

Biological Opinion Compliance Checklist: Skagit County Proposed Draft Submittal

Biological Opinion Provision	ESA Reference	Model Ordinance Section	Community Regulations Reference	Annotation
<p>1. Activities Affected</p> <p>All “development” in the areas affected must comply with these provisions. The BiOp added the last two phrases to the NFIP definition of “development:”</p> <p style="padding-left: 40px;">any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, subdivision of land, <u>removal of substantial amounts of vegetation, or alteration of natural site characteristics.</u></p>	<p>App. 4, footnote 23</p>	<p>2. Definitions</p>	<p>SCC 14.04 Definition of Development</p> <p>SCC 14.24.060</p> <p>SCC 14.34.100(1)</p>	<p>The County’s definition of development is broad and captures the activities identified in the proposed definition of “development” within the Model Ordinance. Additionally, proposed revisions to SCC 14.34.100 add additional activities that will require a flood development permit, thus triggering habitat review, for those activities that may or may not otherwise require a development permit.</p> <p>SCC 14.24.060 requires critical area review and authorization for any land use activity that can impair the functions of critical area or their buffers with the exception(s) of activities allowed without standard review listed under 14.24.070.</p>
<p>2. Mapping Criteria</p> <p>a. In addition to the Special Flood Hazard Area (SFHA) and floodway on the community’s Flood Insurance Rate Map, the following areas are delineated (community wide or permit by permit).</p>				<p>GIS will create additional layers to Skagit County’s iMap interactive map service that staff and applicants can utilize in determining review area, including the RHZ, floodway, and SFHA.</p>

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1) Riparian habitat zone (RHZ), using dimensions from the May 14, 2009, errata letter	RPA 3.A, App. 4, Section 1, 5/14/09 Errata letter page 6	3.4.C	Proposed SCC 14.34.055	Waters of the State (WAC 222-16) within the SFHA will be overlain with a 250' Protected Review Area pursuant to the RHZ definition in SCC 14.34.055.
2) Channel migration zone (CMZ) plus 50 feet,	RPA 3.A, App. 4, Section 1	3.4.D	Proposed SCC 14.34.055	There is a proposed new definition of Channel Migration Area in SCC 14.34.055. The Channel Migration Zone has not yet been mapped or adopted by Skagit County, however will be addressed as part of the ongoing Shoreline Master Program update process, scheduled for completion June 2013.
b. New mapping must consider future conditions and the cumulative effects from future land-use change.	RPA 2.C	3.5.E	Proposed SCC 14.34.050(2)	New hydrologic and hydraulic flood studies will require consideration of future conditions and cumulative effects from anticipated land use changes in accordance with Regional Guidance for Hydrologic and Hydraulic Studies in Support of the model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act, FEMA Region X, 1010.

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c. Communities are encouraged to consider identifying and evaluating the risk of flooding behind 100-year levees based on future conditions and cumulative effects	RPA 2 D			
3. Administrative Procedures				
a. The application for a permit to develop in the affected area must include the elevations of the 10-, 50-, and 100-year floods, where such data are available	App. 4, Section 3.4	4.2.A.3	Proposed SCC 14.34.110 (3)(a)	When and where available the elevations and boundaries of 10, 50 and 100 year floods will be included in application materials.
b. The applicant must record a Notice on Title that the property contains land within the RHZ and/or 100-year floodplain before a permit may be issued.	App. 4, Section 3.9	5.1.G	Proposed SCC14.34.110 (8); SCC 14.34.150(5)	Authorizations of floodplain development permits including land divisions will require notice on title.
c. Communities that permit development outside the protected area must track the projects for which they issue floodplain development permits, including effects to flood storage and fish habitat and mitigation provided.	App. 4, Section 4	4.5.F, 4.5.G	Proposed SCC 14.34.120(1)(d)-(e).	Flood area development permits will be tracked in Permits Plus data base by parcel number and planning file number and hard files along with habitat assessments.

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<p>4. General Development Standards</p> <p>a. If a lot has a buildable site out of the Special Flood Hazard Area, all new structures shall be located there, when feasible. If the lot is fully in the floodplain, structures must be located to have the least impact on salmon.</p>	App. 4, Sections 3.1 and 3.11	5.2.A	Proposed SCC 14.34.150 (1)	Structures must be located to have the least impact on habitat by locating outside of the SFHA, as far from the water body as possible or on the highest ground of the parcel. All new structures must be set back from the Protected Review Area a minimum of 15 feet unless the applicant can demonstrate that the structure is not likely to adversely affect listed species.
<p>b. Stormwater and drainage features shall incorporate low impact development techniques that mimic pre-development hydrologic conditions, when technically feasible.</p>	RPA 3.A.3.B and 4.A	5.2.B.1	Proposed SCC14.34.150 (2)	Where technically feasible construction in the SFHA shall employ Low Impact Development techniques such as those contained in The Technical Guidance Manual for Puget Sound.
<p>c. Creation of new impervious surfaces shall not exceed 10 percent of the surface area of the portion of the lot in the floodplain unless mitigation is provided.</p>	App. 4, Section 3.6	5.2.B.2	Proposed SCC 14.34.150 (3)	Impervious surfaces shall not exceed 10% of the surface area of the portion of the parcel within the SFHA unless it is demonstrated that there is no net increase in the rate and volume of stormwater surface runoff that will leave the site.

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d. Any loss of floodplain storage shall be avoided, rectified or compensated for. Any compensation off site must be in a priority floodplain restoration area identified in the associated ESU Recovery Plan for listed species.	RPA 3.A.3.b, App. 4, Section 2	7.6	Proposed SCC 14.34.150 (4)	All building/grading applications include areas to denote amounts of fill, excavation and impervious surfaces. The new floodplain development permit will include this information as well. Review staff, consisting of Plans Examiners, Development Review Permit Technicians, and Public Works Drainage review staff will review each project for compensatory storage and impervious surfaces compliance. Project re-design will be requested where compensatory storage or impervious surfaces requirements are not met with the design submitted.
e. Uses that are not permitted in the Protected Area unless shown not to adversely affect water quality, habitat, etc., include septic tanks and drain fields, dumping of any materials, hazardous or sanitary waste landfills; receiving areas for toxic or hazardous waste or other contaminants.	App. 4, Section 1	5.3	Proposed SCC 14.34.100(1)	The County will now require a floodplain development permit for activities, including septic system and dumping of hazardous materials where a permit may not previously have been required. These activities will therefore require a habitat impact assessment pursuant to SCC 14.34.220(1). Landfills always require a development permit and therefore will need to go through the habitat impact assessment process outlined in SCC 14.34.220(1).

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<p>5. Habitat Protection Standards</p> <p>a. Any improvements or repairs to existing structures that result in a greater than 10 percent increase of the structure footprint must mitigate for any adverse effects.</p>	RPA 3.A.4	7.2.B	Proposed SCC 14.34.220 (2) (b); SCC 14.24.220(1)	Any improvements or repairs exceeding 10% will require compliance with the Habitat Impact Assessment process outline in SCC 14.34.220.
<p>b. Removal of native vegetation must leave 65 percent of the surface area of the portion of the property in the floodplain in an undeveloped state.</p>	App. 4, Section 3.7	7.4	<p>SCC 14.24.060 (review and authorization required);</p> <p>SCC 14.24.080(4)(c)(viii) (site assessment—regulatory analysis required)</p> <p>SCC 14.24.080(5) (General Mitigation Requirements)</p> <p>SCC 14.24.090(1)(a) (PCA—undisturbed in natural state)</p> <p>SCC 14.24.520 (review functions and values, including LWD)</p> <p>SCC 14.24.530 (protection standards)</p> <p>SCC 14.24.540(5)(g) (performance standards)</p>	<p>Activities resulting in removal of native vegetation trigger critical areas review. (SCC 14.24.060). Native vegetation removal generally not allowed within designated critical areas or their buffers. (SCC 14.24.090(1)(a)) Site assessments within SFHA will be required to look at retention and/or removal of native vegetation to ensure that such activity would not result in an adverse effect to species protected under the Endangered Species Act (SCC 14.24.520). If any native vegetation is proposed for removal such removal must not adversely affect protected species (SCC 14.34.220; 14.34.520).</p> <p>An Administrative Official Interpretation (AOI) will be developed and published describing how the site assessment process under the CAO will provide adequate review for activities proposed within the SFHA to determine no adverse</p>

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				effect to species. The elements of the AOI have been provided for the Planning Commission's 6/28/11 Study Session.
<p>c. The community must prohibit development in the floodway, RHZ, and CMZ plus 50 feet or demonstrate that any proposed development in the area does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.</p>	<p>RPA 3.A.2, App. 4, Section 1, 4</p>	<p>7.7 7.8</p>	<p>Proposed SCC 14.34.220, Habitat Protection Standards</p> <p>Riparian buffers (Freshwater and Marine) are established under SCC 14.24.530 (1) & (2) SCC 14.24.540 (1) Buffer Width Increasing</p>	<p>All activities proposed within the Protected Review Area as defined in proposed SCC 14.34.055 will be required to prepare a Fish and Wildlife Habitat Conservation Area site assessment pursuant to SCC 14.24.520. The Protected Review Area includes the RHZ, which the County has defined as those areas within 250' of Waters of the State, as well as the floodway and Channel Migration Area (when mapped). The review triggered under .520 will ensure that no adverse effect to species will occur.</p> <p>Riparian & Marine buffers within SCC 14.24 (CAO), are considered generally sufficient to protect aquatic and riparian functions and are supported by Best Available Science (BAS) compiled by Watershed Company (January 2007)</p> <p>If additional buffer width is required to further protect riparian functions based on site specific conditions or for conveyance/storage, then buffer width</p>

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				increasing option may be utilized pursuant to SCC 14.24.540(1).
d. Any development outside the Protected Area must mitigate for adverse indirect effects on stormwater, riparian vegetation, bank stability, channel migration, hyporheic zone, wetland and large woody debris functions such that equivalent or better salmon habitat protection is provided	App. 4, Section 3	7.7pp 7.8	Proposed SCC 14.34.220 SCC 14.24 Proposed SCC 14.24.070 Proposed 14.24.520	Any development proposed in the SFHA outside the Protected Review Area as defined in proposed SCC 14.34.055 must submit a Habitat Impact Assessment checklist pursuant to proposed SCC 14.34.220(1). This checklist will include consideration of the functions described in the Biological Opinion. If it appears functions and values may be adversely affected by the proposed development, a site assessment will be required under the CAO. Pursuant to proposed SCC 14.34.220(3), a habitat mitigation plan will be required consistent with the requirements of SCC 14.24.
e. In the SFHA outside the Protected Area, require zoning to maintain a low density of floodplain development	App. 4, Section 3.2	Credited by the CRS, (431LD.b)		Existing zoning designations throughout the SFHA ensure low density development. Throughout the SFHA, minimum lot size ranges from 1 acre (although this constitutes a very small percentage of land) to 40 acres, and is predominantly 40 acres within the Ag-NRL zoning designation.
f. All structures must be set back at least 15 feet from the Protected Area and	App. 4, Section 3.3	5.2.A	Proposed SCC 14.34.150(1)	Proposed amendments to SCC 14.34 require a minimum setback back of 15

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sited as close to the SFHA boundary as possible				feet from the Protected Review Area unless the applicant can demonstrate that the structure is not likely to adversely affect listed species.
g. The proposed action must be designed and located so that new structural flood protection is not needed	App. 4, Section 3.8	4.2.E	Critical Area SCC 14.24.060 Shoreline Master Program SCC 14.26 Chapter 7.16	The (SCC 14.24.060) requires critical area review and authorization for any land use activity that can impair the functions of critical areas or their buffers. Site assessment required under 14.24 will require assessment of project impacts and establishment of mitigation measures to achieve not likely to adversely effect determination. In addition Chapter 7.16 of the Shoreline Master Program establishes policies, regulations and permit procedures, including Department of Ecology review for development of shoreline stabilization and flood protection facilities.
h. New road crossings over streams are prohibited outside the Protected Area	App. 4, Section 3.10	7.8.A.3 Note 1.	SCC 14.24, 14.26 and 14.34	Any new road crossing would trigger development permit review under the Critical Areas Ordinance (SCC 14.24), the Shoreline Master Program (SCC 14.26 Chapter 7.17), and Flood Damage Prevention Ordinance (SCC 14.34). Any adverse impacts to protected species would have to be mitigated.

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i. All bank stabilization measures requiring armoring of the streambank or shoreline shall utilize bioengineering per the Integrated Streambank Protection Guidelines 2003 (for riverine shorelines) or the State Shorelines Guidelines on bank stabilization (2003) (for estuarine and marine shorelines).	App. 4, Section 3	4.2.F Commentary		