



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

North Puget Sound • Region 4 • 16018 Mill Creek Blvd., Mill Creek, WA 98012-1296
Telephone: (425) 775-1311 • Fax: (425) 338-1066

July 31, 2020

Skagit County

Attention: Board of County Commissioners

1800 Continental Place, Suite 100

Mount Vernon, Washington 98273

VIA EMAIL: KenD@co.skagit.wa.us; RonW@co.skagit.wa.us; ljanicki@co.skagit.wa.us

SUBJECT: WDFW Review of Proposed Critical Areas Ordinance Amendment to Increase Protections for Great Blue Herons

Dear Commissioners Wesen, Dahlstedt, and Janicki:

The Washington Department of Fish and Wildlife (WDFW) recently reviewed a proposal to amend Skagit County's Critical Areas Ordinance (CAO; SCC 14.24.520) specific to protections for Great Blue Heron (GBHE) which is a designated Priority Species on WDFW's Priority Habitats and Species (PHS) List (see <https://wdfw.wa.gov/publications/00165>). WDFW's interest in your CAO is based on our agency's mandate to preserve, protect, and perpetuate Washington's fish and wildlife species and their habitats, and to provide for sustainable recreational hunting and fishing opportunities (RCW 77.04.012). We fulfill this mandate in partnership with local jurisdictions, which have the authority and responsibility to regulate land use; and with landowners, who act as stewards of their lands.

Our specific role in CAO updates and amendments is to provide science-based technical assistance concerning the needs of fish and wildlife at the local jurisdiction level. The purpose of this letter is to provide comments and recommendations regarding the proposed amendment.

1. Background.

- A. Existing Statewide PHS Management Recommendations. WDFW-designated GBHE as a statewide Priority Species in 1991 and published species-specific GBHE PHS Management Recommendations in 2012. One of the most important needs of GBHE is the protection of their nesting colonies (sometimes referred to as "heron rookeries", or more correctly, "heronries"), which are particularly sensitive to disturbance. Disturbance impacts can include, but are not limited to, terminated nesting attempts at the individual nest level up through full colony abandonment.

To that end, WDFW worked with species experts to develop a set of recommended buffers for nesting colonies to include in our Management Recommendations. These consist of both year-round buffers based on the amount of built (i.e., impervious) land cover, and additional seasonal buffers to account for noise-generating land use activities during breeding (nesting) season. An excerpt of those buffers from our GBHE Management Recommendations is included below:

Because colonies closer to human activity may tolerate more disturbance than colonies in a more undisturbed area (2, 52, 59), our recommended buffer widths vary with the surrounding levels of development. To delineate the year-round buffer, draw a circle around each outer nest tree using the buffer distances in Table 1. The outermost edge of each circle forms the outer limit of the year-round buffer (Figure 5)².

Table 1. Recommended buffers for nesting colonies

Year-round Buffers ^a			
Meters	Feet	Setting	Percent built within a ¼ mile of the nest colony ^c
300	984	Undeveloped	0 - 2%
200	656	Suburban/Rural	2 - 50%
60 ^d	197	Urban	≥ 50%
Seasonal Buffers ^e			
Meters	Feet	Land Use Activity	Time of Year
200	656	Unusually loud activities ^f	February to September
400	1,320	Extreme loud activities like blasting	

a Buffer guidelines based on 3, 4, 7, 15.

b Rationale for setting-specific buffers based on observed heron tolerance variations associated with land use levels (49, 52)

c Cutoff percentages among undeveloped, urban, and suburban/rural as defined in 36, 49.

d When birds in an urban area exhibit behavior indicative of a low tolerance to people, assign the 300 meter buffer regardless of setting.

e Seasonal buffer begins at the outer edge of the year-round buffer when specified land uses occur near a colony in the breeding season.

f These activities generates sounds exceeding 92 decibels when the sound reaches the outer boundary of the nesting colony (58).

We strongly stand by our published PHS Management Recommendations. They were developed in close coordination with renowned experts on the subspecies of GBHE that resides near the coastal region of Washington and are a recognized source of best available science.

- B. Current status of species in Skagit County. Skagit County has special significance for its notable GBHE populations. Specifically, Skagit County is home to the March Point Colony, which is the single largest GBHE colony along the west coast of North America. Although nesting GBHEs occupy other areas along the west coast, few are as important as the forested habitat adjacent to Padilla Bay. This is because Padilla Bay has one of the largest contiguous beds of eelgrass along North America’s west coast (Bulthuis 1995). The GBHEs at March Point rely on this eelgrass as a critical foraging resource. Consequently, forested habitat surrounding this eelgrass is a limiting resource to nesting GBHEs in the

region. The loss of suitable forested habitat along Padilla Bay (and elsewhere where nearby eelgrass resources occur) to development without adequate consideration of our PHS guidelines (along with related protections) threatens these local birds as well as the overall west coast GBHE population.

Skagit County was also recently home to another large GBHE colony on Samish Island. Though the Samish Colony has not been used since 2017, our PHS Management Recommendations state that inactive colony sites should receive the same protection as active colonies for ten years after the colony has seemingly been abandoned because GBHEs are known to reestablish former colony sites up to a decade after the birds have left.

- C. GBHE protections in Skagit County's existing CAO. Skagit County has already designated GBHE as a species of local significance (SCC 14.24.500 [4a]). However, the language in the county's current CAO does not make it clear that county staff should apply the buffers that WDFW recommends for GBHE nesting colonies to local land use proposals. This is primarily because the county requires the use of WDFW's management recommendations as part of a site assessment (SCC 14.24.520 [4]), but only when a "project is **within 200 feet of a fish and wildlife habitat conservation area** (SCC 14.24.520)." (emphasis added.) Thus, under the current CAO, any proposed activity occurring greater than 200 feet away from a GBHE nesting colony would not require an HCA site assessment, even though WDFW's PHS Management Recommendations for GBHE advises a year-round buffer for nesting colonies of up to nearly 1,000 feet.

2. Current proposed amendment.

- A. Summary of amendment options. WDFW understands that the Skagit County Planning and Development Service staff prepared and presented a report titled "2019 Docket of Comprehensive Plan Policy, Map, and Code Amendments" dated December 11, 2019 to the county's planning commission, which outlines four amendment options related to GBHE protections: One of the options (Option 1) is to retain the existing CAO "as is". Options 2 and 3 outline various changes to the existing CAO, as requested and/or recommended by the petitioner (Skagit Land Trust) and county staff, respectfully. Specific changes to the CAO that would occur as part of Option 4 are not described in the staff report but this option is noted as available to the Board of County Commissioners to develop an additional alternative.
- B. County staff recommendation. The county staff recommend amendment Option #3 as they believe this course of action will increase protections for "Great Blue Herons based on best available science provided by the Washington Department of Fish and Wildlife's Priority Habitats and Species: Management Recommendations: Great Blue Heron report" (see Page 36, Paragraph #1 in the December 11 staff report). Under the staff recommended option, specific changes would include an explicit requirement for a site assessment and a habitat management plan for "development proposed within 1,000 feet of the outer boundary of a

Great Blue Heron nesting colony...”; and specific protections for inactive colony sites for up to 10 years after ostensible colony abandonment.

- 3. WDFW’s recommendation.** Because of an apparent gap in the current CAO language, WDFW is very concerned that GBHEs are and will continue to be vulnerable to declines from land use proposals that might fall through the cracks in the current project review process. Negative impacts to nesting colonies in Skagit County are likely to result if the current CAO is left unchanged. Therefore, WDFW strongly supports that the specific changes outlined in amendment option #3, which staff recommended, be carried forward, as it would substantially improve conservation of GBHE nesting colonies. That being said, we encourage the Board of County Commissioners to take the staff’s recommendation *and* go one step further by also including a temporarily expanded buffer around nesting colonies during breeding season, as outlined in our PHS Management Recommendations (see the excerpt from that document included on page 2 of this letter.)

In closing, thank you for the opportunity to provide comments on this proposed CAO amendment. Our relationships with local jurisdictions like Skagit County are very important, and we believe that amending your CAO as we specified above will not just provide important protections for the species consistent with best available science: It will also provide greater clarity for landowners and other applicants for land use activities within Skagit County, as well as for Planning and Development Services staff who assist those customers.

If you have any questions, please contact me at (360) 770-8664 or Robert.warinner@dfw.wa.gov.

Sincerely,

Bob Warinner
Assistant Regional Habitat Program Manager

cc: Chuck Stambaugh-Bowey, Region 4 Habitat Program Manager, WDFW (via email)
Mary Huff, Land Use Conservation and Policy Section Manager, WDFW (via email)
Michael Cerbone, Assistant Director, Skagit County Planning and Development Services (via email)
Peter Gill, Long Range Planning Manager, Skagit County Planning & Development Services (via email)

Literature Cited:

Bulthuis, D. A. 1995. Distribution of seagrasses in a north Puget Sound estuary: Padilla Bay, Washington, USA. *Aquatic Botany*, 50: 99-105.