

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN REGION
STATE OF WASHINGTON

EVERGREEN ISLANDS; JAN M
EDELSTEIN and FRIENDS OF SKAGIT
COUNTY,

Petitioner,

v.

SKAGIT COUNTY,

Respondent.

Case No. 26-2-0004c

FINAL DECISION AND ORDER

SYNOPSIS

Evergreen Islands (Evergreen), Jan M Edelstein and Friends of Skagit County (FOSC) challenged Skagit County's 2025 Critical Areas Ordinance update, Ordinance No. O20250011 ("Ordinance," "Update," or "Update Ordinance"). The Board concluded that, with the exception of the stream buffer provisions of Skagit County Code (SCC) 14.24.530 (Evergreen's Issue #5), Petitioners have failed to carry their burden of proving the Update is not compliant with the Growth Management Act. However, as to 14.24.530, that section fails to sufficiently protect existing functions and values of critical areas.

I. INTRODUCTION

Throughout 2025, Skagit County worked towards an update of its Critical Areas Ordinance (CAO), as required by RCW 36.70A.130(1), RCW 36.70A.060(2), and RCW 36.70A.172. These regulations were adopted via Ordinance No. O20250011 that was enacted on November 15, 2025 and was effective immediately. This appeal followed.

II. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board also finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to thereto are presumed valid upon adoption.¹ This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by a county is not in compliance with the Growth Management Act (GMA).² The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.³

The scope of the Board's review is limited to determining whether a county has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.⁴ The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.⁵

IV. ANALYSIS AND DISCUSSION

Issues raised by Petitioner Evergreen Islands

Issue No. 1. Does SCC 14.24.230(7)(a)⁶ of the Update depart from the Best Available Science without reasoned justification and fail to protect the functions and values of wetlands, and thereby fail to comply with RCW 36.70A.020(9, 10), .040(3), .060(2, 3),

¹ RCW 36.70A.320(1).

² RCW 36.70A.320(2).

³ RCW 36.70A.280, RCW 36.70A.302.

⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3). In order to find a county's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

⁶ The text of the challenged section is found in Appendix A.

1 .130(1), .170 and .172(1) and WAC 365-195-915, where it exempts selected Category IV
2 wetlands up to 4,000 square feet from the requirement to follow the mitigation
3 sequence's first step to avoid impacts?

4 Issue No. 2. Does SCC 14.24.230(7)(b)⁷ of the Update depart from the Best Available
5 Science without reasoned justification and fail to protect the functions and values of
6 wetlands, and thereby fail to comply with RCW 36.70A.020(9, 10), .040(3), .060(2, 3),
7 .130(1), .170 and .172(1) and WAC 365-195-915, where it authorizes the County to allow
8 development of buffers for any wetland up to 1,000 square feet in size?

9 Evergreen argues that the County did not include Best Available Science (BAS) when
10 it adopted the Update's wetland exemptions and they do not protect wetland functions.⁸
11 Evergreen notes that the Update authorizes developers to skip the avoidance step in the
12 mitigation sequence for impacts to Category IV wetlands up to 4,000 square feet and to
13 develop buffers for all wetlands up to 1,000 square feet, yet the County staff reports fail to
14 discuss whether those exemptions are consistent with BAS.⁹

15 Evergreen points out that the Update differs from Department of Ecology's (Ecology)
16 sample regulations by omitting the prescription to mitigate the impacts "through the purchase
17 of credits from a mitigation bank or in-lieu fee program, if available...." The Update also does
18 not expressly require a critical area report for these exemptions.

19 Evergreen argues the County does not include BAS or offer a reasoned justification for
20 allowing the development of Category IV wetlands up to 4,000 square feet or eliminating
21 buffers for all wetland types up to 1,000 square feet, and does not protect wetland functions
22 and values.

23 Finally, Evergreen asserts that these exemptions rely on the false promise of
24 compensatory mitigation for these impacts even though compensatory mitigation has been
25 demonstrated to fail to achieve no net loss in many instances.

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31 ⁷ The text of the challenged section is found in Appendix A.

32 ⁸ Evergreen Islands Opening Brief (referred to here and after as EI Opening Br.) at 15-17.

⁹ EI Opening Br. at 15-16.

1 In response, the County argues that SCC 14.24.230(7)(a)'s exemption of certain small
2 and isolated Category IV wetlands from the first step of the mitigation sequencing requirement
3 mirrors Ecology's sample wetland regulations and thus follows BAS and protects the functions
4 and values of wetlands.¹⁰

5 The Board finds that that Evergreen did carry its burden on this issue because the
6 Update implemented Ecology's 2022 guidance on wetlands, which we find reflects BAS, and
7 protects the functions and values of wetlands. The County points to the recent Board decision
8 of *Futurewise et al. v. Snohomish County* in which petitioners argued the county failed to
9 protect the ecological functions and values of small and isolated wetlands by allowing
10 development without requiring avoidance in certain categories of wetlands.¹¹ The Board in
11 *Snohomish* found the petitioners failed to carry their burden because the County followed
12 BAS in Ecology's 2022 guidance and the scientific evidence presented by the petitioners
13 failed to show that Ecology's guidance failed to protect functions and values.¹²

14 Here, the County notes that its own amendment mirrors Sample Wetland Regulations
15 § 040.A.¹³ SCC 14.24.230(7)(a) does not exempt wetlands based on size alone, but rather
16 on size and category together, subject to six additional conditions.¹⁴ SCC 14.24.230(7)(a)
17 appears to be *more* protective than the sample regulations because it excludes from the
18 exemption any wetland "required to mitigate drainage, flooding, or water quality problems in
19 the watershed."¹⁵

20 Finally, the County points out that Ecology's guidance states that "[i]t is reasonable,
21 in the context of mitigation sequencing, to create some flexibility in dealing with small, low-
22 functioning wetlands in some cases." ¹⁶

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27 ¹⁰ County Br. at 13.

28 ¹¹ *Futurewise et al. v. Snohomish County*, GMHB No. 25-3-0011, Final Decision and Order at 4–5 (Feb. 17,
2026).

29 ¹² *Id.* at 34.

30 ¹³ Sample Wetland Regulations 040.A (SIR 29 at A-5–6). Also, see Appendices A and B to this Final Decision
and Order.

31 ¹⁴ SCC 14.24.230(7)(a)(i)–(vi).

32 ¹⁵ SCC 14.24.230(7)(a)(vi).

¹⁶ County Br. at 15.

Turning to Issue 2, SCC 14.24.230(7)(b)'s exemption of certain small and isolated Category IV wetlands from the buffer requirements again mirrors Ecology's sample wetland regulations and thus follows BAS.

As to both SCC 14.24.230(7)(a) and (b), if the Category IV wetland is isolated, small, not part of a riparian corridor, has a low habitat score, and is not required to mitigate drainage, flooding or water quality issues (this last condition be an *additional* condition not found in Ecology's guidance), then under (a) the first step of the mitigation sequence is not required and under (b) there is a potential exemption from buffer provisions.

The present case is similar in many respects to the recent Board case of *Futurewise et al. v. Snohomish County* where petitioners challenged the County's reliance on Ecology's 2022 wetlands guidance as BAS. The Board concluded, "The Board finds that the County followed BAS in Ecology's 2022 guidance, and Petitioners have not submitted sufficient scientific evidence to persuade the Board that Ecology's guidance will fail to protect ecological functions and values."¹⁷ The same conclusion applies here.

Issue No. 3. Do the Update's wetland buffer averaging provisions (SCC 14.24.240(2)) depart from the Best Available Science without reasoned justification and fail to protect the functions and values of wetlands, and thereby fail to comply with RCW 36.70A.020(9, 10), .040(3), .060(2, 3), .130(1), .170 and .172(1) and WAC 365- 195-915 because they do not incorporate the full suite of conditions advised by the Washington Department of Ecology for buffer averaging?

Issue No. 6. Do the Update's stream buffer averaging provisions (SCC 14.24.540(2)) depart from the Best Available Science without reasoned justification and fail to protect the functions and values of wetlands, and thereby fail to comply with RCW 36.70A.020(9, 10), .040(3), .060(2, 3), .130(1), .170 and .172(1) and WAC 365- 195-915 because they do not incorporate the full suite of conditions advised by the Washington Department of Ecology for buffer averaging?

¹⁷ *Futurewise et al. v. Snohomish County*, GMHB No. 25-3-0011, Final Decision and Order at 34 (Feb.17, 2026).

1 Evergreen argues the Update's buffer averaging provisions depart from BAS without
2 reasoned justification and without a demonstration that they will protect wetlands and riparian
3 areas and are not designed to protect critical areas because they authorize buffer averaging
4 for wetlands and for riparian areas without imposing all the conditions that state agency
5 recommendations establish.¹⁸ Evergreen maintains that BAS does not support buffer
6 averaging because according to a 2018 publication from Ecology, there is no scientific
7 information available to determine if averaging the widths of buffers actually protects functions
8 of wetlands.¹⁹ But, in fact, Ecology's Wetlands Guidance for Critical Areas Ordinance
9 Updates, does state:

11 Local governments can allow buffer widths to vary in certain circumstances.
12 This may be reasonable if your standard buffers are adequate. The width of
13 buffers may be averaged if this will improve the protection of wetland
14 functions or if it is the only way to allow for reasonable use of a parcel. Buffer
15 averaging should not be combined with other buffer reductions.²⁰

16 Additionally, the BAS review of the County's Update by Facet noted:

17 Ecology provides guidance for wetland buffers framed around several
18 alternatives in *Wetlands in Washington State - Volume 2: Guidance for*
19 *Protecting and Managing Wetlands- Protecting and Managing Wetlands,*
20 *Appendix 8-C* (Granger 2005, modified 2018) and 2022 Ecology *Guidance*
21 *for Critical Area Ordinance Updates*. Both guidance documents provide
22 similar but slightly differing approaches and both are considered to be
consistent with BAS at this time.²¹

23 Evergreen does acknowledge that these recommendations from Ecology do allow
24 buffer averaging under certain circumstances but challenges the County's approach because
25 it modified Ecology's sample language for the use of buffer averaging. In response, the
26 County argues that it did not violate the GMA when it substantially mirrored Ecology's sample
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29 ¹⁸ EI Opening Br. at 17-20.

30 ¹⁹ EI Opening Br. at 18, citing IR 23, Ecology Pub. No. 05-06-008, Appendix 8-C, Guidance on Widths of
31 Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System,
13 (July 2018).

32 ²⁰ IR 29 at 31.

²¹ IR 4 at 34 (emphasis added).

1 regulations allowing buffer averaging when no adverse impact to functions and values will
2 occur and it is necessary and no reason alternative exists.²²

3 The sample regulations establish two distinct grounds for averaging: Section -050.A.3
4 is to improve wetland protection based on significant differences in habitat characteristics;
5 and section -050.A.4 is to allow reasonable use of a parcel if no feasible site design
6 alternatives exist.²³

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8 In fact, the County's averaging provision is *stricter* than Ecology's sample regulations
9 and, unlike the sample regulations, SCC 14.24.240(2) requires mitigation sequencing before
10 averaging can be considered and the applicant must provide compensatory buffer
11 enhancement for any buffer that is degraded or lacks sufficient vegetation components.

12 Furthermore, this code section limits averaging to "when necessary to accomplish the
13 purpose of the proposal *and no reasonable alternative is available*."²⁴ Not only may averaging
14 be permitted only where demonstration of mitigation sequencing is required but averaging is
15 further limited to only those locations where geography the creates "variations in sensitivity,"
16 the averaging must meet specific size constraints (the total buffer area must stay the same
17 and no buffer may be reduced below 75% of the standard size).

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19 Finally, the proposed use cannot "adversely impact the functions and values of fish
20 and wildlife habitat conservation areas;" and must "meet performance standards for protecting
21 fish species."²⁵ Under these constraints, the County's provisions meet the "no-net-harm"
22 standard and the Board finds that the County did not depart from BAS.

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24 **Issue No. 5. Do the stream buffers established by the Update (SCC 14.24.530) depart**
25 **from the Best Available Science without reasoned justification and fail to protect the**
26 **functions and values of water courses and thereby fail to comply with RCW**
27 **36.70A.020(9, 10), .040(3), .060(2, 3), .130(1), .170 and .172(1) and WAC 365- 195-915,**
28 **where they are intended to act as Riparian Management Zones but are generally**
29 **smaller than the one site potential tree height width commensurate with the Riparian**

30 ²² County Br. at 16.

31 ²³ See Appendix B.

32 ²⁴ SCC 14.24.240(2)(a) (emphasis added).

²⁵ See, SCC 14.24.540(2)(c)(d)

1 **Management Zone protections established by the Washington Department of Fish and**
2 **Wildlife?**

3 Evergreen argues that the County did not include BAS and did not protect Fish and
4 Wildlife Habitat Conservation Areas (FWHCAs) when it adopted stream buffers sized that
5 would allow development across 3,000 acres of land whose protection from development is
6 necessary for the full functioning of designated water courses.²⁶ Evergreen points out that the
7 Update designates as FWHCAs all surface waters, including rivers and streams that have
8 been designated as Types F and N by the Washington Department of Natural Resources.
9 Having designated these water courses, Evergreen argues that the CAO Update must protect
10 them and must include the BAS in doing so. Evergreen maintains that the current BAS for
11 riparian areas like rivers, streams, and creeks concludes that stream functions can be
12 protected only by designating RMZs measured as one SPTH200²⁷ from either side of all
13 stream types and by strictly limiting development in that area. Evergreen notes that the County
14 acknowledged this BAS and explained that the average width of an RMZ throughout the
15 county is 192 feet, but instead used buffers of 150 feet for Type F streams and 100 feet for
16 Type Np and Ns streams.
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19 Relying on WDFW's Buffer Evaluation, Evergreen argues that the County's buffer
20 approach risks the loss of more than 3,000 acres of forested land that provide riparian
21 functions.²⁸ Evergreen asserts that the exclusion of a substantial amount of acreage from its
22 CAO buffers that WDFW identified as necessary for fully functioning riparian areas conflicts
23 with the GMA mandate to protect critical areas.²⁹
24

25 The County's response is three pronged: first, the County did not depart from BAS; to
26 the extent that the County did depart from BAS, it had a reasonable justification to do so; and
27 the County's Update protects the functions and values of riparian areas.
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30 ²⁶ EI Opening Br. at 20-23,

31 ²⁷ Site Potential Tree Height,

32 ²⁸ EI Opening Br. at 22, citing IR 18, WDFW Buffer Evaluation, at 11 (Table 4).

²⁹ EI Opening Br. at 23.

1 As an initial matter, the County argues that Evergreen is mistaken in conflating
2 WDFW's guidance on riparian buffer widths with GMA mandates. It notes that WDFW's
3 guidance is explicitly "applicable to riparian ecosystems statewide"³⁰ whereas the GMA
4 specifically contemplates that planning and development regulations reflect local
5 circumstances.³¹

6 The County argues that it did not depart from BAS, but even it had, it was done with a
7 reasoned justification.³²

8 The County disputes Evergreen's assertion that the "Riparian Recommendations
9 [contained in Volume 2] qualify as BAS pursuant to WAC 365-195-130(4)(b)"³³ and that this
10 "BAS for riparian areas like rivers, streams, and creeks concludes that stream functions can
11 be protected only by designating RMZs measured as one SPTH200 from either side of all
12 stream types and by strictly limiting development in that area."³⁴ Instead, the County argues
13 that the Riparian Recommendations were regulatory guidance.³⁵ Further, WDFW was clear
14 that they were not BAS.³⁶

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19 ³⁰ SIR 32 at 3 (Riparian Ecosystems v.2).

20 ³¹ RCW 36.70A.020 ("The [GMA] goals are not listed in order of priority and shall be used exclusively for the
21 purpose of guiding the development of comprehensive plans, development regulations, and ... regional plans,
22 policies, and strategies"); WAC 365-196-050(1) ("Regional and local variations and the diversity that exist
23 among different counties and cities should be reflected in the use and application of these procedural
24 criteria.").

25 ³² County Br. at 21.

26 ³³ EI Opening Br. at 21 n.110.

27 ³⁴ Id. at 21.

28 ³⁵ SIR 32 at 1 (Riparian Ecosystems v.2) ("We offer the following science-based guidance..."); *id.* at 2-3
29 ("these recommendations represent WDFW's guidance for the protection and restoration of ... riparian
30 ecosystems..."); *id.* at 3 ("...Volume 2 provides management guidance for riparian ecosystems..."); *id.* at 3
31 ("The purpose of this document is to provide guidance..."); *id.* at 3 ("This guidance is applicable to riparian
32 ecosystems statewide."); *id.* at 4 ("These other programs and policies ... may differ with guidance provided
herein."); *id.* at 9 ("This document provides guidance that is consistent with the GMA..."); *id.* at 19 ("We tailor
the following guidance..."); *id.* at 23 ("This chapter gives guidance to help..."); *id.* at 34 ("This chapter provides
high-level guidance...").

33 ³⁶ SIR 31 at 2 (Riparian Ecosystems v.1); SIR 32 at 2-3 (Riparian Ecosystems v.2) ("The information
presented in this management recommendation document **is not, in and of itself, science. Rather, it
consists of policy recommendations** which are informed by the best available science summarized in
Volume 1 and which reflect WDFW's mission and legislative mandate. To that end, these recommendations
represent WDFW's guidance for the protection and restoration of healthy, intact, and fully functioning riparian

1 The County notes that its buffers are based on the nature of the waterway.³⁷ Further,
2 its adopted baseline buffers account for at least 82% of what would be included in a SPTH
3 buffer.

4 The County's review found that although the baseline buffer widths were less than the
5 average SPTH200 size of 192 feet, with the mandatory increase of at least 33% for buffers
6 less than densely vegetated with native plants, the size of buffers for fish bearing streams
7 would reach at least 200 feet.³⁸

8
9 This Board has held that a jurisdiction is not required to "adopt SPTH200 buffers or
10 any other particular regulatory scheme for the protection of riparian critical areas. ... So long
11 as that [no net loss of ecological functions and values] is met, the County has broad discretion
12 as to how to proceed."³⁹

13 While the Update to the CAO has a standard buffer width of 150', which can be
14 increased by 33% if the buffer is not fully vegetated, even a 33% increase will still not achieve
15 a buffer of 200'. Therefore, there is a not-insignificant portion of buffers that are not being
16 protected.

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18 In fact, in WDFW's Riparian Buffer Evaluation⁴⁰ the Department notes the County's
19 responsibility for achieving no net loss of critical area functions and values including within its
20 Fish and Wildlife Habitat Conservation Areas. The Department cited to WAC 365-196-830(4)
21 that provides:

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23 (4) Although counties and cities may protect critical areas in different ways
24 or may allow some localized impacts to critical areas, or even the potential
25 loss of some critical areas, development regulations must preserve the
26 existing functions and values of critical areas. Avoidance is the most
27 effective way to protect critical areas. If development regulations allow harm
to critical areas, they must require compensatory mitigation of the harm.

28 ecosystems and for how land managers and land use regulators can utilize best available science to protect
29 these ecosystems within the scope of their authority and/or ability.") (Empahsis added).

30 ³⁷ SCC 14.24.530(1)(c); SIR 1, Attach. 2, at 70 (Ord. O20250011).

31 ³⁸ SIR 24 at 4(Buffer Tech. Mem.).

32 ³⁹ *Futurewise et al. v. Snohomish County*, GMHB No. 25-3-0011, Final Decision and Order at 26 (Feb. 17, 2026).

⁴⁰ IR 18 at 16.

1 Development regulations may not allow a net loss of the functions and
2 values of the ecosystem that includes the impacted or lost critical areas.

3 (Emphasis added).

4 The County noted that the benefits the riparian buffer provides has significant
5 diminishing rates of return and that “most buffer function is achieved at roughly 75 to 80
6 percent of SPTH[200].”

7 While the County is doubtless correct regarding the diminishing benefit to protecting
8 beyond the 200’ buffer, and the Board has never insisted that local jurisdictions must adopt a
9 SPTH200 in all instances, the fact remains that, for that area, the CAO Update does not
10 contain provisions ensuring no net loss of existing functions and values of critical areas. Even
11 diminishing habitat protections still constitute habitat protections, so if the full width of the
12 buffer is not to be protected, there must be some other means of ensuring no net loss of
13 ecological function. Here, there is not.

14 In light of the foregoing the Board concludes that Evergreen has carried its burden of
15 proof to demonstrate that the County’s buffer sizing fails to sufficiently protect existing
16 functions and values of critical areas.

17 **Issue No. 7. Does the Update’s authorization at SCC 14.24.540(5)(g) to conditionally**
18 **allow timber removal in riparian buffers depart from Best Available Science without**
19 **reasoned justification and fail to protect the functions and values of water courses and**
20 **wetlands and thereby fail to comply with RCW 36.70A.020(9, 10), .040(3), .060(2, 3),**
21 **.130(1), .170 and .172(1) and WAC 365-195-915?**

22 Evergreen argues that the authorization to remove timber in riparian buffers departs
23 from BAS without reasoned justification and will not protect riparian areas.⁴¹

24 Evergreen points out that under the CAO Update, “[t]o allow for greater flexibility in a
25 development proposal, an applicant has the opportunity to remove timber within the standard
26 buffer widths shown above if the applicant’s mitigation measures incorporate all of the
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32 ⁴¹ EI Opening Br. at 25- 26

1 performance standards based upon water type listed in the table below.”⁴² However,
2 Evergreen maintains, the County did not, identify BAS to show that the performance
3 standards would maintain the functions and values of the riparian areas, particularly where
4 the timber cutting occurs closest to the stream or river. It notes that WDFW recommends that
5 counties prohibit timber harvests within SPTH200 when a property is converted from forestry
6 to another use.⁴³ Evergreen argues that this exception to allow timber removal did not include
7 BAS and the County did not provide a reasoned justification for allowing this activity.
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9 In response, the County argues that section .540(5)(g) does not violate the GMA
10 because it was not substantially amended by the CAO Update – that it was a carried forward
11 provision from the prior ordinance - and thus Evergreen Islands is time-barred and cannot
12 challenge the presumption that this provision complies with the GMA.⁴⁴
13

14 The Board notes that the amendments to the prior .540(5)(g), now .540(4)(g), were
15 minimal, and Evergreen Islands instead focuses on the phrase “[t]o allow for greater flexibility
16 in a development proposal, an applicant has the opportunity to remove timber within the
17 standard buffer widths shown above if the applicant’s mitigation measures incorporate all of
18 the performance standards based upon water type listed in the table below.” This language
19 is pre-existing language that was not amended and is presumptively compliant with the GMA.
20 As the County notes, the periodic updates required by the GMA do not create an open season
21 for challenges to previously adopted provisions that are carried over into the new plan or
22 code.⁴⁵
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25 **Issue No. 4. Do the Update’s wetland buffer averaging provisions (SCC 14.24.240(2))**
26 **and provisions for the development of smaller Category IV wetlands and smaller**
27 **wetland buffers (SCC 14.24.230(7)) fail to comply with the GMA’s internal consistency**
28 **requirements, RCW 36.70A.040(3)(d), .060(3), and .130(1)(d), and WAC 365-196-500 by**
29 **allowing the development of select wetlands and wetland buffers notwithstanding**

30 ⁴² EI Opening Br. at 24, citing to IR 1, CAO Update, at 75/78.

31 ⁴³ EI Opening Br. at 24, citing to IR 32, Riparian Recommendations, at 26.

32 ⁴⁴ County Br. at 27.

⁴⁵ County Br. at 28, citing *Thurston County v. WWGMHB*, 164 Wn.2d 329, 344, 190 P.3d 38 (2008).

1 Comprehensive Plan Goal 5A to preserve and protect wetlands to maintain no net loss
2 of wetland functions and values, and Policies 5A-5.1 “to give priority to avoiding
3 impacts to critical areas,” 5A-5.1(a)(iv) that “[a] wetland buffer zone of adequate width
4 should be maintained between a wetland and any adjacent development to protect the
5 functions and integrity of the wetland,” 5A-5.1(a)(v) that “[w]etland buffer zones should
6 be retained in their natural condition to the greatest extent possible”, and 5A-5.3(a)(i)
7 “[d]evelopment adjacent to wetlands should be sited such that wetland buffer
8 functions are protected and an adequate buffer around the wetland is left
9 undisturbed”?

10 Issue No. 8. Does the Update fail to comply with the GMA’s internal consistency
11 requirements, RCW 36.70A.040(3)(d), .060(3), and .130(1)(d), and WAC 365- 196-500, by
12 allowing buffer averaging without all Ecology factors (SCC 14.24.540(2)), applying
13 buffers small than recommended by WDFW for Riparian Management Zones (SCC
14 14.24.530), and authorizing conditional timber removal in buffers (SCC 14.24.540(5)(g)),
15 notwithstanding Comprehensive Plan policies that, “[s]tream and wetland buffers must
16 be set so as to protect habitats associated with riparian dependent species” (Policy
17 5A-5.1(d)(i)) and “[h]abitat fragmentation must be minimized to enhance wildlife
18 diversity by protecting important wildlife areas, open space, and interconnecting
19 corridors that form a continuous habitat network” ((Policy 5A-5.1(d)(ii)).

20 Evergreen claims that the Update established development regulations inconsistent
21 with policies previously established by the County’s Comprehensive Plan, including those for
22 wetland development exceptions and buffer averaging, inadequate riparian buffers and timber
23 cutting in riparian buffers.⁴⁶ In particular it cites to several Goal 5A policies, Goal 5A being the
24 policy to “Preserve and protect wetlands to prevent their continual loss and degradation.”

25 In furtherance of its argument, it asserts that the wetland exemptions allow the
26 development of select Category IV wetlands without preventing their continual loss and
27 degradation and without prioritizing avoidance of impacts. It also claims those exemptions
28 allow the development of buffers for all wetlands smaller than 1,000 square feet
29 notwithstanding the policy to maintain adequate buffer widths and to retain them in their
30 natural state.

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32 ⁴⁶ EI Opening Br. at 25.

1 The Board finds that Evergreen Islands' assertion of inconsistency are somewhat
2 conclusory and fail to meet the standard of inconsistency, i.e. that no feature of the plan or
3 regulation is incompatible with any other feature of the plan or regulation.⁴⁷ That is, no feature
4 of one plan may preclude achievement of any other feature of that plan or any other plan.⁴⁸

5 Comprehensive Plan policy 5A-5.1 requires that: "Critical areas shall be designated
6 and protected to maintain no net loss of wetland functions and value." Regarding wetland
7 regulations, the County followed Ecology's sample wetland regulations. As these regulations
8 are based on BAS, the Plan policies do not require the County to exceed that are more
9 protective of the environment than adherence to BAS would indicate. Evergreen has not
10 identified any specific Plan policy with which the wetland exemptions or buffer averaging
11 provisions are *per se* incompatible. As the Board has elsewhere found SCC 14.24.240(2) and
12 SCC 14.24.230(7) to be consistent with BAS and, by extension, protective of critical areas,
13 the Board does not find any inconsistency between the Ordinance and Policy 5A-5.1 with
14 regard to wetland protection.
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16 However, the Board finds that the adopted riparian buffer standards in the Ordinance
17 are not consistent with Policy 5A-5.1. Above, the Board determined that the Ordinance would
18 not fully protect riparian buffers. If the full range of riparian functions and values are not being
19 protected, then the Board can only conclude that the requirement of Policy 5A-5.1 to avoid
20 net loss of functions and value is not being implemented with regard to riparian critical areas,
21 and that the adopted riparian regulations are inconsistent with Policy 5A-5.1, in violation of
22 the GMA requirement for regulations to be consistent with and implement the Comprehensive
23 Plan.⁴⁹
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26 **Issue No. 9. Should the Update provisions identified above be declared invalid because**
27 **their continued validity would substantially interfere with the fulfillment of goals 9 and**
28 **10 of the GMA?**
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31 ⁴⁷ *CMV v. Mount Vernon*, WWGMHB 98-2-0006c, Final Decision and Order at 9 (July 23, 1998).

32 ⁴⁸ *Carlson v. San Juan County*, WWGMHB 00-2-0016, Final Decision and Order at 3 (Sept. 15, 2000).

⁴⁹ RCW 36.70A.130(1)(e).

1 This issue was withdrawn by Petitioners.⁵⁰

2 **Issues Raised by Petitioners Jan Edelstein and Friends of Skagit County (FOSC)**

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5 **Issue No. 1. Does Section 14.24.080 of the Update fail to protect the functions and**
6 **values of fish and wildlife habitat conservation areas and other critical areas as**
7 **required by RCW 36. 70A.020(10), .060(2), .130, .170, .172 and WAC 365.190.080 by**
8 **requiring a Critical Area Report for only those Critical Areas located within the "land**
9 **use or development activity" (SCC 14.24.060), or within 300' of the boundary of said**
10 **use or activity in the case of wetlands, 250' for flood and geohazard critical areas, or**
11 **200' for all other critical areas, rather than critical areas at distances that may be**
12 **affected by the proposed activity?**

13 **Issue No. 2. Does Section 14.24 of the Update fail to protect the functions and values**
14 **of all critical areas as required by Growth Management Act requirement at RCW**
15 **36.70A.020(1) by failing to protect critical areas in rural areas from inadequate public**
16 **facilities such as stormwater conveyances provided in RCW 36.70B.040(1)(c) and use**
17 **or development activity in rural areas on a finding of adequate public facilities**
18 **designed to protect critical areas from storm water discharge? (SCC 14.62**
19 **Concurrency). Issue Withdrawn**

20 SCC 14.24.080(2)(b)(i) requires standard critical areas review if "[a] critical area or its
21 buffer is present and the land use or development activity could impair the functions and
22 values of the critical area or its buffers."⁵¹ "Critical areas or their buffers are present if either
23 is (1) within 300 feet, or (2) a distance otherwise specified in this Chapter, from the proposed
24 activity or (3) may be affected by the proposed activity."⁵²

25 FOSC claims that the Critical Area review procedure fails to protect all critical areas as
26 required by the GMA ⁵³

27 FOSC notes that, on one hand, SCC 14.24.060 states broadly that the Director's
28 written authorization is required for any "land use or development activity" that "can impair the
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30 ⁵⁰ EI Opening Br. at 9.

31 ⁵¹ SIR 1, Attach. 2, at 11 (Ord. No. O20250011).

32 ⁵² SCC 14.24.080(2)(d)(i); SIR 1, Attach. 2, at 12 (Ord. No. O20250011).

⁵³ FOSC Opening Br., at 19-20.

1 functions and values of critical areas or their buffers.” Yet, SCC 14.24.080 limits the scope of
2 the Director’s review — and any required Critical Area Report (CAR) — to critical areas on-
3 site or within 200-300 feet of the project boundary. FOSC asserts this is a “structural
4 contradiction.”⁵⁴

5 FOSC also argues that the Update is contrary to the GMA because it fails to protect
6 the functions and values of critical areas located more than 200/300 feet away from the
7 subject property from the direct or indirect impacts of new development, such as from
8 stormwater runoff, artificial light at night (ALAN) on anadromous fisheries, and disturbances
9 to sensitive wildlife habitat. Consequently, FOSC claims, the distance limitation must be
10 deemed noncompliant with RCW 36.70A.060(2), RCW 36.70A.172, and WAC 365-190-080.⁵⁵

11 In response, the County disputes that SCC 14.24.080 limits review to critical areas on-
12 site or within 200-300 feet of the property and argues that it requires critical areas review for
13 impacts of *any* distance.
14

15 The Board notes that express SCC 14.24.080(2)(a)(i) requires standard critical areas
16 review if “[a] critical area or its buffer is present and the land use or development activity could
17 impair the functions and values of the critical area or its buffers.” The specific distances of
18 300 feet for wetlands, 250 feet for flood and geohazard areas, 200 feet for all other critical
19 areas, serve an administrative function as they establish the standard *presumptive* review
20 zone within which a critical areas report is *automatically* required but do not limit the Director’s
21 authority to require review of impacts beyond those distances when the facts warrant it.
22 Rather, SCC 14.24.080(2)(c)(i) provides, “Critical areas or their buffers are present if either is
23 within 300 feet, or a distance otherwise specified in this Chapter, from the proposed activity
24 or *may be affected by the proposed activity*.” This final “may be affected by the proposed
25 activity” language provides the County with a basis for requiring critical areas review to any
26 affected critical area.
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31 ⁵⁴ FOSC Opening Br., at 19.

32 ⁵⁵ FOCC Opening Br. at 20.

1 With regard to stormwater impacts, the County argues that it has chosen to primarily
2 regulate stormwater through Chapter 14.32 SCC, which regulates the stormwater
3 infrastructure for new development, and Chapter 16.32 SCC, which specifically governs water
4 pollution in Skagit County.⁵⁶ The point is well taken. The County's stormwater ordinance is
5 not under appeal in this proceeding.

6 The Board finds that FOCC has failed to carry its burden to demonstrate that Section
7 14.24.080 of the Update fails to protect the functions and values of fish and wildlife habitat
8 conservation areas and other critical areas as required by the GMA.
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11 **Issue No. 3. Does Section 14.24.080 of the Update fail to protect individual critical areas**
12 **from the cumulative impact of multiple land use or development activities as required**
13 **by RCW 36.70A? Issue Withdrawn**

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15 **Issue No. 4. Did Skagit County fail to include best available science as required by**
16 **RCW 36.70A.172 without a reasoned basis for doing so when it limited the review area**
17 **for critical area impacts to distances shorter than the reach of the impacts?**

18 FOCC argues that Skagit County's Critical Area review procedure is not supported by
19 BAS and Skagit County did not offer a well-reasoned basis for departing from it.⁵⁷

20 FOCC argues that the County's update is based on the surmise and speculation that
21 the proposed project will not harm critical areas located more than the specified distance of
22 200 to 300 feet from the subject property.⁵⁸

23 FOCC asserts that the BAS produced through the update process, however, makes
24 clear that the impacts of new land use or development activities can and do travel more than
25 200-300 feet from the project boundary. However, FOCC does not cite that research, but
26 instead merely notes that County's BAS review documents over 100 priority species present
27 in Skagit County, many of whom have known nesting or other sensitivities to new land use or
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31 ⁵⁶ County Response Br. at 31.

32 ⁵⁷ FOCC Opening Br. at 20-23.

⁵⁸ FOCC Opening Br. at 20.

1 development activities more than the specified critical area review distance of 200 feet from
2 the subject property. This is not, as FOSC suggests, an assumption by the County that
3 “200/300 feet beyond the subject property provides an impenetrable barrier beyond which the
4 projects adverse impact cannot travel.”⁵⁹

5 FOSC next notes that the CAO Update does not include the Ecology recommendation
6 from the 2024 Western Washington Manual that project developers conduct an off-site
7 analysis of the impact of stormwater discharge “for a distance up to one mile.”⁶⁰

8 FOSC challenges the County’s decision to rely on its stormwater code – SCC Chapter
9 14.32, which adopts Ecology’s Stormwater Manual – to address off-site stormwater impacts,
10 noting that the purpose of the Manual is to reduce the adverse impacts of stormwater, not
11 protect critical areas. FOSC argues that because the Manual recognizes that “some
12 degradation of urban and suburban receiving waters will continue, and some beneficial uses
13 will continue to be impaired or lost due to new development” this violates GMA’s mandate to
14 protect not mere merely reduce impacts. It must be pointed out that the provisions of SCC
15 14.32, Stormwater Management, are not before the Board in this matter. Therefore,
16 arguments regarding the insufficiency of that document to protect critical areas are irrelevant
17 and will not be considered.

18 FOSC argues that managing adverse impacts only at the site level, even at low levels
19 of urbanization, is inadequate “to perpetuate fish and wildlife in the long term.”⁶¹ It urges that
20 the Critical Area Review procedure should look “as far as necessary”, without artificial
21 constraint, for the purpose of assessing the risk of adverse impact to critical areas so that
22 appropriate restrictions can be placed on development or mitigation required.

23 In response, the County argues that the review distances in SCC 14.24.080 are based
24 on BAS regarding the typical zone of influence for each category of critical area.⁶² The Board

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⁵⁹ FOCC Opening Br. at 21.

⁶⁰ FOCC Opening Br. at 22.

⁶¹ FOCC Opening Br. at 27, citing to SIR 31 at 266. T. Quinn, et al., Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications, WDFW (2020).

⁶² County Br. at 32.

1 concurs that the 300-foot distance for wetlands aligns with Ecology’s guidance indicating that
2 activities within that range have the potential to impair wetland functions and values. The 250-
3 foot distance for flood and geohazard areas reflects the typical outer boundary within which
4 site disturbance and impervious surface increases can affect flood patterns and geologic
5 stability. Finally, the 200-foot distance for all other critical areas represents the conservative
6 outer bound within which development activities typically affect critical area functions under
7 standard conditions. In the County’s case, these distances function as what the County terms
8 administrative defaults—ensuring comprehensive review within the established zone—while
9 the “may be affected” language of SCC 14.24.080(2)(d)(i) extends review to any critical area
10 actually threatened beyond those distances.
11

12 The Board finds that FOSC has failed to demonstrate that the review distances set out
13 in SCC are not based on BAS. FOSC’s suggestion that a local jurisdiction should look “as far
14 as necessary” without artificial constraint is not required by the GMA.
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17 **Issue No.5. Does Section 14.24.080 of the Update conflict with the Growth Management**
18 **Act’s internal consistency requirements at RCW 35.70A.020(12), 36.70A.060(3) and**
19 **36.70A.130(1) by limiting critical areas review to those impacts within 200-300 feet from**
20 **the project notwithstanding that Skagit County Comprehensive Plan Policy 5A-**
21 **5.3(e)(iii) requires storm water runoff, flow rates, flow volumes an pollution caused by**
22 **site development are managed so that detrimental impacts to water resources and**
23 **property are maintained at predevelopment levels, and SCC 14.24.080(5)(D) requires**
24 **an assessment of the probable direct, indirect, and cumulative impacts of the**
25 **proposal?**

26 FOSC argues that reliance on the Stormwater Code precludes compliance with the
27 GMA consistency requirement.⁶³ FOSC claims that both the distance limitation in the CAO
28 Update and the staff’s reliance on the stormwater code “to protect” critical areas is
29 inconsistent with the Skagit Comprehensive Plan Policy that requires performance standards
30 to be adopted “through appropriate codes and administrative procedures for development in
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32 ⁶³ FOCC Opening Br. at 27-28

critical areas; including but not limited to (i) Critical area report information and analysis.” FOSC claims that the Critical Area review procedure which reviews only those critical areas within 200/300 feet of the subject property does not apply the GMA performance standard of ‘no degradation’ from the proposed project and that Skagit County attempts to apply the “no degradation” standard only to critical areas within 200/300 feet of the project. FOSC asserts that the Skagit County Planning Department erroneously equates the SCC 14.32 Stormwater Management technology standard with the GMA ‘no degradation’ standard.

In addition, FOSC claims the CAO Update is inconsistent within itself because the distance limitation on extent of review prevents review of a project’s cumulative impacts on a particular critical area.

The Board finds that there is no inconsistency because Section 14.24.080 establishes presumptive review distances calibrated to the known zone of influence for each category of critical area and supplements that rule with an unlimited catch-all for any critical area that may be affected.⁶⁴ In particular, the following language provides for widening the scope of review as necessary:

(i)Critical areas or their buffers are present if either is within 300 feet, or a distance otherwise specified in this Chapter, from the proposed activity or may be affected by the proposed activity.⁶⁵

By comparison, and not in contrast, Skagit County Comprehensive Plan Policy 5A.-5.3(e)(iii) provides:

(iii) Storm water runoff, flow rates, flow volumes and pollution caused by site development shall be managed so that detrimental impacts to water resources and property are maintained at pre-development levels.⁶⁶

The Comprehensive Plan does not require the County to impose open-ended review at any distance; only that such review effectively capture likely impacts.

⁶⁴ County Br. at 33.

⁶⁵ SCC 14.24.080(2)(d)(i) (emphasis added).

⁶⁶ Skagit County Comprehensive Plan 2025-2045, at 158.

1 SCC 14.24.080 draws a distinction between applications needing a standard review – (i) if a
2 critical area or its buffer is present and the land use or development activity could impair the
3 functions and values of the critical area or its buffers;(ii) The activity is not allowed without
4 standard review under SCC 14.24.070 – and if not, then no further critical area review is
5 required. If the proposed activity requires standard review, the Director must determine
6 whether critical areas or their buffers are present and may be affected by the proposed
7 activity.⁶⁷
8

9 The substance of this issue is an allegation of inconsistency of this section of the SCC
10 with the Comprehensive Plan. The Board has held that, in making a determination whether
11 there is consistency between various parts of a local jurisdiction’s planning policies and
12 regulations, consistency means that no feature of the plan or regulation is incompatible with
13 any other feature of the plan or regulation.⁶⁸ That is, no feature of one plan may preclude
14 achievement of any other feature of that plan or any other plan.⁶⁹
15

16 The Board concludes that FOSC has not demonstrated that SCC 14.24.080 precludes
17 achievement of Skagit County Comprehensive Plan Policy 5A-5.3(e)(iii) and has not
18 demonstrated clear error.

19 In addition, the Board does not find an internal inconsistency within SCC 14.24.080.
20 While FOSC claims a distance limitation on extent of review prevents review of a project’s
21 cumulative impacts on a particular critical area, it is clear that 14.24.080(5)(D) mandates “[a]n
22 assessment of the probable direct and indirect impacts to the critical area(s) and buffer(s)
23 resulting from the proposed development; and an assessment of the cumulative impacts to
24 the critical area resulting from the existing and proposed development” as part of the critical
25 areas report, thus assuring consideration of impacts to affected critical areas and buffers.
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31 ⁶⁷ SCC 14.24.080(2)(d).

32 ⁶⁸ CMV v. Mount Vernon, WWGMHB 98-2-0006c Final Decision and Order at 9 (July 23, 1998)

⁶⁹ Carlson v. San Juan County, WWGMHB 00-2-0016 Final Decision and Order at 3 (Sept. 15, 2000).

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V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds and orders the following:

- The adoption of the riparian buffers in Skagit County Ordinance O20250011 at SCC 14.24.530 was **clearly erroneous** because the adopted buffer do not comply with the Growth Management Act requirement to protect critical areas against a net loss of ecological functions and values, RCW 36.70A.040(3), -.060(2), -(3).
- The adoption of the riparian buffers in Skagit County Ordinance O20250011 at SCC 14.24.530 was **clearly erroneous** because the adopted buffers do not implement and are not consistent with Comprehensive Plan Policy 5A-5.1 in violation of the Growth Management Act requirement for development regulations to be consistent with and implement the Comprehensive Plan, RCW 36.70A.130(1)(e).
- In all other respects, Petitioners have not met their burden to show a clearly erroneous violation of the Growth Management Act in the adoption of Skagit County Ordinance O20250011. All other challenges to Ordinance O20250011 are hereby **denied**.
- Ordinance O20250011 is hereby **remanded** to Skagit County to take legislative action in accordance with the following schedule:

Item	Date Due
Compliance Due	January 19, 2027
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	February 2, 2027
Objections to a Finding of Compliance	February 16, 2027
Response to Objections	February 26, 2027

Telephonic Compliance Hearing

Zoom link to be provided at a later date.

March 5, 2027

10:00 a.m.

Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: “Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.” **Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.**

SO ORDERED this 20th day of July, 2026.



Alex Sidles, Presiding Officer



Rick Eichstaedt, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁷⁰

⁷⁰ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514; RCW 36.01.050. See also RCW 36.70A.300(5); WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

Appendix A
Skagit County Code 14.24

SCC 14.24.230(7)(a):

(7) Category IV wetlands less than 4,000 square feet that have been identified through a site assessment may be exempted from certain protection standards as outlined below:

(a) Category IV wetlands less than 4,000 square feet are exempt from the mitigation sequencing requirement to first avoid impacts where:

(i) The wetland is isolated; and

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

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

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

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

(vi) The wetland is not required to mitigate drainage, flooding, or water quality problems in the watershed; and

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

SCC 14.24.230(7)(b):

(7) Category IV wetlands less than 4,000 square feet that have been identified through a site assessment may be exempted from certain protection standards as outlined below:

(b) Wetlands less than 1,000 square feet may be exempted from buffer provisions contained in this Chapter when criteria of Subsections (7)(a)(i) through (7)(a)(vi) of this Section are met.

SCC 14.24.240(2)

(2) Buffer Width Averaging. Buffer averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. Prior to considering buffer averaging, the applicant must demonstrate application of mitigation sequencing as

1 required in SCC 14.24.080. Averaging of required buffer widths will be allowed only if
2 the applicant demonstrates that all of the following criteria are met:

3 (a) Averaging is necessary to accomplish the purpose of the proposal and no
4 reasonable alternative is available; and

5 (b) Averaging width will not adversely impact the wetland functions and values; and

6 (c) The total area contained within the wetland buffer after averaging is no less than
7 that contained within the standard buffer prior to averaging; and

8 (d) The buffer width will not be reduced below 75 percent of the standard buffer width
9 or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV,
10 whichever is greater;

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

13 SCC 14.24.540(2):

14 (2) Buffer Width Averaging. Buffer width averaging allows limited reductions of buffer
15 width in specified locations, while requiring increases in others. Prior to considering
16 buffer averaging, the applicant must demonstrate application of mitigation sequencing
17 as required in SCC 14.24.080. Averaging of required buffer widths will be allowed only
18 where the applicant demonstrates to the Director that all of the following criteria are
19 met:

20 (a) Averaging is necessary to accomplish the purpose of the proposal and no
21 reasonable alternative is available; and

22 (b) The habitat contains variations in sensitivity due to existing physical characteristics;
23 and

24 (c) Averaging will not adversely impact the functions and values of fish and wildlife
25 habitat conservation areas; and

26 (d) Averaging meets performance standards for protecting fish species; and

27 (e) The total area contained within the buffer after averaging is no less than that
28 contained within the standard buffer prior to averaging; and

29 (f) The buffer width will not be reduced below 75 percent of the standard buffer width;

30 (g) Compensatory mitigation is provided to address degraded buffer.

31 SCC 14.24.540(5)(g)

32 (g) To allow for greater flexibility in a development proposal, an applicant has the
opportunity to remove timber within the standard buffer widths shown above if the
applicant's mitigation measures incorporate all of the performance standards based
upon water type listed in the table below. In conformance with professional standards
used by the Washington Department of Natural Resources for forest practices in
sensitive areas, all removal of timber within FWHCA buffers will be subject to

1 conditioning specified by the Director in conjunction with an on-site technical team
2 review in which participation by representatives of the proponent, Ecology, WDFW,
3 WDNR and natural resource representatives of affected Indian tribes is solicited. No
4 net loss of ecological functions must be demonstrated through the critical area report
5 process.
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Appendix B

Sample Wetland Regulations IR 29 at 51, 52 of 101 (cf. SCC 14.24.230(7)(a) ((i)-(vi)):

040 Exemptions and Allowed Uses in Wetlands

040.A. Wetlands that meet the following criteria are not subject to the avoidance and minimization requirements of the mitigation sequence (Chapter 070.A.1 and 070.A.2) in accordance with the following provisions, and they may be filled if the impacts are fully mitigated based on the remaining actions in Chapter 070.A.3 through 6. Impacts should be mitigated through the purchase of credits from a mitigation bank or in-lieu fee program, if available, consistent with the terms and conditions of the bank or program. In order to verify whether the following criteria are met, it is essential that a critical area report for wetlands meeting the requirements in Chapter 060 be submitted.

1. All Category IV wetlands less than 4,000 square feet that:

a. Are located in the areas covered by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (U.S. Army Corps of Engineers, 2010)

b. Are not associated with riparian areas or their buffers

c. Are not associated with shorelines of the state or their associated buffers

d. Are not part of a wetland mosaic

e. Do not score 6 or more points for habitat function based on the Washington State Wetland Rating System for [Western or Eastern] Washington: 2014 Update (Ecology Publication [#14-06-029 or #14-06-030]), or as revised by Ecology)

f. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife and do not contain state or federally listed species or their critical habitat or species of local importance identified in the [City/County] code [if there is a locally adopted regulation]

2. Wetlands less than 1,000 square feet that meet the above criteria are exempt from the buffer provisions contained in this Chapter.

050 Wetland Buffers

050.A. Buffer Requirements. The buffer tables have been established in accordance with the best available science. They are based on the category of wetland and the habitat score [for options 1 and 2] as determined by a qualified wetland professional using the Washington State Wetland Rating System for [Western or Eastern] Washington: 2014 Update (Ecology Publication [#14-06-029 or #14-06-030], or as revised). Unless otherwise noted, the level of impact from adjacent land use is assumed to be high.

1. Buffer Width Tables.

2. Increased Wetland Buffer Width. Buffer widths shall be increased on a case-by-case basis as determined by the [Administrator] when a wider buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation

1 showing that it is reasonably related to protection of the functions and values of the wetland.
2 The documentation shall include but not be limited to the following criteria:

3 a. The wetland is used by a state or federally listed plant or animal species. These species
4 would be those listed under WAC 220-610-010, 50 CFR 17-11, 50 CFR 17-12, or other state
5 or federal regulations.

6 b. The wetland has critical habitat; or a priority area for a priority species as defined by WDFW;
7 or Wetlands of High Conservation Value as defined by the Washington Department of Natural
8 Resources' Natural Heritage Program.

9 c. The adjacent land is susceptible to severe erosion, and erosion-control measures will not
10 effectively prevent adverse wetland impacts.

11 d. The adjacent land has minimal vegetative cover.

12 e. The land has slopes greater than 30 percent.

13 3. Buffer averaging to improve wetland protection may be permitted when all of the following
14 conditions are met:

15 a. The wetland has significant differences in characteristics that affect its habitat functions,
16 such as a wetland with a forested component adjacent to a degraded emergent component
17 or a dual-rated wetland with a Category I area adjacent to a lower-rated area.

18 b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive
19 portion of the wetland and decreased adjacent to the lower functioning or less-sensitive
20 portion as demonstrated by a critical area report from a qualified wetland professional.

21 c. The total area of the buffer after averaging is equal to the area required without averaging.

22 d. The buffer at its narrowest point is never less than either 75 percent of the required width
23 or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever
24 is greater.

25 4. Averaging to allow reasonable use of a parcel may be permitted when all of the following
26 are met:

27 a. No feasible alternatives to the site design could be accomplished without buffer averaging.

28 b. The averaged buffer will not result in degradation of the wetland's functions and values as
29 demonstrated by a critical area report from a qualified wetland professional.

30 c. The total buffer area after averaging is equal to the area required without averaging.

31 d. The buffer at its narrowest point is never less than either 75 percent of the required width
32 or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever
is greater.