Critical Areas Ordinance Update 2024

Summary of Changes

This document is intended to provide a brief summary of the more substantive changes proposed for the 2024 Critical Areas Ordinance update. These are provided as concepts only. To read the proposed language in full context, please review KCC Title 19-Critical Areas Ordinance.

19.100 Introduction and Approval Procedures

19.100.105 Statement of Purpose

- REVISED: Policy Goal #11 re: cumulative impact
- ADDED: Policy Goal #13 re: Climate change; "plan for and consider"

19.100.125 Exemptions

- MODIFIED: 'Emergency' criteria section; 10-days to notify County; Must apply for necessary permits after-the-fact

19.100.130 Standards for Existing Development

- MODIFIED / CLARIFIED: the Single-family '20% Rule' section; *side* facing critical area may not be expanded more than 20%; still requires HMP/Wetland report; expansion in other location not feasible
- ADDED / CLARIFED: when demolished, the 'date of destruction' is the date of final inspection approval on the Demo Permit
- REVISED: Danger Tree section; avoidance and minimization

19.100.145 Special Use Review

- ADDED DETAIL / CLARIFIED: Special Use Review is not a stand-alone permit type

19.100.155 General Application Requirements

- MOVED: Mitigation Sequencing to this section to clarify that it applies to all critical areas (previously only in definition of "Mitigation" and in 19.200 Wetlands chapter.

  [[NOTE: Mitigation sequencing, specifically avoidance and minimization are achieved in different ways for different critical areas. Notably, for geohazards, providing a geological or geotechnical report that indicates the risks can be reduced by meeting a site-specific buffer and/or setback is sufficient to demonstrate mitigation sequencing. *When technology*

cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided (WAC 365-190-120(2)).]]

19.150 Definitions

- MODIFIED to apply to more than just wetlands: .195 Compensation; .265 Enhancement; .525 Reestablishment
- ADDED .256 Emergency
- ADDED .276 Establishment;
- ADDED .341 Functionally and effectively disconnected
- MODIFIED .345 Functions and values
- ADDED: .386 Habitat corridor
- ADDED: .401 Hydraulic Project
- ADDED: .436 Monitoring
- ADDED: . 441 No Net Loss (similar to definition in SMP)
- ADDED: .466 Preservation
- ADDED: .571 Significant Development

19.200 Wetlands

19.200.205 Purpose and Objectives

- ADDED: Section A. "[…] maintaining and enhancing […] movement of small animal and amphibian species[…]"

19.200.210 Wetland Identification and Functional Rating

- ADDED / CLARIFIED: Mapped hydric soils are considered potential wetlands
- REMOVED: Wetland Category score ranges
- MODIFIED: Exemptions for Small Wetlands- Both Category III and IV wetlands under 1,000 square feet may be exempt from buffers (Cat. IV used to be 4,000 square feet); CLARIFIED: exemption applies when habitat score is not 6 points or greater; ADDED / CLARIFIED: The 15-foot building setback still applies

19.200.215 Wetland Review Procedures

- MODIFIED: Single-Family Wetland Certification- review within 300-feet (not 250-feet)
- ADDED: Single-Family Wetland Certification- Certification needs to include a site plan and rating forms

19.200.220 Wetland Buffer Requirements

- No change in buffer widths.
- REORGANIZED: .220(B) is now NEW section, *Increased or Enhanced Wetland Buffer Width*, and section .220(C) is now REVISED section, *Provisions for Decreasing Buffer*
- ADDED: .220(B) *Increased or Enhanced Wetland Buffer Width*
    - The standard buffers widths assume that the buffer is adequately vegetated to provide functions. This section provides authority and standards for requiring either an enhanced buffer or increased buffer width when these existing conditions are not met.

        [[Note that this is on a case-by-case basis and is discretionary. Note that a option to increase buffers already existed in the FWHCA chapter (19.300). Any request to enhance vegetation must be proportionate to impact. This does not apply to existing development.]]
    - Buffer enhancement is preferred over buffer width increase, but when necessary, a NEW table is also provided to indicate by how much the buffer should be expected to increase.
- REORGANIZED / CLARIFIED: .220(C) *Provisions for Decreasing Buffer*
    - This section was largely reorganized for clarity of when the different permit types apply, and the standards for each. No substantive changes.
    - Protection of significant trees MOVED to apply to any type of buffer reduction
    - ADDED: Functionally Disconnected Buffer section to address an existing policy for when mitigation may not be required when 'significant development' exists between the proposal and critical area (Note: driveways do not count as 'significant development').
    - MODIFIED: Habitat Corridor and Minimization Measures options for reducing bufer. Now under single section; Habitat corridor clarified as a minimum 100-feet *connecting* corridor and must be legally protected.
    - CLARIFIED: Variance only an option when Type I or II reductions not feasible and will be a Type III process
- REORGANIZED / MODIFIED: .220(D) NEW section *Protection of Buffers*. Moves fencing, signs and refuse/fill requirements all into a single section; Fencing needs to allow for the movement of small animals and amphibians.

19.200.225 Additional Development Standards for Certain Uses

- ADDED: .225(D) Land Divisions and Land Use Permits- requirement for each created lot to include at least one building site, consistent with same section in 19.300
- ADDED: .225(E) Surface Water Management- new section regarding how managed for bog wetlands
- REORGANIZED: .225(I) Pesticides- moved from only under the Utilities section to apply more broadly

19.200.230 Wetland Mitigation Requirements

- ADDED: Use of native plant species
- ADDED: Minimum 1:1 mitigation ratio for buffer impacts
- MODIFIED: Direct Wetland Mitigation ratios revised
- ADDED: .230(E)(3)- Methods for Compensatory Mitigation- nothing 'new', but does codify guidance from Ecology on re-establishment, rehabilitation, establishment, preservation, and enhancement.
- ADDED: .230(F) – Mitigation Compliance
    - Completed prior to final inspection
    - Mitigation Covenant Required (similar to stormwater covenant)
    - Future projects will verify mitigation sill in place or must be replaced
    - Monitoring requirements (moved up from old section (E))

19.300 Fish and Wildlife Habitat Conservation Areas

19.300.305 Purpose

- ADDED: Purpose Statement- *Retain and restore riparian buffers to the maximum extent practicable to preserve and enhance functions and values over time*.

19.300.310 Fish and wildlife habitat conservation area categories

- ADDED: TYPE O Streams
    - Water body that otherwise meets the definition of a stream, but does not have a surface connection downstream to a typed stream. These features are usually found in headwater systems and run subterranean (hence the absence of a continuous surface connection). The lack of surface water connection means they have not previously been protected by the CAO.
    - These are not mapped and field verification will be necessary by the biologist and likely Stream ID Team. [[Note that these streams are not frequently encountered. They also only apply to *natural* watercourses that meet the definition of a "stream". It does not apply to artificial ditches.]]
    - Standard buffer is 50-feet

19.300.315 Development Standards

- MODIFIED: Type F standard stream buffer increased from 150-feet to 200-feet; UGA Alternative Buffer Width starts at 150-feet
- MODIFIED: Type Ns/Np stream buffers increased from 50-feet to 100-feet; UGA Alternative Buffer Width starts at 75-feet

- ADDED: Type O standard stream buffer at 50-feet (no change for UGA Alternative Buffer Width)
- ADDED: Where lakes have associated wetlands, a wetland report would still be required and the greater buffer (100-foot for lake or wetland buffer) will apply.
- REORGANIZED / MODIFIED: .315(A)(2) Buffer Measurement. Combined standards related to buffer measurement into single section: OHWM, CMZ, streamside wetlands, braided channels
- CLARIFIED: removal of invasive vegetation in the buffer is allowed with DCD approval.
- ADDED: General buffer alternative. Option to use WDFW's Site Potential Tree Height model when a site-specific soil analysis (geologist, etc.) and an analysis by habitat biologist on how to the tool was used to determine the site specific buffer. [Note: this is a less cost-effective or predictable tool, which is why it is not the default. However, in some cases, the SPTH model can result in smaller buffers than the standard buffers prescribed by code. No additional permits are needed for approval of this method.]
- ADDED: UGA Alternative Buffer Widths
    - Intended to be used for redevelopment, and sites where full riparian function doe s not currently exist. Does not apply to single-family uses or subdivisions.
    - Applies only in the UGA for new multi-family, or for redevelopment to multi-family, commercial or institutional uses. May also be applied with ecosystem restoration is included in the proposal (this is beyond buffer enhancement and would include things like daylighting a stream or establishing a habitat corridor).
    - HMP must demonstrate that greater riparian function will be provided than currently exists; cannot impact functionally significant habitat (mature trees, habitat corridos); cannot increase threat of erosion, flooding, etc.; the existing development (clearing, grading, etc.) must have been legally established.
    - If utilizing a previously developed site, no new development activity may further intrude into the UGA Alternative buffer or critical area.
    - A "Certification" Worksheet is available, similar to the Stormwater Waiver form. This will allow review of a preliminary HMP to verify that the proposal appears to qualify for use of the UGA Alternative Buffer width for planning purposes, but like the stormwater waiver, is subject to change with formal review.
- REORGANIZED / CLARIFIED: .315(A)(5) *Provisions for Decreasing Buffer*
    - This section was largely reorganized for clarity of when the different permit types apply, and the standards for each.
    - Protection of significant trees MOVED to apply to any type of buffer reduction
    - ADDED: Functionally Disconnected Buffer section to address an existing policy for when mitigation may not be required when 'significant development' exists between the proposal and critical area (Note: driveways do not count as 'significant development').
- REORGANIZED / CLARIFIED: .315 (A)(6) *Provisions for Increasing Buffer.* Buffers for streams may need to be increased if a PHS recommended buffer is larger; streams in ravines extended buffer language moved here; CMZ increase also here.
- REORGANIZED / MODIFIED: .315(A)(7) NEW section *Protection of Buffers*. Moves fencing, signs and refuse/fill requirements all into a single section

- ADDED: .315(A)(9) *Piped Watercourses*. Code was silent on how to address buffers and setbacks for typed streams which are piped.
    - Applies only when upstream/downstream portions are not reasonably feasible for future restoration (verified by County, WDFW and tribes) based on existing infrastructure; and when the pipe is adequately sized to accommodate flow capacity now and in the future (accounting for climate change); and functions are still enhanced to the greatest extent possible (adding rain gardens or habitat corridors).
    - Would require only a 15-foot setback easement on either side of the piped stream, primarily for maintenance or safety.
- MODIFEID: .315 (D) *Stream Crossings*.
    - Need to also use WDFW publication, *Incorporating Climate Change into the Design of Water Crossing Structures*.
    - *For new development proposals, if existing crossings are determined to adversely impact or be of insufficient size to maintain function for salmon spawning, holding or passage areas, new or upgraded crossings shall be relocated as determined by the Washington State Department of Fish and Wildlife (WDFW).*
- ADDED: .315(N) *Enhancement Activities.*
    - Similar to language in SMP that acknowledges WAC exemptions from local permitting process for certain types of sponsored restoration projects.

19.400 Geologically Hazardous Areas

19.400.410 General Requirements

- MODIFIED / CLARIFIED: .410(D) *Clearing, Grading and Vegetation Removal*
    - Clarifies the vegetation shall not be removed from both landslide AND erosion hazard areas without geological/geotechnical support.

19.400.420 Erosion hazard areas.

- MODIFIED: .420(B)(1)- CMZ mapping can be from other sources that followed Ecology guidance, such as the DNR Natural Resources Geologic Information Portal.

19.400.425 Landslide hazard areas.

- ADDED: .425(C)- Landslide hazard indicators now include
    - *Areas with slopes containing soft or liquefiable soils, such as areas with unconsolidated glacial deposits subject to elevated groundwater levels after prolonged rainfall or rain-on-snow events*
    - *Areas within potential landslide runout distance greater than the slope height as 1 measured from toe of slope or as determined in a geological hazards geotechnical report.*

19.400.435 Development standards.

- REORGANIZED / CLARIFIED: .435(A) *Erosion and Landslide Hazard Development standards*
    - No substantive change. Does clarify that development activities shall not be allowed inside a landslide OR erosion hazard area without geological assessment; clarifies how buffer is applied and how the buffer/setback applied for moderate and high erosion hazard areas (25' buffer + 15' setback), as well for moderate and high landslide hazard areas.
- ADDED: .435(B) *Seismic Hazard Development Standards*
    - Geologic assessment is required for moderate seismic hazard areas (liquefaction concern)

19.400.445 Recording and disclosure

- MODIFIED: Geotechnical NTT only required when the report has identified actions or measures beyond standard requirements (larger buffers and setbacks, for example).
- ADDED: Statement that any monitoring recommendations stated in the assessment is the responsibility of the landowner.

19.500 Frequently Flooded Areas

No changes

19.600 Critical Aquifer Recharge Areas

19.600.605 Purpose.

- MODIFIED: Policy D
    - *D. Balance competing needs for water supply while preserving essential natural functions and processes, especially for maintaining critical fish and wildlife habitat conservation areas. This includes, but is not limited to, ensuring groundwater recharge to maintain natural stream flows.*

19.600.615 Development Standards

- MODIFIED: .615(D)*Storm Water.*
    - *Storm Water. Storm water best management practices shall be accomplished in accordance with Title 12 and shall take into account potential reductions in the annual volume of water infiltration onsite due to the proposed development to protect water quality and quantity.*

19.700 Special Reports

19.700.705 Special Reports

- ADDED: .705(E) *Timeframe*
  - All special reports valid for 5-years unless otherwise indicated by author; clarifies the supplemental report option

19.700.710 Wetland delineation report

- ADDED / CLARIFIED: .710(B)- report to include analysis for functional values, summary of proposed activity and impacts to both the wetland AND buffer.

19.700.715 Wetland mitigation report

- ADDED: .715(B)(6)(g)(ii) *Landscape Position and Geomorphology*
  - Qualitative description of functions to also include *[…] moderating downstream temperatures, contributing to base flows, maintaining stream flows, or improving water quality locally and regionally.*
- ADDED: .715(B)(6)(j)(i) *Information on Water Quality, Where Applicable*
  - *Description of any known or observable water quality problems at the development site and downstream until marine waters are reached […].*
- ADDED: .715(B)(7) *Mitigation Approach*
  - The discussion of wetland rectification strategies needs to include a time frame for when the impacts will be rectified (temporal loss)
- ADDED: .715(B)(12) *Site Protection*
  - Added requirement that the mitigation area and associated buffer be legally protected through a tract or easement. Proof of recorded documentation required.
  - Physical site protection of the remaining wetland boundaries and buffer required
- MODIFIED: .715(B)(16) *Performance Bonds and Demonstration of Competence*
  - Demonstration of compliance may be extended up to ten years (typical 5)
  - Clarifies that two consecutive monitoring reports may result in bond release earlier

19.700.720 Habitat Management Plan

- ADDED: .720(B) Map to include
  - ALL FWHC Areas, inclusive of standard or proposed buffer widths and setbacks;
  - the locations of any significant trees; and
  - identification and location of any Priority Habitats and Species
- MODIFIED / ADDED: .720(C) Plan to include
  - Analysis of existing species, habitats, ecological quality, functions and values
  - Analysis of the effect of the proposal on the above
  - Discussion on full mitigation sequencing (avoidance, minimization, etc)

- Mitigation sites to preserve or achieve habitat corridors; aquatic habitat impacts need to be mitigated in the same ecosystem; ongoing practices to protect habitat
- Analysis of how meeting "full buffer function"
- Discussion of significant tree retention
- Site Protection requirement (same as Wetland Mitigation Report)

19.700.725 Geological Assessments

- ADDED: .725(C) *Geological Report Submittal Standards*
  - A site plan is required with the report, showing top and/or toe of slope and any required buffers and/or setbacks

19.700.730 Hydrogeological Report

- ADDED: Report criteria to address water QUANTITY concerns
  - .730(A)(5) *Available surface water and groundwater quality and quantity data*
  - .730(A)(9) NEW: *Cross reference the storm drainage report to determine potential reduction in the annual volume of water infiltration onsite due to the proposed development.*
  - .730(A)(10) *Recommendations on appropriate BMPs (best management practices) or mitigation to assure no significant degradation of groundwater quality or quantity*

19.800 Appendices

Appendix A: Washington State Wetland Rating System Categories

- REMOVED

Appendix B: Kitsap County's GIS Database of Critical Areas Information

- MODIFIED: corrected name of PHS database; added Washington Natural Heritage Program; Updated to WA DNR LiDAR Portal

Appendix E: Critical Area Decision Types

- MODIFIED: To match changes to body of code; corrected to Add Type II process for streams and wetlands; clarified when variance needed