions.

14.24.240(2) Buffer Width Averaging. For consistency with the BAS, we recommend that the following Washington Department of Ecology criteria be added to the list:

(f) averaging will improve wetland protection;

(g) the buffer is increased adjacent to the higher functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion;

14.24.380 Seawater Intrusion Areas. We support denying wells if chloride levels in groundwater exceed a certain level and urge you to ensure that the limit you set is prudent and protects water quality.

14.24.500 Fish and Wildlife Habitat Conservation Areas 14.24.500. As an initial matter, we agree with the

GAP analysis and strongly recommend that the County adopt a Riparian Management Zone approach to its Fish and Wildlife Habitat Conservation Area protections. The Washington Department of Fish and Wildlife has already proposed a method for doing so based on site potential tree height.

14.24.530(1)(c)(i). As with the wetland text, the County should explain how it determined that 80% cover qualifies as “densely vegetated,” and whether that means 80% canopy cover or 80% ground cover. To the extent that it is intended to refer to canopy cover, then 80% would not qualify as densely-vegetated.

14.24.540(2) Buffer Width Averaging. For consistency with the BAS, we recommend the following additions shown in underline, consistent with Washington Department of Ecology criteria:

(b) The habitat contains variations in sensitivity due to existing physical characteristics, and the buffer is increased adjacent to the area of more sensitive habitat and decreased adjacent to the less sensitive portion; and

(f) The buffer width will not be reduced below 75% of the standard buffer width, or 100 feet, whichever is greater; and

(h) Averaging will improve FWHCA protection.

14.24.540(5)(b) Allowed Uses in HCAs or Buffers. Docks. This section needs to be revised consistent with the proposed Shoreline Master Program and to ensure that docks do not extend within 25 horizontal feet of a FWHCA.

14.24.540(5)(c) Allowed Uses in HCAs or Buffers. Bulkheads. This section needs to be revised consistent with the proposed Shoreline Master Program to ensure that an applicant demonstrates a need for the bulkhead that they did not create, that the bulkhead will not adversely impact shoreline geological or ecological functions, and that the bulkhead construction follows the mitigation sequence.

14.24.540(5)(e) Allowed Uses in HCAs or Buffers. Low-impact uses. The County needs to provide a definition for low-impact uses and activities to ensure that the activities allowed do not impact the buffer function. Consistent with that goal, the standards need to ensure that activities like trails do not fully encircle a water body or fully separate a water body from the surrounding riparian zone.

## **Defensible Space for Wildland Fire Protection**

The CAO update should add Performance Standards for vegetation management within buffers for the purpose of defensible space from wildland fire. The proposed draft update for the Comprehensive Plan includes wildland fire prevention goals and actions yet the draft CAO fails to incorporate the recommendation in the GAP analysis for maintaining ecological functions in buffers when defensible space around existing structures is necessary. “If vegetation management for defensible space is allowed, then performance standards must be developed to ensure that it does not result in a net loss of ecological function.” (GAP analysis page 7) This is not a philosophical discussion, but a real dilemma faced by landowners working to maintain wildfire protection zones around existing structures while providing functioning buffers adjacent to wetlands and within riparian management zones.

## **Geologically Hazardous Areas**

We recommend that the CAO improve and add data and maps on Mine Hazards to supplement the reference at SCC 14.24.410(5). The GAP analysis recommends improving mapping and databases for mine hazards.

## DEVELOPMENT REGULATIONS

14.06.150. Types of Review. We recommend the following actions be moved to the column that **requires public notice**:

- hazard tree removal
- land disturbance permits
- shoreline exemptions

Evergreen Islands continues to recommend that **all critical areas variances be hearing examiner variances**. The County is proposing that 25-50% reductions be processed by the Director of Planning and Development Services.

14.18.\_\_. Accessory Dwelling Units. They would be allowed in all zones. To avoid doubling density, they should be prohibited in RI and RRv zones;

We recommend changing the term "Special" Use Permit to "Conditional" Use Permit for uniformity with the name for those permits in other counties and cities;

14.51.040. New Special Use Permit applications. We recommend adding the following two information requests:

- the amount of clearing and grading anticipated to be associated with the use; and
- the amount of impervious surface to be created and the volume of anticipated stormwater run-off;

14.52.030. Mining Special Use application contents. Please restore the express requirement that an applicant must submit "a complete environmental checklist." The proposed text would delete that language, which can currently be found at SCC 14.16.440(8)(h);

Chapter 14.58. Variances. We oppose the shift in the code that would allow activities under residential permitting without variances;

14.58.040. Variance Review criteria. We recommend that the criteria that would only apply to Hearing Examiner variances or setback variances **apply to all requests for variance**. These are important factors, like the determination that "the special conditions and circumstances do not result from the actions of the applicant."

Thank you for the opportunity to comment and please do not hesitate to contact me if you have questions or need clarification. Evergreen Islands looks forward to your thoughtful consideration of our comments.

Marlene Finley, President  
Evergreen Islands  
P.O.Box 223

Anacortes, WA 98221`