Attachment A - WORKING DRAFT RESPONSES

Table of Recommended Revisions

The table below identifies the revisions that Evergreen Islands, Washington Environmental Council, RE Sources, and Guemes Island Planning Advisory Committee propose to address the Shoreline Management Act's mandate to protect state shorelines as fully as possible. The table includes the page number for the text to be revised and the individual subsection or paragraph.

Revisions are identified as follows: (1) language to be removed is shown in strike-through, and (2) language to be added is shown in underline. In addition, we have inserted the rationale for the recommendation in the fourth column.

Page Number	Skagit County Proposed Language	Recommended language	Rationale for recommendation	Department Response
7	6A-Introduction The SMA vests counties and cities with the primary responsibility forcomprehensively planning and reasonably regulating shoreline development and use. The goals, shoreline area designations, policies, regulations, and procedures set forth in the shoreline management master program are essential to the protection of the public health, safety, and general welfare of thepeople of Skagit County.	6A-Introduction The SMA vests counties and cities with the primary responsibility for comprehensively planning and reasonably regulating shoreline development and use. The goals, shoreline area designations, policies, regulations, and procedures set forth in the shoreline management master program are essential to the protection of the public health, safety, and general welfare of the people of Skagit County, <u>including potable, safe drinking water</u>.	-	
12	**Management Policies** 6B-1.2 New overwater structures should be allowed for water-dependent uses, public	6B-1.2 New overwater structures should be allowed for water-dependent uses,	*When constructed over submerged aquatic*	

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	access, or ecological restoration.	public access, or ecological restoration, where they will not shade submerged aquatic vegetation like seagrasses and macroalgae.	*vegetation, overwater structures cause impacts to their viability by shading out sunlight, evenwhen grated.*[1]	
12	6B-1.4 In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple uses of overwater facilities should be encouraged.	6B-1.4 In order to reduce the impacts of shoreline development and increaseeffective use of water resources, multiple uses of the same overwater facilities should be encouraged.	*This edit would promote the use of individual facilities for multiple usesto avoid the need to construct multiple overwater facilities for each use.*	
13	**Natural Purpose** The purpose of the Natural environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions. Only low intensity uses should be allowed in order to maintain the ecological functions and ecosystem-wide processes.		*This section would benefitfrom a definition of "low intensity" or examples of low intensity uses*.	

[1] *See* K. Fresh, *et al.*, *Using light-permeable grating to mitigate impacts of residential floats on eelgrass* Zostera marina L. *in Puget Sound, Washington*, Ecol. Eng. (2006), doi:10.1016/j.ecoleng.2006.04.012 (concluding that grating up to 50% of a float deck either did not affect dock shading impacts on seagrass or that such effect could not be detected), attached to the associated comments as Attachment R; W. Gladstone and G. Courtenay, *Impacts of docks on seagrass and effects of management practices to ameliorate these impacts*, Estuarine, Coastal and Shelf Science 136, 53-60 (2014) (concluding that grating reduced, but did not eliminate, the loss of seagrass biomass under docks), attached to the associated comments as Attachment S.

Page Number	Skagit County Proposed Language	Recommended language	Rationale for recommendation	Department Response
15	**Rural Conservancy Designation Criteria** 6B-4.1 A Rural Conservancy environment designation should be assigned to shoreline areas outside incorporated municipalities and urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply: a. The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant toRCW 36.70A.170; b. The shoreline is currently accommodating lesser-intensity residential development outside urbangrowth areas and incorporated cities or towns; c. The shoreline is supporting human uses but subject to environmental limitations, such as properties thatinclude or are adjacent to steep slopes, feeder bluffs, floodplains orother flood-prone areas; d. The shoreline is of high recreationalvalue; or e. The shoreline contains unique historicor cultural resources; or f. The shoreline contains low intensitywater-dependent uses.	6B-4.1 A Rural Conservancy environment designation should be assigned to shoreline areas outside incorporated municipalities and urban growth areas, as defined by RCW 36.70A.110,if any of the following characteristics apply: a. The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designatedagricultural or forest lands pursuant to RCW 36.70A.170; b. The shoreline is currently accommodating lesser-intensity residential development outsideurban growth areas and incorporated cities or towns; c. The shoreline is supporting humanuses but subject to environmental limitations, such as properties thatinclude or are adjacent to steep slopes, feeder bluffs, floodplains or other flood-prone areas; d. The shoreline is of highrecreational value; or e. The shoreline contains unique historic or cultural resources; or f. The shoreline contains low		

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		intensity water-dependent uses;or g. The shoreline contains low intensity water-dependent uses.	-	
15-16	6B-4.2 Uses in the Rural Conservancy environment should include those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Agriculture, commercial forestry, and aquaculture when located on natural resource lands and consistent with provisions of this SMP are preferred by the County and allowed uses under the SMA. Low-intensity, water-oriented commercial and industrial uses may be permitted where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the use. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated. Mining and related activities may be an appropriate use within the rural	6B-4.2 Uses in the Rural Conservancy environment should include those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Agriculture, commercial forestry, and aquaculture when located on natural resource lands and consistent with provisions of this SMP are preferred by the County and allowed uses under the SMA. Low-intensity, water- oriented commercial and industrial uses may be permitted where those uses have located in the past or at unique sites in rural communities that possess shoreline conditionsand services to support the use. Water- dependent and water-enjoyment recreation facilities that do not deplete the resource overtime, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated. Mining and related activities ~~may be an appropriate use~~ shall not be allowed within the rural conservancy		

Page Number	Skagit County Proposed Language	Recommended language	Rationale for recommendation	Department Response
	conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26- 241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070	environment ~~when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26- 241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant toRCW 36.70A.170 and WAC 365-190-070~~		
16	6B-4.3 Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed	6B-4.3 Developments and uses that would substantially degrade or permanently deplete the biological resources of the area ~~should~~ <u>will</u> not be allowed		
19	**Urban Conservancy** 6B-7.6 Mining and related activities may be an appropriate use within the Urban Conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-240 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190- 070.	6B-7.6 Mining and related activities are not allowed ~~may be an appropriate use~~ within the Urban Conservancy environment ~~when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-240 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190- 070~~.		
19	**Agriculture Policies** 6C-1.1 General d. The creation of new agricultural lands by	d. The creation of new agricultural lands by		

Page Number	Skagit County Proposed Language	Recommended language	Rationale for recommendation	Department Response
	diking, or filling of those tidelands, tidal marshes, and associated wetlands which are potentially more productive in their long term natural state should be discouraged.	diking, or filling of those tidelands, tidal marshes, and associated wetlands which are potentially more productive in their long term natural state ~~should be discouraged~~ is not allowed.		
21	**Aquaculture Policies** 6C-2.1 Aquaculture is an activity of statewide interest and should be encouraged. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Shellfish aquaculture provides ecosystem services such as wildlife habitat and improved water quality through filtration.	6C-2.1 Aquaculture is an activity of statewide interest and should be encouraged where it will not adversely impact shoreline ecology. Properly managed and sited, aquaculture can largely avoid impacts ~~it can result in long-term over short-term benefit and can protect~~ the resources and ecology of the shoreline. Shellfish aquaculture can provide~~s~~ ecosystem services such as wildlife habitat and improved water quality through filtration.	*To the extent that aquaculture replaces existing shoreline habitat and species with a different habitat or species, or by intensifying the use of that habitat with a mono-crop, it causes ecological impacts and should be recognized as such.*	
22	6C-2.11 Commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck operations without significant clearing and grading.	6C-2.11 Commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck operations without ~~significant~~ clearing and grading.	*This change reflects the impacts caused by clearing and grading.*	
31	**Mining Policies** 6C-13.1 Recognizing that certain earth materials are in demand, yet limited in quality andquantity, and that shorelines are a valuable and limited resource where mining can have irreversible impacts, mining activities should primarily beencouraged to take place outside of	6C-13.1 ~~Recognizing that certain earth materials are in demand, yet limited in quality and quantity, and that shorelines are a valuable and limited resource where mining can have irreversible impacts, mining activitiesshould primarily be encouraged to~~	*Mining should not occur in or along shoreline areas and their buffer zones.*	

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	shoreline areas. a. Mining activities, if allowed, should not occur in shoreline areas of high environmental, cultural, recreational,or historical value. b. Recognizing the limited quantity and quality of natural marine and lake shores, especially accretion shoreforms, and recognizing the increasing demand for other uses of these shorelines and the existence of alternative sources of earth materials,mining activities should be limited on these shorelines. c. Surface mining of river and stream point bars for sand and gravel or othermaterials should be allowed provided there is annual accretion and replacement of these materials.	~~take place outside of shoreline areas.a. Mining activities, if allowed, should not occur in shoreline areasof high environmental, cultural, recreational, or historical value.~~ ~~b. Recognizing the limited quantity and quality of natural marine and lake shores, especially accretion shoreforms, and recognizing the increasing demand for other uses of these shorelines and the existence of alternative sources ofearth materials, mining activities should be limited on these shorelines.~~ c. ~~Surface mining of river and stream point bars for sand and gravel or other materials should be allowed provided there is annual accretion and replacement of thesematerials.~~		
33	**Recreational Development** 6C-14.2 Unique and Fragile Shoreline Areas a. Accretion shoreforms, marshes, estuaries, and wetlands that are susceptible to damage from more intensive recreational development should be protected and preserved forless intensive forms of recreation.	6C-14.2 Unique and Fragile Shoreline Areas a. Accretion shoreforms, marshes, estuaries, and wetlands that are susceptible to damage from moreintensive recreational development ~~should~~ must be protected and preserved for less intensive forms of recreation.		

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33	6C-14.3 Design f. Recreational or access development should be designed to protect and preserve scenic views and aesthetic values of the shoreline environment.	f. Recreational or access development should be designed to protect and preserve scenic views, ~~and~~ aesthetic values, and ecological health of the shoreline environment.		
33	**Residential DevelopmentPolicies** 6C-15.1 Where allowed by this SMP, residential development should not significantly damage, diminish, or adversely affect shoreline ecological function, natural resource uses, archaeological and historic sites, or important scenic vistas.	6C-15.1 Where allowed by this SMP, residential development should not significantly damage, diminish, or adversely affect shoreline ecological function, natural resource uses, archaeological and historic sites, ~~or~~ important scenic vistas, or groundwater quality, such as through salt water intrusion.		
44	**Critical Areas Policies** 6G-2.11Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity. a. Existing and future beneficial uses ofgroundwater should be maintained and protected. b. Wherever groundwater is determined to be of a higher quality than the criteria established for said waters, theexisting water quality should be protected, and contaminants that willreduce the existing quality thereof	6G-2.11 Ensure adequate design, construction, management, and operations to protect groundwaterquality and quantity. a. Existing and future beneficial usesof groundwater should be maintained and protected, including against loss or degradation of potable water dueto sea water intrusion. b. Wherever groundwater is determined to be of a higher	-	

Page Number	Skagit County Proposed Language	Recommended language	Rationale for recommendation	Department Response
	should not be allowed.	quality than the criteria established for said waters, the existing water quality should be protected, and contaminants that will reduce the existing quality thereof should not be allowed.		
57-59	**Part III: General Regulations** 14.26.305 Environmental Protection	Mitigation	*This section must be revised to insert provisions that address Skagit County's ongoing oversight of mitigation projects once a project is permitted. Such provisionswould include a timeline for achieving successful mitigation and steps to cure any failures to achieve that success.*	
59	(8) New development and uses must be designed to mitigate significant adverse impacts on other shoreline uses and values.	(8) New development and uses must be designed to mitigate ~~significant~~ adverse impacts on other shoreline uses and values.	*The SMP doesn't establish athreshold for the significance of impacts thatmust be mitigated. Instead,all impacts must be addressed. Instead, SMPs must conserve remaining ecological functions and promote the restoration of impaired ecological functions. WAC 173-26-181, -186(8), -201(2)(c), -201(2)(f), -221(2), -221(5), -221(6).*	

14.26.310 Dimensional Standards

59	(1) When a development or use is proposed that does not comply with the dimensional standards of this SMP, such deviations fromthe SMP bulk, dimensional, or performancestandards can only be authorized by approval of a Shoreline Variance. If a proposal meets requirements allowing administrative reductions or modifications, it is considered compliant with the SMP and does not require a Shoreline Variance.	(1) When a development ~~or use~~ is proposed thatdoes not comply with the dimensional standards of this SMP, such deviations from the SMP bulk, dimensional, or performance standards can only be authorized by approval of a Shoreline Variance. If a proposal meets requirements allowing administrative reductions or modifications, itis considered compliant with the SMP and does not require a Shoreline Variance.	*The term "use" should be deleted because variances apply to dimensional standards, rather than uses, which are addressedthrough the conditional use permit process.*	
60	(4) Water-dependent uses, shoreline access, and shoreline restoration may be authorizedwithin the required buffer without a Shoreline Variance provided mitigation sequencing is applied and the project demonstrates adequate compensatory mitigation to achieve no net loss of shorelineecological functions.	(4) ~~Water-dependent uses, shoreline access, and s~~Shoreline restoration may be authorized within the required buffer without a Shoreline Variance provided mitigation sequencing is applied and the project demonstrates adequate compensatory mitigation to achieve no netloss of shoreline ecological functions.	*The development of uses and access in the buffer defeats the purpose of the buffer, which the most current science recommends remain largely undeveloped.*[2] *Consequently, any development in that areashould occur only subjectto the review that occursthrough the variance process.*	

Table 14.26.310-1 Dimensional Standards

The following table sets out minimum buffer widths and other dimensional standards for each shoreline environment designation. For other dimensional standards, see SCC 14.26.420 Boating Facilities and Related Structures and Uses

[2] Washington Department of Fish and Wildlife, *Riparian Ecosystems, Vol. 2: Management Recommendations*, 24-25 (Dec. 2020), attached as Attachment T to the associated letter.

Dimensional Standard	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
Buffers for Upland Uses[1]						
from marine or lake shorelines	200 ft	150 ft	150 ft	100 ft	140 ft	n/a
from river or stream shorelines	200 ft	200 ft	200 ft	200 ft	200 ft	n/a
Height Limits for Residential Development[2]						
for uses waterward of the OHWM	n/a	n/a	n/a	n/a	n/a	n/a
for upland uses within required buffer	25 ft	25 ft	25 ft	25 ft	25 ft	n/a
for upland uses outside required buffer	35 ft	35 ft	35 ft	35 ft	35 ft	n/a
accessory structures on Guemes Island	15 ft	15 ft	15 ft	15 ft	15 ft	n/a
Height Limits for All Other Uses[2]						
for uses waterward of the OHWM	n/a	n/a	n/a	n/a	n/a	5 ft
for upland uses within required buffer	25 ft	25 ft	25 ft	25 ft	25 ft	n/a
for upland uses outside required buffer	35 ft	35 ft	35 ft	35 ft	35 ft	n/a
Hard Surface Limits						
for all commercial and industrial upland uses	n/a	30 10%	70%	n/a	70%	n/a
recreational uses	5%	25 10%	30%	30%	40%	n/a
for all other upland uses	5%	30 10%	30%	30%	40%	n/a
Signs and Outdoor Advertising						
Max Height	n/a	5 ft	5 ft	10 ft	25 ft	5 ft
Max sign area per side	n/a	15 sq ft	15 sq ft	20 sq ft	100 sq ft	6 sq ft

The County should track the many instances in which it approves development that conflicts with these standards.

We recommend applying a hard surface limit of 10% for Rural Conservancy lands consistent with the Guidelines' statement that "[s]cientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic character of the shoreline. WAC 173-26-211(5)(b)(ii)(D).

Change recommended:

WAC 173-26-211(3)(b)(ii)(D) does recognize that scientific studies support a maximum lot coverage of 10 percent in the Rural Conservancy environment. However, this same subsection goes on to state, "Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved."

The County suggests adding a footnote to Table 14.26.310-1 to acknowledge that new lots in Rural Conservancy created after the adoption of the SMP would need to comply with this 10 percent hard surface coverage limitation.

Footnotes:

1. Water-dependent developments are allowed within the buffer provided mitigation sequencing is applied per SCC 14.26.305 to avoid, minimize, and mitigate adverse impacts to result in no net loss of shoreline ecological function

2. Additional height for utility facilities, bridges, and industrial uses may be approved when necessary for the functions of a permitted use, provided such structures must be designed to minimize obstruction of views. For such heights proposed over 35 feet above average grade the applicant shall demonstrate that it will not obstruct the view of a substantial number of residences and overriding consideration of the public interest will be served.

14.26.320 General Provisions Applicable Upland of the OHWM

61	(1) Location of upland development.	(1) Location of upland development.	*The SMA requires that newdevelopment be*	

	(a) New development must be located and designed to avoid the need for future shoreline stabilization to the extent feasible.	(a) New development must be located anddesigned to avoid the need for future shoreline stabilization ~~to the extent feasible~~.	*constructed to avoid theneed for future shorelinestabilization.*	
61-62	(2) Design features for compatibility. Shorelineuse and development must be designed to complement the character and setting of the property, minimize noise and glare, and avoid impacts to view corridors, **wherefeasible.**	(2) Design features for compatibility. Shoreline use and development must be designed to complement the character and setting of theproperty, minimize noise and glare, and avoid impacts to view corridors~~, where feasible~~**.**		
62	(4) Screening. (a) Building mechanical equipment must beincorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features,a visual screen must be provided consistent with building exterior materials that obstructs views of such equipment.	(3) Screening. (a) Building mechanical equipment must be incorporated into building architectural features, such as pitched roofs~~, to the maximum extent possible~~. Where mechanicalequipment cannot be incorporated into architectural features, a visual screen must be provided consistent with building exterior materials that obstructs views of such equipment.		
62	(8) Lighting. Interior and exterior lighting must be designed and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas; andto prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks,	(8) Lighting. Interior and exterior lighting must bedesigned and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas; and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening. Lighting must be directed <u>downward and</u> away from critical areas,	*Lighting must be directeddownward to limit its impacts.*	**<u>Change recommended.</u>** There may some instances where downlighting is not the best option. The County recommends adding the following to SMP Section 14.26.360(4)(d) Lighting. <u>Directional sign lighting must be directed away from critical areas, unless necessary for public</u>

	buffer areas and screening. Lighting must be directed away from critical areas, unless necessary for public health and safety	unless necessary for public health and safety		health and safety. Outdoor advertising may not move or fluctuate in lighting or position in any manner.

14.26.330 General Provisions Applicable Waterward of the OHWM

63	(2) Buffers. Water-dependent in-water structures, activities, and uses are not subject to the shoreline buffers establishedin this SMP provided mitigation sequencingis applied per SCC 14.26.305 to avoid, minimize, and mitigate adverse impacts to result in no net loss of shoreline ecological function.	~~(2) Buffers. Water-dependent in-water structures, activities, and uses are not subject to the shoreline buffers established in this SMPprovided mitigation sequencing is applied per SCC 14.26.305 to avoid, minimize, and mitigateadverse impacts to result in no net loss of shoreline ecological function.~~	*The SMA does not exempt water-dependent in-water structures, activities, and uses from the need to address ecological impacts. Thus, to the extent that such development can comply with buffers, it should do so. And for those aspects that cannot meet buffer standards, impacts mustbe minimized and compensated.*	

14.26.405 Uses and Modifications Matrix

83-84	Table 14.26.405-1 Shoreline Use Aquaculture (see SCC 14.26.415) General aquaculture: CU, SD/E, SD/E, SD/E, SD/E, upland	Table 14.26.405-1 Shoreline Use Aquaculture (see SCC 14.26.415) ~~General aquaculture: CU, SD/E, SD/E, SD/E, SD/E,upland~~ Aquaculture activities other than	*"General aquaculture" in* ***Table 14.26.405-1, Shoreline Use and Modifications Matrix*** *should be further defined soit is clear that geoduck and finfish/net pen activities are*	

	Non-commercial freshwater hatcheries: CU, CU,SD/E, SD/E,SD/E, upland Net-pens; CU, CU, CU, CU, CU, upland Commercial geoduck aquaculture: CU, CU, CU, CU,CU, upland	<u>geoduck or finfish; X, SD/E without exemptions, SD/E without exemptions, SD/E without exemptions, SD/E without exemptions, upland</u> Non-commercial freshwater hatcheries: CU, CU, SD/E, SD/E, SD/E, upland Net-pens; ~~CU, CU, CU, CU, CU, upland~~ <u>X, X, X, X, X, upland</u> Commercial geoduck aquaculture: ~~CU~~ <u>X</u>, CU, CU,CU, CU, upland	*not included in this generalized category to better delineate more specifically the various aquaculture uses and applications in the SMP. We suggest having the use be called "Aquaculture activities other than geoduck or finfish" and be prohibited in "Natural" designation and Shoreline Development permit without any exceptions in the remaining designations.The letter of Exception negates having to get a SSDP or CUP and is too permissive.*	

14.26.415 Aquaculture

89-90	**(1) Applicability** (a) This section applies to "aquaculture," meaning the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated withthe State-managed wildstock geoduck fishery. (b) Upland finfish rearing facilities constitute "agriculture" and are not regulated by this section		*Any finfish raising/rearing, native or nonnative, should be required to take place in upland facilities with properpollution controls and appropriate requirements for each Shoreline Environmental Designation.Under Section 14.26.415 Aquaculture, it states that "upland finfish rearing facilities constitute "agriculture" and are not regulated by this section." However, in reviewing*	

			section 14.26.410 Agriculture, there is no mention of regulating upland finfish rearing facilities. Can you please direct us to where in the SMP updated document upland finfish rearing facilities are regulated and how they will be regulated?	

91	**(4) General requirements.** e. Aquaculture operations must be designed, located, and managed to minimize impactsto native eelgrass and macroalgae. i. Aquaculture operations are not requiredto avoid impacts on eelgrass or macroalgae that colonizes an aquaculture operation. ii. Aquaculture operations are not requiredto avoid impacts on non-native eelgrass.	e. Aquaculture operations must be designed,located, and managed to ~~minimize~~ avoid impacts to ~~native~~ eelgrass and macroalgae, with the exception that i. Aquaculture operations are not required to avoid impacts on eelgrass or macroalgae that colonizes an aquaculturеoperation. ii. ~~Aquaculture operations are not requiredto avoid impacts on non-native eelgrass.~~	*The BAS requires avoidance of impacts to these sensitive and critical habitats.*	
92	(5) Shorelines of Statewide Significance. b. Applications for new aquaculture withinShorelines of Statewide Significance must address the policies of RCW 9A0.58.020.		*We are very concerned thataquaculture use is allowed in Shorelines of Statewide Significance under section 14.26.415(6). It is unclear in the SMP how*	

	c. Mechanical disturbance of bottom materials for shellfish harvest is prohibited on Shorelines of StatewideSignificance, except the traditional mechanical (drag) dredge shellfish harvest method may be allowed as a conditional use. All hydraulic harvest methods require a Conditional Use Permit.		*implementation will beconsistent with RCW 90.58.020.*	
93	(7) Net pens. (a) In addition to the General requirements, anet pen application must include: (i) Site characterization survey: (A) Bathymetric survey (bottomfeatures) (B) Hydrographic survey (current velocity and direction, drogue tracking, vertical profiles of temperature, salinity and dissolved oxygen) (C) Underwater photographic survey(presence of critical habitat) (ii) Baseline benthic survey conducted once the net pens are in place, but before they are stocked with fish: (A) Sediment chemistry (B) Infauna sampling (b) A net pen application must demonstrate:	(7) Net pens. (a) <u>New commercial net pen aquaculture operations to propagate non-native finfish ornative finfish species in marine waters is prohibited.</u> ~~(a) In addition to the General requirements, anet pen application must include:~~ ~~(i) Site characterization survey:~~ ~~(A) Bathymetric survey (bottomfeatures)~~ ~~(B) Hydrographic survey (current velocity and direction, drogue tracking, vertical profiles of temperature, salinity and dissolved oxygen)~~ ~~(C) Underwater photographic survey(presence of critical habitat)~~	*Net pen finfish aquaculture,especially nonnative, includes many adverse impacts including organic waste from salmon farms changing the physio-chemical properties and microflora biodiversity of benthic sediments below the pens, increased growth of algae, chemical and drugcontaminants introduced into the environment, the disruption of marine food webs by attracting carnivorous birds and mammals, and the escape of farmed salmon with the potential to transmit disease and compete with wild salmon.[3] We believe*	

[3] A. Buschmann, *et al., Salmon aquaculture and coastal ecosystem health in Chile: Analysis of regulations, environmental impacts and bioremediation ystems*, Ocean & Coastal

Management *3 (2009), doi:10.1016/j.ocecoaman.2009.03.002, *available at*:

	(i) that the native fish and wildlife resources will not be significantlyimpacted; and (ii) that state parks, wildlife refuges orreserves, or habitats of local importance found in Part V, CriticalAreas, will not be significantly impacted. (c) A net pen facility must be located at least 1,500 feet from the OHWM, except a lesser distance may be authorized througha Shoreline Variance if a visual impact analysis demonstrates a lesser distance will not result in a significant adverse impact to aesthetic qualities of the shoreline.	~~(ii) Baseline benthic survey conducted once the net pens are in place, butbefore they are stocked with fish:~~ ~~(A) Sediment chemistry (B) Infauna sampling~~ ~~(b) A net pen application must demonstrate: (i) that the native fish and wildlife resources will not be significantlyimpacted; and~~ ~~(ii) that state parks, wildlife refuges orreserves, or habitats of local importance found in Part V, CriticalAreas, will not be significantly impacted.~~ ~~(c) A net pen facility must be located at least1,500 feet from the OHWM, except a lesser distance may be authorized through a Shoreline Variance if a visual impact analysis demonstrates a lesser distance will not result in a significant adverse impact to aesthetic qualities ofthe shoreline.~~	*that this change is consistent with the SMP Guidelines requirements forno net loss of shoreline ecological functions.*	
93-95	(8) Geoduck aquaculture. (a) A Conditional Use Permit is required fornew commercial geoduck aquaculture. (b) Geoduck aquaculture should be located where sediments, land and water access,	(8) Geoduck aquaculture. (g) A Conditional Use Permit is required fornew commercial geoduck aquaculture. (h) Geoduck aquaculture should be located where sediments, land and water access,	*To ensure consistency across the SMP planning goals and development regulations, and in particular the goal of 6C-2.7*	

http://www.academia.edu/20269011/Salmon_aquaculture_and_coastal_ecosystem_health_in_Chile_Analysis_of_regulations_environmental_impacts_and_bioremediation_systems. Ocean & Coastal Management is a peer reviewed journal.

	and topography support geoduck aquaculture without significant clearing orgrading. (e) A Conditional Use Permit for geoduckaquaculture: i. may include conditions to avoid orlimit impacts from geoduck aquaculture siting and operations; ii. must identify that the permit entails aright to harvest planted geoduck; iii. must include mitigation measures asnecessary to ensure no net loss of ecological functions; iv. must include reasonable monitoring and reporting requirements to verify the permitted activity is in compliance with permit conditions. The County may rely on documentation submittedby an aquaculture operator to federal or state agencies to satisfy any monitoring or reporting requirement. (f) Notice of an application for geoduck aquaculture must be provided to all property owners within 300 feet of the proposed project boundary and to tribeswith usual and accustomed fishing rightsto the area.	and topography support geoduck aquaculture without ~~significant~~ clearingor grading. (e) A Conditional Use Permit for geoduckaquaculture: i. ~~may~~ *must* include conditions to avoid or limit impacts from geoduck aquaculturesiting and operations; ii. must identify that the permit entails aright to harvest planted geoduck; iii. must include mitigation measures asnecessary to ensure no net loss of ecological functions; iv. must include ~~reasonable~~ monitoring andreporting requirements to verify the permitted activity is in compliance with permit conditions. The County may rely on documentation submitted by an aquaculture operator to federal or stateagencies to satisfy any monitoring or reporting requirement. (f) Notice of an application for geoduck aquaculture must be provided to all property owners within ~~300~~ 1000 feet of the proposedproject boundary and to tribes with usual andaccustomed fishing rights to the area.	*(and WAC 173-26-241(3)(b)(i)(C)) that "new and expanded aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adverse impacts to eelgrass and macroalgae,…," we recommend that the Countyadopt specific requirements* ***to avoid, first and foremost, any impacts to eelgrass and macroalgae.*** *To meet this goal, any clearing and grading of theshoreline must be prevented because any clearing and grading of theshoreline for commercial geoduck operations is significant and would thus contravene the goal.* *Further, eelgrass and macroalgae protection andrecovery is a state and federal priority and should be a county priority as wellgiven the huge amount estimated to have already been lost. We are concerned that the SMP*	

			does not provide a processfor monitoring no net loss of ecological functions and/or cumulative impacts analysis to eelgrass and macroalgae from geoduck aquaculture. *We recommend that the language in 14.26.415(8)(f) be expanded beyond the suggested 300 yards to 1000 yards to capture property owners who may situated across the bay or inlet and thus would be impacted by geoduck operations. We fully support notification to all Tribes with usual and accustomed fishing rights tothe area, and request that similar notice be provided for all new, existing, and expanded aquaculture facilities.*	

14.26.420 Boating Facilities and Related Structures and Uses

97	**(4) Development Standards.** (a) Generally. Structures and uses must:	**(4) Development Standards.** (a) Generally. Structures and uses must: (i) <u>be located at least twenty-five feet(measured horizontally from the</u>	*When constructed over submerged aquatic vegetation, overwater structures cause impacts to*	

		nearest edge of the structure) and four vertical feet away from seagrassand kelp beds (measured at extremelow water); (ii) in documented herring spawning areas, be located at least twenty-fivefeet (measured horizontally from thenearest edge of the structure) and four vertical feet from macroalgae beds on which herring spawn (measured at extreme low water); (iii) if artificial nighttime lighting is used in the project, use low-intensity lightsthat are located and shielded to prevent light from attracting fish or disrupting fish migration behavior, unless there are safety constraints.	*their viability by shading outsunlight, even when grated.*[4] *Thus, the revisions are necessary to consistency with the most current, accurate, and complete scientific and technical information available, as well as WDFW regulations at220-660-380(3)(b), which will avoid confusion forapplicants.*	
99	(b) Docks. (i) Standards for all docks. (B) Minimum height. (I) The bottom of any piers or the landward edge of any ramp must be the maximum practical height from the ground, but not less than 1.5 ft above the OHWM.	(B) Minimum height. (I) The bottom of any piers or the landward edge of any ramp must be the maximum practical height from the ground, but not less than 6 ~~1.5~~ ft above the bed at the landward end~~OHWM~~.	*This will provide consistencywith WDFW regulations at WAC 220-660-380(4)(a) and decrease shading per theBAS.*	

[4] *See* K. Fresh, *et al.*, *Using light-permeable grating to mitigate impacts of residential floats on eelgrass* Zostera marina L. *in Puget Sound, Washington*, Ecol. Eng. (2006), doi:10.1016/j.ecoleng.2006.04.012 (concluding that grating up to 50% of a float deck either did not affect dock shading impacts on seagrass or that such effect could not be detected), attached hereto as Attachment R; W. Gladstone and G. Courtenay, *Impacts of docks on seagrass and effects of management practices to ameliorate these impacts*, Estuarine, Coastal and Shelf Science 136, 53-60 (2014) (concluding that grating reduced, but did not eliminate, the loss of seagrass biomass under docks), attached hereto as Attachment S.

14.26.435 Dredging and Dredge Material Disposal

110	(e) Dredging is prohibited in the followinglocations, except for maintenance dredging and for beneficial public purposes consistent with this SMP: (i) In estuaries, natural wetlands, andmarshes. (ii) Along net positive drift sectors andwhere geohydraulic processes are active and accretion shoreforms would be damaged or irretrievably lost. (iii) In shoreline areas and bottom soils that are prone to sloughing, refilling, and continual maintenance dredging. (iv) In officially designated fish, shellfish,and wildlife spawning, nesting, harvesting, and concentration areas. (v) Where water quality would be degraded below permitted state andfederal standards. (vi) Where current and tidal activity aresignificant, requiring excessive maintenance dredging.	(e) Dredging is prohibited in the followinglocations, except for maintenance dredging, and only if the impacts are fully addressed through application of the mitigation sequence ~~and for beneficial public purposes consistent with this SMP~~: (i) In estuaries, natural wetlands, andmarshes. (ii) Along net positive drift sectors andwhere geohydraulic processes are active and accretion shoreforms would be damaged or irretrievably lost. (iii) In shoreline areas and bottom soils that are prone to sloughing, refilling, and continual maintenance dredging. (iv) In officially designated fish, shellfish,and wildlife spawning, nesting, harvesting, and concentration areas. (v) Where water quality would be degraded below permitted state andfederal standards.	*For consistency with the BASregarding the significant impacts associated with dredging, new dredging should be prohibited in these ecologically and geologicallysensitive areas. Further, any impacts from maintenance must be addressed through mitigation.*	

		(vi)Where current and tidal activity aresignificant, requiring excessive maintenance dredging.		

14.26.460 Mining

126	(2) **When Allowed**. These uses are allowed in theshoreline environment designations listed in SCC 14.26.405 Uses and Modifications Matrix,subject to the following: (a) Mining is only allowed when the Administrative Official determines it is dependent on a shoreline location based on an evaluation of geologic factors such as the distribution and availability of mineral resources in the County; the needfor such mineral resources; and economic, transportation, and land use factors. (b) For marine and lake shorelines, miningwaterward of the OHWM is prohibited. (c) For rivers and streams, mining waterwardof the OHWM is prohibited unless: (i) Removal of specified quantities of sand and gravel or other materials atspecific locations will not adversely affect the natural processes of gravel transportation for the system as a whole; and (ii) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net	(2) **When Allowed**. These uses are allowed in theshoreline environment designations listed in SCC 14.26.405 Uses and Modifications Matrix,subject to the following: (a) Mining is only allowed when the Administrative Official determines it is dependent on a shoreline location based on an evaluation of geologic factors such as the distribution and availability of mineral resources in the County; the needfor such mineral resources; and economic, transportation, and land use factors; and where there are no known or suspected geologic hazards. (b) For marine and lake shorelines, miningwaterward of the OHWM is prohibited. (c) For rivers and streams, mining waterwardof the OHWM is prohibited unless: (i) Removal of specified quantities of sand and gravel or other materials atspecific locations will not adversely affect the natural processes of gravel transportation for the system as a whole; and (ii) The mining and any associated permitted activities will not have	*Consistent with the most current science, and public safety standards, as well ascritical areas regulations that require avoidance if the risk cannot be reduced or mitigated (WAC 365- 190-120), mining should not be allowed in areas of coastal geologic hazards.*	

	loss of ecological functions of theshoreline. (iii) Evaluation of impacts should be integrated with the relevant environmental review requirementsof SEPA.	significant adverse impacts to habitatfor priority species nor cause a net loss of ecological functions of the shoreline.; and (iii) Evaluation of impacts should be integrated with the relevant environmental review requirementsof SEPA.; and (iv) There are no known or suspected geologic hazards.		
126	(3) **Application Requirements.** In addition to the requirements in SCC 14.26.710 Applications, and the special use permit application requirements in SCC 14.16.440 Mineral Resource Overlay, an application requires the following:	(3) **Application Requirements.** In addition to therequirements in SCC 14.26.710 Applications, and the special use permit application requirements in SCC 14.16.440 Mineral Resource Overlay, an application requires thefollowing: (a) Identification of any geologically hazardous areas within 200 feet of the parcel to be mined and evaluation of therisk that the proposed mining poses to those geologically hazardous areas.	*This addition is necessary to ensure that mining applications are reviewed forconsistency with coastal geologic hazards.*	

14.26.465 Recreational Development

132	**(4) Development Standards.** (e) Fertilizers, pesticides, and herbicides. (i) Recreational developments requiringthe use of fertilizers, pesticides, and herbicides must leave a chemical freeswath at least 25 feet in width from water bodies and wetlands, unless another BMP achieving equivalent results can be incorporated or near-	**(4) Development Standards.** (e) Fertilizers, pesticides, and herbicides. (i) Recreational developments requiring the use of fertilizers, pesticides, and herbicides must leave a chemical free swath at least ~~25~~ 100 feet in width fromwater bodies and wetlands, unless another BMP achieving equivalent results can be incorporated or near-	*We recommend revising the separation between pesticides and water bodies from 25 to 100 feet,consistent with Best Management Practices identified in the Washington Department ofEcology's 2014 and 2019 Stormwater Management*	

	shore or waterward application isdeemed necessary and applied consistent with manufacturer specifications	shore or waterward application isdeemed necessary and applied consistent with manufacturer specifications	*Manuals for Western Washington, as adopted bySkagit County.*	

14.26.470 Residential Development

133	(4) **Development Standards**. In addition to the general provisions of SMP Part III, development must comply with the followingstandards: (a) Plats and subdivisions must be designed, configured and developed in a manner that ensures that no net loss of ecologicalfunctions results from the plat or subdivision at full build-out of all lots. (b) Residential development must be locatedand designed to avoid the need for flood hazard reduction measures, including shoreline stabilization. (c) The use of fill for expansion or creation ofupland areas to support residential development is prohibited, except for supporting infrastructure such as roads when there is no feasible alternative. (d) Wherever feasible, utilities for new residential development must be installedunderground and consistent with SCC 14.26.490 Utilities. (e) Residential development must implement Low-Impact Development where feasible	(4) **Development Standards**. In addition to the general provisions of SMP Part III, development must comply with the followingstandards: (a) Plats and subdivisions must be designed, configured and developed in a manner that ensures that no net loss of ecologicalfunctions results from the plat or subdivision at full build-out of all lots. (b) Residential development must be locatedand designed to avoid the need for flood hazard reduction measures, including shoreline stabilization. (c) The use of fill for expansion or creation ofupland areas to support residential development is prohibited, except for supporting infrastructure such as roads when there is no feasible alternative. (d) Wherever feasible, utilities for new residential development must be installedunderground and consistent with SCC 14.26.490 Utilities. (e) Residential development must implement Low-Impact Development where feasible	*We recommend adding theproposed language for consistency with SCC 14.26.465 (Recreational Development) and Part VCritical Areas.*	

	through compliance with MR5 in theStormwater Management Manual. (f) Residential development must complywith SCC 14.26.380 Vegetation Conservation.	through compliance with MR5 in theStormwater Management Manual. (f) Residential development must complywith SCC 14.26.380 Vegetation Conservation. (g) <u>Residential development requiring the use of fertilizers, pesticides, and herbicides must leave a chemical free swath at least 100 feet in width from water bodies and wetlands, unless another BMP achieving equivalent resultscan be incorporated or near-shore or waterward application is deemed necessary and applied consistent with manufacturer specifications</u>		

14.26.475 Shoreline Habitat and Natural Systems Enhancement Projects

133	**(1) Applicability.** (a) This section applies to activities proposedand conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines, including, but not limited to: (i) floodplain restoration projects; (ii) fish passage barrier removal orimprovement; (iii) projects to increase shoreline habitat complexity; or	**(1) Applicability.** (a) This section applies to activities proposedand conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines, including, but not limited to: (i) floodplain restoration projects; (ii) fish passage barrier removal orimprovement; (iii) projects to increase shoreline habitat complexity; or	*For consistency with the impacts that the BAS identifies for hard elementslike boulders, we recommend that shoreline habitat and natural systems enhancement projects omit boulders from the materials to be used.*	

	(iv) stabilization of eroding banks provided that the purpose of the project is restoration or enhancement of the natural character and ecological functions of the shoreline, and the project uses appropriate erosion control techniques and approaches, includinglimited use of rock as stabilization only at the toe of the bank as necessary, with primary emphasis on using native vegetation to control erosive forces.	(iv) stabilization of eroding banks provided that the purpose of the project is restoration or enhancement of the natural character and ecological functions of the shoreline, and the project uses appropriate erosion control techniques and approaches, ~~includinglimited use of rock as stabilization only at the toe of the bank as necessary,~~ with primary emphasis on using native vegetation to control erosive forces.		
134	(2) **Application Requirements.** In addition to the requirements SCC 14.26.710 Applications, an application must include the following: (a) Detailed construction plans that includethe following: (i) Plan and cross-section views of theexisting and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs. (ii) Detailed construction sequence andspecifications for all materials, including gravels, cobbles, boulders,logs, and vegetation. The sizing and placement of all materials must be selected to accomplish the followingobjectives:	(2) **Application Requirements.** In addition to therequirements SCC 14.26.710 Applications, an application must include the following: (a) Detailed construction plans that includethe following: (i) Plan and cross-section views of theexisting and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs. (ii) Detailed construction sequence andspecifications for all materials, including gravels, cobbles, ~~boulders,~~logs, and vegetation. The sizing and placement of all materials must be selected to accomplish the followingobjectives:	*For consistency with the impacts that the BAS identifies for hard elementslike boulders, we recommend that shoreline habitat and natural systems enhancement projects omit boulders from the materials to be used.*	

14.26.480 Structural Shoreline Stabilization

133	(1) **Applicability**. (a) This section applies to "structural shoreline stabilization," meaning physical improvements to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such ascurrent, flood, tides, wind, or wave action. (i) "Hard shoreline stabilization" meansshoreline stabilization involving solid, hard surfaces, such as concrete bulkheads. (ii) "Soft shoreline stabilization" may include the use of gravels, cobbles,boulders, and logs, as well as vegetation	(1) **Applicability**. (a) This section applies to "structural shoreline stabilization," meaning physical improvements to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. (i) "Hard shoreline stabilization" means shoreline stabilization involving solid,hard surfaces, such as concrete bulkheads. (ii) "Soft shoreline stabilization" means shore erosion limitation structures and measures that maintain or enhance ecological functions and arecomposed of primarily semi-rigid or flexible materials, bioengineering tailored to site-specific natural conditions, and vegetation, organized ina nonlinear, sloping arrangement, that dissipates wave energy and minimizes erosion in a way that mimics natural shoreline processes. Soft stabilization may include the use of sands, gravels, cobbles, ~~boulders~~, ~~and~~ logs, and ~~as well~~ ~~as~~ vegetation	*With the priority given soft armoring over hard armoring, these proposed changes betterreflect the type of construction necessary to prevent some of armoring's impacts.*	**Change recommended:** Adjusted the suggested language to keep the use of the term "boulder" in the definition as the use of boulders can be helpful to offer stabilization without forming walls. "Soft shoreline stabilization" means shore erosion limitation structures and measures that maintain or enhance ecological functions and are composed of primarily semi-rigid or flexible materials, bioengineering tailored to site-specific natural conditions, and vegetation, organized ina nonlinear, sloping arrangement, that dissipates wave energy and minimizes erosion in a way that mimics natural shoreline processes. Soft stabilization may include the use of sands, gravels, cobbles, boulders, and logs, and as well ~~as~~ vegetation
134	(2) **When Allowed.** These modifications areallowed in the shoreline environment	(2) **When Allowed.** These modifications areallowed in the shoreline environment	*Consistent with the most current science description of*	

	designations listed in SCC 14.26.405Uses and Modifications Matrix. (a) New hard shoreline stabilization structures are prohibited, except when an analysis confirms that that there is a significant possibility that an existing primary structure will bedamaged within three years as a result of shoreline erosion in the absence of such hard shoreline stabilization structures, or where waiting until the need is immediateresults in the loss of opportunity to use measures that would avoid impacts on ecological functions. (b) In all cases, the feasibility of soft shoreline stabilization must be evaluated prior to a request for hardstructural stabilization. (c) New or enlarged stabilization structures are prohibited except inthe following situations: (i) To protect an existing primary structure, including aresidence, when conclusive evidence, documented by a geotechnical analysis, is provided that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or	designations listed in SCC 14.26.405Uses and Modifications Matrix. (a) New hard shoreline stabilization structures are prohibited, except when an analysis confirms that that there is a significant possibility that an existing primary structure will bedamaged within three years as a result of shoreline erosion in the absence of such hard shoreline stabilization structures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions. (b) In all cases, the feasibility of soft shoreline stabilization must be evaluated prior to a request for hardstructural stabilization. (c) New or enlarged stabilization structures are prohibited except inthe following situations: (i) To protect an existing primary structure, including aresidence, when conclusive evidence, documented by a geotechnical analysis, is provided that the structure is in danger from shoreline erosion caused by currents orwaves. Normal sloughing, erosion of steep bluffs, or	*the many ecological impacts associated with armoring, as well as the Puget Sound Partnership goal to reduce the amount of armoring and the USEndangered Species Act requirement to recover listed species harmed by armoring, like the endangered Puget Sound Chinook and Southern Resident Killer Whales, armoring should not be allowedfor new development. New development must be designed,located, and constructed to avoid the need for new armoring.* *Two excellent references discuss the harm that armoring causes: (1) northweststraitsfoundation.org;and (2) Shoreline Master Program Planning and Implementation Guidance by Kelsey Gianou, MS through Dept. Of Ecology.* *Soft Shoreline Stabilization: Shoreline Master Program Planning and Implementation Guidance (Number of pages: 117) (Publication Size: 6752KB):* *Due to concerns about shorelinearmoring impacts to the*	

	(ii) shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate onsite drainage issues and address drainage problems away from the shoreline edge before considering hard or soft shoreline stabilization. (iii) In support of new non-water-dependent development, including single-family residences, when all of the conditions below apply: (A) The erosion is not being caused byupland conditions, such as drainage and the loss of vegetation. (B) Nonstructural measures, such as placing the proposed developmentfarther from the shoreline, planting vegetation, or installing onsite drainage improvements, are not feasible or not sufficient to adequately address erosion impacts. (C) The need to protect primary structures from damage due to erosion is demonstrated through a	shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate onsite drainage issues and address drainage problems away from the shoreline edge before considering hard or soft shoreline stabilization. (ii) In support of new non-water-dependent development, including single-family residences, when all of the conditions below apply: ~~(A) The erosion is not being caused byupland conditions, such as drainage and the loss of vegetation.~~ ~~(B) Nonstructural measures, such as placing the proposed developmentfarther from the shoreline, planting vegetation, or installing onsite drainage improvements, are not feasible or not sufficient to adequately address erosion impacts.~~ ~~(C) The need to protect primary structures from damage due to erosion is demonstrated through a~~	*nearshore environment, the Puget Sound Partnership has developed the following Shoreline Armoring Target: More armoring removed than added during the time period of2011-2020. In 2005-2010 there was a net gain of about 6 milesof armoring, despite armoring regulations and armoring removal restoration projects. There was also about 14.5 milesof replacement armoring. Single-family residences accounted for 76% of the new shoreline armoring length and25% of armoring removal length (Puget Sound Partnership, 2012). Therefore,single family residences represent an opportunity to impact the PSP Shoreline Armoring Target and other environmental policy goals through new armoring prevention, armoring removal,and implementation of hard armoring alternatives such as soft shoreline stabilization.*	

	geotechnical analysis. The damagemust be caused by natural processes, such as currents or waves. (iii) In support of water- dependent development when all of the conditionsbelow apply: (A) The erosion is not being caused byupland conditions, such as drainage and the loss of vegetation. (B) Nonstructural measures, such as planting vegetation, or installing onsite drainage improvements, arenot feasible or not sufficient to adequately address erosion causesor impacts. (C) The need to protect primary structures, including residences,from damage due to erosion is demonstrated through a geotechnical analysis. (iv) To protect projects for therestoration of ecological functions or for hazardous substance remediation projects pursuant to Chapter70.105D RCW when nonstructural measures, planting vegetation, or installing onsite drainage	~~geotechnical analysis. The damagemust be caused by natural processes, such as currents or waves.~~ ~~(iii) In support of water- dependent development when all of the conditionsbelow apply:~~ ~~(A) The erosion is not being caused byupland conditions, such as drainage and the loss of vegetation.~~ ~~(B) Nonstructural measures, such as planting vegetation, or installing onsite drainage improvements, arenot feasible or not sufficient to adequately address erosion causesor impacts.~~ ~~(C) The need to protect primary structures, including residences,from damage due to erosion is demonstrated through a geotechnical analysis.~~ (iv) To protect projects for ~~therestoration of ecological functions or for~~ hazardous substance remediation projects pursuant to Chapter70.105D RCW when nonstructural measures, planting vegetation, or installing onsite drainage improvements, are not		

	improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.	feasible or not sufficient to adequately address erosion causes or impacts.		
143	(4) Development standards (i) The soft shoreline stabilization design must size and arrange any gravels, cobbles, logs, and boulders so that the project remains stable during a two- yearflood event on rivers and under typical boat- and wind-driven wave conditions on lakes and marine waters, including storm and tidal events, and dissipates wave and current energy, without presenting extended linear faces to oncoming waves or currents.	(4) Development standards (ii) The soft shoreline stabilization design must size and arrange any gravels, cobbles, and logs~~, and boulders~~ so thatthe project remains stable during a two- year flood event on rivers and under typical boat- and wind-driven wave conditions on lakes and marine waters, including storm and tidal events, and dissipates wave and current energy, without presenting extended linear faces to oncoming waves or currents.	*As discussed above, bouldersare an element of hard shoreline stabilization and should not be included in softstabilization measures.*	

Part V: Critical Areas

14.26.515 Standard Critical Areas Review and Site Assessment

157	(3) Determination that Critical Areas are notPresent or Affected. (a) If the Administrative Official determinesthat critical areas or critical area buffersare not present within 300 feet of the proposed activity or within a distance otherwise specified in this Part; or (b) The project does not expand an existing single-family residence by more than 200square feet of floor area and does not adversely impact or encroach into critical areas or their buffers; or	(3) Determination that Critical Areas are notPresent or Affected. (a) If the Administrative Official determinesthat critical areas or critical area buffersare not present within 300 feet of the proposed activity or within a distance otherwise specified in this Part; or (b) The project does not expand an existing structure ~~single-family residence~~ by morethan 200 square feet of floor area, does not alter the use or increase septic affluent, and does not adversely impact or	*We recommend combining paragraphs (b) and (d) to apply the same critical area protections evenly to both residential and non-residential development thatwould impact critical areas.* *We also recommend inserting language into paragraph (3)(c) to ensure that applicants understand*	

	(c) The vertical expansion of an existing single-family residence located within a critical area or its buffer may be allowed ifthe expansion does not adversely impact or encroach into critical areas of their buffers; or (d) 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, and does not adversely impact or encroach into criticalareas or their buffers; then (e) The review required pursuant to this Part is complete. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this Part.	encroach into critical areas or theirbuffers; or (c) The vertical expansion of an existing single-family residence located within a critical area or its buffer may be allowed ifthe expansion complies with height limitations established elsewhere in this code and does not adversely impact or encroach into critical areas of their buffers; ~~or~~ (d) ~~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, and does not adversely impact or encroach into criticalareas or their buffers~~; then (e) The review required pursuant to this Part is complete. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this Part.	*that vertical limitations other than critical areas standards may apply.*	
158 - 59	(4) Determination that Critical Areas are Present or Affected. If the Administrative Official determines that critical area indicators are present within 200 feet of the proposed activity or within a distance otherwise specifiedin this Part, then the Administrative Official shall note this determination in the application file and the applicant shall be required to provide the critical areas site assessment	(4) Determination that Critical Areas are Present or Affected. If the Administrative Official determines that critical area indicators are present within ~~200~~ 300 feet of the proposed activity or within a distance otherwise specifiedin this Part, then the Administrative Official shall note this determination in the application file and the applicant shall be required to provide the critical areas site assessment	*We recommend using a 300-foot distances for reviews forconsistency with the CAO and proposed 14.26.515(2).* *We also recommend removing the discretion to adjust the area of review based on applicant's wishesrather than a standardized*	**Change recommended**. The critical areas section (SCC 14.26.515) already includes 300 feet as a review distance. This should be adjusted throughout Part V. County could consider using 300-foot critical area review consistently across the board.

	specified in this Part. Development of a site 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 siteassessment 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 whichare in conflict with this Part. If the applicant, together with assistance from the 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. The site assessment shall be completed asfollows: (a) The site assessment shall be prepared by a qualified professional for the type of critical area or areas involved and shall contain the information specified for eachtype of critical area. The qualified professional may consult with the Administrative Official prior to or during preparation of the site assessment to obtain County approval of modifications to the contents of the site assessment. (b) The site assessment shall use scientificallyvalid methods and studies in the analysis of critical areas data and field reconnaissance and reference the source of science used.	specified in this Part. Development of a site 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, t~~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 whichare in conflict with this Part. If the applicant, together with assistance from the 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. The site assessment shall be completed asfollows: (a) The site assessment shall be prepared by a qualified professional for the type of critical area or areas involved and shall contain the information specified for eachtype of critical area. ~~The qualified professional may consult with the Administrative Official prior to or during preparation of the site assessment to obtain County approval of modifications to the contents of the site assessment.~~ (b) The site assessment shall use scientificallyvalid methods and studies in the analysis of critical areas data and field reconnaissance and reference the source of science used.	*approach.* *We recommend removing the unlimited authorization to modify the contents of thesite assessment, and relianceon the standard provisions below for site assessments.* *The maintenance corridor provision should locate thatcorridor outside of critical areas and buffers to avoid unnecessary impacts to those areas.*	

	(c) The site assessment shall include: (i) Project description that includes a detailed narrative describing the project, its relationship to the criticalarea and its potential impact to the critical area; and (ii) A copy of the site plan for the projectproposal including a map to scale depicting critical areas, buffers, the development proposal, and any areasto be cleared; and (iii) Identification and characterization of all critical areas and buffers adjacentto the proposed project area; and (iv) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;and (v) A description of the proposed stormwater management plan for thedevelopment and consideration of impacts to drainage alterations; and (vi) A description of efforts made to applymitigation sequencing pursuant to SCC 14.26.305; and (vii) A proposed mitigation plan includingland use restrictions and landowner management, maintenance and monitoring responsibilities; and (viii) Regulatory analysis including a discussion of any Federal, State,	(c) The site assessment shall include: (i) Project description that includes a detailed narrative describing the project, its relationship to the criticalarea and its potential impact to the critical area; and (ii) A copy of the site plan for the projectproposal including a map to scale depicting critical areas, buffers, the development proposal, and any areasto be cleared; and (iii) Identification and characterization of all critical areas and buffers adjacentto the proposed project area; and (iv) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;and (v) A description of the proposed stormwater management plan for thedevelopment and consideration of impacts to drainage alterations; and (vi) A description of efforts made to applymitigation sequencing pursuant to SCC 14.26.305; and (vii) A proposed mitigation plan includingland 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, or special management recommendations which have been developed for species and/or habitatslocated on the site. (ix) If necessary, designate a maintenance corridor to provide an area for construction and maintenance of buildings and other structures. The standard width of themaintenance corridor shall 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-invasivespecies only; (B) Uncovered decks; (C) Building overhangs if such overhangs do not extend morethan 18 inches into the setbackarea; (D) Impervious ground surfaces, suchas driveways and patios; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; and (E) Trails.	Tribal, and/or local requirements, or special management recommendations which have been developed for species and/or habitatslocated on the site. (ix) If necessary, designate a maintenance corridor <u>outside of critical areas and their buffers</u> to provide an area for construction and maintenance of buildings and other structures. The standard width of the maintenance corridor shall 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-invasivespecies only; (B) Uncovered decks; (C) Building overhangs if such overhangs do not extend morethan 18 inches into the setbackarea; (D) Impervious ground surfaces, suchas driveways and patios; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; and (E) Trails.		

	(d) If necessary to ensure compliance with this Part, the Administrative Official may require additional information from the applicant, separate from the critical areassite assessment	(d) If necessary to ensure compliance with this Part, the Administrative Official may require additional information from the applicant, separate from the critical areassite assessment		
159-160	(5) General Mitigation Requirements. (a) Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to ensure nonet loss of ecological functions, prevent risk from a critical areas hazard, where applicable, and shall give adequate consideration to the reasonable and economically viable use of the property. (6) Financial Assurance. The Administrative Official shall require the mitigation proposed in the site assessment 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 may require financial assurance which will guarantee compliance with the mitigation plan if the mitigation proposed in the site assessment cannot be completed prior to finalapproval of the development permit. Financialassurance shall 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	(5) General Mitigation Requirements. (a) Mitigation. Where ~~All proposed~~ alterations to critical areas or associated buffers are permitted by this Shoreline Master Program to allow reasonable use of a property, they shall require mitigation sufficient to ensure no net lossof ecological functions and, prevent risk from a critical areas hazard~~, where applicable, and shall give adequate consideration to the reasonable and economically viable use of the property~~. (6) Financial Assurance. The Administrative Official shall require the mitigation proposedin the site assessment to be completed priorto final approval of the development permit.For all projects with an estimated mitigationcost of $10,000 or more, the Administrative Official ~~may~~ shall require financial assurancewhich will guarantee compliance with the mitigation plan if the mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an	*Consistent with the most current science, alterations of shoreline critical areas and buffers should be limitedto those instances where theShoreline Master Program would otherwise prevent all reasonable, economically viable use of the property.* *The financial assurance mustguarantee compliance with the mitigation plan. Per Ecology's SMP Handbook, counties must demonstrate that an alternate approach will address cumulative impacts and no net loss of shoreline ecological functions and will include:* · *Mitigation for any associated adverse impacts.* · *Significant public benefits,such as shoreline ecological restoration.* · *Significant public access to enhance opportunities*	

	Attorney, shall be in the amount of 125% of the estimated cost of the uncompleted actionsor construction, and shall be assigned in favor of Skagit County Planning and Development Services. The term of the financial assurance shall remain in place until the required mitigation is complete.	acceptable financial institution with terms andconditions acceptable to the County Prosecuting Attorney, shall be in the amount of 125% of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of Skagit County Planning and Development Services. The termof the financial assurance shall remain in placeuntil the required mitigation is complete.	*for the public to enjoy theshoreline.*	

14.26.520 Protected Critical Areas (PCA) Requirements

160 - 61	(2) PCA Field Identification and Buffer EdgeMarkers. (a) Temporary Markers. During construction phases of development, distinct temporary marking consisting offlagging and/or staking shall be maintained along the outer limits of thedelineated 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 shall be inspected by the Administrative Official 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	(2) PCA Field Identification and Buffer EdgeMarkers. (a) Temporary Markers. During construction phases of development, distinct temporary marking consisting offlagging and/or staking shall be maintained along the outer limits of thedelineated 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 shall be inspected by the Administrative Official 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	*To ensure that future activities will not harm critical area buffers and to avoid the significant expensefor future property owners ofre-marking critical area buffer boundaries, the County should not establish an exception to the permanent marker provisions.*	

	requirements prior to commencementof the permitted activity. (b) Permanent Buffer Edge Markers. Except as provided under Subsection (2)(b)(i) ofthis Section, the outer edges of all PCAs,with the exception of aquifer recharge areas, shall be clearly marked on-site bythe applicant or landowner with permanent stakes and critical areas markers. Critical areas markers may be either 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 shall be the responsibility of the landowner. (i) The Administrative Official may waive or modify the requirement for permanent buffer edge markers;provided, that any such decision shall be based on a site-specific determination that future verification of PCA locations will notbe 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.	requirements prior to commencementof the permitted activity. (b) Permanent Buffer Edge Markers. Exceptas provided under Subsection (2)(b)(i) ofthis Section, the outer edges of all PCAs,with the exception of aquifer recharge areas, shall be clearly marked on-site bythe applicant or landowner with permanent stakes and critical areas markers. Critical areas markers may be either 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 shall be the responsibility of the landowner. ~~(i) The Administrative Official may waive or modify the requirement for permanent buffer edge markers;provided, that any such decision shall be based on a site-specific determination that future verification of PCA locations will notbe 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.~~		

14.26.522 Hazard Tree Removal

164	(1) In a critical area or critical area buffer, removalof hazardous, diseased or dead trees and vegetation by the landowner may be permitted when necessary to: (a) Control fire; or (b) Halt the spread of disease or damaging insects consistent with the State Forest Practice Act, Chapter 76.09 RCW; or (c) Avoid a hazard such as landslides; or (d) Avoid a threat to existing structures oraboveground utility lines.	(1) In a critical area or critical area buffer, removalof hazardous, diseased or ~~dead~~ trees and vegetation by the landowner may be permitted when necessary to: a. ~~Control fire~~; or b. Halt the spread of disease or damaging insects consistent with the State Forest Practice Act, Chapter 76.09 RCW; or c. Avoid a hazard such as landslides; or d. Avoid an imminent threat of physical damage to an existing primary structure~~s~~or aboveground utility lines.	*We recommend that hazardtrees not be defined to include all trees that could contribute to fire because combustibility is an inherentcharacteristic of all trees, and thus any tree could be characterized as a hazard tree and be subject to removal.* *Tree removal should be limited to those that actuallypose a threat to a structure, and dead trees generally should be retained due to their high value habitat.*	
164	(2) Before hazardous, diseased or dead trees and vegetation may be removed by the landownerpursuant to Subsection (1) of this Section: a. Unless there is an emergency pursuant to SCC14.26.720, the landowner shall obtain prior written approval from Planning and Development Services. This consent shall be processed promptly and may not be unreasonably withheld. If the Administrative Official fails to respond to ahazard tree removal request within 10 business days, the landowner's request shall be conclusively allowed; and	(2) Before hazardous, diseased or dead trees andvegetation may be removed by the landowner pursuant to Subsection (1) of this Section: a. The landowner shall obtain and submit to Planning and Development Services a report from a qualified professional that:(1) the tree or trees sought to be removed have a high probability of falling due to disease; and (2) removal ofthe tree will halt the spread of disease ordamaging insects, avoid a hazard such as landslides, or avoid an imminent threat of physical damage to an existing	*This commonsense and broadly used measure willhelp ensure that only trulyhazardous trees will be removed.*	

	b. The removed tree or vegetation should be left within the critical areas or buffer unless the Administrative Official, or a qualified professional, warrants its removalto avoid spreading the disease or pests; and c. Any removed tree or vegetation shall be replaced by the landowner with an appropriate native species in appropriatesize. Replacement shall be performed consistent with accepted restoration standards for critical areas within 1 calendar year; d. For this Section only, a "qualified professional" shall mean a certified arborist, certified forester or landscape architect.	primary structure or aboveground utilitylines. b. Unless there is an emergency pursuant to SCC14.26.720, the landowner shall obtain prior written approval from Planning and Development Services. Thisconsent shall be processed promptly andmay not be unreasonably withheld. If the Administrative Official fails to respond toa hazard tree removal request within 10 business days, the landowner's request shall be conclusively allowed; and		

14.26.533 Wetland Protection Standards

166	(1) Wetland Buffer Widths. (a) Standard Wetland Buffers. Standard buffers are based on land use impact. Thefollowing standard buffers shall be required for regulated wetlands unless otherwise provided for in this Section:	(1) Wetland Buffer Setbacks. (a) New and expanded development shall besetback a minimum of 30 feet from the outer edge of wetland buffers to avoid the need to impact the buffer to conduct maintenance activities on that development or to clear trees inthe buffer to achieve defensible space around that development as a fire consideration.	*We recommend a 30-foot setback consistent with recommendations by state agencies, such as that foundat: DNR.wa.gov/fightingfire. This is also consistent with the National Fire Protection Association recommendations for preparing homes for wildlife.*[5]	

[5] Nation Fire Protection Association "preparing homes for wildfire" webpage, *available at*: https://www.nfpa.org/Public-Education/By-topic/Wildfire/Preparing-homes-for-wildfire (last visited June 7, 2021).

14.26.534 Wetland Performance-based Buffer Alternatives and Mitigation Standards

168	(2) Buffer Width Averaging. Buffer averaging allows limited reductions of buffer width in specified locations, while requiring increases inothers. Averaging of required buffer widths willbe 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 reasonablealternative is available; and (b) Averaging width will not adversely impactthe wetland functions and values; and (1) (c) The total area contained within the wetland buffer after averaging is no lessthan that contained within the standardbuffer prior to averaging; and (d) The buffer width shall not be reduced below 75% of the standard buffer width. (e)(e)	(2) Buffer Width Averaging. Buffer averaging allows limited reductions of buffer width in specified locations, while requiring increases inothers. Averaging of required buffer widths willbe allowed only if the applicant demonstrates that all of the following criteria are met: (a) Averaging is necessary to <u>achieve reasonable use of the parcel</u> ~~accomplishthe purpose of the proposal and no reasonable alternative is available~~; and (b) Averaging width will <u>improve</u> the wetland functions and values; and (c) The total area contained within the wetland buffer after averaging is no lessthan that contained within the standardbuffer prior to averaging; and (d) The buffer width shall not be reduced below 75% of the standard buffer width.	*These revisions are necessary for compliance with the most current scientific information.*[6] *According to that Ecology wetland guidance, buffer averaging would be limited tothose instances where it "will <u>improve</u> the protection of wetland functions, or if it is the only way to allow for reasonable use of a parcel."*[7] *In addition "[t]he width of thebuffer at any given point afteraveraging <u>should be no smaller than 75%</u> of the standard buffer."*[8] *Ecology's buffer approach is based on amoderate-risk approach with a medium likelihood of causing impacts.* *In describing the importance of buffers, the wetlands guidance states that, "[t]he scientific literature is unequivocal that* ***buffers are necessary to protect wetland functions*** *and values."*[9] *In*	

[6] Wash. Dept. of Ecology, *Wetland Guidance for CAO Updates, Western Washington Version*, Pub. No. 16-06-001, 13 (June 2016), attached hereto as Attachment U.
[7] <u>Id.</u> (emphasis added).
[8] <u>Id.</u> (emphasis added).
[9] ECY Guidance, at 11 (emphasis in original).

			*addition, "**Ecology's buffer recommendations are also based on the assumption that the buffer is well vegetated with native species appropriate to the ecoregion.**"[10] Where the buffer does not contain vegetation adequate to protect the wetland functions,it should either be planted or increased in size.[11]*	
169	(3) Buffer Width Decreasing. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in SCC 14.26.305. In allcircumstances 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 five-year monitoring and maintenance plan. (a) High impact land use projects may apply moderate intensity buffers if measures tominimize impacts to wetlands from high impact land uses are implemented. Someof 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	~~(4) Buffer Width Decreasing. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencingas required in SCC 14.26.305. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shallinclude replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five-year monitoring and maintenance plan.~~ ~~(b) High impact land use projects may applymoderate intensity buffers if measures to minimize impacts to wetlands from high impact land uses are implemented.Some of the measures that may be usedcan be found in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Appendix~~	*There is no science to support buffer width decreases generally.* *In addition, such decreases are inconsistent with the Washington Growth Management Hearings Board's decision in ReSources, Inc. v. City of Blaine, where it rejected buffer averaging that allowed reductions of 40% and 60%, even where "all anticipated impacts to the critical area and its requiredbuffer have been mitigated and, for averaging, the totalbuffer area is not reduced*	

[10] ECY Guidance, at 13.
[11] Id.

	(as updated in 2014), listed in the ImpactMinimization Measures table	~~8C (as updated in 2014), listed in theImpact Minimization Measures table~~	*below the area that would result from use of the standard buffer."[12] The Board noted the lack of BAS to justify the buffer reductions, and quoted with approval Ecology recommendations that, [t]hewidths of buffers may be averaged if this <u>will improve</u> <u>the protection</u> of wetland functions, or if it is the only way to allow for reasonable use of a parcel. <u>There is no</u> <u>scientific information</u> <u>available to determine if</u> <u>averaging the widths of</u> <u>buffers actually protects</u> <u>functions of wetlands</u>."[13]*	

14.26.535 Wetland Alternative Compensation Projects

171 - 72	(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 onwhich the wetland has been impacted by a regulated activity. The following conditions apply to off-site compensation: (a) Off-site compensation shall occur within shoreline jurisdiction of the same drainage	~~(1) Off-Site Compensation. On-site compensationis generally preferred over off-site compensation. Off-site compensation allows replacement of wetlands away from the site onwhich the wetland has been impacted by a regulated activity. The following conditions apply to off-site compensation:~~ ~~(a) Off-site compensation shall occur within shoreline jurisdiction of the same~~	*We recommend deletingsection 14.26.535 as inapplicable in a Critical Area.*	

[12] WWGMHB No. 09-2-0015, FDO, 17 (March 29, 2010).
[13] <u>Id.</u> (emphasis in original)

	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 stormwater storage function providedby Category IV wetlands must be providedfor within the design of the development project. (b) Off-site compensation can be allowed onlyunder 1 or more of the following circumstances: (i) On-site compensation is not feasibledue to hydrology, soils, or other physical factors; (ii) On-site compensation is not practical due to probable adverse impacts fromsurrounding land uses or would conflict with a Federal, State or local public safety directive; (iii) Potential functions and values at thesite of the proposed restoration are greater than the lost wetland functions and values; (iv) When the wetland to be altered is of alimited function and value and is degraded, compensation shall be of the wetland community types neededmost in the location of compensation and those most likely to succeed with the highest functions and values possible.	~~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 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 followingcircumstances:~~ ~~(i) On-site compensation is not feasibledue to hydrology, soils, or other physical factors;~~ ~~(ii) On-site compensation is not practical due to probable adverse impacts from surrounding land usesor would conflict with a Federal, State or local public safety directive;~~ ~~(iii) Potential functions and values at thesite of the proposed restoration are greater than the lost wetland functions and values;~~ ~~(iv) When the wetland to be altered is ofa limited function and value and is degraded, compensation shall 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.~~		

173	(4) Innovative Wetland Mitigation Projects. The Administrative Official may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation ormitigation banking are examples of innovativecompensation 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 organizationaland fiscal capability to act cooperatively; and (c) The group demonstrates that long-term management of the compensation areawill be provided; and (d) There is a clear potential for success of theproposed compensation at the identified compensation site; and (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	(4) Innovative Wetland Mitigation Projects. The Administrative Official may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation ormitigation banking are examples of innovativecompensation 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) <u>The innovative project is anticipated toreplace the same kind and type of functions and values and at a replacement ratio of 3:1.</u> (b) Creation of 1 or several larger wetlandsmay be preferable to many small wetlands; and (c) The group demonstrates the organizational and fiscal capability to actcooperatively; and (d) The group demonstrates that long-term management of the compensation areawill be provided; and (e) There is a clear potential for success ofthe proposed compensation at the identified compensation site; and (f) Wetland mitigation banking programs consistent with the provisions outlined inthe Department of Ecology's publications	*Given the experimental nature of innovative wetlandmitigation projects, we recommend that the replacement ratio include a margin for error.*	

	as a method of compensation for unavoidable, adverse wetland impactsassociated with future development.	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 compensationfor unavoidable, adverse wetland impacts associated with future development.		

14.26.540 Aquifer recharge areas intent

173	(2) Existing and future beneficial uses of groundwater shall be maintained and protected. Degradation of groundwater qualitythat would interfere with or become injurious to beneficial uses shall be avoided or minimized.	Existing and future beneficial uses of groundwatershall be maintained and protected. Degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided ~~or minimized~~.	*Consistent with Washington's drinking waterlaws, we recommend avoiding the degradation of groundwater quality that would interfere with beneficial use.*	
174	(3) Wherever groundwater is determined to be of ahigher quality than the criteria established for said waters under this Section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that: (a) An overriding consideration of the publicinterest will be served; and (b) All contaminants proposed for entry into said groundwater(s) shall be provided withall known, available, and reasonable methods of prevention, control, and treatment prior to entry.	(3) Wherever groundwater is determined to be ofa higher quality than the criteria established for said waters under this Section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such water~~s, except in those instances where it can be demonstrated that:~~ ~~(a) An overriding consideration of the publicinterest will be served; and~~ ~~(b) All contaminants proposed for entry into said groundwater(s) shall be provided withall known, available, and reasonable methods of prevention, control, and treatment prior to entry~~.	*Consistent with state water quality laws and principles ofanti-degradation, the SMP should not allow contamination of groundwater.*	

14.26.543 Aquifer recharge areas site assessment requirements

177	(3) Additional Site Assessment Elements. After theinitial project review, 1 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 siteassessment 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:	(3) Additional Site Assessment Elements. After the initial project review, 1 or more of the site assessment elements listed below ~~may~~ shall be required if warranted 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 ifthe 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:	*This language clarifies the intent to let site conditionsdictate when additional review should be required.*	

14.26.563 Geologically hazardous area mitigation standards.

195	The mitigation plan shall 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 14.26.562 and meet the provision for no net loss of ecological functions. The plan shall also make a recommendation for the minimum setback from thegeologic hazard. Mitigation plans shall 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 shall also address the	The mitigation plan shall be prepared by a qualified professional using Best Available Scienceand Best Management Practices and include a discussion on how the project has been designed to avoid and minimize the impacts discussed under SCC 14.26.562 and meet the provision for no net loss of ecological functions. The plan shall also make a recommendation for the minimum setback from the geologic hazard. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/orrestoration plan and/or other means for	*We recommend this changeas a reminder of the standards that apply to mitigation plans.*	**Partial change recommended** To 14.26.515 Standard Critical Areas Review and Site Assessment Procedures. (4)(b) The site assessment shall use scientifically valid methods and studies, using best available science and best management practices, in the analysis of critical areas data and field reconnaissance and reference the source of science used.

	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 and be implementedas a condition of project approval.	maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approvedby the Administrative Official and be implemented as a condition of project approval.		
196 - 97	(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 shall 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 shall be collected above the hazard and directedto the water by tight line drain and provided with an energy dissipating device at the point of discharge. (c) All proposals involving excavation and/orplacement of fill shall 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 shall not be sited within	(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 shall 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 shall be collected above the hazard and directed to the water by tightline drain and provided with an energy dissipating device at the point of discharge. (c) All proposals involving excavation and/orplacement of fill shall be subject to structural review under the appropriate provisions of the International Building Code (IBC) as amended by Skagit County.	*We recommend these underlined revisions to protect existing and future owners of the properties to be altered and the propertiesthat would be affected by those alterations.*	

	designated geologically hazardous areas with the exception of volcanic hazard areas. No critical facilities shall be locatedwithin 1/4 mile of an active fault. (e) All infiltration systems, such as stormwaterdetention 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 indicatessuch facilities or systems will not affect slope stability. (f) Existing vegetation shall be maintained in landslide and erosion hazard areas and associated buffers. Any replanting that occurs shall consist of native trees, shrubs,and ground cover that is compatible with the existing surrounding native vegetation,meets the objectives of erosion preventionand 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, shall not be subject to these requirements. (g) A minimum buffer width of 30 feet shall beestablished 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	(d) Critical facilities as defined under Chapter 14.04 SCC shall not be sited within designated geologically hazardousareas with the exception of volcanic hazard areas. No critical facilities shall belocated 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 orsystems will not affect slope stability. (f) Existing vegetation shall be maintained in landslide and erosion hazard areas andassociated buffers. Any replanting that occurs shall consist of native trees, shrubs, and ground cover that is compatible with the existing surroundingnative 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, shall not be subject to these requirements. (g) <u>The proposed alteration includes all appropriate measures to avoid,</u>		

	minimum buffer shall be 50 feet. The buffer may be increased by the Administrative Official for development adjacent to a marine bluff or ravine whichis designated as Unstable in the Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978) or where the Administrative Official determines a largerbuffer is necessary to prevent risk of damage to existing and proposed development (h) Structural development proposals within seismic hazard areas shall meet all applicable provisions of the IBC as amended by Skagit County. The Administrative Official shall evaluate documentation submitted pursuant to SCC14.26.562(2) and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions shall be based onknown, available, and reasonable methodsof prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal. (i) No residential structures shall be located ingeologic hazard areas or their buffers if that hazard cannot be fully mitigated.	eliminate, reduce, or otherwise mitigaterisks to health and safety. (h) A minimum buffer width measuring the same width as the height of the slope ~~of 30 feet~~ shall 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 reliefgreater than 50 feet, the minimum widthof the buffer shall be 1.5 times the height of the slope~~50 feet~~. The buffer may be increased by the Administrative Official 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 where the Administrative Official determines a larger buffer is necessary to prevent risk of damage to existing and proposed development (i) Structural development proposals withinseismic hazard areas shall meet all applicable provisions of the IBC as amended by Skagit County. The Administrative Official shall evaluate documentation submitted pursuant to SCC 14.26.562(2) and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions shall be based on known, available, and		

		reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitutegrounds for denial of the proposal. (j) No ~~residential~~ habitable structures shallbe located in geologic hazard areas or their buffers ~~if that hazard cannot be fully mitigated~~. (k) Structures and improvements shall minimize alterations to the slope contour, and shall be designed to minimize impervious lot coverage unlesssuch alterations or impervious surfaces are needed to maintain slope stability. (l) The development will not decrease slopestability on adjacent properties. The development shall not increase the risk or frequency of landslide occurrences. (m) The development will not increase or concentrate surface water discharge orsedimentation to adjacent properties beyond predevelopment conditions. (n) The development is outside of the area of potential upslope or downslope surface movement or potential deposition in the event of a slope failure. (o) The proposed alterations will not adversely impact other critical areas.		
197	(2) Landslide or Erosion Hazard Buffer Reduction. Buffers of landslide or erosion hazardareas maybe reduced to a minimum of 10 feet for	~~(2) Landslide or Erosion Hazard Buffer Reduction. Buffers of landslide or erosion hazardareas may be reduced to a minimum~~	*This section should be stricken to avoid increasingthe risk of harm to people*	

	development meeting all of thefollowing criteria:	~~of 10 feet for development meeting all ofthefollowing criteria:~~	*and development.*	

14.26.573 Fish and wildlife habitat conservation area protection standards.

201	(1) Riparian Buffers. Riparian buffersapply only to streams and rivers. (a) Intent of Riparian Buffers. Theintent 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 createshabitat 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 temperaturesand influences the availability of oxygen for salmon/trout and other aquatic organisms. (iii) Bank Integrity (Root Reinforcement). Bank	(1) Riparian Buffers. Riparian buffersapply only to streams and rivers. (a) Intent of Riparian Buffers. Theintent of riparian buffers is to protect the following ~~5~~ 7 basicriparian forest functions that influence in-stream and near- stream habitat quality: i. Recruitment of Large Woody Debris (LWD) to theStream. 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 temperaturesand influences the availability of oxygen for salmon/trout and other aquatic organisms. iii. Bank Integrity (Root Reinforcement). Bank integrity helps maintain	*These additions to the functions are from all BAS, but taken directly from James S. Brennan, Marine Riparian Vegetation Communities of Puget Sound,Puget Sound Nearshore Partnership Technical Report 2007-02, 1-2 (2007).*[14] *In addition, this language does not indicate how lakeside ecological transition zones between aquatic and terrestrial habitats are protected or How lakeside vegetation functions and values such as shade, bank integrity, runoff filtration andwildlife habitat are protected.*	**Change recommended**. A detailed review of BAS, including riparian areas, was completed as part of the County's critical areas ordinance update. The County acknowledges that since that time, the Washington Department of Fish and Wildlife (WDFW) has issued new management recommendations for riparian management zones. The County recommends including the suggested additional language as subsections vi and vii: vi. Microclimate. Riparian vegetation creates small-scale microclimates upon which plants, fish, and wildlife depend. vii. Nutrient inputs. Riparian vegetation supports substantial populations ofinsects, which are important for the diet of marine fishes like juvenile salmon.

[14] Attached to the associated letter as Attachment V.

	integrity helps maintain habitat quality and waterquality by reducing bank erosion and creating habitat structure and in- stream hiding cover for salmon/trout and other aquatic organisms. (iv) Runoff Filtration. Filtrationof nutrients and sedimentsin runoff (surface and shallow subsurface flows) helps maintain water quality. (v) Wildlife Habitat. Functionalwildlife habitat for riparian-dependent speciesis based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.	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. Filtrationof nutrients and sedimentsin runoff (surface and shallow subsurface flows) helps maintain water quality. v. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is basedon sufficient amounts of riparian vegetation to provide protection for nesting and feeding. vi. Microclimate. Riparian vegetation creates small-scale microclimates uponwhich plants, fish, and wildlife depend. vii. Nutrient inputs. Riparian vegetation supports substantial populations ofinsects, which are important for the diet of marine fishes like juvenile salmon.		

<table>
<tr>
<td>201-202</td>
<td>(c) Standard Riparian Buffer Widths.Riparian areas have the following standard buffer widths:
<table>
<tr><th>DNR Water Type</th><th>Riparian Buffer</th></tr>
<tr><td>S</td><td>See SCC 14.26.310</td></tr>
<tr><td>F > 5 feet wide*</td><td>150 feet</td></tr>
<tr><td>F ≤ 5 feet wide*</td><td>100 feet</td></tr>
<tr><td>Np</td><td>50 feet</td></tr>
<tr><td>Ns</td><td>50 feet</td></tr>
</table>
*Bankfull width of the defined channel(WAC 222-16-010).</td>
<td>(c) Standard Riparian Buffer Widths. Buffer widths in ~~R~~riparian areas shall be equal to or greater than the Site Potential Tree Height (SPTH) for the area where the buffer is located.~~have the following standard buffer widths:~~
<table>
<tr><th>~~DNR Water Type~~</th><th>~~Riparian Buffer~~</th></tr>
<tr><td>~~S~~</td><td>~~See SCC 14.26.310~~</td></tr>
<tr><td>~~F > 5 feet wide*~~</td><td>~~150 feet~~</td></tr>
<tr><td>~~F ≤ 5 feet wide*~~</td><td>~~100 feet~~</td></tr>
<tr><td>~~Np~~</td><td>~~50 feet~~</td></tr>
<tr><td>~~Ns~~</td><td>~~50 feet~~</td></tr>
</table>
~~*Bankfull width of the defined channel(WAC 222-16-010).~~</td>
<td>We recommend that Skagit County apply buffer widths similar to the most current, accurate, and complete scientific and technical information available, which is the Washington Department of Fish and Wildlife's Riparian Ecosystem management recommendations.[15] WDFW recommends applying Riparian Management Zones similar to buffers, and sized the same regardless of stream type, to protect 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."[16] In addition, WDFW found that non-fish-bearing streams: (1) support a unique community of aquaticand riparian-obligate wildlife; (2) provide movement corridors for wildlife, particularly in the face of changing climate conditions; (3) provision fish-bearing streams with matter and energy; and (4) provide cool water to downstream reaches. These RMZs should be based on site potential tree height,</td>
<td></td>
</tr>
</table>

[15] WDFW, *Riparian Ecosystems, Volume 2: Management Recommendations*, 7-8 (Dec. 2020) (hereafter "Riparian Recommendations").

[16] WDFW, *Riparian Ecosystems, Volume 2: Management Recommendations*, 7-8 (Dec. 2020) (hereafter "Riparian Recommendations").

			and the following should be avoided within them: (1) clearing, grading, and filling; (2) new development that would require bank hardening; (3) on-site sewage systems without habitat monitoring plans; or (4) removal of hazard trees without proper evaluation and avoidance and minimization of impacts.[17] *In addition, WDFW notes that its recommendations for RMZs apply to urban areas as well as non-urban areas.*[18] *In addition, the RMZs should begin at the outer edge of the Channel, Channel Migration Zone, or active floodplain, whichever is wider.*[19] *According to WDFW, "[p]rotection and restoration of riparian ecosystems continues to be critically important because: (a) they are disproportionately important, relative to area, for aquatic species (e.g., salmon) and terrestrial wildlife; (b) they provide ecosystem services such as water purification and fisheries…; and (c) by interacting with watershed-scale processes, they contribute to the creation and maintenance of aquatic habitats.*[20]	

[17] *Id.* at 25-27.
[18] *Id.* at 29-30.

[19] *Id.* at 5.
[20] *Id.* at 4.

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

202	(1) Buffer Width Increasing. The Administrative Official may require the standard buffer width to be increased or to establish a nonriparian buffer, when such buffers are necessary for 1 ofthe following: (a) To protect priority fish or wildlife using theHCA. (b) To provide connectivity when a Type S or Fwater 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;	(1) Fish and Wildlife Habitat Conservation Areas Buffer Setbacks. (a) New and expanded development shall besetback a minimum of 30 feet from the outer edge of wetland buffers to avoid the need to impact the buffer to conduct maintenance activities on that development or to clear trees inthe buffer to achieve defensible space around that development as a fire consideration.	*We recommend a 30-foot setback consistent with recommendations by state agencies, such as that foundat: DNR.wa.gov/fightingfire,as well as WDFW's Riparian Handbook. This is also consistent with the NationalFire Protection Association recommendations for preparing homes for wildlife.*[21]	

[21] Nation Fire Protection Association "preparing homes for wildfire" webpage, *available at*: https://www.nfpa.org/Public-Education/By-topic/Wildfire/Preparing-homes-for-wildfire (last visited June 7, 2021).

204	(2) Buffer Width Averaging. Buffer width averagingallows limited reductions of buffer width in specified locations, while requiring increases inothers. Averaging of required buffer widths shall be allowed only where the applicant demonstrates to the Administrative Official that all of the following criteria are met: (a) Averaging is necessary to accomplish the purpose of the proposal and no reasonablealternative is available; and (b) The habitat contains variations in sensitivity due to existing physicalcharacteristics; and (c) Averaging will not adversely impact thefunctions and values of fish and wildlifeconservation areas; and (d) Averaging meets performance standardsfor protecting fish species; and (e) The total area contained within the bufferafter averaging is no less than that contained within the standard buffer priorto averaging; and (f) The buffer width shall not be reduced below 75% of the standard buffer width.	(2) Buffer Width Averaging. Buffer width averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. Averaging of required bufferwidths shall be allowed only where the applicantdemonstrates to the Administrative Official that all of the following criteria are met: (a) Averaging is necessary to achieve reasonable use of the parcel ~~accomplishthe 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 width will improve the wetland functions and values; and (d) Averaging meets performance standardsfor protecting fish species; and (e) The total area contained within the buffer after averaging is no less than thatcontained within the standard buffer prior to averaging; and The buffer width shall not be reduced below ~~75%~~25% of the standard buffer width.	*These revisions are necessary for compliance with the most current science, as noted above, which is Wash. Dept. of Ecology, Wetland Guidancefor CAO Updates, Western Washington Version, Pub. No. 16-06-001, 13 (June 2016).*	.

	(e) 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 allof the performance standards based upon water type listed in the table below. In conformance with professional standards usedby the Washington Department of Natural Resources for forest practices in sensitive areas, all removal of timber within HCA buffersshall be subject to conditioning specified by the Administrative Official 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. 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, cannotmeet these standards, then the AdministrativeOfficial 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	(e) ~~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 uponwater 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 be subject to conditioning specified by the Administrative Official 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.~~ ~~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 itcan 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 will not be able togive its approval for any activity which would inhibit recovery of or degrade the current buffer.~~	*We recommend removing this section because there is no BAS to allow logging in buffers generally and trees should be protected where possible to provide functions to FWHCAs like moderating water temperatures. For example, the Department of Ecology found in March 2020that the eight Lower Skagit tributaries are impaired under the Clean Water Act, with water temperatures exceeding Total Maximum Daily Loads. Efforts to improve water temperature, an important variable in salmon survival, have fallen short because of the inabilityto reach voluntary tree planting goals within riparian buffers. The Puget Sound Partnership Leadership Council adopted a resolution to implement a strategy to improve the situation but it failed.* *Tree retention also provides carbon sequestration benefits that address climatechange.*	

	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 soilsurvey, 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 beallowed provided the following performance standards can be met. For Type S streams, analternative method may be utilized to allow limited timber harvest within the outer 100 feet of a 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 froma mature stand of those species establishedon site:~~ ~~If the current stand can exceed the riparianprotection that could be expected based onsite potential, then additional activity may be allowed provided the following performance standards can be met. For Type S streams, an alternative method maybe utilized to allow limited timber harvest within the outer 100 feet of a buffer:~~		

14.26.575 Additional Provisions for Fish and Wildlife Habitat Conservation Areas

206	(2) Critical Saltwater Habitat Standards. Any proposed uses or modifications may not intrude into or over critical saltwater habitatsexcept when all of the conditions below are met: (a) The public's need for such an action or structure is clearly demonstrated and the	(2) ~~Critical Saltwater Habitat Standards. Any proposed uses or modifications may not intrude into or over critical saltwater habitatsexcept when all of the conditions below are met:~~ ~~(e) The public's need for such an action or structure is clearly demonstrated and~~	*We recommend removing this section because there is no BAS that suggests that destruction of critical saltwater habitats is permissible in exchange for an unspecified "public need."*	

	proposal is consistent with protection ofthe public trust, as embodied in RCW 90.58.020; (b) Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost toaccomplish the same general purpose; (c) The project, including any required mitigation, will result in no net loss of ecological functions associated with criticalsaltwater habitat; and (d) The project is consistent with the state's interest in resource protection and speciesrecovery.	~~the proposal is consistent with protection of the public trust, asembodied in RCW 90.58.020;~~ ~~(f) Avoidance of impacts to critical saltwaterhabitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;~~ ~~(g) The project, including any required mitigation, will result in no net loss ofecological functions associated with critical saltwater habitat; and~~ ~~(h) The project is consistent with the state'sinterest in resource protection and species recovery.~~		
206-207	(4) The following additional activities may bepermitted within fish and wildlife HCAs: (a) Water-dependent uses. Consistent with the use allowances for each environment designation, water-dependent uses and activities may be located at the OHWM oras prescribed by conditions added to a permit. (i) Uses, developments, and activities accessory to water-dependent uses should be located outside any applicable standard or reduced shoreline buffer unless at least one ofthe following is met: (A) a location in the buffer is necessary for operation of the	(4) The following additional activities may bepermitted within fish and wildlife HCAs: (a) Water-dependent uses. Consistent with the use allowances for each environmentdesignation, water-dependent uses and activities may be located at the OHWM or as prescribed by conditions added to apermit. i. Uses, developments, and activities accessory to water-dependent uses~~should~~ shall be located outside anyapplicable standard or reduced shoreline buffer unless all of the following conditions apply ~~at least one of the following is met~~:	*This section requires the recommended sideboards to prevent unnecessary impactsto critical habitats.*	

	water- dependent use or activity(e.g., a road to a boat launch facility);	(B) the water-dependent use or activity is essential for the public welfare and a location inthe buffer is necessary for operation of the water- dependent use or activity (e.g., a road to a boat launch facility);		

Part VI: Legally Established Pre-Existing Uses and Structures

14.26.610 Purpose and Applicability

209	(1) Purpose. Consistent with RCW 90.58.620 and WAC 173-27-080, shoreline uses and developments that were legally established prior to the effective date of this SMP, but do not conform to the regulations of this SMP, enjoy certain limited rights to continuation, maintenance, and expansion. Single-family residences and appurtenant structures, located landward of the OHWM, that were legally established prior to the effective date of this SMP but do not conform to the regulations of this SMP, are considered conforming structures and uses for purposes of this SMP.	(1) Purpose. Consistent with RCW 90.58.620 and WAC 173-27-080, shoreline uses and developments that were legally established prior to the effective date of this SMP, but do not conform to the regulations of this SMP, enjoy certain limited rights to continuation, maintenance, and expansion. ~~Single-family residences and appurtenant structures, located landward of the OHWM, that were legally established prior to the effective date of this SMP but do not conform to the regulations of this SMP, are considered conforming structures and uses for purposes of this SMP.~~	*We recommend removal of this provision because previously-developed structures that are inconsistent with current regulations are, by definition, nonconforming, and this appellation allows their continued use.*	

14.26.620 Pre-Existing Single-Family Residences and Appurtenant Structures

209-210	(3) Enlargement or expansion. A pre-existing residential or appurtenant structure that is nonconforming with respect to dimensional	(3) Enlargement or expansion. A pre-existing residential or appurtenant structure that is nonconforming with respect to dimensionalstandards may be enlarged or expanded in	*We recommend this additionfor consistency with the most current science and to provide clear notice to landowners of the*	

	standards may be enlarged or expanded inaccordance with the following provisions. (a) Minor. Enlargement or expansion by the addition of space to the main structure, or by the addition of space to an appurtenantstructure, may be approved by the Administrative Official if all of the followingcriteria are met: (i) the enlargement does not extend farther waterward than the existing primary residential structure or fartherinto the minimum side yard setback; (ii) the enlargement does not expand thefootprint of the existing structure by more than 200 square feet; (iii) the enlargement does not cause the existing structure to exceed the heightlimit, or in the case of an existing over-height structure, the enlargement does not increase the structure's existing height; (iv) potential adverse impacts to shorelineor critical area ecological functions or processes from the expansion are mitigated on site, in accordance with SCC 14.26.305; and (v) any applicable requirements of SCC 14.34 are met.	accordance with the following provisions. (a) Minor. Enlargement or expansion by theaddition of space to the main structure, or by the addition of space to an appurtenant structure, may be approvedby the Administrative Official if all of thefollowing criteria are met: (i) the enlargement does not extend farther waterward than the existingprimary residential structure or farther into the minimum side yardsetback; (ii) the enlargement does not extend further into critical areas or their associated buffers or setbacks; (iii) the enlargement does not expand the footprint of the existing structure by more than 200 squarefeet; (iv) the enlargement does not cause theexisting structure to exceed the height limit, or in the case of an existing over-height structure, the enlargement does not increase the structure's existing height; (v) potential adverse impacts to shoreline or critical area ecologicalfunctions or processes from the expansion are mitigated on site, in accordance with SCC 14.26.305; and	*parameters for expansion.*	

		(vi) any applicable requirements of SCC 14.34 are met.		

Part VII: Administration

14.26.710 Applications

215	(2) Application Level. Shoreline applications areclassified by application level in SCC Chapter 14.06 Permit Procedures. (a) Shoreline exemptions are a type ofLevel I application. A Notice of Development Application is not required for shoreline exemptions.	(2) Application Level. Shoreline applications areclassified by application level in SCC Chapter 14.06 Permit Procedures. (a) Shoreline exemptions are a type of Level Iapplication. A Notice of Development Application is ~~not~~ required for shoreline exemptions.	*Consistent with every otherLevel I and Level II decision,letters of exemption must require public notice.*	

14.26.730 Conditional Use Permit

219-220	(2)Review Criteria. A Shoreline ConditionalUse Permit may be granted only if the applicant can demonstrate all of the following: (b) That the proposed use will be consistent with the policies of RCW 90.58.020, WAC 173-27- 160, and the policies of this SMP;and with the regulations in any applicable use sections in Part IV; (c) That the proposed use will not interfere with the normal publicuse of public shorelines; (d) That the proposed use of the siteand design of the project is compatible with other authorized uses within the area and with	(2) Review Criteria. A Shoreline Conditional UsePermit may be granted only if the applicant candemonstrate all of the following: (a) That the proposed use will be consistent with the policies of RCW 90.58.020, WAC 173-27- 160, and the policies of this SMP;and with the regulations in any applicable use sections in Part IV; (b) <u>The proposal is appropriate in design, character and appearance with the goals andpolicies for the land use designation in which the proposed use is located;</u>	*We recommend these revisions for consistency withstandard CUP criteria.*	

	uses planned for the area underthe comprehensive plan and thisSMP; (e) That the proposed use will resultin no significant adverse effects or a net loss to the shoreline environment in which it is to be located; (f) That the public interest will sufferno substantial detrimental effect;and (g) That the proposed use will not result in substantial adverse effects or net loss of shoreline ecosystem functions and that consideration has been given tothe cumulative impact of additional requests for like actions in the area	(c) That the proposed use will not interfere with the normal publicuse of public shorelines; (d) That the proposed use of the siteand design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP; (e) That the proposed use will resultin no significant adverse effects or a net loss to the shoreline environment in which it is to be located; (f) That the public interest will suffer no ~~substantial~~ significantdetrimental effect; and (g) That the proposed use will not result in substantial adverse effects or net loss of shoreline ecosystem functions and that consideration has been given tothe cumulative impact of additional requests for like actions in the area (h) The cumulative impact of additional requests for like actions (the total of the conditional uses over time orspace) will not produce significant adverse effects to the		

		environment that cannot bemitigated by conditions of approval; (i) Approval of the proposed use will not confer a special privilegeon the applicant that is not enjoyed by others in the vicinity of the property.		

14.26.735 Shoreline Variance

220	(2) Types. There are two types of variances: administrative variances and Hearing Examinervariances. (a) Administrative variance. An application to reduce a standardbuffer width by 50% or less is an administrative variance. (b) Hearing Examiner variance. Any othervariance application, e.g., for relief from specific bulk, dimensional, or performance standards of this SMP, isa Hearing Examiner variance.	(2) Types. There are two types of variances: administrative variances and Hearing Examiner variances. (a) Administrative variance. An application to reduce a standard buffer width by ~~50~~25% or less is an administrative variance. (b) Hearing Examiner variance. Any other variance application, e.g., forrelief from specific bulk, dimensional, or performance standards of this SMP, is a HearingExaminer variance.	*To avoid granting excess discretion at the staff level and to ensure proper public review of significant variancerequests, we recommend limiting the amount of variance that may be approved by staff to a maximum of 25%.*	
221	(4) Review Criteria. These criteria apply to the review of both administrative and HearingExaminer variances. (a) The Shoreline Variance may be authorized only if the structure will not obstruct views from public property or asubstantial number of residences, as informed by the view analysis.	(4) Review Criteria. These criteria apply to the review of both administrative and HearingExaminer variances. (a) The Shoreline Variance may beauthorized only if the structurewill not obstruct views from public property or a substantial	*We recommend the proposed revisions for clarityand to avoid impacts to wetlands, a critical area.*	

	(b) Per WAC 173-27-170(2), for development or a use to be located landward of the OHWM, or landward ofany wetland as defined in RCW 90.58.030(2)(h), a variance may be authorized if the applicant can demonstrate all of the following: (i) That the strict application of the bulk, dimensional, or performance standards set forth in this SMP precludes, or significantly interfereswith, reasonable use of the property; (ii) That the hardship described in criterion (i) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this SMP, and not,for example, from deed restrictions or the applicant's own actions; (iii) That the design of the project is compatible with other authorized uses within the area and with usesplanned for the area under the comprehensive plan and this SMP and will not cause adverse impactsto the shoreline environment; (iv) That the variance will not constitutea grant of special privilege not	number of residences, as informed by the view analysis. (b) Per WAC 173-27-170(2), for development or a use to be located landward of the OHWM, or landwardof any wetland as defined in RCW 90.58.030(2)(h), a variance may be authorized <u>only</u> if the applicant can demonstrate all of the following: (i) That the strict application of the bulk, dimensional, or performancestandards set forth in this SMP precludes, or significantly interferes with, reasonable use of the property; (ii) That the hardship described in criterion (i) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this SMP, and not, for example, from deed restrictions or the applicant's own actions; (iii) That the design of the project is compatible with other authorized uses within the area and with usesplanned for the area under the comprehensive plan and this SMP and will not cause adverse impacts to the shoreline environment;		

	enjoyed by the other properties inthe area; (v) That the variance requested is the minimum necessary to afford relief;and (vi) That the public interest will sufferno substantial detrimental effect. (c) Per WAC 173-27-170(3), for development or a use to be located waterward of the OHWM, or within anywetland as defined in RCW 90.58.030(2)(h), a variance may be authorized if the applicant can demonstrate all of the following: (i) That the strict application of the bulk, dimensional, or performancestandards set forth in this SMP precludes all reasonable use of the property; (ii) That the proposal is consistent withthe other review criteria of subsections (a) and (b)(ii) – (vi) above; and_ (iii) That the public rights of navigationand use of the shorelines will not be adversely affected.	(iv) That the variance will not constitute a grant of special privilege not enjoyed by the otherproperties in the area; (v) That the variance requested is theminimum necessary to afford relief; and (vi) That the public interest will sufferno substantial detrimental effect. (c) Per WAC 173-27-170(3), for development or a use to be locatedwaterward of the OHWM~~, or withinany wetland as defined in RCW 90.58.030(2)(h)~~, a variance may be authorized if the applicant can demonstrate all of the following: (i) That the strict application of thebulk, dimensional, or performance standards set forthin this SMP precludes all reasonable use of the property; (ii) That the proposal is consistent with the other review criteria of subsections (a) and (b)(ii) – (vi) above; and_ (iii) That the public rights of navigation and use of the shorelines will not be adversely affected.		

14.26.780 Permit Appeals

224	(1) Administrative appeals must be in accordance with SCC Chapter 14.06. Where standards or procedures in this Part differ fromthose in SCC Chapter 14.06, the provisions of this Part control. (a) Any person aggrieved by the granting, denying, rescinding or revision of a conditional use, or Hearing Examiner shoreline variance permit may request a reconsideration before the Hearing Examiner or submit an appeal to the Board of County Commissioners in accordance with SCC 14.06, provided allrequests for reconsideration or appeals must be submitted within five days of the date of the Hearing Examiner's written decision, or decision after reconsideration.	(1) Administrative appeals must be in accordance with SCC Chapter 14.06. Wherestandards or procedures in this Part differ from those in SCC Chapter 14.06, the provisions of this Part control. (a) Any person aggrieved by the granting, denying, rescinding or revision of a conditional use, or Hearing Examiner shoreline variance permit may request a reconsideration before the Hearing Examiner or submit an appeal to the Board of County Commissioners in accordance with SCC 14.06, provided all requests for reconsideration or appeals must be submitted within ~~five~~ fourteen days of the date of the Hearing Examiner's written decision, or decision after reconsideration.	*We recommend revising the time period for filing an administrative appeal from five to fourteen days to ensure adequate opportunityto appeal and to address dueprocess considerations.*	

14.26.790 Monitoring

224 - 25	(1) Skagit County must track all shoreline permitsand exemption activities to evaluate whetherthis SMP is achieving no net loss of shoreline ecological functions. (2) Consistent with WAC 173-26-201(2)(b), SkagitCounty must conduct system-wide monitoringof shoreline conditions and development activity that occur in shoreline jurisdiction outside of critical areas and their buffers, whenever practical. Such monitoring should include permit tracking of development,	(2) Consistent with WAC 173-26-201(2)(b), SkagitCounty must conduct system-wide monitoring of shoreline conditions and development activity that occur in shoreline jurisdiction ~~outside of critical areas and their buffers, whenever practical~~. Such monitoring ~~should~~ must include ~~permit~~ tracking of	*We recommend the proposed revisions to helpidentify all areas of necessary information.* *With regard to 14.26.790, we have not seen evidence inthis process of a tracking mechanism for all shoreline permits and exempt activities.*	

	conservation, restoration, and mitigation, such as: (b) new shoreline development; (c) Shoreline Variances and the nature of thevariance; (d) compliance issues; (e) net changes in impervious surface areas,including associated stormwater management; (f) net changes in fill or armoring; (g) net change in linear feet of levee and distance between OHWM and any levees; (h) net changes in vegetation including in areaand character. (3) Using this information and information about the outcomes of other actions and programs ofother County departments, the Administrative Official must prepare a no-net-loss report everyeight years as part of the SMP evaluation or Comprehensive Plan Update process. If the no- net-loss report shows degradation of the baseline condition documented in the County'sShoreline Analysis Report (2012), the Administrative Official must propose changes to this SMP, or Shoreline Restoration Plan, or both, at the time of the eight-year update to prevent further degradation and address the loss of ecological function.	conditions of approval, mitigation requirements, and required landowner maintenance and/or monitoring responsibilities for all approvals, including thefollowing development or information, ~~conservation, restoration, and mitigation, such as~~: (a) new shoreline development; (b) Shoreline Variances and the nature of thevariance; (c) shoreline conditional use permits; (d) shoreline development approvedpursuant to an exemption; (e) compliance issues; (f) net changes in impervious surface areas,including associated stormwater management; (g) net changes in fill or armoring; (h) net change in linear feet of levee and distance between OHWM and any levees;and (i) net changes in vegetation including inarea and character.	*With regard to 14.26.790(3),we have not seen a no net loss report as part of this SMP update process notwithstanding that it is a required component.*	