

Critical Areas Ordinance Update Comment Matrix - Comments Received through April 26th, 2024

Comment #	Date Received	Name	Topic	Text
1	3/21/2023	James Kelly	Code Change Matrix	I appreciate the notice alerting us on the upcoming revision to the CAO and if the current schedule holds (released in June 2024) I would hope that the committee would provide a chart of what has changed and why. It is necessary to have a ready reference to the impact of changes and why, and not the hugh amount of detail that those who are engrossed in the revisions deal with. The purpose of the revision stated ..."Align, Assure, and Provide..." does not give any citizen a feel for the devil is in the details of the prospective revisions. Missing this revision listing and what drove the revision I would be hard pressed as a citizen, and property owner in Kitsap County to understand what has really occurred to the average property owners benefit or detriment.
2	4/30/2023	Deborah Vedin	Development and Environmental Hazards	I live on land that has been in our family since before Washington was a State, and my Great Uncle and Grandmother donated over 1500 acres to Watersheds over many years. The rest of the land includes critical wetlands, salmon streams, artesian springs, seasonal streams and protected forests. DOT and other State stakeholders are in the process of upholding Boldt ordered infrastructure replacement projects on the downstream from my recent project @ State Hwy 16 in Gorst through to the Puget Sound catchment. This area suffered recent flooding and steep slopes sliding due to the artesian springs movement from clear cutting and solid surfaces runoff from rapid over building. Even my home that's been here 66 years has had to have a sump pump installed under it because of runoff. And we have lost the 250 year old logging road to slides from water diversion from the project above us! This could easily happen to State Hwy 16! Or to the ramp by Feigley Road. Please understand the power of our amazing aquifer. Respect it. Homes built on it won't be stable. And the roads will look like State Route 166 (always sinkholes)
3	5/1/2023	Deborah Vedin	Development near HWY 16	I just had a conversation with my mail carrier that concerned me very much. I've been working for nearly 20 years on the expansion of McCormick Woods as it is on land thaws previously donated by my family for Watersheds. The current planning was set up in stages and required it meet EPA and Corp of Engineers guidelines due to the critical wetlands, endangered salmon streams Forestry and WDFW. This was because much of the land owned by DR Robert ONeill was under a FFFP GRANT, Which requires no logging and stream management/setbacks due to the Culvert and Streams Restoration and and Puget Sound Catchment Basin on both our properties. Washington will be completing this project through DOT and are currently in the measure/surveying/location/ process at State Hwy 16 Gorst through to the Catchment Basin. As well as the Feigley stream and Gorst Creek. For this reason DOT is NOT GRANTING ANY NEW CONNECTIONS TO STATE HWY 16. McCormick has given buyers false impressions that improvements to State Highway will be coming. This isn't the case. Projects "in the pipeline are limited to maintenance and legally required culvert/stream restoration for salmon." Please don't give out any permits for projects that will result in dangerous dead ends to the highway as there are already too many collisions through this dangerous corridor.
4	5/3/2023	Judy Fulford	Slide Area Code Enforcement	What is the point of updating the critical area ordinance if the county is not enforcing the critical slide area rules now?
5	1/8/2024	Thomas Garrett (DEIS Comment)	Aquifer Depletion	Many of our aquifers are being rapidly depleted by over-pumping. As the over-pumping occurs, the land can settle as water is pumped out leaving less space for the new water to refill the aquifer. Over-pumping can also cause saltwater intrusion also which can damage the entire aquifer beyond use. Kitsap County should facilitate a contingency fund to cover the cost of rural parcel owners for the loss of their private wells due to over-pumping and saltwater intrusion of the aquifers due to the rural growth forecast. A plan should also be developed to install new water pipelines in existing rights-of-way to facilitate new water connections to the rural parcel owners losing their wells due to over-pumping and salt water intrusion. Kitsap County should also fund the research for other solutions with existing and new technologies to solve this problem. Kitsap County should take into consideration all private wells when determining total water usage forecast for the CAO Hydrology Plan and EIS
6	1/18/2024	Kathie Lustig (Comp Plan Comment)	CAO Enforcement	Do not expand SEPA exemptions. SEPA checklists need stronder reveiew/oversight. Protect urban canopies. Protect habitat. Strengthen, don't weaken CAOs. Enforce CAOs.
7	1/22/2024	Port Gamble S'Klallam Tribe (DEIS Comment)	No Net Loss and Net Ecological Gain	No net loss (NNL) has been a standard for 20 years. Yet, during the 2022 Legislative session through the proviso contained within the Engrossed Substitute Senate Bill 5092-the Washington State Legislature directed the Washington Department of Fish and Wildlife (WDFW) to investigate a pathway for incorporating a Net Ecological Gain (NEG) standard into state law with the goal of improving endangered species recovery and ecological health statewide. WDFW submitted a letter and report to the legislature, Net Ecological Gain Standard Proviso Summary Report, December 2022. The letter states, "Despite significant investments in the recovery of salmon and other fish and wildlife species, scientific evidence of continued ecosystem decline in Washington indicates that NNL policies are not working or are not going far enough to protect our state's rich natural heritage." The county can not rely on NNL policies to mitigate significant unavoidable adverse impacts to the environment. Additional mitigation measures are needed. See pages 1-5
8	1/23/2024	Doug Hayman (DEIS Comment)	Variences	In my experience in looking at several variance requests in the area, the county tends to lean towards NOT strictly enforcing buffers, whether that relates to hazards for the homeowner or risks to the health of the critical areas. Whichever plan is chosen, or CAO updates are made, the county needs to make variances the exception and not the norm. See pages 6-11

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9	2/3/2024	Beth Nichols (DEIS Comment)	Variances	<p>Kitsap County approves variances to the CAOs routinely, making the CAO useless as a protection mechanism. I wonder if currently any variance is ever denied in Kitsap County to uphold the CAO goals of protection. These CAOS are weak and ineffective and not a true mitigation measure in current practice. Critical areas ordinances, which are currently under review, need to be strengthened with fewer routine variances and NO administrative approval decision options.</p> <p>See pages 12-15</p>
10	2/14/2024	Betsy Cooper (DEIS Comment)	CAO in Relation to the DEIS	<p>The Critical Areas Ordinance is cited as a regulation that will a moderator of impacts to natural resources and a check on impacts. However, the CAO is under revision and there are many changes that are still being considered. The fact that this regulation is in flux should be stated clearly in the EIS and perhaps a summary of the changing aspects of the CAO should be presented to more accurately indicate what aspects of these regulation can affect impacts to water resources, sensitive areas, etc.</p> <p>See pages 16-21</p>
11	2/19/2024	Doug Hayman (Comp Plan Comment)	Variances	<p>“Kitsap County protects the natural environment in part through its adopted Critical Areas Ordinance (CAO)” This sounds great but the reality is that Kitsap DCD leans towards protecting property owners and developers to grant variances that ignore the buffers meant to protect critical areas.</p> <p>-On page 71 it reads, “No Net Loss is a standard that ensures new developments do not introduce new impacts that decrease ecological functions. If impacts do occur, projects must mitigate those impacts to demonstrate no net loss.” This sounds good in theory but the county is understaffed and lacks the ability to do the necessary monitoring needed to measure before and after data necessary to show that no net loss has occurred.</p> <p>-on page 73 it states, “Environment Strategy 1.i. Submit the required annual report to the Federal Emergency Management Agency regarding Kitsap County’s status on review of projects for compliance with the National Flood Insurance Program (NFIP) Biological Opinion Puget Sound, as well as progress towards achieving programmatic compliance.” The county needs to integrate LiDAR to more accurately map areas that are at risk for flooding. The existing flood areas use averages that don't reflect the Best Available Science.</p> <p>-On page 74 it states, “Environment Policy 3.3. Continuously improve mapping, inventory, and baseline information of natural assets and their condition.” I’m all for this by replacing PDF versions of maps with online GIS maps. The county knows that the stream locations need updating for accuracy. And since LiDAR data is already available from WA DNR, we should make full use of it.</p> <p>-on page 77 it says, “Environment Strategy 6.a. Support and incentivize voluntary stream, wetland, riparian, and shoreline restoration and preservation efforts.” I fully support this. It would help volunteers to be granted access to such streams and wetlands with some coordination from the county where these people could gain access without being shot or attacked by dogs and other risks. This needs to be planned out well to succeed</p>

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12	2/19/2024	Beth Nichols (Comp Plan Comment)	Net Ecological Gain and Variances	<p>ENVIRONMENT comments</p> <p>We would like to see Kitsap County living up to the goals stated in the Environment element of the Comp Plan. I strongly concur with the statement from the Comp Plan: “Human well-being depends on a healthy, natural environment to provide for clean air, clean water, food, and overall high quality of life.” Now we need to move that from aspirational to ACTION steps. How can we make this happen on the ground?</p> <ul style="list-style-type: none"> • “Emphasis on the importance of the ecosystem and critical areas throughout the County”- The County needs to upgrade its respect of critical area codes in all development practices as carried out by DCD. Respect for the environment AND respect for those citizens who push for environmental protection needs to be an increased part of DCD’s culture. Currently the bias of DCD staff appears to be toward developers. Citizens have the right to expect balanced services that work to protect the environment equal to the rights of developers. The culture of DCD impacts the ability of Kitsap County to meet this goal of emphasizing the importance of the ecosystem and critical areas. There needs to be a shift in DCD culture. • “Ensuring environmental regulations are consistent with best available science.” Ensure that BAS is treated as expert guidance by DCD staff, and not just aspirational. BAS in environmental codes should be recognized as “expert witness” in public hearings for development permits. Variances to the environmental regulations should be extremely limited. • “Recognition of the health benefits of natural systems and aims to reduce adverse environmental impacts on vulnerable populations.” Agree with this statement, and once again – we need action steps for this goal. • “Enhancement of urban tree canopy and recognize the benefits of urban forests” • – We need strong codes for tree preservation and replacement only when preservation is not at all possible. Tree preservation codes need to be in the UGA, and in Alternative 2. We need to protect trees in the areas of development, in urban areas. Planting new trees in a time of climate change will not adequately replace the trees removed; they will grow too slowly to provide the benefits the larger trees already provide. Some newly planted trees will struggle in our more dry and hot summers. Our tree canopy is a precious resource. <p>-Whenever possible Kitsap County should explore purchase and conservation of sensitive lands to prevent development on critical areas such as wetlands, riparian zones, habitat corridors, forests and around sensitive lake areas. Partnerships with conservation groups should be explored to enable these opportunities to happen quickly. Tax reductions to property owners to incentivize open space and conservation should be explored and offered widely as options in lieu of development. There should be data on “grandfathered in small lots” that contain critical areas and explore how these lots could be protected by conservation efforts or tax incentives.</p> <p>-Net Ecological Gain should be the goal for the County in its approach to critical areas protections. “No Net Loss” is now recognized as SLOW NET LOSS. We are at a crossroads and the time for serious protections of critical areas is now. Net Ecological Gain means that after development, there is an increase in biodiversity, resilience and ecosystem functions. We cannot afford to continue to lose our ecosystem functions especially in this time of accelerating climate change.</p> <p>-Critical area Codes- Riparian buffers need to be the same whether Alternative 2 or 3 is chosen, those buffers need to meet Best Available Science with Riparian Management Zones and Site Potential Tree Height. A Critical area is CRITICAL and has mandated protection whether the County chooses one Alternative or the other. Even in an Urban Growth area, the CAO needs to be followed to meet at least NO NET LOSS, and hopefully NET ECOLOGICAL Gain. We must balance the care of these critical areas with the need for more dense housing.</p> <p>- Water supply and water quality need to be seriously considered with population growth, in this County that relies on aquifers for water. With climate change, adequate water supply and healthful quality is not a given. We need to recognize that we have limits to live within and protect water quality and quantity at all decision points. The care of our water resource is fundamental to all who live here.</p> <p>-On site septic (OSS) are of great environmental concern. When they fail, which they will- they pollute our precious water supply. More education needs to happen for property owners, so they know how to maintain septic and treat them carefully. Development in rural areas, which relies on OSS, should be discouraged as we protect our increasingly limited forested rural areas.</p>
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13	2/20/2024	Doug Hayman (Comp Plan Comment)	Riparian Management Zones	<p>Here is a statement I made tonight to the Kitsap Planning Commission in hopes of having Riparian Management Zones be added to the efforts to update the Critical Area Ordinances as they relate to the Comp Plan: Riparian Management Zones (made to Kitsap planning commission meeting Feb 2024) Kitsap County hired a group of experts to report back to them on best available science to then shape their update to the Critical Areas Ordinances to be done this year. In contrast to current stream buffers in the prior CAO, the science calls for a broader perspective on what riparian management zones can do to protect streams, the salmon that rely upon them and other wildlife that use these corridors. These benefits include:</p> <ul style="list-style-type: none"> • The recruitment of woody debris that helps shape flow velocities resulting in healthier aquatic habitats. • Shade & Microclimate necessary for salmon who need cool waters between 55 and 68 degrees. • Bank integrity – these riparian zones stabilize the banks. • Runoff filtration – by adhering to minimum suggested 100-foot buffers they remove pollution through filtration, reduction of sediment and keep excess nutrients out as well as toxic metals, herbicides, and pesticides. <p>The suggested guideline of using the Site Potential Tree Height is a wise way to proceed to protect the natural environment we rely upon. We can look to the City of Anacortes as they have embraced this alternative to stream buffers while Clark County to our South has implemented a hybrid of riparian management zones and standard stream buffers.</p>
14	2/26/2024	Carol Price (DEIS Comment)	Net Ecological Gain and Variances	<p>I am in support of many of the comments already made by Coleen Shoudy, Dave Shorett, Doug Hayman, Beth Nichols, and others. Comments submitted in the letter from the Port Gamble S'Klallam Tribe are particularly significant. They make the case for adoption of Net Ecological Gain as a County standard. Critical Area Ordinance regulations need enforcing, especially in reference to wetlands, streams, and the shoreline. Buffers around these water ways need to be honored and enforced, and variances for buffers are not appropriate. Property owners must be held to a higher standard in their responsibilities towards the environment.</p>
15	2/26/2024	Suquamish Tribe (DEIS Comment)	CAO in Relation to the DEIS	<p>Updates to the CAO and the Comprehensive Plan should either be on substantially the same time path or the CAO updates should already be completed so reviewers are aware of the potential impacts resulting from what is being proposed. See pages 22-63</p>
16	2/26/2024	Kitsap Building Association (KBA) (DEIS Comment)	CAO in Relation to the DEIS	<p>It also must be stated that any discussion regarding UGA boundaries and buildable lands cannot be had until the Critical Areas Ordinance Update has been finalized and adopted. The land use portion of the comprehensive plan process hinges on an update to critical areas code that is not complete. The KBA, and the Kitsap community at large, are being done a disservice by being asked to comment on a comprehensive plan before the Critical Areas Ordinance process has been completed. How can we make suggestions in good faith without knowing what critical area buffers we will be working with? See pages 64-66</p>
				<p>First, a personal thank you to the staff at the DCD for all their hard work and dedication in outreach during the DEIS process. They have held numerous in-person and hybrid events, with display materials to better understand potential changes to our county. Of the alternatives proposed by DCD, Alternative 2 is the one I support. It provides for more rural, farm and environmental protections. To refrain from being repetitious, I would like to call special attention to the comments from Poulsbo Mayor Erickson and the Port Gamble S'Klallam Tribe. I do not support the Raydient rezone request. It would degrade forever the rural character that currently exists and would bring suburban/urban traffic and other environmental mitigation needs that are not supported by the intention of the GMA. Please keep the zoning as it stands. If future citizens decide to change this, let them do so at that time. The same goes for the Island Lake rezone request. Please deny this upzone. Between 1997 and 2017, Kitsap County lost 61% of its farmland (USDA Agricultural Census, 1997-2017), nearly three times the rate of that in the greater Puget Sound Region. Kitsap County needs to</p>

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17	2/26/2024	David Vliet (DEIS Comment)	Buffer Variations for Agriculture	<p>make farmland preservation a priority to provide food security for its citizens. We cannot, and should not, expect farmers in other areas to fully supplement our growing food needs. There is a growing number of young and motivated local farmers that we need to embrace and assist in growing our local food supply. Please commit to public hearings with regards to farmland preservation in 2024-25.</p> <p>I agree with previous citizens commenters below on the need to achieve Net Ecological Gain when pursuing development goals as a county. We cannot continue to unsustainably build out and lessen our quality life, in a "death by a thousand cuts," as someone said below. And no more variances when it comes to wetland mitigation. This is a shell game that does not force us to come to terms with building the way we should, where we should. I have heard that our development community is very creative. Let that creativity flow within the existing landscape and work around our critical and forested areas. These are critical areas for a reason.</p> <p>I support expansion and enforcement of the CAO. I however would like to see some exception in the CAO code for farmland. I'm proposing something like a 50% variance of setback in the CAO so these farms can remain in business in a county with rising land values and rapid land conversion.</p> <p>Lastly, Kingston, "The Little City by the Sea," is a gem of a town. I strongly oppose the upzones put forth in the alternatives for Kingston. Especially for the poor folks off Lindvog Rd., a beautiful road that will be forever changed should this zoning be changed. We need to wait to see the impacts that Arborwood has on our quite and kind little town before expanding the UGA. From what I have read, Kingston has already met our population goals as required by the GMA.</p>
18	2/26/2024	Berni Kenworthy (DEIS Comment)	CAO in Relation to the DEIS	<p>The forthcoming update to the Kitsap County Critical Areas Ordinance will require an update to the county's buildable lands and land capacity analyses. How is this version of the draft Comprehensive Plan EIS anticipating changes that may occur as a result of the new CAO? See pages 67-68</p>
19	2/26/2024	Kitsap Environmental Coalition (KEC) (DEIS Comment)	CAO in Relation to the DEIS	<p>Critical Areas Ordinance is called out numerous times as a key mitigation measure, however that ordinance is currently under review. It will only be as effective as the strength of its final requirements. If it has too many opportunities for variances and waivers, this mitigation measure will be weak and useless. Rather than vaguely describing the direction the County plans to take, the EIS and Plan should spell out specifically what the County has to do. In certain cases this will require some hard decisions on what is allowed; to apply the rules and regulations without the use of variances. See pages 69-80</p>
20	3/2/2024	David Onstad (Comp Plan Comment)	CAO in Relation to the Environmental Element	<p>Those in the CAO working groups organized by the County have difficulty improving or adding the rational environmental protections needed in this fundamental set of rules. These difficulties seem to contradict the platitudes and lofty goals expressed in this chapter.</p> <p>Dr. David Onstad, an ecologist, reviewed the "BAS" included in a report by consultants on the update of the CAO and found it significantly lacking in current science pertaining to wildlife and wetlands.</p> <p>The following text explains why we need Net Ecological Gain as a paradigm in the County: Some would say that No Net Loss (NNL) is not based on the Best Available Science. In addition, long-term monitoring of mitigation sites is lacking. The consultants for WA Department of Fish and Wildlife (Davis and Gunnell 2022) stated "Washington currently has a No Net Loss (NNL) policy for development involving shorelines, wetlands, and certain other critical habitats. Despite significant investments in the recovery of salmon and other fish and wildlife species, scientific evidence of continued ecosystem decline in Washington indicates that NNL policies are not working or are not going far enough to protect our state's rich natural heritage." "In advancing Net Ecological Gain standards, the state must simultaneously address these issues and others tied to NNL."</p> <p>The primary effort should be to change the CAO and change the culture within DCD. The Comp Plan is too vague and idealistic to determine the real, practical protections for nature that the County needs. Unfortunately, the 12 policies listed in the 2017 CAO are not adequately followed or implemented in Kitsap County. Ten and one half of the twelve policies declare that the County will support and protect the environments of the County. Only one-half of policy #4 mentions that allowable use of land will protect property rights and development. Do the 10 and ½ policies really protect critical areas in Kitsap County? Or does the ½ (of #4) trump the rest? The Comp Plan and the new CAO should at least be honest and transparent about how the County truly deals with the environment and critical areas. Have only two policies: one stating something about property rights and development and another that describes protecting critical areas. See pages 81-84</p>

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21	3/3/2024	Thomas Doty (Comp Plan Comment)	Protection of Amphibian Habitat	<p>Add amphibian friendly, reproductive habitat to the Critical Areas Ordinance (CAO) regulations. Wetland preservation should not all be about salmon – there is no trickle-down benefit to amphibians in the current protection of salmon streams.</p> <p>See page 85</p>
22	3/8/2024	Tecla Legge	Calculating Slope Percentage Broken Links CAO Map	<p>Hello team members working on this update.</p> <p>Much of the material is a great improvement in language clarification. Much appreciated. One item that might help is how do you figure out a slope percentage% ? There is discussion of percentages and setbacks, but not how that is calculated. A diagram of a slope would be very helpful.</p> <p>I've tried to look further into items in the March 8, 2024 emailed publication. A few of the links go nowhere - such as linking to some of the RCWs (sorry now I can't find the 2 that don't link).</p> <p>But most important to me is that the link to the county's Critical Areas map is relatively low resolution. You can't pull up enough detail to figure out lot line and roads. The black lines are so thick, you can't figure out what you're looking at. Is there some other county site that provides a better - higher resolution - look?</p> <p>Thank you, Tecla Legge Kingston WA</p>
23	3/10/2024	Laurie Sterling	Adoption of Sustainable Building Code Gentrification Livability	<p>Hello,</p> <p>I am a resident of Port Orchard and would like to comment on the critical areas ordinance planning that is taking place. While there are many details and moving parts to consider, I believe it behooves us to remain mindful of the larger picture in asking ourselves what is the character and quality of community and lifestyle we want to foster as this inevitable growth moves forward. This ultimately can shape the details and direction of the growth that is chosen which as I am certain you are aware, is vitally important as it is often difficult and costly to change course mid stream. As a government representing the interests of the citizens, this means we must look at what is best for the COMMUNITY, which includes the longer term interests of the youth currently living in Kitsap County, and the generations to come. In remaining steadfast to this ideal, we may need to say no to expediency and convenience in the interest of truly using this beautiful space we have to foster a thriving, vibrant, livable community that we all feel fortunate to live in.</p> <p>Given the realities of global warming which we know are only getting worse, we need to implement building codes on new construction that address sustainability. This should include at the very least having water reclamation as part of the design, and use of alternative energy sources to reduce strain on the grid as well as protecting old growth trees and wildlife corridors.</p> <p>This also means when it comes to approving permits for business and construction asking if this is best for the community. Failure to examine this can lead to the gentrification of our community. As an example, did we really need 2 new pharmacies built across the street from one another? Two big box office supply stores built across from each other? More storage units? More car washes? Is this really enhancing the livability of our area???</p> <p>Also as we look at livability and quality of health and life in this community, we need to look at what incentives and services can be made available to promote health, well being and community. One very obvious need in our community is to have a YMCA. I have met with the director of the YMCA and am aware that there have already been multiple feasibility studies indicating this is a viable option in this community. As a parent, there have been woefully few options for activities for kids here. There is only one swimming pool and one lit playing field for the entire South Kitsap School District. As someone who works with seniors, there are very few services here such as a safe place to walk and activities to reduce social isolation that is rampant right now. Having a YMCA is one option that would make a huge impact for our community. I mention this because it is part of the larger picture as we ask, what kind of community do we want? What can we do to make it more livable, to create more opportunities for citizens to connect, know, and care for one another. How we build the physical forms around do in fact shape how community is built....or obstructed. It behooves us to learn from other communities that have succeeded in this regard and to be creative in finding a way, but this begins with committing to the vision in the first place.</p> <p>Thank you for your consideration and I appreciate the opportunity to share my views on this important stage in the life of this community.</p> <p>Laurie Sterling MSW, LICSW</p>

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24	3/22/2024	Suquamish Tribe SEPA Comment	SEPA Environmental Checklist	See pages 86-95
25	3/25/2024	Kitsap Alliance of Property Owners	Development	See pages 96-116
26	4/8/2024	Suquamish Tribe (Comp Plan Comment)	CAO in Relation to the Comp Plan	<p>Though the Critical Areas Ordinance Update 2024 proposes increases in stream buffers, the proposed buffer widths for Type N streams are generally half the width as called from by Best Available Science and only meet the base minimum width to meet the pollution removal function.</p> <p>Non-conforming lots are a frequent source of requests for RUE or variances resulting in buffer reductions and failing to deal with this legacy issue reduces environmental protections as smaller lots have less opportunity to avoid critical areas or their buffers. Potential measures to deal with this legacy issue include, but are not limited to policies that require the ultimate landowner (to avoid adjacent lots be owned by multiple companies controlled by the same entity) to aggregate adjacent lots to extent possible to bring substandard lots to conforming status in terms of size. Additionally, when variances to buffer requirements are sought, the Special Reports must quantitatively describe buffer impacts and proposed mitigation, and the time required for the mitigation to achieve the same values and functions prior to the disturbance.</p> <p>A Land Use Policy that requires DCD to manage and maintain the CAO maps to ensure they reflect the most recent information is required. Additionally, prior to adopting this Comp Plan, the County should review all existing Special Reports, stream type reports, etc., and revise the Critical Area Maps as necessary to implement Environment Policy 2.4</p> <p>It would help, particularly for small business if the County's publicly accessible CAO database was kept current so people making decisions to site small rural based business are not surprised during an application for a permit to discover Critical Areas that could have influenced earlier decisions.</p> <p>The Draft Comp Plan and the current CAO, SMP, Stormwater Ordinance do not achieve the "enhance" part, but cater to a slow decline. See the Tribe's comments the DEIS for details.(Referring to GMA goal "Protect the environment and enhance the State's high quality of life, including air and water quality, and the availability of water."</p> <p>The location of many critical areas and the correct stream type for many streams is unknown. As noted elsewhere, the County must have this information to assess potential impacts. Desktop review is a helpful first step, but does not replace site visits to verify onsite conditions.</p> <p>Rather than being aspirational, the County should implement a program to monitor and evaluate the effectiveness of the CAO and SMP, with close attention paid to the number of variances, buffer reductions, buffer averaging, etc. as well as the area (both project specific and by sub-basin) in which they intrude into a critical area or its buffer.</p> <p>The extent to which County Code will protect species or their habitats not specifically listed in the CAO is suspect.</p> <p>The County has not used Best Available Science to set stream buffers for Type N or) streams, or to include riparian areas as a critical area.</p> <p>The methods to quantify impacts to ensure effective mitigation is proposed are absent from the Comprehensive Plan, the DEIS, and the CAO.</p> <p>To meet this Environmental Goal (Goal 3), the location of critical areas need to be accurately known, new or revised locations updated, and a method to quantify the impacts prescribed. Great effort has been devoted by many agencies to determine impacts to wetlands, scant effort has gone into quantifying the impacts to other critical areas such as stream or stream buffers. Quantification must extend between comparison of the square footage of impacted area to square footage of proposed mitigation with a scaler not based on current science.</p> <p>The chronic out of date status of the critical area mapping detracts from the ability to streamline the permit review process</p> <p>County must routinely update its critical area databased and included an overlay that shows what special reports have been prepared for each parcel to enable consultants to see what other reports might influence their conclusions and suggest additional work be conducted early rather than later when work has gone into project design.</p> <p>See pages 117-138</p>

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27	4/10/2024	Thomas Doty	Protecting Amphibians	<p>Ignoring, for the moment, the philosophical ramifications of extinguishing amphibians, it is instructive to metaphorically liken species diversity in an ecosystem to the rivets in an airplane wing. Repeatedly take out one rivet among hundreds, when does the wing fail? How many species can we lose before ecosystem failure? Neither is known, exactly. There has been little interest, and little research money, dedicated to understanding the critical role played by amphibians in ecosystem dynamics.</p> <p>Consider DNA and the library at Alexandria. The sum total of human knowledge was burned down, as many as nine times. Someone likely objected. The loss of even one species carries with it DNA encoding biochemical solutions to problems we may not yet be aware of. Amphibian DNA represents structural and functional evolutionary experiments leading to refinement over 365 million years, a massive informational loss.</p> <p>Moist, permeable amphibian skin is a seemingly ideal environment for fungi and bacteria. Why are there not commonly massive skin infections among these species? Your feet would rot. They have immune systems, not unlike our own, that produce anti-fungal and anti-bacterial compounds which mostly have not been studied. Accepting their loss is short-sighted given that most of our effective pharmaceuticals come from obscure organisms living in obscure habitats.</p> <p>Amphibians play a critical role in micronutrient delivery from aquatic to terrestrial environments. Perching birds (70% of all birds) are having difficulty calcifying their eggs, partly due to acid rain washing Ca++ from soils. This loss is further compounded by the decline in availability of juvenile amphibians dispersing into woodlands, carrying their calcium-rich bones upon which birds and small mammals normally feed.</p> <p>Dying amphibians can be viewed as wetland habitat canaries, signaling the environmental future for more resistant species. Because they are transparent to water borne toxins, amphibians are among the first to show the effects of aquatic contaminants. We should be alarmed when frogs die.</p> <p>Amphibians eat the bugs that eat wood, resulting in an increase in carbon sequestration. Ensatina, a local woodland salamander, has recently been shown to reduce the CO2 introduced into the atmosphere by up to 17% by consuming the bugs that normally convert wood into CO2.</p>
28	4/10/2024	Beth Berglund (Comp Plan Comment)	Ecosystem Restoration for Ecological Services	<p>1. The Parks and Environment sections both allude to the same lands but use different and undefined terms. This makes it confusing for the reader to understand the boundaries between the heritage parks' recreational interests and the open space's ecological protection interests.</p> <ul style="list-style-type: none"> o What is the mission / vision for our heritage parks and for our open spaces? o Where are they aligned and where do they conflict? o Where does it express how we balance both interests? o How will we prevent our Heritage parks from being "loved to death"? <p>2. Page 118: heritage parks, waterways and waterfront parks, community recreation complexes, legacy parks, special use parks, and open spaces and greenbelts. What distinguishes each? Shouldn't each be defined in the comp plan? e.g., Kitsap County's Heritage Parks are large forested areas with established woodland trails and natural features including streams and ponds. Many of these parks were in timber production and are being transitioned into ecologically diverse and valuable conservation, open space, and recreation areas. Ecological restoration is part of this transition.</p> <p>3. In the context of heritage parks, I recommend buffer zones and other policies be established that restrict adjacent uses that are loud, polluting, detrimental to wildlife, and/or that degrade the nature-focused experience our heritage parks should provide to both human and non-human animals.</p> <p>4. Where in this Comp Plan do we reflect that we value protection and restoration of lowland streams, marshes, estuaries, and diverse and healthy forest ecosystems because we recognize they provide critical ecological services? Are those values only addressed in the CAO? 5. The NKU sports complex project is a direct reflection of Kitsap County's and North Kitsap School District's failure to maintain and improve our existing sport fields. Fortunately, it's not too late. Kitsap County should work with the NKU team to identify the needs of the fields at Buck Lake and Kola Kole — both of which were rated two out of five (by the NKU team) and are considered by them to be unusable as either practice or game fields. I can attest that Kola Kole in Kingston is being used almost exclusively as a dog park. The county parks department should explore opportunities to partner with organizations like Rotary and others to fundraise and/or support levies/bonds. Fields that have been shown to be impractical to upgrade should be re-evaluated for meeting other community priorities.</p>

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29	4/11/2024	Doug Hayman	Buffer Widths	<p>I made this comment or suggestion at the Kitsap Community Advisory Council last night and was told that I should submit it to this address as well:</p> <ol style="list-style-type: none"> 1. Allow no greater than 25-percent buffer reduction or variance. 2. Require public notice whenever any buffer reduction is being considered. 3. Provide public notice via the Kitsap government website and add a government email option along with the varied notifications citizens can receive. Not just the Kitsap Sun, which is not free. Citizens can currently sign up for email notifications for road conditions, and other issues in the county, please add a checkbox option to hear about buffer reductions as well as having a place on the DCD website that mentions permits where variances and buffer reductions are being requested. <p>In two developments I'm aware of one got a 50-percent reduction on a fish bearing stream; the other was an 89-percent reduction for a wetland. People think that the critical areas are being protected by robust critical areas ordinances but don't know that there is then a process of getting drastic buffer reductions such as these.</p> <p>Doug Hayman Indianola, WA</p>
30	4/11/2024	Kitsap Environmental Coalition (KEC) (Comp Plan Comment)	Variances and Riparian Management Zones	<p>The Critical Areas Ordinance is called out numerous times as a key mitigation measure, however that ordinance is currently under review. It will only be as effective as the strength of its final requirements. If it has too many opportunities for variances and waivers, this mitigation measure will be weak and useless.</p> <p>Kitsap Environmental Coalition supports the recommendation by Washington Department of Fish and Wildlife to use Riparian Management Zones (RMZs) as a replacement for the standard stream buffer widths currently used in the Kitsap County Critical Areas Ordinances.</p> <p>See pages 139-150</p>
31	4/12/2024	Department of Ecology - Emily Atkins	Wetlands	<p>See pages 151-303</p>
32	4/15/2024	Roger Gay	Accessabilty and Mapping	<p>This is regards to my quick review of some sections of the CAO update. I wanted to look at my property and figure out how it was classified per your map on the project website. It was almost impossible to enlarge the map to get a clear view of my property. By the time I got to 200+ times the view was mostly just junk colors. As far as I know I live on a grandfathered property as odds are the home could not be built now following the latest rules & regulations. For me to use the CAO and other county documents to figure out what I can do or not do on my property is difficult to say the least. I should not have to hire "experts" to figure out the rules, they should be easy to find and figure out by the property owners and taxpayers. It should not require magic, a crystal ball and a \$5,000 expert. The map itself needs to be broken down into smaller sections so property owners see a better view of how their property is classified when they zoom the view.</p> <p>Just my initial and quick thoughts on this update.</p> <p>Roger Gay</p>

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33	4/16/2024	John Pellicciotta	Removal of Wetland Designation	<p>Good afternoon Kathlene, my name is John Pellicciotta and I live at 8964 NE State Highway 104 in Kingston. I am contacting you today in regards to proposed changes to the CAO and specifically, the proposed wetland designations/updates. As it currently sits, I have an area designated as a wetland on my property. I have never felt that it met the definition of a wetland and have been attempting to have the designation removed. The wetland designation was delineated on July 14, 1998 during a short plat application process. I purchased the property in 2003. In 2014 I hired Ecological Land Services to conduct a study of the designated wetland area and they had determined that the does not meet the current wetland criteria. I have inquired about its' designation removal previously but I have never made much progress or received much support from those I spoke with.</p> <p>Each time an opportunity presents itself, I again ask County officials about any process available to me. With the current update to the CAO and the language changes to the wetlands in Chapter 19, I am again asking if there is anything I can do to have the wetland designation removed.</p> <p>Thank you for your service to the County</p> <p>John Pellicciotta</p>
				<p>During planning for Sinclair Ridge (Now called McCormick North after the passing of Rob O'Neill). Areas of Critical Wetlands are being ignored in order for construction companies and Big Business to make money. The problem with that is that many people depend on water still being pumped from the AQUIFER. And those homes sit on, the blue clatter STEEP SLOPES those homes sit on. Hillsides have already begun to shift from the clear cut even before adding acres of solid surface to the top,of the hill. Then add irrigation for yards, runoff from composition roofs and asphalt going into groundwater and 2 SALMON Bearing Streams that the State has invested. Over a million dollars into and it the possibility of an OSO after a previous STEEP SLOPE SLIDE that closed traffic on Sr16 in Gorst. Already... It's unthinkable that out County is allowing changes to an area that Federal and State records recognize as CRITICAL WETLANDS.</p> <p>These areas require special insurance. And homeowners should be notified.,But if they aren't they could be forced to pay. "Out of pocket costs." Artesian springs in areas where AQUIFERS exist, move. This causes damage to homes and requires specific foundation requirements, like pores etc. No Hydrological studies were ever done even though Bremerton and Port Orchard previously operated much of this area, and still do as WATERSHED, PUMPING DRINKING SUPPLY DONATED BY MY GRANDPARENTS!</p> <p>Now that's coming back to DISTROY my property by diverting water to my land. Not to the Stream or their property. I've lost the Original 1886 logging road to a slide and have water encroaching close to my backyard as well as near my power pole from the opposite side of the property. Neither were wet priority to site construction. And the Stream is now running far lower even when weather is stormy. This isn't good for Our Salmon STREAM.</p> <p>As the 5th generation who has stayed here in Kitsap County to support the community it's frustrating. Our family gave so much. Including my Father a Silver Star DISABLED VET. Now his home and family giving is being ignored for greed. What happens when there's another FIRE like 1938? Or we have a drought? What happens if the entire hillside comes down on Sr16 in Gorst? By that discharge pipeline not just on one Truck in my neighbor's driveway and one lane? Remember, it happened IN OSO! THE TRAFFIC NIGHTMARE IS UNTHINKABLE! AND THE DEATHTOLL WOULD BE SO MUCH HIGHER! PLUS IN OSO THERE WEREN'T 2 NATIONAL SECURITY INTERESTS INVOLVED.</p> <p>MY SRP WITH THE DFW AND DNR DECLARED THIS CRITICAL WETLANDS. THIS REPORT FOR "SINCLAIR RIDGE" CALLED IT A CRITICAL AREA. AND THE STATE OF WASHINGTON DOT IS COMPLETING THE SRP STREAM RESTORATION AND CULVERTS FROM THE THROUGHPUT AT THE CATCHMENT FROM KABELAC CREEK @ 3021 W STATE HWY 16 98312 UPSTREAM THROUGH THE MUDFLATS TO THE LAST SRP (MINE DONE IN 2018). IT WOULD BE FANTASTIC IF McCormick would continue the process and COMPLETE the full Stream Restoration, instead of just DISTROYING LAND.</p> <p>MY FATHER AND ROBERT MCCARY HELPED MR. McCormick Sr Design the Original plat for McCormick Woods. Every one came from miles around to like work, and play in this beautiful environment. Because it respected the earth. They are all crying NOW! The people who live there near the new homes are selling because they have lost the calm and natural settings. Roads are a mess and getting worse! And there's no plan for new infrastructure like traffic, electric, water, cable, police, schools. The poor animals are lost. Bears and even cougar sighted when they once just lived peacefully in dense woods with plenty of food and WATER.</p>

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34	4/18/2024	Deborah Vedin	Development and Critical Wetlands	<p>All this is a disaster waiting to happen. Mark my words. It happened in 1938.</p> <p>Deborah Vedin</p> <p>Stop the madness!</p>
35	4/23/2024	Raymond Craig	Critical Areas Enforcement	<p>The current critical area requirements are not being enforced. The property at 10603 SE Cisco Road has had several landslides, has never had a GeoTec and was supposed to be vacated in 2003. DCD seems to be unwilling to force compliance.</p>
36	4/23/2024	Beth Nichols	Code Language	<p>See pages 304-309</p>
37	4/23/2024	Doug Hayman	CAO Comments	<p>See pages 310-331</p>
38	4/25/2024	Elena Vasilyeva	CAO and Housing Affordability	<p>Hello, I am a resident and a new property owner in Kitsap county, this comment is in regard to the upcoming Kitsap County Critical Areas Ordinance Update. My name is Elena, during my recent search for a land lot to purchase, by my estimation, 80%-90% of properties on the market had a wetland or erosion area in them. I also saw that a lot of these lots and properties are bought by "investment" buyers, who in turn build over priced and unaffordable houses on them, because they simply can afford the associated costs for developing in those areas. I want to see my tax dollars go to funding more specialists who can do inspections in situ for every unique land plot and who can tailor the regulation to the specific plot - free of cost to the owner. More limiting regulations appear like they will inevitably lessen the affordability that we will need in the future, as our economy is not rising but somewhat declining. After reading the materials of the proposition, I do not see a clear description of a problem that prompted these proposed changes. I also feel like the tribe's comments are not offering any cooperative solutions, instead only limiting and policing. Thank you for the opportunity to send you my comment, I love this county and want to see it thrive honestly and fairly.</p>

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39	4/25/2024	Thomas Doty	Protecting Amphibians	<p>Please see the attached as my commentary on the revised 2024 Critical Areas Ordinance. My concern is for the global, catastrophic decline of amphibian populations, for familiar local reasons - habitat modification and loss. Temporary ponds and intermittent streams are critical to their survival and yet do not seem to meet Kitsap county's wetland preservation criteria. Understand that there is no trickle-down benefit to amphibians in the protections afforded to salmon streams. Quite the opposite - watershed pools with water quality adequate for amphibian reproduction is considered an indicator of suitable quality for downstream fish.</p> <p>Ignoring, for the moment, the philosophical ramifications of extinguishing amphibians, it is instructive to metaphorically liken species diversity in an ecosystem to the rivets in an airplane wing. Repeatedly take out one rivet among hundreds, when does the wing fail? How many species can we lose before ecosystem failure? Neither is known, exactly. There has been little interest, and little research money, dedicated to understanding the critical role played by amphibians in ecosystem dynamics.</p> <p>Consider DNA and the library at Alexandria. The sum total of human knowledge was burned down, as many as nine times. Someone likely objected. The loss of even one species carries with it DNA encoding biochemical solutions to problems we may not yet be aware of. Amphibian DNA represents structural and functional evolutionary experiments leading to refinement over 365 million years, a massive informational loss.</p> <p>Moist, permeable amphibian skin is a seemingly ideal environment for fungi and bacteria. Why are there not commonly massive skin infections among these species? Your feet would rot. They have immune systems, not unlike our own, that produce anti-fungal and anti-bacterial compounds which mostly have not been studied. Accepting their loss is short-sighted given that most of our effective pharmaceuticals come from obscure organisms living in obscure habitats.</p> <p>Amphibians play a critical role in micronutrient delivery from aquatic to terrestrial environments. Perching birds (70% of all birds) are having difficulty calcifying their eggs, partly due to acid rain washing Ca++ from soils. This loss is further compounded by the decline in availability of juvenile amphibians dispersing into woodlands, carrying their calcium-rich bones upon which birds and small mammals normally feed.</p> <p>Dying amphibians can be viewed as wetland habitat canaries, signaling the environmental future for more resistant species. Because they are transparent to water borne toxins, amphibians are among the first to show the effects of aquatic contaminants. We should be alarmed when frogs die.</p> <p>Amphibians eat the bugs that eat wood, resulting in an increase in carbon sequestration. Ensatina, a local woodland salamander, has recently been shown to reduce the CO2 introduced into the atmosphere by up to 17% by consuming the bugs that normally convert wood into CO2.</p>
40	4/26/2024	David Onstad	CAO Comments	See pages 314-323
41	4/26/2024	Kitsap Building Association (KBA)	CAO Comments	See pages 324-330
42	4/26/2024	Hood Canal Environmental Council (HCEC)	No Net Loss and Buffer Widths	<p>The Hood Canal Environmental Council (HCEC) appreciates how diligently and transparently Kitsap County has been working through the Critical Areas Ordinance update by involving various working group members.</p> <p>The "no net loss" rule adequately maintains the quality of life in Kitsap County while allowing for some development and much needed housing.</p> <p>It is paramount that buffer widths on wetlands and streams are increased and that significant trees are protected as recommended in the CAO update.</p> <p>Wildlife and habitat corridors need to be incorporated whenever possible.</p> <p>HCEC strongly supports incorporation of the proposed code amendments of the CAO update into the Kitsap County Comprehensive Plan update.</p> <p>Bernadette Olson, HCEC Vice President</p>
43	4/26/2024	Kitsap Environmental Coalition (KEC)	CAO Comments	See pages 331-342
44	4/26/2024	Washington Department of Fish and Wildlife (WDFW)	CAO Comments	See pages 343-349

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45	4/26/2024	Suquamish Tribe	CAO Comments	<p style="color: blue; text-align: center;">See pages 350-498</p>
46	4/28/2024	Jan Wold	CAO Comments	<p>My comments, with emphasis on stream and wetland buffers and the Johnson Creek wildlife habitat and corridor just south of Poulsbo, are attached. Please consider them in preparing the Kitsap County Critical Ordinance (CAO) update. Just getting this Johnson Creek wildlife habitat and corridor into the CAO document and mapped will be helpful, whether or not there are regulations that go with it. This is the only remaining higher quality wildlife corridor in Kitsap County from east Puget Sound to Hood Canal. It is also the only area with a wildlife corridor that has an assortment of safe crossings of four lane State Highway 3. The Hood Canal Environmental Council also supports the recognition and preservation of the function of this Johnson Creek wildlife corridor.</p> <p>This habitat corridor should also fit well with the desire of the Navy to not have encroachment of heavy development adjacent to the Bangor Base. If you contact the Navy they may be interested in supporting this corridor and the acquisition of property within the corridor that could be left in a natural state.</p> <p>In reviewing the draft CAO, I do not see exactly how it covers wildlife corridors such as the wildlife corridor up Johnson Creek. It would appear some modifications need to be made to the CAO to highlight and avoid net loss of function in special habitat areas such as this corridor.</p> <p>Please let me know you received these comments. Do contact me if I can answer questions or provide additional information on the Johnson Creek wildlife corridor.</p> <p>Thank you,</p> <p>Jan Wold See attachment on pages 499-514</p>
47	4/28/2024	Futurewise	CAO Comments	<p style="color: blue; text-align: center;">See pages 515-520</p>

January 22, 2024

Scott Diener, Kitsap County SEPA Responsible Official
Department of Community Development
Planning and Environmental Programs
614 Division St, MS-36
Port Orchard, WA 98366
Email: compplan@kitsap.gov

Subject: Port Gamble S’Klallam Tribe Comments – DEIS for the 2024 Kitsap County Comprehensive Plan Update

To Mr. Diener,

Thank you for the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the Kitsap County Comprehensive Plan 2024 Update. The Port Gamble S’Klallam Tribe is the successor in interest to Indian bands and tribes signatory to the 1855 Treaty of Point No Point, 12 Stat. 933.¹ The Port Gamble S’Klallam Tribe Reservation is located within Kitsap County and much of the county is within the treaty reserved rights for fishing, hunting, and gathering in usual and accustomed areas. The Port Gamble S’Klallam Tribal Council has discussed the potential and imminent impacts of development in Kitsap County to the immediate areas around the Port Gamble S’Klallam Tribal Reservation and its Usual and Accustomed Areas. To protect our tribal treaty rights, heritage, culture, and to improve the livelihood of our people, we have these comments.

DEIS General Comment:

Context: The State Environmental Policy Act Handbook, updated in 2018, provides a number of general standards for a DEIS and FEIS. The EIS substantive authority (WAC 197-11-660) states that any government action may be conditioned or denied under SEPA to mitigate the environmental impacts. The DEIS, Section 1.5 Summary Tables includes the impacts & mitigation measures for 9 topics. Four of these topics are described as resulting in significant unavoidable adverse impacts. The Transportation summary states that there will be no significant unavoidable adverse environmental impacts even though the impacts state that vehicle miles traveled (VMT) will increase between 72 and 78 percent and that greenhouse gas (GHG) emissions will continue to rise.

Comment: The Earth, Air Quality/Climate/Noise, Water Resources, Plants & Animals, and the Transportation Topics must all be revised to include mitigating measures that are sufficient to mitigate the identified impacts in the DEIS.

¹ *United States v. Washington*, 459 F. Supp. 1020, 1039 (W.D. Wash. 1978) (hereinafter *Boldt II*).

Mitigation:

Context: Referenced mitigation measures throughout the EIS point to the WRIA 15 Watershed Restoration and Enhancement Plan, Salmon Recovery Plans, Critical Areas Regulations, the Shoreline Master Program, the Stormwater Ordinance, and other reports and plans as a way to mitigate the environmental impact identified in the EIS. Some State and Federally listed Endangered and Threatened Species have been listed since 1999.

Comment: The county can not rely on the WRIA 15 Watershed and Restoration and Enhancement Plan because it is not an adopted plan. It may be years before the plan is adopted. The WRIA 15 Plan is mandated by state law to result in a net ecological benefit to instream resources, but many involved in the review of the plan rejected the plans' ability to meet these criteria. It needs to go farther to offset the consumptive water use from the expected new permit-exempt wells to avoid negative impacts to groundwater recharge. Of the approximately 40 projects listed in the plan, Kitsap County is listed as a project sponsor for one project.

Lead Entities for salmon restoration/recovery plans have been authorized by the legislature since 1998. The Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Salmon Recovery Plan was developed in November 2005 in response to the ESA listing for summer chum. More recovery plans have been added. These plans are important, and work must continue, but these plans are not fixing the problem and they do not exist to provide additional mitigation to future projects. The county is relying on decades old action to mitigate anticipated environmental impacts from future development. More mitigation is needed to prevent and halt all habitat degradation.

Critical Areas Ordinance was originally adopted on November 25, 2013. The purpose of the ordinance was to "Achieve no net loss and increase the quality, function and value of wetland acreage with Kitsap County..." KCC 19.200.205. No net loss (NNL) has been a standard for 20 years. Yet, during the 2022 Legislative session through the proviso contained within the Engrossed Substitute Senate Bill 5092-the Washington State Legislature directed the Washington Department of Fish and Wildlife (WDFW) to investigate a pathway for incorporating a Net Ecological Gain (NEG) standard into state law with the goal of improving endangered species recovery and ecological health statewide. WDFW submitted a letter and report to the legislature, Net Ecological Gain Standard Proviso Summary Report, December 2022. The letter states, "Despite significant investments in the recovery of salmon and other fish and wildlife species, scientific evidence of continued ecosystem decline in Washington indicates that NNL policies are not working or are not going far enough to protect our state's rich natural heritage." The county can not rely on NNL policies to mitigate significant unavoidable adverse impacts to the environment. Additional mitigation measures are needed.

Shoreline Master Program (SMP) was first adopted in 1976 and the purpose is to guide the future development of the shorelines in Kitsap County in a manner consistent with the Shoreline

Management Act of 1971. Exhibit 3.1.3 1-2 Existing conditions of the county's Shorelines of the State lists nine streams/rivers. These streams and rivers are described as being impaired with impacts such as being on the 303(d) list for DO, pH, bacteria, having fair floodplain connectivity, temperature, etc. County data indicates that 82% of the shoreline properties within the county have been developed and 38% of the shoreline has been altered with shoreline armoring. Policies need to be put into place to protect the existing shoreline and restore as much as possible in the future.

The SMP is also based upon the NNL policy. This policy does not work, and significant revisions need to be put in place to mitigate the adverse environmental impacts of the future development of Kitsap County.

Rural Character:

Context: Section 3.2.2.1 Relationship to Plans & Policies –Affected Environment. This section describes Rural Lands, specifically, “The rural element may allow for a variety of rural densities and uses, but it should include measures for the protection of rural character, bot in terms of the visual compatibility of rural development with surrounding areas and in terms of reducing the inappropriate conversion of undeveloped land into sprawling, low-density development.” Page 3-26.

Comment:

The diversity of rural densities is lessening in North Kitsap County. The Port Gamble S’Klallam Tribe is working toward putting lands north of the existing reservation land into trust. This will remove a large swath of Rural Wooded (1 DU/20Ac). There is a 400 acre request to change land use and zoning from Rural Wooded to Rural Residential (1 DU/5 ac) adjacent to the Port Gamble Forest Heritage Park. This is a rezone the tribe does not support. There are many other requests being reviewed by the county to convert Rural Wooded to a smaller lot for single family development. The Rural Wooded Zone is becoming less and less in this area. In addition, many rezone requests are also for the conversion of Rural Protection (1 DU/10 Ac) to Rural Residential. This decrease in larger rural lots will have a significant effect on the variety of rural densities. The variety is an important aspect of the rural character in Kitsap County. Otherwise, it seems the county may end up as Rural Residential only. Take measures to protect the large rural lots and the existing character that makes Kitsap the place people love.

Rural Growth:

Context: Exhibit 3.2.2. 1-1 Vision 2050 calls for reduced rural population growth rates in all counties and encourages counties to plan for even lower growth rates than contained in the Regional Growth Strategy (approximately 5%). PSRC MPP-RGS-14, "Manage and reduce rural growth rates over time, consistent with Regional Growth Strategy, to maintain rural landscapes and lifestyles and protect resource lands and the environment.”

Comment:

The county's rural development expectation should be in the single percentage range. The King County EIS also released as a supporting document to the mandated Comprehensive Plan Update in 2024 states that the rural area population will be 1% annually. The county can achieve increased limited development in rural areas. The county expects to grow by 15% in the rural

area as analyzed by the EIS. This is too high. A measure to support decreased rural growth would be to remove the Rural Residential Zone.

Rural Impacts:

Context: Exhibit 1.5-3 Summary of impacts and mitigation-Water Resources states that, “impacts on water quality in rural areas are also assumed to be proportional to the number of residences served by onsite septic systems, which have the potential to produce higher loads of nutrients and bacteria.” Page 3-49 a discussion of the Hood Canal Dissolved Oxygen describes a State Legislature adoption of the Hood Canal Rehabilitation Program to develop a program to address the rehabilitation of Hood Canal in Mason, Kitsap, and Jefferson Counties under RCS 90.88. The Upper Hood Canal Restoration Project (2005) Final Report and Hood Canal Coordinating Council Regional Pollution Identification and Correction Program (PIC) focused solely on onsite septic system issues as a source of pollution.

Comment:

Rural development means no urban services. One of the most important services urban areas provide is sewer. Rural development for single family homes requires the use of an on-site septic (OSS) with every home. The OSSs are guaranteed to fail at some point. Homeowners/renters don’t understand what is required for maintenance, inspection, and replacement. It is expensive to own an OSS. This is a differed cost that the county does not need to manage with development in the county. Due to the significant impact these uses have on the environment, their future use in all rural development in the foreseeable future, and the lack of oversight the adverse environmental impacts are high. There are several mitigation measures that could be used. One, remove the Rural Residential Zone. Two, charge county residents with OSS a fee for the county to inspect, maintain, replace, and monitor all OSS. Three, use alternative methods of managing waste. Four, several other mitigating measures are out there and available. Add as many as possible to mitigate this environmental impact. Current policies are not enough to limit single family development growth and environmental impacts in rural areas.

Topics requested be included in the EIS Scoping

Context: The tribe requested a number of additional topics be included in the EIS review with a letter submitted on December 8, 2022.

Comment:

- Climate change should have a section of its own. It is sprinkled throughout but it would be clearer if it were in its own section. More detail could be provided for sea level rise, increased storm intensities, and the health impact climate change will have.
- Tree canopies were mentioned six times in the EIS. Reliance on tree canopy loss is based on the draft code provided. This is relinquishing tree canopy to a development activity. Robust efforts and policies should be reviewed and implemented as mitigation to ensure there is no loss of tree canopy over time.
- Fish passage barriers were not specifically discussed. Improvements to fish passage barriers extend beyond fish passage to decreased local area flooding, functioning riparian



PORT GAMBLE S'KLALLAM TRIBE
NATURAL RESOURCES DEPARTMENT
31912 Little Boston Rd. NE – Kingston, WA 98346

areas capable of infiltrating more water, improved habitat with additional tree canopy, GHG sequestration, connection to wildlife corridors, and other benefits.

- Analysis of ground water quantity and quality should be included. Is there enough water to support the additional population and job growth? Can Kitsap County ensure that tribal senior water rights will not be impacted?
- PGST is concerned about the capacity for wastewater treatment and the heavy use of septic tanks for more rural development. Include analysis of environmental impact of septic tank use for development.
- Evaluation of Net Ecological Gain was not discussed in the EIS. This measure could go far as a mitigation measure toward reducing significant adverse environmental impacts.

Should you have any questions, please contact Marla Powers at the address or phone number below.

Marla Powers, Environmental Planner, Natural Resources Department
Port Gamble S'Klallam Tribe
31912 Little Boston Road NE
Kingston, WA 98346
(360) 689-7551
mpowers@pgst.nsn.us

Thank you for considering our comments.

Sincerely,

Amber Caldera, Chairwoman
Port Gamble S'Klallam Tribe

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Comments on the Kitsap County Draft Environmental Impact Study for 2024

submitted by Doug Hayman, Indianola, WA

The environment can survive without humans, but humans cannot survive without a healthy environment. This is an essential starting point in looking at the plans by people in Kitsap County on how we will proceed for the coming decades. What follows are my thoughts and concerns in examining the 400+ page Draft EIS.

- On page 7 of the Draft EIS, it mentions a required approval by the Kitsap Planning Commission. I have attended a handful of their online meetings via Zoom and find that they may need to be provided a better explanation of how each of the proposed alternatives truly work. Those commissioners need more information on what has been discussed in the Critical Area Ordinances working groups and would benefit by hearing short presentations by DCG Watershed, the firm hired to provide recommendations on Best Available Science as it pertains to Kitsap County's CAO update work. Additionally, hearing from the Washington Department of Fish and Wildlife and the Department of Ecology would be of great benefit to then shape their decision-making process. One area in particular stands out, the suggested use of Riparian Management Zones to replace current stream buffers. The commission could use more detail on that science and process.
- One critical thing that lacked specifics in this Draft EIS is just how each of the household income brackets will get their housing needs met. We need to actively target meeting the housing needs of middle- and low-income households regardless of which alternative is chosen with specific detail on what income ranges are already saturated in unincorporated Kitsap County versus what is still lacking. The EIS repeatedly says that Alternative X will meet housing but not jobs or vice versa with little concrete detail.
- In 1.3, pg. 22, the draft says: "Ultimately, the Board of County Commissioners (Board) will select a preferred alternative. The Board is not limited to selecting the alternatives exactly as set forth in the EIS and **may select an alternative that combines various features of the alternatives set forth in the EIS.** However, the selected alternative must be within the range of alternatives addressed by the EIS (WAC 197-11-655(3)(b))." The text I've emphasized in bold raises big flags for me. Pick an alternative and stick to it. Alternative 2 and Alternative 3 are quite different and we shouldn't be opening up a buffet line of sticking to UGAs but then allow expansion into areas zoned to maintain rural standards. Of particular concern would be the request by Raydient to rezone approximately 400 acres currently zoned at 1DU/Acre to a much higher density without a real public need for this but instead much opposition to their request.

- On page 28 and in many other parts of this Draft EIS there is language like this which needs to be strongly fact checked: **“Under Alternative 3, increased riparian buffer widths are proposed compared to Alternative 1 and 2. Within the proposed UGA boundaries, approximately 508 acres would be encumbered by the increased stream buffers, compared to 245.5 acres that would be affected by the existing 50-foot buffers. This increase will improve protections compared to Alternative 1 and 2.”** As someone who took part in the Critical Area Ordinances Update Working group for the Fish and Wildlife section where Riparian Management Zones (RMZs) were discussed, not only was there not enough time to fully discuss this proposed change to stream buffers, there was never mention along the lines of implementing this only for one of the three proposed alternatives. In fact, we left those two meetings thinking that the county might implement it in whole, as a hybrid model or not embrace RMZs at all. And the planning commissioners need some additional information on these as some in their most recent meeting think the WDFW tool is not yet ready for implementation when in reality they are likely more fearful that the increased buffers from 100-feet to perhaps 200-feet would be too much of an encumbrance on property owners. And this will be a challenging process to use RMZs for any of the three alternatives as those wouldn’t need to be tied to just alternative 3.
- Pg 34 referring to 3.2.3 states: “Alternative 2 projects to develop 14,684 housing units, which meets the housing need target, and produces about an even split of housing that serves lower income households and middle to upper class income households.” Where in these out-of-the-air estimates do you show how you’ll meet middle- and low-income housing needs. Are you locking in building permits only for home that guarantee they’ll be at prices to meet the income of those segments, or will these be home that cost \$600k or more?
- On pg. 38 referring to 3.2.6 it states: “Generally, each alternative results in similar levels of transportation impact.” This seem to be in error as an increased density in a UGA like Kingston with public transportation would mean far fewer cars on the road than if the added population was traveling to newly expanded developments in rural zones. This needs to be called out and real numbers shown on how you make such general statements.
- On pg. 46 in reference to 3.3.6 for Solid Waste is again providing a questionable assumption: Why would humans in any of the three alternatives be producing more or less solid waste? How do you arrive at: “tons of solid waste and recycling generated per year would be highest with Alternative 2.”
- On pg. 53 referring to 2.1.2 there is mention of “housing affordability and availability” but how with any of the three alternatives are you truly enforcing this goal? If we are saturated in the housing for upper income households, will you block issuing any more building permits until the lower tiers of income have their affordability and availability needs met in unincorporated Kitsap County?

- In 2.2.2.2 on public participation, how will you go beyond “public participation theater” so that the public tracks that their comments were not only submitted, but also taken in by decision makers and discussed?
- Maps used throughout this Draft EIS PDF are highly problematic. They are densely filled with information and even those that can be zoomed in on, result in losing access to simultaneously seeing the legends for the maps. These should be provided as hyperlinks to online GIS maps similar to what the Kitsap Parcel search tool has where the public can zoom in/out while the legend remains, and a choice to activate layers to see just those portions for better clarity. Lastly, you are failing to meet federal accessibility standards which at the minimum would have good alternative text to describe the images and not auto fill in things like “a map of the United Kingdom” which currently exists for many of these Kitsap maps. Throughout the PDF all images relied upon autogenerated descriptions that failed to describe what the images are every time. These are what blind and low vision users rely upon to fully access what the county shares out to citizens.
- In 2.4 Alternatives you once again mention the highly problematic “The Board is not limited to selecting the alternatives exactly as set forth in the EIS and may select an alternative that combines various features of the alternatives set forth in the EIS. However, the selected alternative must be within the range of alternatives addressed by the EIS (WAC 197-11-655(3)(b)).” Pick a plan and stick to it, especially where not doing so would allow creep into areas that should remain rural.
- In 2.4.2 it says, “Rural Rezones: Only those that promote limited rural employment opportunities.” This is imperative, especially in the case of Raydient’s rezone request as it wouldn’t truly provide an employment benefit that isn’t already being met elsewhere in North Kitsap.
- 2.4.3 states for Alternative 3, “**Reclassification Requests:** Includes most requests except those that are GMA-non-compliant (e.g., urban zones in rural areas, one-acre zoning, etc.)” Raydient’s rezone request has been tossed into both alt 2 and alt 3 and both are problematic as it goes against the intent of the GMA to keep rural areas rural.
- The table on pg. 68 of the Draft EIS PDF in reference to stream buffers again is questionable for buffer widths not changing with alt 1 or alt 2 versus alt 3. The CAO update working groups were never discussing such restrictions on where riparian management zones as stream buffers would or would not be applied. And the 100-foot buffer is a minimum to prevent pollution but could be much wider with RMZs if the site-specific tree height for dominant trees was say, 200 feet or more for a 200-year old tree. There needs to be clarification on why Alt 2 would not be able to include RMZs for setting buffer widths.
- In 2.5.2 you state that “County staff reviewed the reclassification requests and categorized them as follows:
 - 1. Requests that fit the “Compact Growth/Urban Center Focus” of Alternative 2
 - 2. Requests that fit the “Dispersed Growth Focus” of Alternative 3
 - 3. Requests that did not fit Alternative 2 or 3 because the change was inconsistent with GMA or other requirements.”

This does not seem to be accurate as it pertains to Raydient’s rezone request being dropped into both alt 2 and alt 3. It clearly goes against the intent of the GMA. That

rezone request does not meet a public need and would increase density in an area that is supposed to be 1 home per 20 acres. Someone made a mistake on this or is biased towards this developer.

- In tables 2.5.3 and ones like it you fail accessibility standards wherein you used color alone to distinguish items. Look up “WCAG” and “color alone” to remedy this failure to reach all the citizens in an equitable manner compliant with the law.
- Table 2.5.3-5 stands out for how it does not show the housing capacity for each of the income ranges, unless I’m reading something else in there. We need to know specifically how Kitsap DCD will enforce meeting the housing needs of middle- and low-income households regardless of alternative 1, 2 or 3 and not throw around sub-totals and totals for each without citing details.
- In 3.1.1.3 it states, “Kitsap County will encourage building sites to be located away from critical areas, such as steep slopes and landslide hazard areas, by requiring minimum buffer widths and building setbacks in the CAO.” In my experience in looking at several variance requests in the area, the county tends to lean towards NOT strictly enforcing buffers, whether that relates to hazards for the homeowner or risks to the health of the critical areas. Whichever plan is chosen, or CAO updates are made, the county needs to make variances the exception and not the norm.
- In 3.1.2.1 it states, “Kitsap County does not appear to have a current tree canopy cover inventory that could be referenced as the baseline condition.” This is a very important issue that follows pretty much all monitoring. If the county is striving towards no net loss of ecological function, you cannot know if a decline is happening if you’re not willing to put the resources into such baseline monitoring followed up later to see if you are succeeding.
- In 3.1.2.3 states, “Environment Goal 1. Formally treat natural environments, including forest lands, shorelines, freshwater systems, intact ecosystems, and other critical areas, as an essential asset that is planned for, managed, and invested in to meet the needs of current and future generations.” This sounds great on paper but how will you truly commit to this if you allow variances again and again for fear of unconstitutional takings? This difficult challenge needs to be addressed and not swept under the rug till the next comp plan work years from now.
- In 3.1.3.1 regarding Critical Aquifer Recharge Areas (CARA) you state, “CARAs are regulated under the Kitsap County CAO (Kitsap County Code 19.600).” That doesn’t mean much if the regulation is written on paper but is ignored in the variance process by DCD. Hold fast to protecting critical areas and if you cannot, address why it is that you aren’t complying with the GMA in this regard.
- On page 140 of the PDF, where are you coming up with:

“Under Alternative 3, an additional 5,674 lineal feet of non-fish bearing streams will be affected by the UGA expansion areas compared to Alternative 1. As a result, stream water quality would be expected to decline in those areas where growth is greatest under Alternative 3. Additionally, 17,936 feet of non-fish bearing waters would be affected by up zoned areas under this Alternative. Surface water impacts on streams would be generally greater under Alternative 3 than under Alternatives 1 and 2. The greatest impacts to those basins would be directly associated with the most extensive conversion to impervious surfaces. Under Alternative 3, increased riparian buffer widths are proposed compared to Alternative 1 and 2. Within the proposed UGA boundaries, approximately 508 acres would be encumbered by the increased stream buffers, compared to 245.5 acres that would be affected by the existing

50-foot buffers. This increase will improve protections compared to Alternative 1 and 2.”

This was not part of the CAO working group discussion of RMZs, that only one alternative would possibly implement them.

- On page 159, Impacts Common to All Alternatives, again I challenge the line, “Critical areas, including streams and wetlands, would receive similar protection under each of the alternatives with some increased protections for riparian areas in Alternative 3.” This inaccurate RMZ information needs to be addressed.
- In 3.2.1.3 for Mitigation Measures it also states, “Critical areas, including streams and wetlands, would receive similar protection under each of the alternatives with some increased protections for riparian areas in Alternative 3.” Again, the CAO update process for Fish and Wildlife working groups did not tie the use of Riparian Management Zones only to one of three alternatives. It was the use of Best Available Science recommendations to better protect riparian zones. This needs to be corrected and “similar protection” is a fallacy if one alternative uses 50-foot buffers that then get a variance while alternative 3 supposedly uses RMZs to be 100-foot or wider.
- On page 192 it states, “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.” What mechanism would allow DCD to both protect the environment AND compensate property owners so that these were not mutually exclusive conditions?
- How will you meet the following mentioned on pg. 196? “Public participation procedures that are described in the procedural rules (WAC 365-196-600) include broad dissemination of proposals and alternatives, opportunity for written comment, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.” Especially that last point? Would there be feedback on my challenge that RMZs should not just be associated with Alternative 3 and the public would know about how this comment was being addressed?
- On pg. 247 of the PDF, how is it that you all arrive at the specifics of, “Alternative 2 is the only alternative which adequately meets the expected housing need by 2044 as projected by the Housing All Planning Tool developed by the Washington State Department of Commerce. Alternative 2 projects to develop 14,684 housing units and produces about an even split of housing that serves lower income households and middle to upper class income households.” Will you enforce not allowing new developments of homes that don’t meet the middle and lower household income affordability standards or is this just vague speculation for rating the alternatives?
- On page 249 there is the questionable assertion, “Alternative 3 is the only Alternative that meets the 2044 employment target, generating 1,157 more jobs than the target.” Just because you expand into areas with rezones doesn’t guarantee increased employment. Or that employment increase would be fleeting as it might just be during a new building phase that more people in that area would be employed in construction.

As a citizen I call upon you all to protect the environment by measuring ecosystem health now to have a baseline to compare to later to see if you have achieved no net loss or better yet, a net ecological gain in ecosystem well-being.

Take into consideration the reality that you cannot have infinite growth in a finite world. You can only squeeze so many people into an elevator, bus or county. We do not need to develop every bit of land in Kitsap County. People choose to live here because of the natural beauty they are surrounded by. We can protect our critical areas like streams, wetlands, aquifer recharge areas. We do not have to yield to demands to develop into those areas and should find mechanisms and incentives to reward property owners for protecting these places.

We need to meet the housing needs of all income ranges as directed by the Growth Management Act, not just build expensive home for the upper tiers of our county. Cap development of those upper end homes in unincorporated Kitsap County until we've met the needs of the middle- and lower-income tiers.

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EIS Comments. For 2024 Beth Nichols

General comment on Draft EIS for Comp Plan:

-First of all, how are our public comments being incorporated into this EIS?

Critical areas ordinances (CAO) are mentioned widely throughout the Draft EIS as a mitigation mechanism for protecting the natural environment as the County is more widely developed. It is brought up in every section as the mitigation for the unavoidable losses. However, in practice, Kitsap County approves variances to the CAOs routinely, making the CAO useless as a protection mechanism. I wonder if currently any variance is ever denied in Kitsap County to uphold the CAO goals of protection. These CAOS are weak and ineffective and not a true mitigation measure in current practice. Critical areas ordinances, which are currently under review, need to be strengthened with fewer routine variances and NO administrative approval decision options.

Every section of the EIS states “Inevitable loss” – how does this contribute to the mandated goal of NO Net loss?? There must be true use of critical areas protections-- without variances and with full mitigation measures.

Climate change needs to be more fully addressed in the EIS, especially for water quality and quantity and the importance of tree canopy preservation.

1.3 Alternatives

-Alternative 2 or 3 are given as distinct choices in approach. However, the County Planners say there can be a “mix” of elements of both Alternatives. This is hugely problematic. You can’t do both and have a coherent plan.

By allowing elements of Alternative 3, Alternative 2 will be undermined. You can’t pursue both paths at once: Compact Growth/ Urban Center Focus AND elements of Dispersed Growth Focus. This needs to be corrected: it is an underlying serious fallacy and makes the whole approach faulty and inconsistent. This looks like a loophole to allow dispersed rural development while also intensifying the urban center.

1.5-3. Water Resources

As stated in the EIS, the use of on-site septic systems in rural areas is a major impact on water quality. When these systems fail as they will, there will be potential contamination to water systems. The County doesn’t do enough to mitigate this major impact and most homeowners do not know enough about these systems to properly maintain them. There should be a program for all homeowners for education, monitoring, and guidance for replacement for those on OSS, with an impact fee collected. Also this is a strong reason for not allowing more development into rural areas without sewer systems.

Water quality and quantity needs to be more fully analyzed and addressed. We need more baseline measures of water quality AND quantity. This is fundamental for all in Kitsap County. Do we absolutely have the water quantity and quality to support the population growth targets?

2.4.2 Housing Diversity

How are guidelines for meeting the housing targets going to be set? How does the County ensure that permitted housing does accomplish the goal of creating missing middle housing, instead of just adding to more housing geared toward high income earners. Especially in Kingston area where we already have 750 high end homes coming in at Arborwood- we need a primary focus now of middle-income housing. No rezones for high end housing; we don't need more of that kind of housing stock. We need a MORATORIUM on rezone requests for multiple single family home developments, until we meet the target for affordable housing.

Exhibit 2.5.1 -1 Page 2-16 Major Revisions table – Countywide

-Alternative 2- Why no tree retention???? Some level of tree retention needs to be in place for urban areas when possible. Trees in the urban environment are significant mitigation to climate change and decrease heat island effect. This needs to change.

-Alternative 2 states no change in stream buffers ?? This number needs to be guided by the Best Available Science and consistent with Critical Areas Ordinances.

2.5.3-1 Population Targets

Kingston has already met its growth target with the addition of Arborwood, approx. 750 homes. We do not need to bring on any more units if this is correct.

2-24 Exhibit 2.5.4-1 UGA increase in Alternative 2- Kingston adds 73 acres when growth targets already have been met. WHY?

3.1.4 Plants and Animals

This review of impacts on plant and animal communities does not address large and small mammals that live specifically in forested habitat, amphibians that live in wetlands and have migration patterns, native plants that are replaced by clearing and grading.

In the specific case of amphibians, migration patterns need to be considered and also silt fences that block those pathways need to be discouraged.

Vague description of animals without specificity makes the EIS review very weak in this area, it needs more specificity.

The EIS needs to add the adverse impact on all wildlife by natural areas' proximity to housing areas, causing more wildlife interactions that can result in animal deaths. Displaced wildlife such as bear and cougar wander into neighboring yards and end up being killed for human safety. This happened with a cougar incident in Kitsap in 2023.

Continued 3.1.4 This section is where the benefits of a tree and native plant retention policy should be added.

3.2 Land Use. Need to address Farmland in Kitsap County. Needs to be added to the land use section. Benefits of farmland to climate resilience, habitat, local food security. Protection of farmland now is needed for food production options in the future. Agricultural land preservation is paramount to a healthy community.

3.2.2.1 Rural Character: “The rural element of the comprehensive plan must include measures to contain development and protect against sprawl, assure visual compatibility with the surrounding rural setting, protect critical areas, and protect against conflicts with agricultural, forest, and mineral resource uses.”

How is this being strongly protected? We need a moratorium on rezones of rural lands.

This article chronicles past practice of Kitsap County:

<https://www.theurbanist.org/2024/01/29/kitsap-countys-proposed-comp-plan-sleepwalks-toward-more-sprawl/>

“Do what you’ve always done, Get what you’ve always got”

Rural rezones should be denied. For instance the 400 acre Raydient rezone request on Bond Road would contribute to the same pattern of sprawl and would set a precedent for more development in the rural area. The environmental impact of this rezone would be hugely negative for North Kitsap.

3.3 Built Environment: Public Services and Utilities

-I am not seeing any mention of Health Services in this section. The Kitsap County Health Department declared a health emergency in Kitsap due to high health care costs and inadequate access to services. Although overall health services are not a function of County government, the crisis situation in our County’s health services heavily impacts public services, including fire services. In 2023, there was a crisis with overcrowding at St Michael’s ER that kept first responders from being able to leave patients at the ER. This is a huge omission in the EIS, and a health services section needs to be added addressing the impact of higher population with an already strained to crisis health system. Talk to the Kitsap County Public Health Department for these additions.

<https://providers.kitsappublichealth.org/2023/07/kitsap-public-health-board-declares-crisis-in-response-to-high-healthcare-costs-and-inadequate-access-to-services/>

-Although the Washington State Ferries are under State control / WSDOT, the impact on Kitsap County with higher populations and continued expectation of overburdened ferry service needs to be addressed.

-With an increased population located in Silverdale, Kingston, Port Gamble and overall North Kitsap the location of County services in Port Orchard becomes more problematic to citizens. Attending in person meetings, applying for permits, or attending jury duty is a hardship coming from North Kitsap with increasing traffic and time it takes to travel. There is no public transit going directly to the County seat in Port Orchard from North Kitsap, leaving North Kitsap residents less able to access County services. This should be mentioned in the EIS and needs to be addressed for fair representation.

Zoning 17.420.060

Lot aggregation in the Suquamish LAMIRD – removal of requirement for multiple existing lots to aggregate. This should not be removed, there is an environmental benefit to encouraging larger

lots in this area that is too heavily built without being a UGA. Address the difference between the two.

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To: Scott Diener, Colin Poff, compplan@kitsap.gov

From: Betsy Cooper

Date: Feb 14, 2024

RE: Comments on Kitsap County 2024 Comp Plan Draft EIS (December 2023)

Thank you for the opportunity to comment on the Draft EIS prepared for the consideration of the 2024 Kitsap Comprehensive Plan Update. Below please find my comments on the EIS:

Page 20 (1-2) (also page 54) - 1.1.3 – Location – while this document must focus only on County land and land use, it is not correct that the Cities Comprehensive planning activities should not inform and be considered in this EIS. If there are significant changes proposed for Poulsbo, Bremerton, or Port Orchard they may affect traffic, infrastructure, or recreational planning done by the county. Also, annexations proposed or anticipated in the near future would reduce the rural area the County is responsible for and thus make continued ‘dispersed development’ even more undesirable. I believe that the results and potential impacts of the City’s planning should be discussed in this document, to the extent that it may change impacts or decisions being considered by the County and the effects on future CFP planning and rural preservation. Please add references and information in the final EIS.

Page 21 (1-3) – Phasing – the reference here and later in the EIS mentions that this is a ‘phased review’. Please explain or give examples of actions that would warrant a ‘narrower’ or specific review after this non-project EIS level review is complete.

Page 24 (Exhibit 1.5-1 and throughout the document) – The Critical Areas Ordinance is cited as a regulation that will a moderator of impacts to natural resources and a check on impacts. However, the CAO is under revision and there are many changes that are still being considered. The fact that this regulation is in flux should be stated clearly in the EIS and perhaps a summary of the changing aspects of the CAO should be presented to more accurately indicate what aspects of these regulation can affect impacts to water resources, sensitive areas, etc.

Page 25 (1-7) – Exhibit 1.5 1 Earth Impact Summary – as will be commented on later in the Earth Section, the Earth impacts section is missing shoreline zone impacts that should be included in this section as well as Climate Change.

Page 28/29 (1-8) 1.5.3 – Water Resources Impacts Alt 3 - I am glad to see the impacts quantified for non-fish bearing stream, since Alt 3 carries clear significantly more impact (5-10X). However, ‘fish bearing’ stream impacts were not mentioned in this document. I would request that a similar analysis presented, if possible, on Fish-bearing streams. One other aspect of stream and wetland effects was not presented, the potential for additional buffers area losses that is allowed by the buffer averaging regs already in place. Could buffer averaging losses be estimated, and if not at least mentioned?

Page 29 (1-9) also in Water Resources Impacts and elsewhere in the document, the ACOE are mentioned as regulating Wetlands. While this is still correct for contiguous wetlands, the agency has recently lost the ability to regulate small, disconnected wetlands so the general statement you have about the Corps jurisdiction should be modified to reflect this reduction in jurisdiction. It could also be stated that if

these small wetlands are not identified and regulated by the County or State that more wetland loss is an unmitigated impact in the future.

Page 31 (1-11) – Alt 3’s proposed buffer widening mitigation should be considered to be added to any eventual hybrid Alternative. This is an important measure and would have the potential to offset the inevitable losses of small non-contiguous wetlands that will result from the loss of ACOE jurisdiction.

Page 32 (1-12) – SW BMPS – I also strongly recommend that the County include in any final alternative that stronger BMPs for Water Quality improvement be part of Stormwater building or maintenance in the County. While adding expense it will be very important to the future of Kitsap’s stream and nearshore health.

Page 33 (1-14/15) 1.5-5 – Land and shoreline – The summary does not include Sea Level Rise expected in the coming years. This will result in changes to shoreline development potential and thus there will be adverse impact on the shoreline if the SMP is not changed to include policies and permit requirements to address these effects when developing in the shoreline zone.

Page 34 (1-16) Plans and policies – This summary page and later in the document, Alt 3 is described as including removal of lot aggregation requirements. What are those requirements and what would be the effect of removing of those requirements? This should be described rather than just stated.

Page 38/39 (1-20) 1.5-9 Transportation Summary – Later in the Transportation Section the LOS for each state roadway is shown to be barely adequate now. The fact that the State Roadways are North Kitsap’s major arterials and their conditions in the next 20 years must be considered when loading population to the North of Kitsap. Also, the effect on freight transport from the Kingston Ferry Terminal to South and on to the Olympic peninsula is threatened by inaction for planning and improving LOS on these roadways. Here too is where knowing what Poulsbo City Comp Planning is anticipating must be considered by Kitsap County now.

Page 44 (1-26) Recreation – The EIS does not acknowledge or identify the current lack of adequate active recreation facilities in the current (no Action) condition. Also, it states the PROS Plan will address this issue. Will that information be in hand by the Final EIS? The current degraded conditions of the existing facilities, and a cost estimate for the improvement of the existing facilities and a plan for the future is vital for North Kitsap and I am sure for all of Kitsap. Please add this information in the final EIS.

Page 47/48 (1-29/30) 1.5-18/19- Wastewater and Stormwater – This planning effort should include a new way to generate or allocate funding to these vital Capital Facilities so that the strategy for new facilities is not solely on the shoulders of developers. Impact fees will always go up but heaping all the burden on development is slowing residential and commercial growth in Kitsap. The mitigation measures should be strengthened to acknowledge the need for new County funding of needed infrastructure.

Page 62 (2-10) Definition of Countywide Centers is vague at best and is difficult to distinguish from Regional Growth Centers. It is concerning that since Kingston is designated ‘countywide’, but Silverdale and Bremerton are ‘regional’ the badly needed transportation, transit and road infrastructure funding may go to them over Kingston in all cases. Also how do Kingston and McWilliams/303 in any way relate or resemble each other? Why were they the only Countywide centers designated? How are their needs or characteristics similar?

Page 69 (2-17) SEPA Flexibility Thresholds – What does “increase SEPA Flexibility Thresholds” mean? What is the E-pacer Program? These mechanisms need to be explained and their actual effects on development should be clarified so that their effects can be understood.

Page 71 (2-19) Kingston Storefront Zone – How was this storefront zone size decided upon? It appears larger than any proposal received by the County. This proposed Storefront zone is wholly too large. It would put pressure on the potential for multifamily residential development to occur throughout the zone but particularly in the newly proposed area along Lynvog. The document is correct to state that such a ground floor commercial requirement would be (as it was when it was first implemented for the first 8 years) detrimental and a barrier to development in the Kingston Core.

Page 72 (2-19) Mc Williams/303 appears to be a carved-out section of the Rt 303 Highway Commercial zone and not in any way resembling Kingston. Thus, Kinston should not be the same overlay ‘countywide center’.

Reclassification proposal #72 – As part of Alternative 3 the reclassification of a 200-acre rural wooded area is proposed to be reclassified to rural Residential. That Reclassification should not be included in any action by the County. It wholly goes against the GMA effort to maintain rural character. I have also recently learned that the Port Gamble S Klallam Tribe is planning to remove a large area of land from the Rural Wooded category. Since the uses they may propose for these lands are not known at this time this action would further diminish the rural wooded area in North Kitsap. And since the rural areas are continuing to be developed at a greater rate than would be supportive of the basic GMA tenants of maintaining rural character, there is no justification for granting such an upzoning of the Raident property.

Exhibit 2.5 3-2 Employment Growth Targets – The figures for Poulsbo appear to be extremely low and should be checked. Is this only for a small area that is to be annexed? Also, on this topic the Alt 3 is described to meet and exceed the employment targets but how that would occur – what additional employment-producing elements yield this conclusion is not clear. Please expand on this in the EIS.

Page 93 (3-11) Earth Impacts – While the statement “the assigned land use designations and zoning classification do not generate impacts themselves” may generally be true, one aspect of land designation is not being fully addressed - the potential for new and changing shoreline effects as sea level rises and storms intensify. These effects will not be felt by all zoning designations. The Final EIS should acknowledge this. The County should add a section to the SMP updating permit requirements for development along the shoreline, and a mitigation measure in document should call for that review and revision.

Page 122 (3-41) Exhibit 3.1.3.1-2 shows only limited coverage of streams. There is no mention of important North Kitsap lowland streams. Also, this section should mention shoreline vegetation (eelgrass) and forage fish populations areas. These resources have been shown to be affected by land-based development and thus should be mentioned in the EIS.

Page 128 (3-45/46) – Lake list does not mention Carpenter Lake. It is important that this unique bog environment, rare in Kitsap, be included in the list of lakes, as well as any other bogs in Kitsap.

Page 130 (3-49) – WQ Section should include a link to all the waterbodies that are listed as impaired by some constituent for example, Carpenter Creek is listed for Fecal Coliform. Mentioning all the listings is

important to correctly characterize these existing conditions. Such a figure or list should be available from the Dept of Ecology.

Page 148 (3-68) – rare plants – as noted above, this section also does not mention the bog plants found in at least one bog in North Kitsap – Carpenter Lake Bog. Please add mention of this and other bog/fen environments in the plants and wetland sections of this document. These are important and rare in our region and occur only because of unique surface water conditions that should be taken into account when land is considered for development.

Page 148 (3-67/8) – Bear, cougar, and coyote should also be mentioned as being present in North Kitsap woodland areas. And as a consequence of development the bear’s habitat is certainly being reduced. These effects could be expected to be greater in Alternative #3.

Page 151 (3-70) – estuarine nearshore habitat – There should be mention of the fact that in several places throughout the County that significant restoration investment has been made in areas to regain more natural conditions (e.g. Carpenter Creek; Clear Creek; Harpers creek) and these areas are in the process of enhancing the estuarine ecosystems in these areas.

Page 152 (3-70/71) Marine Nearshore habitat – the data for land cover is from 2013 and the other data is from much older references. Unfortunately, it is possible that statistics of tree cover and other vegetation are out of date. Unless they can be verified as still correct, I suggest they be removed or caveated in some way.

Habitat section – while fish species in the intertidal and in the estuary are covered well in this document, there is no reference to Eelgrass coverage along the Kitsap shoreline and Kelp Forest areas (some restoration areas that exist). These are important components of the marine nearshore environment along the Kitsap shoreline and should have some mention in the document. Since runoff from new development, or intensified land uses in or near these areas could affect their patchiness, it is important they be mentioned.

Also, the WRIA 15 Plan is cited as an important tool to direct action and achieve improvement in habitat and water quality. However, the WRIA plan is not an approved plan, and its initiatives are certainly not fully funded. Therefore the description of this plan and its use in this EIS should be revised to clearly note that it is not fully approved or funded.

Page 167 (3-83) – Mitigation for shoreline affects – a mitigation again could be added here that speaks to a revision of the Shoreline Management Program that incorporates increase protections for nearshore areas from development and climate-related degradation with development.

Page 169-70 (3-2) – Centers designations – the distinction between regional centers and countywide centers is not clear. Why is Kingston a Countywide Center? How are its characteristics the same as the other area in that category? While it is important that Kingston be eligible for grants or other programs that can support transit, housing, road, ferry improvements, it is not clear why Kingston is distinguished differently than the regional centers (e.g. Silverdale). These distinctions should be explained in the Final EIS or Kingston may need to be reclassified.

Page 188 (3-20) – While the 2016 subarea plan may have mentioned the potential for Kingston to incorporate, there is no determination at this time that such an incorporation is reasonable or feasible during the next 20 years. This statement should be revised to say that Kingston, like all UGA's, are slated at some time to be incorporated.

Page 195 (3-28) – Plan consistency – This section notes that jurisdiction's plans must be consistent. Here this EIS may fall short of evaluating all the impacts of these alternatives without being aware of, and considering, the effects of the plans of Poulsbo, Port Orchard and Bremerton. While it is understandable that the County needed to prepare this plan in time for a timely review by all, it should however share the important components of these Cities updates as well in the Final EIS so that all effects on Transportation, recreational planning, transit, changes can be assessed on County proposals.

Page 197 (3-30) – Regional Center designation vs Countywide designation – the distinction between these two centers is vague at best. If there are differences in requirements and expectations, then they should be more thoroughly explained. Kingston has been listed as an HCTC, and has been given additional population and employment requirements, because of that designation but, it may not be able to effectively compete for transportation funding against these other Regional Centers. The distinction between these two zones and the attendant benefits and requirements should be clarified or Kingston should perhaps be designated a Regional Center.

Page 260 (3-93/4) – Visual Character - Kingston – I would request that the photographs Exhibit 3.2.5.1 – 4 and narrative for Kingston be revised the Old Town component do have a storefront area and Kingston does also have enforceable design standards that focus on a small-town maritime feel. This narrative does not reflect those aspects and the images are not representative of the town in any way. A picture of the downtown core showing the building type would be more illustrative.

Page 269 (3-102) Kingston section should be revised to mention the stairstep nature of the UVC zoning that preserves light and views for the Downtown main streets. It also incorrectly states (However, commercial zoned areas will have an increased maximum height of 50 feet.) This would be allowed only in a stairstep manner and for roof peaks.

Page 272 (3-105) The impacts listed under Kingston Alt #3 neglect to present the significant light and visual changes a 55ft building height allowance would cause in the main street in Kingston, creating a canyon effect, significant loss of light and views of the water, the key aspect of the town's appeal. This effect should be stated in the Final EIS.

Page 273 (3-105) - Exhibit 3.2.5.3 -1 While this table is a summary of the whole county, in Alt 3 the significant change in the light, visual effects and character of potentially creating 55 ft buildings on either side of Main Street in Kingston, where those heights and canyon effects exist in no City in Kitsap, should be highlighted. This would be a significant change to Light, shadow and view corridor.

Page 307 (3-136) – Ferries – While the data on ridership is great and well presented, there is no data presented regarding vehicles and particularly the truck and commercial vehicles that the ferries carry. This is particularly important information regarding planning for roadway capacity. A key aspect of the Kingston Ferry run is that it carries the most commercial vehicles of any part of the WSF system and the need to plan for those vehicle movements is crucial. Therefore, it should be discussed, and future

planning should consider the increase in these vehicles and their effects on LOS on County and State roadways.

Page 312 (3- 140) – Pedestrian – This section is written in a way that currently seems to indicate that there are adequate and safe shoulders on roadways for pedestrians in the UGAs. Kingston, and perhaps other areas in the County, do not have adequate pedestrian ways. Therefore, the existing conditions sections and the no Action should be amended to state this clearly and mitigations measures should be noted in all alternatives that pedestrian ways development is needed to meet reasonable consistency with Urban service requirements.

Page 318 (3-150/151) – Transportation/Roadway impacts - In seems the methodology used here is flawed. The way the sections of the county roadways deficiencies are lumped together, and averaged significantly minimizes deficiencies in serve, rather than highlight deficiencies. For example, in Kingston's UGA, all the major arterials corridors (state Rt 104 and Miller Bay) leading to and from the UGA are currently nearing or are significantly deficient. Averaging these deficiencies with all other county roads dilutes these impacts and seems to bring under 15 % and thus achieves consistency. This approach must be revised in the Final EIS to more accurately highlight the pinch points and issues for roadway LOS for the next 20 years. Analyzing the arteries alone associated with UGA could be one approach. Also discussing their conditions' impacts on commerce and presenting them would also be important and illustrative planning challenges.

Also, one example of a missing component in the North Kitsap area is NE 288th St, which runs between Hansville rd. NE and St Highway 104. This roadway is a narrow, curvy two-lane road without shoulders that is used by many to avoid the stretch of Bond Rd (also called SR 104) from the Miller Bay/Hansville highway intersection where it becomes St route 307. This stretch is regularly busy with offloading of ferry traffic from Kingston that heads south and to the Olympic peninsula. Since that stretch is often congested, and the NE 288th St is a straighter, alternate route to RT104 for many leaving The Point Casino, it is used heavily, particularly at night. This has resulted in property damage (loss of many mailboxes) and many visits by law enforcement. While there have not been fatal accidents as yet, the area is not safe for pedestrians to walk. This is an example of another type of deficiency not identified in the EIS and not taken into account in the current analysis of consistency.

Page 326 (3-159) Exhibit 3.2.6.3.-1 roadway improvements – This table should include shoulder widening for Barber Cutoff Rd and South Kingston Rd for pedestrian safe and recreational opportunity. For existing and both alternatives.

Page 402 (3-235) – Stormwater Infrastructure – an additional mitigation measure that could be added would be to require additional SW WQ remediation for all road projects.

Page 413 (3-246) Impacts on Telecommunications – This section did not describe any of the deficiencies and inequities demonstrated by the pandemic when online school was not supported equally throughout the county. Kingston and North Kitsap had significant areas where internet was not adequate and as reported in this section, the communication companies do not intend to improve availability. This is a critical impact to residential and commercial as it grows. This issue should be acknowledged and quantified in the Final EIS.

[Return to Comment Matrix](#)



THE SUQUAMISH TRIBE

NATURAL RESOURCES DEPARTMENT
PO Box 498 Suquamish, WA 98392-0498

26 February 2024

Department of Community Development
Planning and Environmental Programs
614 Division Street, MS-36
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Subject. Comments on 2024 Comprehensive Plan Update Draft Environmental Impact Statement Kitsap County

Introduction

The Suquamish Indian Tribe of the Port Madison Reservation appreciates the opportunity to provide additional review of the Draft Environmental Impact Statement (DEIS) and supporting documents for Kitsap County's 2024 Comprehensive Plan Update.

Concurrent with issuing the DEIS, the County has published proposed amendments to Kitsap County Code Title 16 (Land Division), Title 17 (Zoning), and Title 18 (Environment). Additionally, at this time, the County is reviewing its Critical Areas Ordinance (CAO), the County's primary mechanism to reduce impacts to Fish and Wildlife conservation areas (streams/riparian areas), Frequently Flooded Areas, Geologically Hazardous Areas (steep slopes), and Critical Aquifer Recharge Areas.. The CAO is undergoing review for compliance with Best Available Science (BAS). However, at this time there are no published proposed changes to the CAO despite the DEIS frequently referring to the CAO as a protective mechanism. In effect, reviewers are being asked to accept changes in UGA without an ability to review the extent to which proposed changes to CAO reflect BAS or potential environmental impacts. As noted in the DEIS, "*The Board of County Commissioners will select a preferred alternative based on this Draft EIS in April of 2024.*" Page 2-11 of the DEIS states:

"The Board is not limited to selecting the alternatives exactly as set forth in the EIS and may select an alternative that combines various features of the alternatives set forth in the EIS. However, the selected alternative must be within the range of alternatives addressed by the EIS (WAC 197-11-655(3)(b))."

The DEIS makes numerous references to significant impacts but does not quantify them. In the absence of information about how the CAO will be amended, the DEIS is unable to provide the Board, Tribe and public with sufficient information to discuss environmental impacts select a reasonable alternative, or include mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.

County staff have said that the CAO updates will undergo their own separate SEPA review at a later date. However, wording in the DEIS, such as that for stream buffers, suggests the County has already decided upon stream buffer widths. Updates to the CAO and the Comprehensive

Plan should either be on substantially the same time path or the CAO updates should already be completed so reviewers are aware of the potential impacts resulting from what is being proposed.

As noted in the Tribes comments on the “*Draft Land Use Alternatives*”, the

“Tribe (1) does not support the rezoning of rural protection parcels to more intensive uses; (2) believes growth should be accommodated within the existing UGA and only when that is filled should it be expanded; (3) the UGA should not include riparian areas such as Grovers and Chico creeks to protect groundwater recharge; and (4) though not currently identified, does not support increased density within the Suquamish LAMIRD.”

Others, such as the City of Poulsbo have expressed opposition to upzoning large parcels of rural land. In a letter dated November 6, 2023 and entitled “*EIS Alternative, City of Poulsbo Opposition to Alternative 3 rezone request*” the City of Poulsbo states its

“strong opposition to the rezone application submitted by Jon Rose (aka Raydient) for the vacant, 413.9 acres located off of and north of Bond Road, which seeks to change the zoning designation from Rural Wooded (RW) to Rural Residential (RR) (aka Reclassification Request #72).

The Tribe concurs with the City’s statement “*Upzoning land outside of UGAs runs counter to the fundamental purpose of the GMA and undermines the careful planning and thoughtful development that the Act seeks to achieve*” as well as rationale stated in the City’s letter.

General Comments

Aquifer Recharge

Throughout the DEIS, the issue of reduced groundwater is generally looked at through the lens of reduced groundwater due to consumptive use. However, the impacts of development upon groundwater recharge as well discharge to springs and streams need to be quantified. The DEIS mentions changes in hydrology as a significant unavoidable adverse impact, but the DEIS and CAO (as currently written) do nothing to quantify the impacts of growth-related decreases in infiltration over a typical water year. Such impacts can and must be quantified. Whether an action is considered to generate an impact, often depends upon the information collected and how that information is analyzed as well as an understanding of the limitations and assumptions in the models or assessment used to quantify impacts. And then even if something is recognized qualitatively as an impact, it is often not quantified.

The DEIS refers to numerous significant adverse impacts yet does not proposed an effective methodology to quantify them or describe mitigation measures, for example, development induced changes in water infiltration despite the DEIS on page 1-12 states: “*Long-term cumulative reduction in groundwater recharge and associated discharge to streams*” is a significant unavoidable adverse impacts.

Furthermore, the DEIS states in many cases an impact may occur (such as found on pages 1-10, 3-12, and 3-26), rather than is expected to occur or will occur. Though for any single project, some impacts may be considered *de minimus*, but when taken collectively, such as expanding the UGA/increasing impervious surfaces the DEIS has acknowledged some of these impacts are significant. For accuracy, the Tribe requests that “may occur” should be written as “will occur”. It also indicates additional mitigation measures (such as found on pages 1-11, 3-63) might be required, but neither the DEIS nor the current CAO requires the collection of information needed to quantify the scale of impact and resulting mitigation needs to offset those impacts.

Declining baseflows also need to be considered in the context of increased intermittency of seasonal streams in both space and time, and converting perennial streams to seasonal streams.

Fish and Wildlife Habitat Conservation Areas

It should be noted that the Washington Department of Fish and Wildlife Best Available Science¹ for riparian areas, as recently reviewed by the County,² recommends significantly wider buffers than those proposed by the County for both non-fish and fish bearing streams.

The DEIS outlines three Alternatives and proposed increased protection for non-fish streams under Alternative 3 (Dispersed Growth Alternative), but there are no proposed increased stream buffers for non-fish streams under Alternative 2 (Compact Growth/Urban Center Focus) - even though development will continue outside the UGA.

Alternative 3 (Dispersed Growth Alternative) the DEIS (page 3-45) states there will be “*increased stream buffers, from 50 feet to 100 feet, for non-fish-bearing streams.*” However, there is no proposed increase in buffer width for non-fish streams for Alternative 2 (Compact Growth/Urban Center Focus). The expansion of buffers widths to 100 feet for Alternative 3, might be based upon the following statement from recent WDFW guidance on riparian areas.

“Where neither SPTH200 nor the extent of the riparian vegetative community is at least 100 feet, we recommend RMZ delineation of a minimum distance of 100 feet, because this distance will achieve 95% or more removal efficacy of phosphorous, sediment, and most pesticides.”³

Rentz et al is Best Available Science and goes on to state on page 4 (emphasis added):

*“Restoration of riparian ecosystems is critically important because legacy of environmental impacts resulting from the ways land use has affected riparian areas over the past 200 years. In other words, what **remains available for***

1 Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

2 Best Available Science Summary Report: Critical Area Ordinance Update Kitsap County. Prepare for Kitsap County Department of Community Development by DCG Watershed May 21, 2023.

3 Page 27. Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

protection is not enough to provide the full functions and values Washington’s fish and wildlife need.”

And also on page 4:

“In reviewing the current science literature for Volume 1, we found no evidence that full riparian ecosystem functions along non-fish-bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams.

Washington Department of Fish and Wildlife Best Available Science⁴ for riparian areas as recently reviewed by the County⁵ indicates significantly wider buffers than proposed by the County are required for non-fish streams and larger buffers for most fish bearing streams.

Though describing the length of non-fish streams affected (for example, see pages 1-10), the DEIS does not describe the length of affected fish streams. Erroneously, the County is presuming these are non-fish bearing streams, most likely based on County maps. These maps have a great deal of error as described later. Furthermore the DEIS focus on stream length is directed towards land that will be encumbered by buffers, rather than the impacts to the stream channel. Additionally, the DEIS implies that impact is proportional to the length of stream segment within or adjacent to the upzoned parcels. There are two issues with this. First, it does not appear to consider stormwater travels downstream so in addition to the new length stream affected by the UGA expansion, there is the downstream channel subject to cumulative stormwater effects to be considered. Second, by using length of stream rather than area of upzone, the implication is that each upzone has the same affect. While length might be more applicable for impacts to the functions such as shading and wood recruitment, area is most likely a more appropriate measures for potential changes to infiltration and thus impacts to groundwater recharge and stream baseflows. This premise is implicitly acknowledged in the following statement from page 1-12: *“Direct impacts on plants and animals from intensification of development are assumed to be proportional to the amount of impervious surface created in specific areas.”*

The EIS should acknowledge that the correct stream typing of many streams is unknown, hence the importance for surveys to be conducted in accordance with approved stream typing methodology. The CAO, as currently written, allows for many small or seasonal Type F streams to be erroneously categorized as Type N. . In the absence of verification of whether these streams are fish bearing or not, perhaps a better word choice for what the information the DEIS is trying to convey is simply to use the word streams, rather than the current wording will states as fact that these streams are non-fish bearing waters and potentially mislead property owners. In the absence of verification that a stream is not Type F, it should be assumed that it could potentially be a Type F. Impacts to affected non-fish streams which are tributary to fish streams are still an impact to downstream fish habitat. This is implicitly acknowledged in the

4 Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

5 Best Available Science Summary Report: Critical Area Ordinance Update Kitsap County. Prepare for Kitsap County Department of Community Development by DCG Watershed May 21, 2023.

statement on page 3-235:

“Even if one or more of the mitigation measures is implemented, there could still be some changes to existing stormwater runoff patterns. This could alter flow conditions downstream of the planning areas and could potentially aggravate existing downstream flooding and erosion problems”

However, while the DEIS only acknowledges the impacts of increased flood volumes or velocities upon spawning habitat it has restricted that discussion to the effects of development in the floodplain and not included the effects of upland development generated stormwater. Additionally, there is no explicit acknowledgement that increased flows can affect fish passage.

Mitigation

The definition of mitigation in SEPA at times does not match the non-SEPA usage. From 197-11-768 (2) *Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts*; To “minimize” something is to reduce it to the smallest amount or degree. To “reduce” something is simply to make it smaller. When the EIS refers to minimize, it actually means reduce. Avoidance should be the preferred mitigation measure.

The County will rely greatly upon Critical Areas (page 1-11 and other) to *“identify and protect critical areas, including water resources like streams, wetlands, frequently flooded areas, and critical aquifer recharge areas.”* However, the CAO as currently written does not required an evaluation of many impacts, such as development induced changes to the typical volume of water infiltrated over a year.

The DEIS relies upon numerous speculative or voluntary mitigation measures for which the County lacks the authority or staff to implement or require. For example, such as voluntary project identified under the Kitsap Regional Shoreline Restoration Plan (DEIS pages 1-11, 1-13, 3-85). Some mitigation measures are suggested as encouragement (such as pages 1-7, 1-11, 3-16), rather than obligatory. Furthermore, the County is relying (such as noted on pages 1-11, 3-38, 3-39) upon the unadopted *“WRIA 15 Watershed and Restoration and Enhancement Plan”* to offset consumptive water use from permit-exempt wells. The Suquamish, Port Gamble, and Squaxin tribes have opposed this plan (see the Suquamish Tribe comments on WRIA 15 plan previously forwarded to Kitsap County). This plan contains no assurances that there is water for water mitigation. Furthermore, there is little effort made to deal with consumptive water uses from non-exempt users and no more than a qualitative discussion of potential impacts of development upon water infiltration and no means proposed to quantify the loss in infiltration. Yet, the DEIS on page 1-12 under Significant Unavoidable Adverse Impacts states: *“Long-term cumulative reduction in groundwater recharge and associated discharge to streams.”*

There is reference to existing salmon habitat restoration plans on page 1-11 (and others) that reads: *“Consider state, local, and tribal restoration plans to ensure salmon recovery is prioritized. These include the Chico Watershed Plan, Curley Creek Watershed Plan, and the Natural Resource Asset study.”* This is most welcome, but many of these plans are voluntary

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and beyond the control of the County to implement. However, the County should read these plans as providing guidance and detailed information of key areas for development to avoid or areas that required larger buffers.

Page 1-11 and others refers to additional mitigation measures that may be needed to ensure adequate protection of anadromous fish. These measures are most welcome and if implemented will ensure the stream channel is more resilient to climate change and stormwater. However, given the current degraded state of many stream channels and riparian areas, they should be considered “**as needed**” rather than may needed.

Specific comments on the DEIS are presented in Annex A. Comments on proposed draft development regulations for Title 16 Subdivisions and Title 17 Zoning (which also included the proposed tree retention/replacement standards) are incorporated as comments to applicable sections of the DEIS are presented in Annex B.

Considerably more information is required in the FEIS before the Board can make an informed decision about the impacts of the Comprehensive Plan and potential mitigation measures.

Thank you for the opportunity to comment on this DEIS. The Tribe looks forward to working with the County on revisions to the EIS as well as Comprehensive Plan updates. If you have any questions, please contact me directly at 360-394-8449.

Sincerely,



Roderick Malcom
Ecologist/ Biologist
Suquamish Tribe

Attachments – 2

Annex A - Specific comments on the DEIS.

Annex B - Comments on proposed draft development regulations for Title 16 Subdivisions and Title 17 Zoning.

Annex A - Specific comments on the DEIS.

DEIS page number	DEIS narrative (bold emphasis added)	Comment
1-2	Moreover, an EIS is to provide an impartial discussion of significant environmental impacts and inform decision makers and the public of reasonable alternatives, including mitigation measures , that would avoid or minimize adverse impacts or enhance environmental quality (WAC 197-11-400(2)).	The DEIS has failed to provide sufficient information is to provide an impartial discussion of significant environmental impacts and inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality for reasons outlined above and below.
1-3	For non-project proposals SEPA allows more flexibility in EIS preparation because “there is normally less detailed information available on their environmental impacts and on any subsequent project proposals.”	As noted above and below, neither the DEIS nor the CAO proposed a methodology to quantify some site specific impacts (such as changes in water infiltration due to development) and the resultant cumulative effects. Though, at this time there is little information on what might be actually developed at the locations subject to DEIS, there is sufficient information based upon proposed rezone request and current zoning to ballpark some proposed impacts, such as changes in infiltration due to new impervious surfaces. The Tribe is willing to work with the County to develop a methodology to ballpark these impacts.
1-5	Major issues facing decision makers include the following:	Other issues include an insufficient understanding of the limitations of the CAO special reports to collect information needed to ensure the applicable CAO objectives are met, the low resiliency of many stream channels to stormwater due to simplified channels, that impacts to aquatic life can occur at flows well below that required to cause channel erosion (the focus of stormwater management)

		etc.
Exhibit 1.5-1 Summary of impacts and mitigation—Earth		
Impacts Common to All Alternatives		
1-6	but will offer protection of resources through the regulations of the County code, particularly the Critical Areas Ordinance (CAO) and the Shoreline Master Program (SMP) .	A more accurate statement would be, “but reduce impacts to resources through the regulations of the ...” Additionally, the SMP buffers are typically much less than those required by the current CAO, let alone what BAS now indicates is needed.
Alternative 1, “No Action”		
1-6	can reduce the volume of water that infiltrates the soil , which leads to increased runoff and decreased groundwater recharge	Though the DEIS mentions reduction in infiltration, nothing is proposed to quantify the reduction in the volume that is infiltrated and thus the potential impact. Additionally, the current version of the CAO does not require quantification. This is an example of where an impact is acknowledged, but it not quantified.
1-6	Stormwater controls are intended to maintain stream flows in ranges consistent with native vegetation cover .	The intent of this statement stream flows consistent with native vegetation cover should be clarified. Is it to mean ranges consistent with pre-development conditions, or something else? Additionally, what is meant by range should be stated. Unless stormwater that would have previously infiltrated is infiltrated, there will be increases in the frequency and duration of sub-peak flows even through peak flows are reduced.
1-6	and allow potential for chronic soil contamination as a result of development activities.	This impact will occur under Alternative 1 also, except the concentration and location will change.
Alternative 2, “Compact Growth/Urban Center Focus”		
1-6	Intensification of development in current UGA boundaries and the limited UGA expansion areas would increase the extent of impervious	Suggest adding “ <i>reduce volume of water that infiltrates to soil</i> ” (as noted in Alt 1) and contaminate surface and ground

	surfaces, modify soil structures,	waters. Suggest wording as <i>“similar housing capacity”</i> to reduce the potential for any confusion that capacity refers to impervious surface and stormwater. Densification doesn’t mean there are no environmental protections.
Alternative 3, “Dispersed Growth Focus”		
1-6	The increases in UGAs would expand impervious surfaces, modify soil structures, and allow potential for chronic contamination of soils associated with development activities.	Suggest adding <i>“reduce volume of water that infiltrates to soil”</i> (as noted in Alt 1) and contaminate surface and ground waters.
Mitigation Measures		
1-7	Kitsap County will encourage building sites to be located away from critical areas, such as steep slopes and landslide hazard areas, by requiring minimum buffer widths and building setbacks in the CAO.	Encourage should be changed to require. The County’s buffer requirements, though known to be inadequate based upon Best Available Science, are in many cases the maximum the County requires as the County allows administrative reductions in buffer width (see tables below), reduction that can be up to 50%. And these reductions can be made without any public or Tribal input, resulting in administrative decisions that might lack complete information. There should be no administrative reductions in buffer width.

Critical Area	Amount of Proposed Buffer Reduction	Type of Application	Decision Type	Where Decision is Made	Potential Levels of Appeal	
Wetlands						
Wetland - Buffer Averaging	Up to 25%	Critical Area Buffer Reduction Request	I	DCD Staff	Hearing Examiner	Superior Court
	>25%	Variance	III		-----	Superior Court
Wetland Category III or IV with Habitat Score* less than 5 pts. (with Averaging)	Up to 50%	Critical Area Buffer Reduction Request	I	DCD Staff	Hearing Examiner	Superior Court
	>50%	Variance	III		-----	Superior Court
Wetland - Administrative (not Averaging)	Up to 25% (Min. 30' for Single Family and Low-Intensity Land uses; Min. 40' for all other uses)	Critical Area Buffer Reduction Request	I	DCD Staff	Hearing Examiner	Superior Court
	>25%	Variance	III	Hearing Examiner	-----	Superior Court

*Using the Wetland Rating System for Western Washington, updated 2014.

Streams and Lakes Under 20 Acres**						
Stream-Administrative	Up to 25%	Critical Area Buffer Reduction Request	I	DCD Staff	Hearing Examiner	Superior Court
Stream-Administrative- for Single Family	25-50%	Critical Area Buffer Reduction Request	II	DCD Staff	Hearing Examiner	Superior Court
	>50%	Variance	III	Hearing Examiner	-----	Superior Court
Stream-Administrative- all other uses	>25%	Variance	III	Hearing Examiner	-----	Superior Court

Decision Types

Buffer reduction requests are reviewed under different decision types, depending on the type of critical area and the size of the reduction being requested. The table on page 2 provides this detail.

Type I decisions do not require public notice or a public hearing.

Type II decisions require public notice and a 14-day comment period.

Type I or II decisions may be appealed to the Hearing Examiner (for details, see KCC [Chapter 21.04](#)).

Type III decisions are subject to public notice and Hearing Examiner review and approval. The Hearing Examiner decision may be appealed to the Kitsap Superior Court.

Applicable Regulations & Commitments

1-7	KCC Section 19.400.405 of the CAO defines geologically hazardous areas and outlines regulations for development standards for projects in or near the designated hazard areas.	This is a potential example of where referencing the Comprehensive Plan DEIS prior to having the implementing ordinances roughly fleshed out impedes the ability to effectively assess the
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		mitigative value of applicable regulations and commitments. The CAO is undergoing review and what it will require in terms of buffers, special studies or reports is unknown. For example, will slope failure runoff zones be considered a geologically hazardous area.
Significant Unavoidable Adverse Impacts		
1-7	The corresponding increase in impervious surfaces and changes in hydrology would be correlated with the amount of growth-related development under each alternative.	The DEIS mentions changes in hydrology as a significant unavoidable adverse impact, but the DEIS and CAO (as currently written) do nothing to quantify the impacts of growth-related decreases in infiltration over a typical water year. Such impacts can and must be quantified.
Exhibit 1.5-2 Summary of impacts and mitigation—Air Quality/Climate		
Significant Unavoidable Adverse Impacts		
1-9	However, regulations to protect and replace significant trees can minimize this unavoidable impact.	Current County Code (19.150.575) defines significant trees as <i>“any healthy tree that is at least eight inches in diameter at breast height (48 inches). A tree growing with multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree that is planted to fulfill requirements of this title shall be considered significant, regardless of size or species.”</i> It is unclear why the County considers only significant trees to contribute to efforts to minimize GHG emissions. Replacing trees does not address temporal loss impacts. See Annex B for more details.
Exhibit 1.5-3 Summary of impacts and mitigation—Water Resources		
Impacts common to All Alternatives		

1-9		The potential impacts of growth-related decreases in infiltration upon groundwater and stream flows have not been quantified and need to be discussed in more detail.
1-10	However, all alternatives must adhere to the policies and regulations to safeguard surface water and groundwater resources , as well as protect public health and safety from flood hazards.	There are numerous caveats and assumptions in stormwater management that are not fully described in the DEIS. A more detailed response is found in the main Water Resources Section.
1-10	Consequently, all alternatives would indirectly affect surface water resources with future development proposals . The creation of impervious surface areas and removal of forested areas associated with development activities in all alternatives will influence natural surface water systems (Booth et al. 2002).	Groundwater is also influenced as noted elsewhere in the DEIS.
Alternative 1, "No Action" Impacts		
1-10	The increased impervious surface area associated with continued urban development under Alternative 1 may reduce groundwater recharge area and could affect water quality from nonpoint urban runoff and point source contamination.	As noted elsewhere in the overall impact of development is to reduced groundwater recharge and degrade water quality. " May " and " could " should be changed to will .
Alternative 2, "Compact Growth/Urban Center Focus" Impacts		
1-10	Surface water impacts on streams under Alternative 2 would be greater in several basins and UGAs than those under Alternative 1 as a result of increased total impervious surface area in those basins.	As stormwater management focuses on reducing the potential for channel erosion, scant attention is paid to the observation that an additional impacts of development is that impervious surfaces area can result in an increase frequency of subpeak flows and create peaks where none existed before and by concentrating on the geomorphic threshold for channel erosion, overlooks biological thresholds for displacement and increased energy

		<p>expenditures of aquatic life due to the increased volume of water discharged to the stream. These are direct impacts to aquatic life.</p> <p>6PPD-q is a concern though mentioned in in the DEIS, more needs to be done. See comments to page 1-14.</p>
<p>1-10</p>	<p>Water quality in riparian areas would be expected to decline in those areas where growth is greatest under Alternative 2.</p>	<p>Water quality will be expected to decline not only in areas where growth is greatest but all areas where there is development. Page 52 of the 2019 Stormwater Manual states (emphasis added):</p> <p><i>The engineered stormwater conveyance, treatment, and detention systems advocated by this and other stormwater manuals can reduce the impacts from development to water quality and hydrology. However, they cannot replicate the natural hydrologic functions of the natural watershed that existed before development, nor can they remove enough pollutants to replicate the water quality of pre-development conditions. Ecology understands that despite the application of appropriate practices and technologies identified in this manual, some degradation of urban and suburban receiving waters will continue, and some beneficial uses will continue to be impaired or lost due to new development.</i></p> <p>To mitigate impacts to riparian areas, the County should enforce buffer widths by denying most buffer reduction requests.</p> <p>Furthermore, without a database and associated maps describing the extent and location of the buffer reduction, the County is unable to ascertain the extent to which buffer reductions has reduced</p>

		the riparian buffer width and thus functions and values. This is key to understanding cumulative effects.
Alternative 3, “Dispersed Growth Focus” Impacts		
Mitigation Measures - Incorporated Plan Features		
1-11	Alternatives 2 and 3 would include adoption of revisions to critical area regulations;	The relationship between the proposed buffers in this DEIS and what buffers might result from revision to the Critical Areas regulations should be stated. Separate environmental review of the updated Critical Areas Ordinance differs from establishing buffers. It should be stated in the Comprehensive Plan FEIS what proposed CAO changes the County intends to make with reference to the actual increase (such as 50 feet), rather than ambiguous terms such as increase.
1-11	The Kitsap Regional Shoreline Restoration Plan identifies several voluntary projects and programs to be implemented to improve shoreline functions over time.	As there is no requirement to implement these voluntary projects and programs, these should not be considered mitigation measures.
Other Potential Mitigation Measures		
1-11	Consider state, local, and tribal restoration plans to ensure salmon recovery is prioritized.	These state, local, and tribal restoration plans should also be read as areas where development should be steered away from as well as guidance to where buffers should be increased over standard requirements.
1-11	Additional mitigation measures may be needed to ensure adequate protection of anadromous fish including, but not limited to:	Wording in the Ecology and Kitsap Stormwater manuals clearly indicates additional mitigation measures beyond stormwater facilities is required. A more detailed commentary follows later.
1-11	Increased stormwater management requirements near riparian management zones to increase channel complexity;	Please clarify the intent of this stormwater management requirement. If the intent is to increase stream channel complexity, that is most welcome. If the intent to do something else? Or is the

		intent is to increase instream hydraulic complexity, such as increasing the quantity of habitat components that increase pools (see below)
1-11	Establish benchmarks in floodways to accommodate additional flows;	Please clarify the intent of this statement. Is the intent to establish “benches” to provide for additional conveyance?
	Encourage habitat components that will create pools to provide shelter to salmonids and other anadromous fish.	Wording in the Ecology and Kitsap Stormwater (quoted elsewhere in this letter) clearly indicates additional mitigation measures beyond stormwater facilities is required. Projects that over the water year discharge a total volume of stormwater to the stream exceeding the existing condition should be considered to have create an impact to aquatic life and provide mitigation. The mitigation would depend upon project location, presence of Type F streams at the project site, ability of the project to provide wood from land clearing to County or fisheries enhancement groups, funding to fisheries enhancement groups, etc.
Significant Unavoidable Adverse Impacts		
1-12	Impacts to both surface and ground water resources are expected, including increasing peak flows , channel incision, and reduced groundwater recharge, and may be unavoidable as new impervious surfaces are created and vegetation is removed with development activities.	Additional unavoidable impacts are an increased frequency of subpeak flows and create peaks where none existed before and by concentrating on the geomorphic threshold for channel erosion, overlooks biological thresholds for displacement and increased energy expenditures of aquatic life due to the increased volume of water discharged to the stream. These are direct impacts to aquatic life
1-12	Long-term cumulative reduction in groundwater recharge and associated discharge to streams.	The DEIS admits that this is an impact, but neither the DEIS, nor the exiting CAO does anything to quantify the scale of loss of infiltration due to increased impervious surfaces are or consider

		<p>which areas might be the most vulnerable in terms of reduced groundwater inputs to streams and wetlands.</p> <p>Site specific and cumulative alterations in infiltration need to be quantified for all developments where, over the water year, the development discharges a total volume of stormwater to the stream exceeding the existing condition, and mitigation required.</p>
Summary of impacts and mitigation—Plants & Animals		
Impacts Common to All Alternatives		
1-12	<p>Critical areas, including streams and wetlands, would receive similar protection under each of the alternatives with some increased protections for riparian areas in Alternative 3.</p>	<p>The wording in the DEIS indicates the increased protection (increase of buffer from 50 to 100 feet) is for non-fish streams, so DEIS overstates the increased protection. No additional protection is proposed for fish streams nor streams under Alternative 2.</p>
Alternative 1, “No Action” Impacts		
1-12	<p>Development of properties within or near environmentally critical areas could result in increased impacts to wetland and riparian habitat functions and values.</p>	<p>Streams should be added to this sentence.</p>
Alternative 2, “Compact Growth/Urban Center Focus” Impacts		
1-12		<p>See previous comments in Water Resources about wording in this section.</p>
Alternative 3, “Dispersed Growth Focus” Impacts		
1-13		<p>See previous comments in Water Resources about wording in this section.</p>
Mitigation Measures		
Applicable Regulations & Commitments		
1-13		<p>See previous comments in Water Resources about wording in this section.</p>
1-14	<p>The County could consider incorporating standards beyond the</p>	<p>A major hurdle to upgrading existing water quality treatment facilities is the</p>

	<p>existing 2021 Kitsap County Stormwater Design Manual requirements by incorporating additional Best Management Practices (BMPs) for stormwater management near roadways to reduce the impacts on aquatic life from roadway runoff that contains 6ppd-quinone. Recommended BMPs to mitigate impacts from 6ppd-q are referenced in Ecology Publication 22-03-020.</p>	<p>lack of space as no consideration was given to the potential need for feature components arising from changes in science or BMPs. Similar to the requirement for a reserve septic field, the County should require some additional area be set aside for projects subject to water quality treatment in case the Ecology review indicates additional stormwater treatment is needed to treat 6PPD-q. These areas can be considered as open space, unless needed for water quality treatment. If there is no requirement for a reserve set aside, then the FEIS should acknowledge that certain chemicals might not be treated effectively.</p>
<p>Exhibit 1.5-6 Summary of impacts and mitigation—Relationship to Plans and Policies</p>		
1-16	<p>Proposed policy changes include a tree retention standard,</p>	<p>The tree retentions standard is a draft. Additionally, the proposed standards allow for the trees in required buffers to be considered part of the standard, when they should not be. See Annex B for more details.</p>
1-16	<p>increasing stream buffers to 100 feet,</p>	<p>It should be specific that this if for non-fish streams.</p>
<p>Significant Unavoidable Adverse Impacts</p>		
1-30	<p>With advanced planning, review of development applications, and implementation of mitigation measures, there should not be unavoidable adverse impacts from any of the three alternatives. The level of unavoidable adverse impacts depends on the degree that potential mitigation measures are implemented. Even if one or more of the mitigation measures is implemented, there could still be some changes to existing stormwater runoff patterns. This</p>	<p>The statement of unavoidable adverse impacts is not supported by Best Available Science nor current County Code.</p>

	could alter flow conditions downstream of the planning areas and could potentially aggravate existing downstream flooding and erosion problems.	
ALTERNATIVES		
2-13	Alternative 3, “Dispersed Growth Focus” Expanded buffers along mapped non-fish streams.	It should be clarified what is meant by “ <i>mapped non-streams</i> ”. For example, does it mean streams that are currently mapped as non-fish streams excluding unmapped streams that are later found, or does it include not yet discovered non-fish streams. This is important as the County and this DEIS (Exhibit 3.1.3.1-1 Watercourse and surface water map) refers to mapped streams and makes no reference to unmapped streams as it does for unmapped wetlands and rare plants. The expanded buffers should apply to all streams, whether mapped or not.
2-14	Exhibit 2.5.1-1 Major policy revisions of Alternatives 2 and 3	A legend explaining the abbreviations would be helpful.
2-16	Increased stream buffers Alt 1 - No Change No Change (50-foot buffers) Alt 2 - No Change (50-foot buffers) Alt 3 Non-Fish increased (100-foot buffers)	Buffers for fish streams should also be included. Otherwise, the impression might be that Type F streams have a 50 foot buffer. As communicated to the County numerous times, the County’s current buffers of 50 feet on Type N streams are inadequate, and the 150 buffer on a Type F stream in most cases does not meet the SPTH recommendation to ensure full buffer function.
2-17	Alternative 2 Tree Replacement Proposal:	See Annex B
2-17	Alternative 3 Tree Retention Proposal:	See Annex B.
2-22	Exhibit 2.5.3-5 Housing capacity of	The housing capacity of Alternatives 2 and 3 is lower than what it could be due

	alternatives	to restrictions on building heights.
2-28	The County is proposing a variety of amendments to development regulations as part of the proposal. Key updates to development regulations are shown in Exhibit 2.5.1-1.	Many of the proposed amendments, such as to the CAO, are unknown.
AFFECTED ENVIRONMENT, SIGNIFICANT IMPACTS & MITIGATION MEASURES		
3-8		To the extent possible, the geological hazard of mass wasting or debris flows runout zones should be mapped.
3.1.1.2 Earth – Impacts		
Impacts Common to All Alternatives		
3-11 over time but will offer protection of resources through the regulations of the County code, particularly the CAO and SMP. Review procedures will also ensure adequate public health and safety measures are in place.	More apt would be that impacts will be reduced.
3-11	expanded areas of impervious surfaces,	Though mentioned later in terms of stormwater and under the alternatives, add <i>“reduced areas for infiltration”</i> as rainfall itself is not stormwater.
3-12	Compacted soil, or areas covered by impervious surfaces, allows for less stormwater infiltration into the ground and may cause impacts to groundwater recharge.	This known impact must be quantitatively addressed in terms of how much development alters the volume of water infiltrated over the water year.
3-13	Impervious surfaces can reduce the volume of water that infiltrates the soil, which leads to increased runoff and decreased groundwater recharge.	Add <i>“resulting in reduced stream flows”</i> .
3-13	Stormwater controls are intended to maintain stream flows in ranges consistent with native vegetation cover.	The intent of this statement stream flows consistent with native vegetation cover should be clarified. Is it to mean ranges consistent with pre-development conditions, or something else? Additionally, what is meant by range should be stated.

3-16	Kitsap County will encourage building sites to be located away from critical areas, such as steep slopes and landslide hazard areas, by requiring minimum buffer widths and building setbacks in the CAO.	Given the wording in the CAO, the word “ <i>require</i> ” should be used.
3-16	Most geologic hazards may be avoided or minimized by locating developments outside of the mapped areas	Mass wasting runout zones are not mapped.
3-16	KCC Section 19.400.405 of the CAO defines geologically hazardous areas and outlines regulations for development standards for projects in or near the designated hazard areas.	Mass wasting runout zones are not adequately addressed in the CAO.
Earth – Significant Unavoidable Adverse Impacts		
Air Quality – Significant Unavoidable Adverse Impacts		
3-36	Tree losses projected for the alternatives cannot be wholly avoided given net developable acres in the county. However, regulations to protect and replace significant trees can minimize this unavoidable impact.	This is another example, where the time delay between impact and when mitigation compensates for the impacts, such as replacing significant trees, results in a long term impact. significant trees. See Annex B for more details.
3.1.3 Water Resources (Surface & Ground)		
3-36	The flow of water through the landscape is determined by delivery and movement.	A discussion that the flow of water through a stream channel is affected by channel hydraulic complexity - which is often in the short-term a function of wood in the channel and in the long-term the condition of the riparian corridor - and that complexity creates a mosaic of depths and velocity essential to aquatic life is needed.
3-37	Groundwater also contributes to base flows of streams, provides direct input into lakes,	In many streams, groundwater maintains base flows and in the absence of groundwater, there is no stream flow.
3-38	Of those, approximately 322 miles are non-fish bearing waters in the	This appears to be a continuation of the emphasis in the DEIS on describing the extent of non-fish bearing streams. It

	unincorporated county.	would be helpful for the total length of fish bearing streams known to date to be included.
3-38	Likewise, some adjacent watersheds share a common regional aquifer, which contributes significantly to the summer flows of these streams.	This emphasizes the importance of quantify development induced alterations on water infiltration and ana analysis of groundwater flow paths. Additionally, in some cases, the aquifer is the only source of water for summer flows. Furthermore, groundwater can be an impact source of cooler water to the stream channel during the warmer months and provide areas of thermal refugia that will become more important with climate change. The DEIS has not considered thermal refugia, nor is it considered in the current CAO.
3-41	Exhibit 3.1.3.1-2 Existing conditions of the county’s Shorelines of the State	Maps overlaying fish streams and non-fish streams tributary to fish streams with streams on the 303(d) list for temperature, DO, or low flows would be helpful to assess the vulnerability of streams to the proposed zoning changes.
3-48	Water Quality 303(d) Listings	The listing of 303(d) streams should expand to all streams and include maps overlaying fish streams with streams on the 303(d) list for temperature, DO, or low flows. Maps overlaying fish streams and non-fish streams tributary to fish streams with streams on the 303(d) list for temperature, DO, or low flows would be helpful to assess the vulnerability of streams to the proposed zoning changes.
3-50	Areas of high impervious surface area coverage can negatively impact the potential for groundwater recharge by routing precipitation into nearby stream channels or stormwater discharge facilities instead of natural infiltration.	This is a qualitative statement recognizing an issue but nothing in the DEIS or the CAO requires a quantification of the impact.

3-50	Critical Aquifer Recharge Areas (CARA)	Despite its objectives, those sections of the CAO dealing with CARA typically consider impacts to quality and quantity of the human water supply, and not impacts to aquatic life. For example, well potential impacts to wells are considered, equal consideration is not given to springs and areas of groundwater upwelling with the same distance of the project.
3.1.3.2 Water Resources – Impacts		
Impacts Common to All Alternatives		
3-52		There is no discussion of the how important thermal refugia or inputs of cooler water are to salmonids.
3-52	The creation of impervious surface areas and removal of forested areas associated with development activities in all alternatives will influence natural surface water systems (Booth et al. 2002).	See previous comments about groundwater impacts regarding this wording.
3-53	In areas where land is currently undeveloped, increased impacts may be experienced as engineered surface water systems may not be effective in replicating natural processes or systems.	Engineered systems will not effectively replicating natural systems. Page 52 of the 2019 Ecology Manual (emphasis added) states: “The engineered stormwater conveyance, treatment, and detention systems advocated by this and other stormwater manuals can reduce the impacts from development to water quality and hydrology. However, they cannot replicate the natural hydrologic functions of the natural watershed that existed before development, nor can they remove enough pollutants to replicate the water quality of pre-development conditions. Ecology understands that despite the application of appropriate practices and technologies identified in this manual,

		<p>some degradation of urban and suburban receiving waters will continue, and some beneficial uses will continue to be impaired or lost due to new development. This is because land development, as practiced today, is incompatible with the achievement of sustainable ecosystems. Unless development methods are adopted that cause significantly less disruption of the hydrologic cycle, the cycle of new development followed by beneficial use impairments will continue.”</p> <p>Page 122 contains the following statement.</p> <p>The BMPs listed in this section are likely insufficient by themselves to prevent significant hydrologic disruptions and impacts to streams and their natural resources. Therefore, local governments should look for opportunities to change their local development codes to minimize impervious surfaces and retain native vegetation in all development situations. Most importantly, to maintain the beneficial uses of our lowland freshwater systems will require land use planning that targets retention of a majority of a creek’s watershed in its natural condition, and retains most of the benefits of headwater areas, , connected wetlands,</p>
3-53	<p>Changes in land use can also lead to declining summer base flows. Stormwater runoff that flows quickly downstream reduces infiltration and allows less runoff to be stored in the soil for summer flows. for summer flows. Without adequate stormwater detention, channels that were formerly resilient may become</p>	<p>Declining baseflows also need to be considered in the context of increased intermittency of seasonal streams in both space and time, and converting perennial streams to seasonal streams. Additionally, potential impacts to cold water refugia (a separate issue from overall stream temperature) must be considered.</p>

	<p>unstable due to larger and more variable stream flows over time. Reduced summer base flows may result in a loss of flood-carrying capacity, increased stream temperatures, decreased supply of dissolved oxygen, loss of capacity to assimilate and dilute contaminants, loss of aquatic habitat, and creation of seasonal fish passage barriers (EPA 2021).</p>	
3-55	<p>Pumping water from permit exempt wells can reduce groundwater discharge to springs and streams, which in turn has the potential to reduce stream flows (Barlow and Leake, 2012).</p>	<p>As throughout the DEIS, the issue of groundwater discharge to springs and streams is generally looked at through the lens of reduced groundwater due to consumptive use. However, the impacts of development upon groundwater recharge need to be quantified.</p>
<p>Impacts of Alternative 1, "No Action"</p>		
<p>Impacts of Alternative 2, "Compact Growth/Urban Center Focus"</p>		
3-58	<p>Under Alternative 2, an additional 1,458 feet of non-fish bearing streams will be affected by the UGA expansion areas compared to Alternative 1. Additionally, 1,477 feet of non-fish bearing waters will be affected by upzoned areas under this Alternative.</p>	<p>See previous comments re this type of wording.</p>
3-58	<p>Water quality in riparian areas would be expected to decline in those areas where growth is greatest under Alternative 2.</p>	<p>See previous comments re this type of wording.</p>
3-58	<p>Unmapped wetlands may also occur in all areas of proposed UGA expansion under this alternative,</p>	<p>Unmapped streams, both fish and non-fish may also occur.</p>
3-63	<p>Additional mitigation measures may be needed to ensure adequate protection of anadromous fish. Potential mitigation measures could include, but are not limited to:</p>	<p>See earlier comments.</p>

3.1.3.4 Significant Unavoidable Adverse Impacts – Water Resources		
3-63	Additional mitigation measures may be needed to ensure ...	See earlier comments.
3-63	The County’s stormwater management requirements would minimize the impacts from new impervious surfaces.	Suggest reduce, not minimize.
3-63	However, it should be noted that the 2019 Stormwater Management Manual for Western Washington (SWMMWW) and the 2021 Kitsap County Stormwater Design Manual do not address outside factors, such as area increases in stream flows or rates of erosion.	<p>This is a key point and highlights the need to collect information, such as reduction on annual volume of infiltration, changes to stream hydroperiod at velocities that impacts salmonids, etc. in order to comprehend the impacts and develop mitigation measures. Furthermore, to emphasis the point, suggest a footnote taken from the County Stormwater Manual be added to emphasis to Decision Makers the shortcomings of the Manual :</p> <p><i>“This manual presents Kitsap County’s minimum standards for engineering and design of drainage BMPs. While Kitsap County believes these standards are appropriate for a wide range of project proposals, compliance solely with these requirements does not relieve the professional engineer submitting designs of their responsibility to ensure drainage facilities are engineered to provide adequate protection for natural resources and private property. Compliance with the standards in this manual does not necessarily mitigate all probable and significant environmental impacts to aquatic biota. Fishery resources and other living components of aquatic systems are affected by a complex set of factors. While employing a specific flow control standard may prevent stream channel erosion or instability, other factors affecting fish and other biotic resources (e.g., increases in stream flow</i></p>

		<p>velocities) are not directly addressed by this manual. Likewise, some wetlands, including bogs, are adapted to a very constant hydrologic regime. Even the most stringent flow control standard employed by this manual does not prevent all increases in runoff volume, and it is known that increased runoff can adversely affect wetland plant communities by increasing the duration and magnitude of water level fluctuations. Thus, compliance with this manual should not be construed as mitigating all probable and significant stormwater impacts to aquatic biota in streams and wetlands; additional mitigation may be required. Additional mitigation may also be required to compensate for loss of critical drainage area habitat functions associated with activities inside the critical drainage area or critical drainage area buffers."</p>
<p>3-63</p>	<p>However, some impacts to both surface and ground water resources, including increasing peak flows, channel incision, and reduced groundwater recharge, may be unavoidable as new impervious surfaces are created and vegetation is removed with development activities.</p>	<p>These statement should be expanded to note that if a development increases impervious surface area and the increase in stormwater generated cannot be infiltrated onsite, then an outcome of detention is that though released at a rate that should not create significant erosion in the channel, this greater volume of water is released over a longer period of time altering increasing stream velocities above what they would have been otherwise in the absence of development. This points out another benefit of calculating total pre and post development runoff volume over the water year as it can used to estimate changes in water velocities and duration of flows that might impact aquatic life.</p>
<p>3-63</p>	<p>It is not possible to eliminate all impacts on surface water resources</p>	<p>It is clearly not possible, unless development is restricted to what can be</p>

	entirely under any of the alternatives.	constructed without increasing the volume of stormwater leaving a site, to prevent alterations in stream flow. However, it is possible to locate outfalls away from areas used by salmonids to shelter from high flows or to increase instream structural complexity as noted elsewhere in this DEIS, an increase that would typically provide a greater volume of water within acceptable velocities.
3-64	Decline and eventual loss of some wetland functions for hydrology, water quality, and habitat.	The same will occur to streams.
3.1.4 Plants & Animals		
3-69	Water levels are more stable and peak flows are more typical of historic flows	<p>The presence of historical peak flows should not be assumed to mean the water in the channel behaves the same as historically. Stream hydraulics are function of flow and hydraulic complexity.</p> <p>The focus in stormwater management on reducing peak flows to avoid channel erosion (a geomorphic threshold) has led to a lack of focus on biological thresholds for flows. Water flows (velocities) required to displace aquatic life (such as juvenile salmonids), to increase their energy expenditures to maintain position, or requires holding in positions with an acceptable velocity or generally not considered.</p> <p>In undeveloped channels, due to the hydraulic complexity (often created by wood) water moves through the stream channel much differently than in channels that have been altered by development. The complex mosaic of differing water velocities and depths has been converted to a system with greater uniformity of depth and velocity with fewer area for aquatic life to avoid flows above their</p>

		swimming thresholds.
3-69	Many structural features typical of historical vegetation, such as snags, dead and downed wood, and brush piles, are often completely removed from the landscape.	The same has and is occurring in streams. Habitat forming wood has been removed from many stream or stream reaches, in the absence of a mature riparian corridor the amount of remnant wood is declining, if there is remnant wood. The lack of hydraulic complexity makes aquatic life more vulnerable to development induced alterations of the hydroperiod.
3-70	stream channels, which has resulted in degraded overall water quality and resulted in alterations to hydrology .	More discussion of the impacts of development, such as reducing stream hydraulic complexity, upon how water moves through streams should be presented.
3-70	Nearshore Estuary Habitats.	A definition for pocket estuary should be provided as well as a map to the location of the larger pocket estuaries. Though incomplete, Kitsap County does have a map of pocket estuaries. https://www.kitsap.gov/dcd/NR_Nearshore_Assessment_Maps/KitsapEast_PocketEstuaries.pdf a Kitsap County Map of pocket estuaries
3-70	These diverse nearshore habitats are critical for rearing of anadromous fish, including Chinook salmon,	Estuaries are particularly important for juvenile chinook, coho and chum as well as forage fish and other marine species
3-73	USFWS has identified nine federally listed terrestrial wildlife species that are documented to occur or may occur in Kitsap county (USFWS 2022). These aquatic species include Chinook salmon, chum salmon, ...	The first sentence refers to terrestrial species but the examples given are aquatic. As noted in other communications to the County from the Tribe, the County should be designating species of local concern. Additionally, the County should plan for wildlife corridors.
3-74	Fish habitat is largely dependent on water quality and quantity.	This is an oversimplification. Sufficient amounts of good freshwater water without physical habitat such as wood,

		properly size sediment, etc., provide little fish habitat. Suggest this sentence be expanded to note the stream habitat arises from the interaction of flow, water, and sediment and changes in the amount or timing of the input of these affects habitats. This would set the stage for the longer following sentence found in this paragraph of the DEIS. Additionally, a discussion of the interaction of wood with water to form complex habitats, particularly pools that can remain wetted during low flows (thus increased resilience to climate change) is warranted. Furthermore, low velocity water created by wood helps shelter aquatic life form peak flows.
3-77	Estuarine habitat occurs at the stream mouths of Barker, Clear, and Steele Creeks, while areas along Dyes Inlet are considered marine nearshore habitat.	A definition of pocket estuary would helpful as pocket estuaries also occur at the mouths of smaller, unnamed streams; and in tidally influenced wetlands with freshwater input etc.
3.1.4.2 Plants & Animals – Impacts		
Impacts Common to All Alternatives		
3-78	Critical areas, including streams and wetlands, would receive similar protection under each of the alternatives with some increased protections for riparian areas in Alternative 3.	As the CAO is undergoing revision, the extent of any increased protection, beyond the proposal to increase the buffer for non-fish stream in Alternative 3 from 50 to 100 feet is unknown. However, the DEIS implies and BAS indicates the current county stream buffers are insufficient.
3-78	However, indirect impacts may also occur with the introduction and establishment of nonnative invasive species.	Other indirect impacts to vegetation includes increased potential for (1) windthrow of trees in the riparian areas; and (2) requests to remove danger trees from the riparian area or stream buffers.
3-79	Aquatic species may be impacted by loss of habitat due to development or	Suggest “may” be switched to “will”. Additionally, changes in water quantity

	alteration of habitat due to changes in water quality and quantity that may occur under each alternative	are using considered towards the extremes: (1) base flows; and (2) peak flows (erosion and flooding concern). However, also need to consider development induced changes in the frequency and duration of flows less than the design event for developments required to plan for flow duration control or the cumulative impacts from multiple projects that are not subject to flow control, but are unable to infiltrate stormwater.
3-80	Reduced quality and quantity of aquatic habitat may occur as a result of future development activities Fish habitat may be impacted by the conversion of land, increased density, changes in types of land use activities, and all alternatives.	Switching “may” to “will” is consistent with wording found in Ecology and Kitsap County stormwater manuals.
3-80	Resulting impacts could include, but are not limited to, increased water temperatures sedimentation, increased peak flows, reduced groundwater recharge, increased shoreline armoring, channelization, and overall reduced riparian and wetland habitats.	Additional impacts include reduced base flows, increased intermittency of seasonal streams in both space and time, and converting perennial streams to seasonal streams. In addition to increased peak flows, there is typically an increase in the frequency of the equivalent of sub-peak flows as well as their duration. Direct impacts to fish, such as displacement or higher energy expenditures due to increased duration of flows at or exceeding the upper end of their swimming ability are an impact.
3-80	Intact riparian or shoreline buffers may reduce adverse effects of watershed-wide development on streams and wetlands.	Though intact riparian or shoreline vegetation buffers are more likely to reduce many adverse effects, this DEIS statement is debatable for impacts that are deliberately conveyed through a buffer to the stream channel, such as some stormwater discharge.
3-80	Established, mature forested buffers allow large woody debris recruitment	A sentence or two of the importance of instream wood to create hydraulic

	and support maintaining healthy stream temperatures.	complexity and the mosaic of water velocities required by salmonids is warranted. This would provide the linkage between the riparian corridor and instream wood.
3-80	Salmonid species are particularly sensitive to changes in water quality and temperature, which may affect their ability to survive, grow, and reproduce.	Juvenile and many stream rearing salmonids are also particularly sensitive to changes in water velocities that exceed their preferred range and habitat alterations due to loss of wood from stream channels as well as temperature increases resulting from removal of riparian vegetation.
3-80	Direct impacts on fish habitat will be minimized by regulatory buffer requirements and the	Suggest reduced is a more appropriate word than minimized.
3-80	However, current state and County regulations require stormwater management and treatment standards for projects that create significant new impervious surface area to help minimize detrimental effects on aquatic species and their associated habitats. These regulations are intended to minimize or mitigate impacts on fish habitat but may not eliminate the impact entirely.	<p>Suggest “minimize” be changed to “reduce”.</p> <p>Suggest “<i>may not eliminate</i>” be changed to “<i>will note eliminate</i>” for consistency with the Ecology and County stormwater manual.</p> <p>State and county regulations require stormwater analysis look at potential alterations to wetland hydroperiods. No such comparable analysis if required for alteration of hydroperiods in stream channel. Aquatic life, such as overwintering juvenile coho that have not found preferred overwintering habitat, in response to storm induced increases in stream flows often move into small tributaries, often backwatered from the main channel and only containing water during storm events to avoid the higher flows in the main channel. Stormwater discharge into these smaller channels can be a significant portion of the flow and reduce their suitability for high flow refugia.</p>

		Additionally, these regulations are intended to reduce impacts to the form of the stream channel, such as reducing flows below the erosion threshold. These regulations are not designed to address stormwater induced flow changes upon water velocities within aquatic life swimming abilities, impacts which can occur at much lower velocities than those needed to erode the stream channel.
3-83	Unmapped rare plants may occur in all areas of proposed UGA expansion and could be affected by future development activities.	Unmapped streams and wetlands are also expected to be present, particularly small low gradient seasonal streams used for overwintering and high flow refugia and small headwater wetlands.
3.2.4.1 Historical & Cultural Preservation – Affected Environment		
3-84	The Suquamish Tribe, working alongside Tribal Elders and the Cultural Co-op, have identified and mapped traditional places in and around the Port Madison Indian Reservation.	The Tribe does not just gather information for places only in and around the reservation, but rather for the entire county. There are ethnographic place names and Suquamish villages and camping spots all over Kitsap County, not limited to the reservation boundaries.
3-89	Additionally, coordination with Washington State Department of Fish and Wildlife and local Tribes is encouraged to ensure protection of treaty reserved natural and cultural resources, where applicable.	Coordination with the Tribe at the earliest possible stage will reduce the potential delays due to (1) redesigning a project after Tribal input has indicated a redesign would avoid sensitive areas; or (2) an inadvertent discovery when there is no plan to deal with discovery..
3-89notify Kitsap County, the Office of Archaeology and Historic Preservation and affected Indian tribes.	Please verify the DEIS has the correct title, it might be the Department of Archaeology and Historic Preservation
3.1.4.3 Plants & Animals – Mitigation Measures		
3-85	The Shoreline Master Program (KCC Title 22), updated in 2021, applies use and modification standards, as well as mitigation sequencing, vegetation	There is a disconnect between the SMP and SEPA for activities within the Shoreline Management Zone. Buffers in the SMP are typically much less than

	<p>conservation, and critical areas regulations to all Shorelines of the State. The updated Shoreline Master Program was adopted to meet the standards of no net loss of shoreline ecological functions. Additionally,</p>	<p>those found in the CAO, yet No Net Loss (NNL) reports typically evaluate whether a proposal is compliant with the mitigation sequencing requirements of all comprehensively updated SMPs and not, rather than cumulative, short-term, long-term, direct and indirect impacts to the environment outside of the buffer. If an impact is not identified, there will be no directed mitigation for that impact. The wording in the SMA and SMPs allows NNL reports and the equivalent to claim certain activities have no impact, when in fact they do. In effect, NNL reports are being used by some applicants to truncate the area over which impacts are to be considered.</p>
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Annex B Comments on proposed draft development regulations for Title 16 Subdivisions and Title 17 Zoning.

Title 16 Subdivisions

Page number	Narrative (bold emphasis added)	Comment
4	16.04.020 Purpose	There appears to be nothing in the purpose about environmental protection and climate change, despite the linkages of many objectives. Putting some reference to those here, would set the stage for the wording in “16.04.060 <i>Conformity with other codes</i> ”.
12	Any associated documents, including but not limited to covenants, conditions and restrictions (CCRs), road maintenance agreements (RMAs) and easement documents, shall be recorded concurrently with and be cross-referenced on the face of the final plat or binding site plan. Recordings shall be at the expense of the applicant.	GPS polygons for Critical areas and critical area buffers, and GPS coordinates for retained and replaced trees, wildlife trees, should be recorded concurrently.
36	Where a land segregation contains or borders a critical area, development shall occur in accordance with the appropriate standards as required by Title 19, including specified native vegetation buffers and construction setbacks where applicable.	A definition should be provided for “borders”. Suggest “borders” means the site is within one (1) Site Potential Tree Height, or 100 feet whichever is greater. Subdivision of land shall not result in buffer reductions or reasonable use exceptions based on the CAO when the subdivision is proposed.
16.40.030 Preliminary Subdivisions.		
37	One or more maps , to scale no less than one inch to one hundred feet, which scales shall be shown on the drawing, both	Polygons for Critical areas and critical area buffers and CMZs, and GPS coordinates for retained and replaced trees, wildlife trees, survey stakes, survey points, where stream bankfull widths were taken, photopoints should be recorded concurrently. There should also be wording that additional information collected in Special Reports might be required to be included on this maps as directed by the CAO.

38	The location of all water bodies (including but not limited to lakes, ponds, saltwater shorelines, streams, and wetlands), their associated buffers and construction setbacks, and mapped flood hazard areas;	Add, " <i>including channel migration zones, as applicable</i> ".
Amendments to approved preliminary subdivisions.		
39	Amendments. For these purposes, " significant " shall mean a greater than ten percent increase when the impact is quantifiable.	Whether an amendment is considered <i>minor</i> or <i>significant</i> will often depend upon the information collected for the various special reports. To help ensure amendments that are actually significant or not considered minor, greater effort is needed to quantify impacts numerical rather than use terms such as greater, larger, reduced etc. For example, if the impact of a proposal upon the volume of water infiltrated onsite is not quantified during review, then it would not be possible to determine if a proposed amendment had affected the infiltration volume by more than 10%. The onus must be on the applicant to document that they cannot quantify an impact or a reasonable surrogate for the impact (for example, using infiltration changes as surrogate for impacts to groundwater recharge). Given that projects with proposed significant changes will not be considered vested, there will be considerable incentive to try not to quantify impacts.
40	If one or more are not satisfied, the application must proceed as a major amendment.	Suggest adding words to the effect " <i>There has been changes in the Best Available Science that affects the understanding of the efficacy of proposed mitigation measures</i> ".
41	Vesting. Major amendments proposed by an applicant shall cause the application to lose its vesting and be reviewed under the regulations in effect at the time of the revised project permit application. Minor	The Tribe is supportive of the proposal that a major amendment shall cause an application to lose vesting. However, vested projects for which substantial work has not commenced with five (5) years of approval should also lose vesting.

	amendments are amendments that do not qualify as major and shall not affect vesting.	If not currently incorporated into the process, Tribes should be included in the review of request for minor and major amendments to ensure Tribal input prior to the County coming to a recommendation as to amendment type.
Final Subdivisions		
41		See comments to 16.40.030 Preliminary subdivisions
Preliminary short subdivisions.		
45		See comments to 16.40.030 Preliminary subdivisions.
46	The location of all water bodies (including but not limited to lakes, ponds, saltwater shorelines, streams, and wetlands), their associated buffers and construction setbacks, and mapped flood hazard areas;	This wording is not found in some of the other sections. Consideration should be given to incorporating it into that wording. Additionally, drainage pathways should be included.
46	The location of geologically hazardous areas and their associated buffers and construction setbacks. Delineate all slopes thirty percent in grade or greater and all slopes from fifteen percent to thirty percent in grade where they are rated as areas of "moderate" or "high" geologic hazard pursuant to Section	This wording is not found in some of the other sections. Consideration should be given to incorporating it into that wording.
Amendment to preliminary short subdivisions.		
47		See comments to 16.40.040 Amendments to approved preliminary subdivisions
Final short subdivisions.		
49		See comments to 16.40.030 Preliminary subdivisions.
Preliminary large lot subdivisions.		
53		See comments to 16.40.030 Preliminary subdivisions.
Amendment to preliminary large lot subdivisions.		
55, 56		See comments to 16.40.040 Amendments to approved preliminary subdivisions
Final large lot subdivisions.		
57		See comments to 16.40.030 Preliminary subdivisions.

Binding site plan contents and approval criteria.		
67	16.60.030 Alterations of final short plats, large lot plats and binding site plans.	A more extensive use of GPS to record various features (features listed earlier such as in the comments on 16.40.030 Preliminary subdivisions) will help ensure a more accurate review of the potential impacts of proposed alterations.

Title 17 Zoning

Page number	Narrative (bold emphasis added)	Comment
9	Lighting is to be directed downward and away from adjoining properties.	Suggest adding at end of sentence " <i>and critical areas and their buffers.</i> "
15	Line 116 Multiple-family ACUP to P in Urban Reserve and Greenbelt zones	It should remain an ACUP
20	Exterior Lighting. In all zones, artificial outdoor lighting shall be arranged so that light is directed downward or away from adjoining properties and shielded from above to prevent light pollution of the night sky and so that no more than one foot candle of illumination leaves the property boundaries.	The additional attention to light and glare is welcome, but could be improved. This as currently written to reduce light and glare impacts to neighbors. However, light and glare affects wildlife. As the property boundaries might include critical areas and their buffers suggest and a second statement to the effect "no more artificial illumination shall not enter wetlands or Fish and Wildlife Habitat Conservation Areas or their buffers.
51	Permeable pavements are encouraged where feasible;	This proposed addition is welcome, but should be strengthened to read " <i>Permeable pavements are required where feasible.</i> ;"
Kitsap County Comprehensive Plan Alternative 2: Tree Replacement Tree Density/ Unit Credit Method		
64	A healthy tree canopy contributes to physical and mental health, safety, aesthetics, and overall welfare of the public.	The use of word canopy implies canopy closure and that suggests retained trees should be clustered to the extent possible. This has several benefits such as reducing risk of wind throw, creating a

		microhabitat for fauna and flora, etc.
64	Tree replacement standards shall apply to any lot under development in urban residential, commercial, and industrial zones in Kitsap County.	The wording here sets the stage that it applies to all lots, but based upon conversations with the County it does not apply to Critical Areas. The following wording from page 65, should be adopted to here: <i>“Tree management and protection within critical areas and their buffers are regulated by Kitsap County Title 19 Critical Areas Ordinance and trees within shoreline jurisdiction are regulated by the Shoreline Master Program.”</i>
64	Lots that are 8,000 square feet in size or less are exempt from the tree replacement standards of this chapter.	Please clarify if this means a developer with a project of 80,000 square feet divided equally into 11 lots is exempt while a developer with a 25,000 square foot project divided into 3 lots is not. If that is the case, then the exemption should be based upon total project size and not lot size.
64	Only healthy, significant trees can count toward the required minimum tree density.	Only counting healthy trees overlooks the importance of wildlife trees, what a later section of this document refers to as significant habitat trees. See comments to Table 17.495.030-1 re wildlife trees.
65	Table 17.495.030-1 Minimum Tree Unit Credits by Land Use Zone	Consideration should be given to an additional credit for retaining wildlife trees of a certain size. Conversely, there should be an additional debit for the removal of wildlife trees - trees with snags and cavities that are used by a variety of birds and small animals. See the following links for species, sizes, clustering, etc. WDFW https://wdfw.wa.gov/species-habitats/living/snags#trees BC https://www2.gov.bc.ca/assets/gov/environment/plants-animals-and-ecosystems/conservation-habitat-management/wildlife-conservation/wildlife-tree-

<p>65</p>	<p>Tree density requirements for a lot can be met by trees located within shoreline jurisdiction, critical areas, and their associated buffers</p>	<p>committee/chief_forester_short_cwd.pdf</p> <p>Allowing the density requirement to be met by trees located in critical areas or their associated buffers is allowing credit for something the applicant is required to do – maintain a buffer. It also is contrary to the intent of the statement on page 64, <i>“Trees also mitigate the negative effects of urban development including the loss to native wildlife biodiversity, increased temperatures, airborne particulates, carbon dioxide, noise, and stormwater runoff caused by increases in impervious surfaces and vehicular traffic.”</i> Particularly in regard to the loss of native wildlife biodiversity – animals, particularly smaller ones, need suitable habitat features to move between areas that are not connected by habitat corridors. Allowing the density requirement to be met by trees located in critical areas or their associated buffers is allowing credit for something the applicant is required to do – maintain a buffer. It also is contrary to the intent of the statement on page 64, <i>“Trees also mitigate the negative effects of urban development including the loss to native wildlife biodiversity, increased temperatures, airborne particulates, carbon dioxide, noise, and stormwater runoff caused by increases in impervious surfaces and vehicular traffic.”</i> Particularly in regard to the loss of native wildlife biodiversity – animals, particularly smaller ones, need suitable habitat features to move between areas that are not connected by habitat corridors.</p>
<p>65</p>	<p>Tree management and protection within critical areas and their buffers are regulated by Kitsap County Title 19 <i>Critical Areas Ordinance</i> and trees within shoreline jurisdiction are</p>	<p>This should be added to wording on page 64 as noted previously.</p>

	regulated by the Shoreline Master Program.	
66	Table 17.495.030-2 Credit Values for Existing and Replacement Trees	See previous comments re wildlife trees.
66	Replacement 2-inch caliper deciduous or broadleaf tree Replacement 6-foot-tall evergreen, conifer tree	These replacement credit ratios appears to be rather arbitrary. Is there any quantitative information behind this ratios, such as the time required for the replacement trees to reach the size set for the existing trees?
67	Developments shall locate a minimum of 25 percent of the required trees in protected tracts, such as tree conservation tracts, recreation tracts, stormwater tracts, and critical area tracts;	If the required trees are planted in critical areas tracts, the developer should not get a mitigation credit for buffer enhancement.
67	When lots or building sites are located next to protection tracts (such as park, stormwater, or critical area tracts), the preferred location of the trees is the area adjacent to these tracts;	If small animal movement, such as amphibians, is a concern, and the project is in a location where critical areas are spatially disjunct, then consideration should be given to locating the trees in a manner that facilitates movement
67	Trees may be planted on a solitary basis or within clusters to form stands or groves.	For reasons outlined earlier, such as reducing the risk of windthrow, creation of microclimates, etc., the preference would be clusters to form stands or groves.
67	Irrigation shall be provided until the tree is established.	In regard to the wording “until the tree is established”, these replacement trees are effectively mitigation for tree removal and/or required to provide for certain objective, such as those listed in 17.495.010 Purpose. As mitigation for impacts, the applicant should be required to conduct periodic inspections of the tree after establishment to ensure it is still viable and replace it if needed treating the tree that needs to be replaced as retained tree for credit values (Table 17.495-030-2)
68	show approximate locations of trees to	Approximate location is vague, GPS work

	be retained or planted	is cheap. The GPS locations of retained and replacement trees and information should be required.
68	Where circumstances warrant, the Director may require more substantial tree protection fencing, as necessary, to protect intrusion of construction into the critical root zones.	Care must be taken to ensure more substantial tree protection fencing does not impede the movement of small animals, such as amphibians
Kitsap County Comprehensive Plan Alternative 3 - Tree Retention Tree Density/Unit Credit Method		
		See comments to Kitsap County Comprehensive Plan Alternative 2: Tree Replacement Tree Density/ Unit Credit Method for general concerns
73	Trees identified as having significant habitat value (i.e., large diameter, snags, or nesting trees) and those located within a critical area or its buffer may be credited toward the tree density requirements, regardless of the health or state of the tree, so long as they have not been deemed a moderate to high risk hazard tree by	<p>A definition for what constitutes a tree having significant habitat value is required. A habitat analysis would be required to document why a tree that meets the criteria is not significant to avoid the significant status. The stream typing system has been around for many years, but many reports still claim what are clearly Type F streams as Type N, even given the stream typing procedures found in the WACs. To have no guidance for significant habitat trees means little protection.</p> <p>Trees located within critical areas or their buffers should not count as credit. Large trees with significant wildlife habitat value should be given a bonus. Additionally, often a tree can be stubbed, reducing the hazard, but maintaining much of the habitat value.</p>
Kitsap County Comprehensive Plan Alternative 3 - Tree Retention Canopy Cover Method		
		See comments to Kitsap County Comprehensive Plan Alternative 2: Tree Replacement Tree Density/ Unit Credit Method for general concerns
76	Table 17.495.030-1 Minimum Tree	The canopy proposal will overlook wildlife

	Canopy Cover by Land Use Zone	trees even more than the trees per acre proposal as many wildlife trees will not contribute substantially to the canopy due to them being dead or dying.
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The Kitsap Building Association firmly believes that every resident of Kitsap County deserves the right to achieve the ultimate American Dream: owning a home. Alternative 3 is the only alternative suggested in the draft environmental impact statement that works towards making this dream a reality. The situation we are currently in is dire: Puget Sound Regional Council’s Vision 2050 estimates over 800,000 households being added to the Puget Sound region over the next 26 years. Kitsap County’s consultant, who was hired to conduct a housing analysis for this Comprehensive Plan Update, estimates that Kitsap will need to add over 25,000 housing units to accommodate its share of this massive growth. Alternative 2, while providing much needed incentives and zoning changes to make multi-family construction more realistic, does not go far enough to foster the correct market conditions that will allow enough units to be built.

Preferred Alternative

The Kitsap Building Association suggests that the county combine the elements from alternatives 2 and 3 that allow for the greatest number of units to be constructed. Alternative 2 leads us to believe that younger generations, for whom home ownership is becoming increasingly unlikely, must be subjected to multi-family style living by decreasing the amount of single-family detached homes that can be built. While it is true that we need more multi-family housing, we also need more detached single-family homes for households to eventually move into. The only way you can combat a housing shortage is by building more housing. Alternative 3 is the clear better option in terms of promoting detached single-family residences. However, we would also like to see the incentives and zoning changes for urban center development that are currently only available via Alternative 2. If the county wants to encourage more multi-family housing construction, then it needs to increase the amount of property that is zoned for that use. A combination of Alternatives 2 and 3 is the correct path forward to ensure the regulatory environment encourages all forms of housing. Continuing on the path of increased regulations will only lead to unaffordable housing, government subsidies, (a vicious cycle of increasing costs), and disenchantment of more people who have less hope for their future.

The county needs to encourage more housing of all types, not just one over the other.

It must be noted that the Growth Management Act explicitly states that cities and counties planning under the GMA must: “Plan for and accommodate housing affordable to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.” *RCW 36.70A.020*. A combination of Alternatives 2 and 3 is the only way this section of GMA is achieved.

Issues with Housing Analysis

The draft EIS housing analysis presents a delineation and trend of the overall housing units permitted within unincorporated Kitsap County from 2012 to 2022 in Exhibit 29. This exhibit

shows a consistent trend of permitted single family residential development exceeding that of permitted multifamily development throughout the study period, even in the years 2021 and 2022. We believe this data is incorrect. We are certain most residents of Kitsap County have witnessed that multifamily development has been booming for the past several years throughout the county and in the cities. No mention of this boom is included in the analysis. While footnote 10 references a couple of multifamily developments being potentially applicable but not included, that is a significant understatement and disservice to the overall analysis. By omitting key data, it appears that the housing analysis is determined to show an ongoing housing trend that fits the desired narrative aimed at supporting selection of the Alternative 2, nicknamed in the draft EIS as the “bending the trend” Alternative.

The Housing Analysis is supposed to provide “key information to help contextualize and update existing conditions in housing...”. This is important data and information that must be clearly understood when it is a major basis for the Alternatives. If multifamily development is underestimated to such a significant degree, then it follows that buildable land availability in the zoning districts designated for future multifamily development is overstated on that basis. Combining this with the pending revisions to the Critical Area Regulations, the buildable lands available for multifamily development within the UGA must be over-estimated for the 20-year period to 2044. Anyone currently involved with conducting feasibility assessments for potential multifamily projects within the existing UGA boundaries knows this.

Parking

The discussion regarding more multifamily development must also include the rather large obstacle of parking requirements. A reduction in parking requirements should be available under both Alternatives 2 and 3, not just 2. *Pg. 68*. Garages should also count towards parking under both alternatives 2 and 3. There is no reason that a garage can count for parking under one alternative but not the other. *Pg. 68*. Cities impose parking requirements to pre-empt (or in response to) residential neighbors and retailers from complaining their free street parking is consumed by multifamily dwellers. Parking requirements make less sense in the city core (where the multifamily development is expected to occur) where short-term parking and permit parking are enforced. Here, developers will respond to (or anticipate) market demand for parking. The more flexible the parking regulations are, the quicker newer supply can be delivered affordably.

Traffic Mitigation

The issue of traffic mitigation is also worth mentioning. With the level of expected growth that is coming, it would make sense for the county to make investments in transportation infrastructure in order to help accommodate. However, with a projected increase in traffic of 72% by 2044, the EIS simply states that there are no transportation improvements needed for the county to maintain compliance with the required level of standard. *Pg. 343*. This is a shocking statement that should be met with high levels of scrutiny, especially when considering that transportation impact fees were raised an unprecedented 514% just three years ago.

It must also be mentioned that the vast majority of proposed future roadway projects are focused in the rural areas. *Appendix C – Transportation Project by Alternative of the EIS*. They will also

be adding pedestrian and bike facilities to accommodate these projects. *Ibid.* Wouldn't the dollars the county is spending on these projects be better spent constructing similar pedestrian and bike facilities inside the UGA, or perhaps reducing requirements for future road frontage improvements that developers will need to build when infilling and redeveloping. Removing that burden from future multifamily development is one way to help with affordability, which will be much more effective than building amenities in the rural areas for only a select few to enjoy.

Critical Areas Ordinance Update

It also must be stated that any discussion regarding UGA boundaries and buildable lands cannot be had until the Critical Areas Ordinance Update has been finalized and adopted. The land use portion of the comprehensive plan process hinges on an update to critical areas code that is not complete. The KBA, and the Kitsap community at large, are being done a disservice by being asked to comment on a comprehensive plan before the Critical Areas Ordinance process has been completed. How can we make suggestions in good faith without knowing what critical area buffers we will be working with?

Conclusion

In conclusion, the county must acknowledge that a public-private partnership is required in order to ensure enough housing is built to accommodate the growth that is coming. There must be compromises made to allow younger generations to experience the dream of homeownership. Regulations play a key role in making that happen or preventing that from happening. We urge the board of county commissioners to adopt a combination of Alternatives 2 and 3. This is the most equitable path forward and will foster strong development for years to come.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RK', is centered on the page.

Randall King
Executive Officer of the Kitsap Building Association

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LOCATION	COMMENT
General Comment	The forthcoming update to the Kitsap County Critical Areas Ordinance will require an update to the county's buildable lands and land capacity analyses. How is this version of the draft Comprehensive Plan EIS anticipating changes that may occur as a result of the new CAO?
General Comment	In support of the expansion of MTFE zones and other affordable housing incentives for all alternatives.
General Comment	The preferred alternative should be a combination of the affordable housing and centered growth incentives from Alternative 2 combined with some expansion of single-family zoning in Alternative 3. This would provide Kitsap citizens a range of housing options and price points while recognizing the housing shortage crisis.
Exhibit 1.5-7, pg 1-16	It is noted that Alternative 2 falls short by 957 jobs. How does the county propose to reconcile this discrepancy?
Exhibit 1.5-7, pg 1-16	Alternative 3 comes in fairly close to the growth target. Will this number fall short after the CAO update?
Exhibit 1.5-10, pg 1-21	The county requires traffic impact fees. Shouldn't they be counted as a mitigation measure under this section?
Section 2.4.2, pg 2-12	Under "Growth Accomodation" it is noted that Alternative 2 generally meets employment targets yet is short by almost 1000 jobs. What number of jobs (+/-) does the county consider to be meeting job targets?
Exhibit 2.5.1-1, pg 2-14	Consider reducing the minimum density of the commercial zones in Alternative 2 from 19 to 10 du/ac?
Exhibit 2.5.1-1, pg 2-15	For Alternative 3 under 'Countywide', individual garage units should count as required parking under all alternatives.
Exhibit 2.5.1-1, pg 2-17	The requirements under Alternative 2 Tree Replacement Proposal are not clear. What happens if the existing site does not contain trees? What is a legacy tree? Do street trees, required landscaping, and trees within critical areas count? What is the requirement for surveying existing trees?
Exhibit 2.5.1-1, pg 2-17	It appears that Alternative 3 requires tree retention but does not allow for tree replacement. It seems problematic to implement tree retention without a provision for replacement. For example, what if the only trees on site are located at the only point of access for the parcel?
Exhibit 2.5.1-1, pg 2-17	Were tree replacement and retention requirements considered in the land capacity/buildable lands calculations?
Exhibit 2.5.6-1	Why was 'Human Services' removed as part of the 'Housing Element'? Where was the 'Glossary' moved?
Exhibit 3.2.2.2-1, Goal-Ensure timely and fair permit procedures	The notes under this goal indicate that permitting goals are met for all alternatives. Current permit timelines are not currently meeting code requirements. Please explain how these alternative will meet permitting timeline goals when the no action alternative is not meeting these goals?

LOCATION	COMMENT
Exhibit 3.2.6.3-3	If 'funding redirects' are ended that currently go to the sherrif and community development, how will the resultant shortfall for those departments be mitigated?
pg 3-199, Other Potential Mitigation Measures	Aren't bullet points 3-5 already part of the county code, road standards and fire standards? Or are these points referring to expansion of the requirements already set forth in code? Expand on the meaning of the last bullet.
Chapter 3.1.1.1, pg 3-234	Note that the heading number is incorrect.
Chapter 3.1.1.1, pg 3-235	Another potential mitigation measure would be for the county to create or incentivize regional stormwater treatment systems.

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The Kitsap Environmental Coalition Board sends these concerns about the Draft EIS report to you so that you can be aware of what several KEC members have been working on over past 2 months. Attached also are our specific comments, which are also being submitted to Mr. Diener as the Responsible Official. Our comments focus on Alternative 2 since this is the Alternative that is most closely aligned with the direction given to the County through PSRC and Legislative guidance. However, providing for the opportunity to “mix and match” alternatives makes it difficult to assess the impact of what is finally decided on as the “preferred alternative”, without any additional opportunity to comment on those impacts. We have noted specific impacts when possible in our comments, but the “preferred alternative” may require an additional opportunity for comment.

The Draft EIS for Kitsap County’s Comprehensive Plan and the draft plan itself makes it hard to do any analysis of the accuracy of the growth estimates on which it is based. There are estimates of the growth targets for certain areas, based on those adopted by KRCC. But these appear to be aspirational, since the population for Kitsap County has been growing over the past three years at about 1% a year, while the plan estimates increases of almost 3% for certain UGAs. This is unlikely, for a number of reasons, including reduced household size, aging population, and problems with ferry service, and health care, as well as other issues. The Draft plan in that case does not need to accommodate that estimated growth through expanded UGAs and zoning changes. This is an important consideration since throughout the document they propose UGA expansions although they are not necessary to accommodate even those ambitious population estimates, and these result in increased environmental impacts such as allowing building in critical areas. The impacts of these assumptions also carry over in the need for greater investment in mass transit and other non-motorized options although the availability of funding for these investments is far from assured.

The County does not have, or show, a good baseline of the current conditions of the environment. Without a baseline, how do we know how bad conditions will get? Data are available to evaluate water, wastewater, wildlife, tree cover, solid waste, cars, etcetera. Yes, we may not know which square kilometer will be impacted the most and how, but we can say that several positive factors will decline and several negative factors will increase in the County as a whole. Furthermore, citizens are not asking for precision. Assume 10% increase in population and then 20% increase and make estimates for County-wide impacts. If the County will not start the conversation about current and future environmental impacts, they will not be able to measure future declines, or more hopefully, improvements. This needs to be coupled with effective monitoring to measure those changes.

If the goal is truly to protect the environment, the County should strive not just to limit negative impacts but to work to actually improve the environment. The goal should be for Net Ecological Gain, rather than no net loss. The natural environment is dying by a thousand cuts, through the loss of trees, wildlife corridors, farmlands, degradation of parks, and diminished rural areas. This concept of NEG is not discussed in the DEIS but should be included.

In many areas the DEIS and the Comprehensive Plan are too vague on the actions that need to be taken, sometimes relying on plans (e.g. WRIA 15) that have not been adopted or implemented, or are not adequate to mitigate future actions. For example, the Critical Areas Ordinance is called out numerous times as a key mitigation measure, however that ordinance is currently under review. It will only be as effective as the strength of its final requirements. If it has too many opportunities for variances and waivers, this mitigation measure will be weak and useless. Rather than vaguely describing the direction the County plans to take, the EIS and Plan should spell out specifically what the County has to do. In certain cases this will require some hard decisions on what is allowed; to apply the rules and regulations without the use of variances.

Climate change should have a section of its own, perhaps at the front, to call attention both to the impacts of climate change, as well as the actions needed by the County to address them. More detail should be provided on sea level rise, increased storm intensities and health impacts from climate change. For example, although sea levels are expected to rise over a foot in the next 25 years, there are no proposed regulations governing the development of shoreline property.

Neither the draft EIS nor the draft Comprehensive Plan address or evaluate the so-called "Framework" for the Port Gamble Forest Heritage Park as required under GMA, and as the County said would be done. The park plan is a proposed revision to the Comprehensive Plan, so the environmental impacts of the park needs to be included in this EIS. It is insufficient to vaguely say it is incorporated by "reference", especially since significant environmental impacts are neither described nor addressed. The EIS and plan must acknowledge and address the significant issues and weaknesses remaining/imbedded in this proposed park plan. Further, all environmental impacts of the park plan are required to be expressly identified, studied, and analyzed in this EIS. If impacts caused by the park plan will be identified and analyzed under SEPA in the future then it should be clearly stated that the park plan (the "Framework") will not be adopted nor projects in it funded or completed until that happens. If the County does not evaluate all environmental impacts of the park plan in the

Final EIS, then it will be opening itself to potential legal challenges regarding the scope and adequacy of the County's SEPA review.

In conclusion, we hope to someday view an EIS that actually deals with real impacts to the environments of Kitsap County. If X impacts are happening in 2023-2024, predict how X will change. And precisely how finances and actions will differ from the past to accomplish that change. Don't simply state that one alternative is better than another in 4 ways and worse in 7 ways. And that more impacts can be avoided (even though they haven't been avoided in the past). Residents now know the environmental impacts that resulted from the 2016 Comp Plan. Give us a clear vision of the future not a blurry one.

Specific Comments

- 1.2.2 Please provide a link to view the comment letters received during the scoping period.
- 1.2.3.1 Phased review – Please explain this idea of a phased review in more detail. What exactly would be incorporated “by reference” and what would warrant a “narrower” or specific review?
- 1.3 Alternatives – Allowing a mix of Alternatives 2 and 3 can be problematic. You can’t have “your cake and eat it” - pursue both Compact Growth and Dispersed Growth. You should strengthen Alt 2, but not by allowing more dispersal.
- 1.5.3 Water Resources – Water quality and quantity needs to be more fully addressed, including establishing baseline measures for both. Several aspects of water resources were not addressed including impacts on “fish bearing” streams and the impact on small and intermittent streams and wetlands which are currently not regulated at any level (these are not regulated by the ACOE). These are critical habitats for a number of flora and fauna species. This is one area where Alt 3’s wider buffer requirements is preferable to Alt 2.
- 1.5.7 Summary of Impacts¹. – Population, Housing and Employment. As discussed above, the estimated population does not align with actual experienced population, nor is there a good rationale for why that will change, unless the County actually *encourages* growth through incentives. In fact, Alternative 2 actually *exceeds* the population growth targets provided to the County by PSRC. The County’s rationale for this is that it is necessary to meet the distribution of housing, i.e. to create more affordable housing options. But if the need is for a different *mix* of housing, it seems it is possible to do that without expanding the UGAs with associated adverse impacts. Up zoning within the UGA could be done with fewer adverse impacts, and might better meet the objective of denser, more accessible developments for a changing population. The County could also provide incentives by making it easier to develop in these existing urban areas through simplifying and streamlining the permit process, waiving permit costs and consultation fees for such developments, or providing density bonuses. There does not seem to be any need to expand the existing UGAs.
- 1.5-10 Each alternative results in similar levels of transportation impact. In total, the number of vehicle miles traveled (VMT) is expected to increase between 72 and 78 percent during the PM peak hour between now and 2044. (No mention of the chemicals from tires and from vehicle exhaust flowing into natural areas and our

water at levels 78% more than at present.) However PSRC traffic demand modeling assumes VMT reductions based on the RTP model (Cascadia Aug 2022).” Thus, the data show increasing per capita miles driven, but their mathematical model predicts fewer miles driven in the future given unknown assumptions and unknown (optimistic?) effort and financing by the County and State. A good but pessimistic model would likely show increases in VMT due to increases in both people and per capita miles driven. Later in the Transportation Section the LOS for each state roadway is shown to be barely adequate now.

- 1.5-15 If the population is increasing, especially if we want to develop greater density, there will be an even greater need for parks and natural areas. The need for people to have access to nature is well documented, and natural parks are an increasing refuge for the protection of native plants and animals. Therefore an important “mitigation” should include the expansion of natural parks. Funding for this effort might include creation of a parks district. On the other hand, the EIS fails to describe the contamination flowing in terms of water pollution, air pollution, noise, illegal movement of motorized bikes into parks from new adjacent subdivisions.
- 1.5-17 The sections pertaining to Solid Waste in this EIS fail to address the increasing amount of litter on roads and public properties. The simplest prediction is that litter will increase and illegal dumping will increase at the same rate as population growth. Illegal dumping is common in County Parks according to reports by citizens and park stewards. If the garbage dumped includes chemicals or biological waste, they are significant threats to humans, wildlife, and nature. According to the Department of Ecology’s 2022 litter pickup summary, (<https://ecology.wa.gov/Waste-Toxics/Solid-waste-litter/Litter/Litter-pickup>). In the March 13, 2023, issue of the Kitsap Sun, the Department of Ecology reported that 413,697 pounds of trash were collected along state highways in Kitsap County. Litter is increasing in the State. Kitsap led the whole group in the number of “dump sites” — more than even King County. The effort to clean it all up dramatically increased with more than 10,000 hours of work in Kitsap County recorded by paid workers and volunteers. However, only half the miles of road were cleared in 2022 compared to the recent past.
- 1.5-18 The current wastewater treatment facilities fail to stop unpermitted dumping of sewage into the bays and Sound every year. Why does the County believe that the future will be better? If the future is not better, then the statement above about absolutely no adverse impacts is wrong. And they are avoidable with better stormwater systems, but unavoidable under current conditions. We

recommend stronger BMPs for Water Quality improvement as necessary for the future of Kitsap's stream and nearshore health.

- 2.5 1-1 Table states no change to stream buffers for Alt 2 and no tree retention. What is the rationale for these decisions, especially since Alt 3 *does include* tree retention and an expanded stream buffer to 100 feet? Wouldn't this requirement be just as needed for Alt 2? County will consider other changes including "increase SEPA flexible thresholds for residential development in all UGAs." What does this mean? An explanation is needed.
- 2.5 4-1 UGA size changes of alternatives. Over 460 acres increased for Alt 2, although not needed to accommodate population. Why? As discussed earlier, there does not seem to be any need to increase the UGAs. Not only is it unnecessary, but it will result in allowing developments in areas of higher risk with greater environmental impacts.
- 3.1.1.2 Earth Impacts – under Alt 2 an additional 94 acres of high geologic hazard areas would be included in expanded UGAs. However, later it states that that "Reducing UGA expansions in Moderate and High Geologic Hazard areas would reduce the potential number of persons or structures exposed to risk of damage due to geologic hazards." These statements are inconsistent and, as discussed earlier, we don't believe it is necessary to expand UGAs.
- 3.1.2.4 Significant Unavoidable Adverse Impacts They state that "trees can minimize this unavoidable impact", but earlier they stated that there were no proposed tree protections under Alt 2. In talking about Greenhouse Gas (GHG) emissions, they also state that tree loss is responsible for ~15% of the increase. Seems like the County should include tree protections in all the alternatives including Alt 2.
- 3.1.3.1 Water Resources – Affected Environment. There is no discussion of the impact of rising sea levels due to climate change and how this should impact development regulations of shoreline property. It is estimated that sea levels will rise over a foot by 2050. The County has done its own study (Kitsap County Climate Assessment Study 2020) that summarizes the projected effects, yet it does not appear that is impacting how these areas can be developed. East Coast states like Florida and Georgia have required homeowners to implement significant changes to mitigate these effects including raising building heights, but there is no evidence of that happening in Kitsap. This is irresponsible, both to the taxpayer and the property owner.

Silverdale Subarea – As noted in the draft, two-thirds of the area is in a Category I or II CARA. According to data supplied by Silverdale Water District, the level of Island Lake has not reached the outflow from the lake into Barker Creek since February 2021. Since Island Lake is the headwaters to Barker Creek, no water being supplied at the headwaters means reduced water flow downstream which several fish species including salmon and cutthroat trout call home at various times of the year. As climate change continues, one can expect this trend to continue. Development next to Barker Creek and Island Lake will only make this situation worse. In addition, there are wetlands associated with Barker Creek that will suffer from development of the property. The rural area proposed for rezoning are the largest remaining mostly undeveloped tract that contributes to groundwater recharge of the Island Lake Aquifer which supplies drinking water for the residents of Central Valley, Ridgetop, and much of Silverdale. The loss of this vital resource to development will have a severe impact on aquifer recharge and possible contamination of the groundwater. Island Lake itself has been in peril as evidenced by the fact that tens of millions of gallons of water must be pumped into the lake each summer (since 1992) to maintain an acceptable water level.

3.1.3.2 Water Resources – Impacts In February, 2023, Dr. David Onstad studied all 14 watersheds for Kitsap Peninsula plus 1 for Bainbridge Island found on the web site <https://www.epa.gov/waterdata/how-my-waterway> for water quality information (recorded in 2018). The database contains information about inland water bodies (streams and lakes) and coastal sites. Several easy conclusions can be drawn. First, some rivers and streams have not been evaluated. Thus, their conditions are unknown. Second, of the 15 facilities with discharge permits, such as sewage treatment plants (STP) and wastewater treatment plants (WWTP), only 1 had no current violation identified in the database. The Naval facilities are included in this database. Third, all inland waterbodies are either impaired or have unknown quality. Fourth, of the 348 coastal sites along the edges of the Peninsula and Bainbridge Island, 107 are impaired (31%), 34 are rated good (10%), and the rest have unknown quality. The ratio of impaired to good is 3:1. If we omit the unknowns, 76% of tested sites along the coast are impaired. Impaired inland waterbodies include Square Lake in CCHP and Coulter Creek at the SW border of CCHP. Others include Long Lake and Kitsap Lake. Note that possibly the best evaluated watershed is the Big Beef Creek watershed near Seabeck on the western side of the Peninsula. All inland waterbodies for that watershed in the database are impaired except for 2 unknowns.

The Kitsap Public Health District monitors County lakes and streams for bacteria hazardous to humans. In its last two reports (2022-2023), the KPHD reported that the number of streams with high bacteria levels increased 50% from 16 in 2022 to 24 in 2023. For 17 lakes, the KPHD reported that 12-18% of the lakes had too much bacteria. Hazardous level advisories were posted for 21

days in 2022 and 127 days in 2023. The EIS does not explain how the County plans to improve the quality of these lakes and streams. Will the number of impaired coastal sites increase as population increases?

- 3.1.3.3 The Kitsap County Coordinated Water System Plan (CWSP) Regional Supplement 2005 Revision (May 9, 2005) presents an assessment of municipal and industrial water supply needs in Kitsap County and a program to effectively provide water supply and service to customers throughout the area. Exhibit (figure) 9-1 in the CWSP report shows a prediction made in 2004 that estimates water demand out to 2030. An extrapolation of that line out to 2044 has the demand exceeding water rights for all of Group A systems by 2035-2044 depending on assumptions. Furthermore, the predicted demand also approaches the water rights for all systems by the 2040s. Doesn't the County have a newer prediction? Doesn't the prediction depend on assumptions of infiltration in the future and climate change? There should be alternative curves on the chart based on alternative assumptions about the future. KPUD could make this a stochastic model and produce confidence intervals around projections. Also, the draft does not clearly state where the water will be extracted from to supply high-density communities. Are they outside of the County? How will increased groundwater extraction influence surrounding flows of groundwater needed to support streams in the dry season?
- 3.1.4.1 Plants & Animals This review of impacts on plant and animal communities does not address large and small mammals that live specifically in forested habitat, amphibians that live in wetlands and have migration patterns, native plants that are replaced by clearing and grading. In the specific case of amphibians, migration patterns need to be considered and also silt fences that block those pathways need to be discouraged. Vague descriptions of animals without specificity makes the EIS review very weak in this area; it needs more specificity. The EIS needs to add the adverse impact on all wildlife by natural areas' proximity to housing areas, causing more wildlife interactions that can result in animal deaths. Displaced wildlife such as bear and cougar wander into neighboring yards and end up being killed for human safety. This happened with a cougar incident in Kitsap in 2023.

This section also does not mention the bog plants found in at least one bog in North Kitsap – Carpenter Lake Bog. Please add mention of this and other bog/fen environments in the plants and wetland sections of this document. These are important and rare in our region and occur only because of unique surface water conditions that should be taken into account when land is considered for development. In addition, a rare plant, *Hypericum majus*, has been identified at Coulter Creek Heritage Park.

The map from WDFW ranking the condition of freshwater habitat (Exhibit 3.1.4 1-1) shows that Port Gamble ranks as high quality despite the comment that most intact habitats occur in the south county.

Exhibit 3.1.4 1-2 Known Occurrences of rare plants in Kitsap County – this table states that their habitats are wetlands and riparian areas, making these areas even more valuable for protection. Later Exhibit 3.3.4.2-1 Target LOS analysis for natural resource areas – shows a significant deficit that just increases over the planning period.

3.2 Land Use – The Plan needs to protect farmland in Kitsap County. This needs to be added to the land use section. Protection of local farmland helps climate resilience, habitat, and local food production. Protection of farmland is paramount to a healthy community.

3.2.1.3 Kitsap Environmental Coalition supports the recommendation by Washington Department of Fish and Wildlife to use Riparian Management Zones (RMZs) as a replacement for the standard stream buffer widths currently used in the Kitsap County Critical Areas Ordinances.

Riparian Management Zones look at several factors that play a part in the health of these ecosystems. Salmon need cooler water temperatures to thrive and survive and the shade of trees is essential for this function. Woody debris aids in regulating the velocity of the streams and helps trap sediment. Trees and other plants in the zone stabilize the bank and the riparian zone acts as a filter to greatly reduce pollution excess nutrients from fertilizers, pesticides, herbicides or other harmful chemicals from nearby roadway use.

These Riparian Management Zone buffer widths are based upon the height of the dominant trees in the area which in Kitsap County is most likely Douglas fir. The Washington Department of Wildlife has created an online map tool to indicate these heights using data on how tall they would be if 200-years old. In those areas of Washington with few or no trees along a stream bank the buffers would be as low as 100-feet to protect streams from pollution.

For an in depth examination of riparian management zones, please refer to Riparian Ecosystems, Volume 1 as it goes into great detail about these complex systems.

Two other Washington state governments have implemented critical areas ordinances based upon riparian management zones. The City of Anacortes implemented RMZ-based buffers in 2021 while Clark County implemented a hybrid of standard buffer widths and those based upon riparian management zones.

3.2.2.1 Rural Character - The Rural Wooded Zone is becoming less and less in this area. In addition, many rezone requests are also for the conversion of Rural Protection (1 DU/10 Ac) to Rural Residential. This decrease in larger rural lots will have a significant effect on the variety of rural densities. The variety is an important aspect of the rural character in Kitsap County. Otherwise, it seems the county may end up as Rural Residential only. Take measures to protect the large rural lots and the existing character that makes Kitsap the place people love. Rural rezones should be denied, and the County's rural development expectation should be in the single percentage range. A measure to support decreased rural growth would be to remove the Rural Residential Zone. Rural development for single family homes requires the use of an on-site septic (OSS), which usually fail at some point. This environmental impact needs to be addressed and mitigated.

3.2.6.1 Transportation - Affected Environment (pdf 276)

Sound to Olympics STO Trail (pdf 308)

The STO trail presents several issues that must be addressed by this EIS. First, the original STO alignments reviewed for SEPA DNS (for the String of Pearls and Non-Motorized plans) has changed greatly. About 90% of the reviewed alignments in the Poulsbo, Port Gamble, and Kingston area have been abandoned. Therefore, the earlier DNS determinations are inapplicable and a new SEPA evaluation is required.

Second, significant and unmitigatable adverse environmental impacts have been unacknowledged. The most recent example is an alignment through a Natural Area designated in North Kitsap Heritage Park. The construction would destroy important habitat that is an undeveloped, critical, and relatively large wildlife refugia and wildlife corridor adjacent to a large wetland and salmon stream complex. Bear, cougar, deer, bobcat, coyote, and beaver are among known species. No on-site mitigation is possible. There is no equivalent area available off-site anywhere in north Kitsap.

Third, because "significant adverse environmental impact for which mitigation cannot be easily identified" exists, a Determination of Significance must be issued and an EIS process started. Because alignments are connected and one section must begin where another ends, the project must be evaluated in total-- phasing is not appropriate.

3.3 Built Environment Public Services and Utilities – There is no mention of Health Services in this section. The Kitsap County Health Department declared a health emergency in Kitsap due to high health care costs and inadequate access to services. Although overall health services are not a function of County government, the crisis situation in our County's health services heavily impacts public services, including fire services. A health services section needs to be added addressing the impact of higher population with an already strained crisis health system.

3.3.4 Parks & Recreation (pdf 375)

There are unresolved difficulties with the SEPA and GMA status of Heritage Parks.

These parks have "land use policy plans" that bring them under the jurisdiction of the GMA. The plans have various names and purposes, including forestry plans, resource management plans, master plans, Framework, etc. Some have been approved by the Board of Commissioners, others not. None of these plans, separately or collectively, have been addressed within the context of the GMA. It is our understanding that all of these park land use policy plans must be evaluated under the GMA.

The SEPA status of some heritage parks also overlaps with planning of the Sound to Olympic trail (comment §3.2.6.1). Where Parks and Public Works planning and projects overlap geographically, all relevant plans must be evaluated for SEPA in concert.

3.3.4.2 Parks & Recreation - Impacts (pdf 378)

3.3.4.3 Parks & Recreation - Mitigation Measures

Applicable Regulations & Commitments

Kitsap County policy must incorporate current WDFW and Ecology recommendations for the use of Riparian Management Zones and appropriately amend the Critical Areas Ordinance.

Kitsap County must incorporate current Ecology recommendations for wetland buffers, specifically the Critical Areas Code be amended to ensure the integrity of buffers as undisturbed, well vegetated areas.

Other Potential Mitigation Measures

Mitigation for Heritage Parks and other large county areas must include monitoring programs of wildlife and habitat health. Results can be used to modify management plans and projects, thus avoiding and minimizing adverse environmental impacts.

Environmental impacts of the Sound to Olympic trail must be properly addressed and addressed within the context of the PROS Plan and individual park forestry, resource management, master or other plans. (ref. comment on §3.2.6.1)

3.3.4.3 Establish a policy standard to protect and restore wildlife habitat and natural ecological functions. Establish monitoring programs to identify the success of restoration efforts.

3.3.4.4 - Significant Unavoidable Adverse Impacts (pdf 382)

EIS must add additional information.

The Parks, Recreation and Open Space Plan for Heritage Parks specifies protection of wildlife and habitat as important park policies, which provide multiple environmental and quality of life benefits. Wildlife and habitat management is an important and critical aspect for these parks. So-called "unavoidable impacts" can be avoided by proper planning, which includes resource assessments and subsequent landscape classifications prior to

specifying development plans (PROS Plan Appendix 5). These elements must be augmented with monitoring programs of wildlife and habitat health. Results can be used to modify management plans and projects, thus avoiding and minimizing adverse environmental impacts.

3.3.4.23-212 Heritage Parks. Shows that County can meet the LOS for this metric assuming “consideration of concepts within the Port Gamble Heritage Park Framework completed in December 2022”. This is the only clear reference to PGHP. Since that Framework is not correct and needs changes, this reference is both insufficient and inaccurate as noted in the summary comments.

Additional environmental assessment is needed in regards toinal:

1. Identification of legal encumbrances and easements;
2. Identification of all existing physical features (including pipelines, wells, specialized recreation areas, etc.)
3. Identification of potential environmental hazards (water system);
4. Policies for conservation, preservation, and/or restoration of critical natural resources;
5. Lack of resource assessments including wetlands and buffers, streams and riparian management zones, wildlife habitat, and wildlife corridors;
6. Amendments to landscape classifications as necessitated by resource assessments;
7. Trail location procedures and lack of compliance with the Critical Areas Ordinance;
8. Level of usage in terms of carrying capacity;

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Environment Chapter for 2024 Comp Plan

Evaluation by Dr. David Onstad

General points

As noted clearly in their Chapter, the County didn't have to say that it is concerned about the environment nor explain how it plans to protect nature. However, the County's chapter is generally vague and idealistic to such an extent that one wonders if any of these "promises" are real. No Net Loss is an old, failed paradigm. The County should prepare for the future by accepting Net Ecological Gain as the paradigm supported by data and Best Available Science.

Actions and practices over the past 5 years have indicated either no accomplishments described in last Comp Plan or failure to (1) measure ecosystem services and (2) protect nature. The Critical Areas Ordinance has many flaws. Those in the CAO working groups organized by the County have difficulty improving or adding the rational environmental protections needed in this fundamental set of rules. These difficulties seem to contradict the platitudes and lofty goals expressed in this chapter.

In the following, quotes identify text from COMP Plan chapter.

The County Defines the Environment is an Economic Asset

"Since the 2016 Comprehensive Plan update, and with a keen eye on planning for the future, Kitsap County has placed a higher priority on environmental sustainability in public policy. A community that embraces sustainability must continually improve the relationship between the developed and natural environments. This includes managing the natural environment as an essential asset alongside other assets like roadways, buildings, and capital facilities. Like these other assets, the natural environment provides services and economic benefits that require planning, coordination, monitoring, and supportive fiscal policies and strategies."

Response: It is not surprising that an economically-focused agency and County describes the environment as an asset. I am in favor of measuring the economic value of ecosystem services, but I also know from the scientific literature and knowledge of many human communities that nature has spiritual, psychological, and emotional value for humans that will be difficult to measure. Citizens' willingness to pay for nature may help add to any initial, easy to calculate estimates of economic value for environmental assets. However, even then we will only be valuing nature from a human perspective. The Kitsap Environmental Coalition and others believe that Nature has the right to exist even if it provides no direct value (service) to society.

Does the Plan really have to describe the environment as an asset? **No.** On Page 3-32 of the Draft EIS for the Comp Plan, the County describes VISION 2050, which "contains multicounty

planning policies (presented as goals, policies, and actions)” “VISION 2050 is Puget Sound Regional Council’s shared plan for moving toward a sustainable future in the region.” The County supports VISION 2050. One goal concerning the environment is “The region cares for the natural environment by protecting and restoring natural systems, conserving habitat, improving water quality, and reducing air pollutants. The health of all residents and the economy is connected to the health of the environment. Planning at all levels considers the impacts of land use, development, and transportation on the ecosystem.” Note this does not depend on an analysis of ecosystem services from an economic or other perspective.

Asset Management

“In 2018, Kitsap County began working with the Washington Environmental Council, Port Gamble S'Klallam Tribe, and Suquamish Tribe to develop the natural asset management program. This new management program defines baseline levels of service or functional conditions of forest cover, streams, and shorelines and aims to develop goals or desired level of service for each asset. The desired levels of service will help guide investments and prioritization of actions to restore and protect natural systems. In addition, County staff continue to explore further implementation of the program into County planning.”

“Asset management refers to treating the components of the public infrastructure system as assets within the public trust to be stewarded by the local government.”

“Kitsap Natural Resource Asset Management Program (KNRAMP) is a new framework to manage natural assets (such as forests, streams, and shorelines) using the same asset management and capital improvements principles that municipalities use to manage built infrastructure.”

Response: This model or software has not been completed. It may never be completed. It is good that the County is collaborating with the other groups.

Best Available Science

“Environment Policy 2.1. Use the best available science in developing policies and development regulations to protect the functions and values of critical areas.”

“Best Available Science Under the state Growth Management Act (GMA), local governments are required to use the best available science in their policies and regulations on critical areas. Best available science means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by the Washington Administrative Code.”

Response: Dr. David Onstad, an ecologist, reviewed the “BAS” included in a report by consultants on the update of the CAO and found it significantly lacking in current science pertaining to wildlife and wetlands. There were few citations of non-governmental reports (journal articles) published since 2010. For the wildlife references (Section 7.3) he noted that only 7 of the journal articles were published since 2010. About half of those pertain to car chemicals in the environment. As a research scientist with knowledge of the exponentially increasing amount of literature in almost all areas of applied and basic science, Onstad decided that the consultant’s literature review did not find all the relevant science (and all best available science) that exists since 2010. To demonstrate this weakness, he did a citation search for journal articles which cited and likely improved, supported or expanded upon the few referred to in the County’s BAS report. The search found many other papers that seemed highly relevant based on a reading of the abstracts. Onstad concluded that either state law and WDFW allow BAS to be less than academic up-to-date BAS or that the County is ignoring much of the BAS.

Net Ecological Gain

The County seems content to follow the No Net Loss paradigm. According to the County, “No Net Loss is a standard that ensures new developments do not introduce new impacts that decrease ecological functions. If impacts do occur, projects must mitigate those impacts to demonstrate no net loss.”

Response: The following text explains why we need Net Ecological Gain as a paradigm in the County. Some would say that No Net Loss (NNL) is not based on the Best Available Science. In addition, long-term monitoring of mitigation sites is lacking.

The consultants for WA Department of Fish and Wildlife (Davis and Gunnell 2022) stated “Washington currently has a No Net Loss (NNL) policy for development involving shorelines, wetlands, and certain other critical habitats. Despite significant investments in the recovery of salmon and other fish and wildlife species, **scientific evidence of continued ecosystem decline in Washington indicates that NNL policies are not working or are not going far enough to protect our state’s rich natural heritage.**” “In advancing Net Ecological Gain standards, the state must simultaneously address these issues and others tied to NNL.”

The WDFW report expands upon these concerns in the following statements “The decline in ecosystem function and biodiversity in the state indicates that **NNL is not being achieved**, experts said. However, this failure is tied to a lack of proper implementation of the standards and other key gaps in the policy, including:

(a)The baseline for which impacts are measured against is undefined or inconsistent, and there are not clear metrics for monitoring success or failure through time.

(b) There is not enough scientific understanding around site specific ecosystem function degradation and whether offsite (and especially out-of-kind) mitigation is equal to or outperforms the site-specific degradation.

(c) Overall, there is insufficient monitoring of NNL standards.

(d) There has been a persistent lack of accountability and enforcement, which exacerbates noncompliance.

Thus, we conclude that variances in the County are permitted too often with required mitigation procedures that rarely produce equal or better ecological function. In essence, destroying one tree in a riparian zone cannot simply be mitigated by planting a tree anywhere. Replacing an entire stream that nature has developed over a thousand years cannot be replaced with a few-months effort.

Our final concern about mitigation is another one highlighted in the WDFW report “Mitigation required by local and state agencies does not have a long-term requirement beyond the initial monitoring period, meaning that when properties are sold, the new owners can degrade the mitigation.” Neither structure nor function can be measured over short term and declared sufficient.

Davis J, and Gunnell C, Cascadia Consulting Group, The Watershed Company, ECONorthwest. 2022. Net Ecological Gain Standard Proviso Summary Report. Olympia, WA: Washington Department of Fish and Wildlife.

Critical Areas

“Environment Goal 2. Critical Areas Designate and protect critical areas. Critical areas include wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.”

Response: The primary effort should be to change the CAO and change the culture within DCD. The Comp Plan is too vague and idealistic to determine the real, practical protections for nature that the County needs. Unfortunately, the 12 policies listed in the 2017 CAO are not adequately followed or implemented in Kitsap County. Ten and one half of the twelve policies declare that the County will support and protect the environments of the County. Only one-half of policy #4 mentions that allowable use of land will protect property rights and development. Do the 10 and ½ policies really protect critical areas in Kitsap County? Or does the ½ (of #4) trump the rest? The Comp Plan and the new CAO should at least be honest and transparent about how the County truly deals with the environment and critical areas. Have only two policies: one stating something about property rights and development and another that describes protecting critical areas.

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Given the scale of local physical and chemical destruction of amphibians and their habitats, and their critical role in ecosystem dynamics, I'd like to offer nine ideas for discussion on how we might preserve amphibian-friendly (i.e., fishless) wetlands (what we call **vernal ponds** and **intermittent streams**). What I see is an ongoing, creeping acceptance of eventual extinction of species as the price to pay for middle class comfort. We should not endorse this inevitability gracefully. To that end:

01. Property tax relief for owners of private fishless wetlands, including those who create such wetlands with suitable buffers.
02. Require actual enforcement of building restrictions in temporary wetlands, emphasizing the inviolability of setbacks and buffers. No escape clauses or provisional avoidances.
03. Require professional wetland delineation of all property transfers, paid for by the buyer.
04. Define the minimal size of wetlands qualifying as 'amphibian breeding habitat' so as to avoid the argument over 'mud puddles'.
05. Add amphibian friendly, reproductive habitat to the Critical Areas Ordinance (CAO) regulations. Wetland preservation should not all be about salmon – there is no trickle-down benefit to amphibians in the current protection of salmon streams.
06. Serious legal penalties for intentionally filling wetlands and abusing buffers. For example, loss of tax relief on affected property if wetlands are negatively impacted.
07. Wetland buffer size (setbacks) should reflect the actual terrestrial needs of metamorphosed amphibians (tens to hundreds of acres), larger than one might think given their diminutive size.
08. Redesign and reconstruction of stormwater ponds to reflect the needs of reproductive amphibians attracted to these sites. Referred to in the pertinent literature as 'ecological traps', most of these ponds, designed for infiltration, not retention, last too short a time to allow full development of larval amphibians.
09. The Planning Commission (or DCD) must include a bonified zoologist, preferably two (vertebrate and invertebrate). Retired biologists are everywhere, often looking for productive ways to contribute, perhaps in an advisory role to the County Commissioners...

Thank you for your attention.

Respectfully.

Thomas Doty, Ph.D., Biological Sciences. Emeritus Professor of Biology, Roger Williams University.

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Kitsap County CAO Update SEPA DNS

The DNS as currently issued is for the County’s proposed updates to the CAO. The public might submit additional proposed updates that could be incorporated. Additionally, during several meetings with the Tribes, the County was told some Tribes would be submitting proposed changes to the CAO upon receiving and reviewing the County’s proposed changes. Indeed, the Suquamish Tribe intends to submit extensive proposed revisions to the CAO for clarity, consistency, insufficiency of required information or analysis, compliance with Best Available Science, etc.

There are numerous references in the Checklist that project specific impacts will be addressed during review of future projects. The CAO as currently written - or as proposed - is incapable of doing that to the extent presumed by the County. This is due to the CAO not considering numerous caveats and limitations noted in supporting manuals; and that Special Reports, when required, neither collect information essential to an analysis nor are required to analyze information in a manner to ascertain and quantify many known impacts.

The issuance of the DNS is premature until the County has finalized the proposed CAO updates and the EIS for the Kitsap County Comprehensive Plan Update. The DNS should be withdrawn and a new threshold determination made after public and Tribal proposals have been submitted for the CAO update, the CAO updates have been finalized and the FEIS for the “2024 Kitsap County Comprehensive Plan Updated” issued.

Specific comments on the Environmental Checklist for the CAO Update follow.

Checklist page number	Checklist Narrative	Comment
3	Draft Environmental Impact Statement (DEIS) for 2024 Kitsap County Comprehensive Plan Updated – dated December 2023	<p>Under the Checklist section “<i>List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal</i>” the County has included the “<i>Draft Environmental Impact Statement (DEIS) for 2024 Kitsap County Comprehensive Plan Updated – dated December 2023</i>”</p> <p>The County is incorporating a draft document for which the County received considerable technical input from the Tribes noting the discussion of impacts failed to adequately discuss some impacts, failed to mention others, and the proposed mitigation measures were insufficient to address identified impacts.</p>

		<p>Until the County has modified the EIS to address these issues, it is inappropriate to consider the EIS to be a document that can be relied upon to provide accurate environmental information.</p>
7	<p>Future development will be reviewed for impacts on drainage patterns on an individual basis.</p>	<p>Introduction.</p> <p>Page 3-63 of the <i>Draft Environmental Impact Statement (DEIS) for 2024 Kitsap County Comprehensive Plan Updated – dated December 2023</i> in section 3.1.3.4 Significant Unavoidable Adverse Impacts – Water Resources states:</p> <p><i>“The County’s stormwater management requirements would minimize the impacts from new impervious surfaces. However, it should be noted that the 2019 Stormwater Management Manual for Western Washington (SWMMWW) and the 2021 Kitsap County Stormwater Design Manual do not address outside factors, such as area increases in stream flows or rates of erosion. However, some impacts to both surface and ground water resources, including increasing peak flows, channel incision, and reduced groundwater recharge, may be unavoidable as new impervious surfaces are created and vegetation is removed with development activities. It is not possible to eliminate all impacts on surface water resources entirely under any of the alternatives.”</i></p> <p>Despite the preceding admission <i>“It is not possible to eliminate all impacts on surface water resources entirely under any of the alternatives”</i>, the CAO as currently written to collect the information required to even attempt to quantify the impacts upon such things such as to infiltration.</p> <p>The County has not addressed this situation by proposing changes to the Hydrogeological Reports required by the County – such reports provide the information needed to assess impacts to <i>“essential natural functions and processes”</i> as well as that needed for <i>“maintaining critical fish and wildlife habitat conservation areas.”</i> Therefore, the impacts of future development upon these will not be adequately review.</p> <p>This is not a new issue. During the ongoing Tribal/County Comprehensive Plan Update Meetings and in submitted comments to individual projects and the <i>“Draft Environmental Impact Statement (DEIS) for 2024 Kitsap County Comprehensive Plan Updated”</i> the Tribe has raised this issue.</p>

	<p>Furthermore, pages 9 and 28 of the Best Available Science Summary – Prepared by DCG/Watershed dated May 31, 2023 (a document included in the list (pg. 2 of the Environmental Checklist) of environmental information that has been prepared, or will be prepared states regarding high impervious surface areas states <i>“Together, these changes reduce infiltration, evapotranspiration, and groundwater storage.”</i></p> <p>Furthermore, the BAS Summar (pg. 30)states:</p> <p><i>"Surface water and groundwater are cyclic and frequently interact through recharge and discharge areas. Maintaining water quantity within an aquifer supports both potable water uses and landscape-scale habitat functions, which are groundwater-dependent." Page 32 is more explicit "In addition to providing drinking water, groundwater also plays a major role in other critical area functions and values. Groundwater contributes to stream surface water flows, wetland hydrology, and flood flows. Surface water and groundwater are interconnected. Groundwater is the source for stream base flow, and during drier periods, this base flow may be the sole source of stream surface flow."</i></p> <p>Despite the implications of what is written in the BAS Summary, neither the stormwater manual nor the CAO consider changes to subsurface drainage patterns and stream recharge due to alterations in development cause onsite infiltration. Neither the current nor proposed CAO require the collection of information needed to ascertain project caused changes in water infiltration and potential impacts to ground and surface waters and subsequent impacts upon aquatic life.</p> <p>Groundwater and water infiltration</p> <p>One method the County uses to review developments for impacts is through the preparation and review of Special Reports. Kitsap County Code 19.700.705A states special reports <i>“provide environmental information and to present proposed strategies for maintaining, protecting and/or mitigating impacts to critical areas:”</i></p> <p>However, when one compares the information the CAO requires to be included in a Special Report to the purpose stated in the CAO or what the County is hoping to accomplish through the CAO, it is apparent the information the CAO requires the Special</p>
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	<p>Report to collect is insufficient to document impacts or “<i>to present proposed strategies for maintaining, protecting and/or mitigating impacts to critical areas:</i>” ”</p> <p>For example, Chapter 19.600 Critical Aquifer Recharge Areas, states in that, among others, it is County policy to accomplish the following are:</p> <p style="padding-left: 40px;"><i>19.600.506B Recognize the relationship between surface and groundwater resources; and</i></p> <p style="padding-left: 40px;"><i>19.600.506D Balance competing needs for water supply while preserving essential natural functions and processes, especially for maintaining critical fish and wildlife habitat conservation areas.</i></p> <p>Despite the wording 19.600 Critical Aquifer Recharge Areas about “<i>preserving essential natural functions and processes, especially for maintaining critical fish and wildlife habitat conservation areas</i>”, the Special Report associated with CARA (19.700.730 Hydrogeological report) is worded as follow: “<i>The report shall address the impact the proposed land use will have on both the quality and quantity of the water transmitted to the aquifer.</i>”</p> <p>Nothing in the wording requires the report address quantify changes to water infiltration, infiltration that eventually provides for stream base flows. Though the wording in 19.700.730A reads (emphasis added) “<i>The report shall be submitted to the department and shall address, at a minimum, the following criteria</i>” the Tribe’s experience is that despite requests for additional analysis the County does not require the proponent to do so.</p> <p>The CARA sections of the CAO focuses on impacts to potable water, and thus the wording overlooks the importance of groundwater to streams flows, particularly base flows or the provision of cool groundwater to warmer surface water.</p> <p>In effect, the Hydrogeological Reports required by the County do not provide the information needed to assess impacts to “<i>essential natural functions and processes</i>” as well as that needed for “<i>maintaining critical fish and wildlife habitat conservation areas.</i>”</p> <p>Excluding information required for water quality, the Hydrogeological Report (19.700.730) requires the following information about the interaction of ground and surface waters (numbering scheme is from CAO).</p>
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		<p><i>3. Location and identification of surface water bodies and springs within one thousand feet of the site with recharge potential</i></p> <p><i>4. Description of underlying aquifers and aquitards, including water level, gradients and flow direction</i></p> <p><i>8. Discussion of the effects of the proposed development on the groundwater resource;</i></p> <p>Subparagraph 3 limits the discussion to “<i>surface water bodies and springs within one thousand feet of the site with recharge potential</i>”. Groundwater can travel much farther than 1,000 feet to reach streams or wetlands.</p> <p>The “<i>Discussion of the effects of the proposed development on the groundwater resource</i>” is limited to potential water quality impacts and potential mitigation measures, and sometimes a qualitative discussion of reduce infiltration. There is no requirement for a discussion of what the follow on effects on the proposed development upon stream base flow, increased seasonality of seasonal streams, temperatures, etc. might be.</p> <p>Additionally, the CARA sections of the CAO leave it to the discretion of the County as to whether a Special Report for an activity in the Category II Critical Aquifer Recharge Area (19.600.615B2 “<i>The need for a hydrogeological report will be determined by the department, the health district and the affected water purveyor when the proposed land use or activity may impact groundwater and surface water quality and quantity. Based on the results of the report, controls, mitigation, and/or other requirements will be established as a condition of approval.</i>”) The Department can make this decision in the absence of any information about site-specific project impacts upon ground/surface water interactions. Additionally, COA wording does not consider impacts to water infiltration in areas that are considered CARAs.</p>
7	When future development proposals are submitted, any water-related impacts created during clearing and construction activities will be mitigated in	The statement “ <i>mitigated in compliance with the County’s stormwater regulations and the most recent Department of Ecology Stormwater Management Manual for Western Washington (SWMMWW)</i> ” This statements conflicts with statements found in the County’s manual such as “ <i>compliance with this manual should not be construed as mitigating all probable and significant stormwater impacts to aquatic biota in streams and wetlands; additional mitigation may be required.</i> ” And with the following wording in the Ecology Manual: “The BMPs listed in this section are likely insufficient by themselves to

	<p>compliance with the County’s stormwater regulations and the most recent Department of Ecology Stormwater Management Manual for Western Washington (SWMMWW), where applicable.</p>	<p>prevent significant hydrologic disruptions and impacts to streams and their natural resources.”</p> <p>Nothing in the Special Reports for Fish and Wildlife Conservation Areas requires that identification of other stormwater impacts not addressed by the manuals and the needed additional mitigation.</p> <p>For example, the State and County stormwater manuals do not consider the potential impact of development and stormwater management increasing the duration of stream flows with velocities that adversely impact aquatic life in the absence of flow events that could cause channel erosion. Additionally, these manuals do not address cumulative impacts of projects that are exempt from the flow duration controls, resulting in cumulative impact upon stream flows.</p> <p>For example, page 52 of the 2019 Department of Ecology Stormwater Management Manual for Western Washington (SWMMWW (emphasis added) states:</p> <p><i>“The engineered stormwater conveyance, treatment, and detention systems advocated by this and other stormwater manuals can reduce the impacts from development to water quality and hydrology. However, they cannot replicate the natural hydrologic functions of the natural watershed that existed before development, nor can they remove enough pollutants to replicate the water quality of pre-development conditions. Ecology understands that despite the application of appropriate practices and technologies identified in this manual, some degradation of urban and suburban receiving waters will continue, and some beneficial uses will continue to be impaired or lost due to new development”</i></p> <p>Page 122 contains the following statement.</p> <p><i>The BMPs listed in this section are likely insufficient by themselves to prevent significant hydrologic disruptions and impacts to streams and their natural resources. Therefore, local governments should look for opportunities to change their local development codes to minimize impervious surfaces and retain native vegetation in all development situations. Most importantly, to maintain the beneficial uses of our lowland freshwater systems will require land use planning</i></p>
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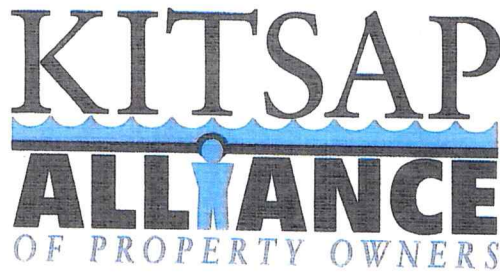
		<p><i>that targets retention of a majority of a creek’s watershed in its natural condition, and retains most of the benefits of headwater areas, , connected wetlands,</i></p> <p>The County Stormwater manual contains the following statement (emphasis added):</p> <p><i>“This manual presents Kitsap County’s minimum standards for engineering and design of drainage BMPs. While Kitsap County believes these standards are appropriate for a wide range of project proposals, compliance solely with these requirements does not relieve the professional engineer submitting designs of their responsibility to ensure drainage facilities are engineered to provide adequate protection for natural resources and private property. Compliance with the standards in this manual does not necessarily mitigate all probable and significant environmental impacts to aquatic biota. Fishery resources and other living components of aquatic systems are affected by a complex set of factors. While employing a specific flow control standard may prevent stream channel erosion or instability, other factors affecting fish and other biotic resources (e.g., increases in stream flow velocities) are not directly addressed by this manual. Likewise, some wetlands, including bogs, are adapted to a very constant hydrologic regime. Even the most stringent flow control standard employed by this manual does not prevent all increases in runoff volume, and it is known that increased runoff can adversely affect wetland plant communities by increasing the duration and magnitude of water level fluctuations. Thus, compliance with this manual should not be construed as mitigating all probable and significant stormwater impacts to aquatic biota in streams and wetlands; additional mitigation may be required. Additional mitigation may also be required to compensate for loss of critical drainage area habitat functions associated with activities inside the critical drainage area or critical drainage area buffers.”</i></p>
8	<p>Future development proposals will be reviewed for consistency with all applicable policies and regulations, including</p>	<p>The associated Special Reports are not required to quantify the time period for mitigation to reach the same structural complexity as the impacted vegetation. Therefore, there is no quantification of the temporal impact. The use of replacement ratios does not address the issue of temporal impact.</p>

<p>requirements to preserve or revegetate with native plant species to achieve no net loss of critical area functions and values.</p>	<p>This is further exacerbated by buffer averaging, where mitigation for impacts close to the critical area being protected, such as a stream or wetland are conducted further from the critical area. The County allows for buffer averaging (19.200) for wetlands as follows:</p> <p style="padding-left: 40px;"><i>“Buffer Averaging. Standard buffer widths may be modified by the department for a development proposal by averaging buffer widths. The total area contained within the buffer after averaging shall be no less than that contained within the standard buffer prior to averaging. The buffer shall not be reduced by more than 50 percent of the standard buffer width at any point. The department may allow wetland buffer averaging where it can be demonstrated that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer requirement.”</i></p> <p>And for Fish and Wildlife Conservation areas (19.300) as follows:</p> <p style="padding-left: 40px;"><i>“Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement”</i></p> <p>Vegetated buffers can protect critical areas from external influences, but in addition to this protective function vegetation also provides inputs, such as wood, detrital material, etc. to streams and wetlands. As noted in the “WDFW Riparian Management Guidance Technical Memo – Prepared by DCG/Watershed Dated December 8, 2023” included in the environmental information prepared for the CAO update, at the distance from a stream increases, there is a typically a reduction in shade, litter fall, and root recruitment provided to the stream channel.</p> <p>However, the curves shown in Figure 1 are derived from the 30 year old FEMAT report. The Technical Memo and the BAS behind it relies greatly upon “ (Volume 1) (Quinn et al. 2020). Quinn et al. includes Figure 1 and describe the figure as follows: <i>“FEMAT’s (1993) curves are conceptual models describing how four key riparian ecosystem functions change with distance from the stream channel”</i>. Since the preparation of this curve, a considerable body of additional literature on function versus distance from the stream channel has been published. That additional information suggests some of the conceptual curves shown in FEMAT graph are less linear than presented. Beyond reliance upon replacement ratios, which are not based upon a quantitative analysis of function bs</p>
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		<p>distance, the CAO does not require a quantitative analysis of whether that portion of the averaged buffer more distant from the critical area provides the same function and values as the impact part close to the critical area.</p> <p>The COA also has provisions for Administrative buffer reduction, such as that found in 19.300 :</p> <p><i>“The department may decrease the buffer if, after consultation with the Washington State Department of Fish and Wildlife, and review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area”</i></p> <p>Again, the CAO does not require the associated HMP to conduct a quantitative analysis of the potential impact to functions and values.</p>
10	<p>Future development proposals will be reviewed for consistency with all applicable policies and regulations, including requirements to maintain wildlife populations and habitat to achieve no net loss of critical area functions and values.</p>	<p>The Special Reports, which are used to determine if there will be no net loss, as currently worded are not capable of providing the information required to ascertain whether a net loss will occur or not. Additionally, the impacts are considered in the NNL reports are based upon the buffer widths specified in County Code and not the buffers recommended by BAS.</p> <p>The buffers in the SMP and the CAO differ and this creates illogical outcomes when one is evaluating no net loss. For example, two similar proposals, adjacent to each other, but with one subject to the SMP and one not, would result in differing NNL reports as the SMP buffers are less than those described in the CAO and any activity outside the SMP buffer will not be considered an impact for the NNL report. While a HMP prepared for the activity not subject to the SMP will consider the activity an impact.</p> <p>Additionally, Best Available Science as prepared by the WDFW considers the area extending one site potential tree height (SPTH) from a stream or its channel migration zone as contributing to stream or riparian habitat. In most cases, throughout Kitsap County, is around 200 feet.</p> <p>Technically, the proposed buffers in the CAO update are not capable of achieving no net loss. The importance of Type N streams to stream ecology and function will not be fully protected as the proposed buffers for such streams are set for pollutant removal. The revised CAO proposes, for areas not covered by the UGA Alternative buffer width, increasing the buffer for Type F streams from 150 to 200 feet (welcome as closely</p>

		<p>approaches a SPTH) and from 50 to 100 feet for type Np and Ns streams, and including a 100 foot buffer for Type “O” streams (streams whose flows go subsurface before connecting with a Type F, Ns, or Np. The increase in buffer width for types Ns and Np streams appears to be restricted to the pollutant removal function as noted on page 12 of the “WDFW Riparian Management Guidance Technical Memo – Prepared by DCG/Watershed Dated December 8, 2023”: <i>“The County could consider increasing their Type N stream buffer width from 50’ to 100’ to align with BAS. Such buffer increases would meet the WDFW recommended minimum 100’ buffer to ensure adequate pollution removal for all stream types”</i></p> <p>There is no discussion in the SEPA document about the shortcomings of the current and proposed buffers ability to achieve no net loss of critical area functions and values. Though the setting of a stream buffer is a policy decision, during the decision making process and after it, a discussion of lost or foreclosed buffer functions and values is required so those making the decisions are aware of the impacts to buffer functions and values if a buffer less than that recommended by Best Available Science is selected.</p> <p>The comments upon vegetation also apply to this section of the Checklist.</p>
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March 20, 2024

Colin Poff, Planning Supervisor
Department of Community Development
KITSAP COUNTY
619 Division Street, MS-36
Port Orchard, Washington 98366

SUBJECT: Critical Areas Ordinance Update Provisions – Reference March 8, 2024
Draft Ordinance Proposal

Dear Colin,

On behalf of the KITSAP ALLIANCE OF PROPERTY OWNERS (KAPO) we are submitting this critique of the proposed amendments to the 2017 adopted Critical Areas Ordinance (CAO) now found in Kitsap County Code Chapter 19. Whenever KAPO makes an assessment of a proposed plan or ordinance, we start with the question, *“what is the problem that is in search of a solution?”* Seldom does Kitsap County even attempt to answer that question and sadly we could find no answer in our review of the newly proposed CAO rules or for that matter in the supporting documents.

To emphasize the point of our question, has the County documented any (as in significant) environmental degradations in the past seven years that can only be addressed by new more draconian regulatory measures? KAPO members are in close touch with the development community and our own property owners and we have yet to hear of problem caused by the failure of existing CAO ordinance measures to prevent or mitigate an adverse impact to our built or natural environment.

Without such documentation, what we have here is regulation for regulation's sake and not a solution to a problem.....because the problem, if there is a problem, has not been explained. Remember, even in consideration of possible environmental damage, the solution may not lie in a regulatory remedy. Often problems can be solved in more than one way. So, before Kitsap County moves forward to adopt new rules we do not need (KAPO's assessment) what are the *documented failings* of our existing ordinance to address known environmental damage when property(s) has been developed in accordance with these 2017 CAO regulatory measures? If by chance some have been observed, what range of remedies have been explored to address the problem?

KAPO members are not aware of any such failings. What we do know is neither Kitsap County nor any State Agency, for that matter, has conducted any studies *in Kitsap*

“The small landholders are the most precious part of a state.” Thomas Jefferson

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County to ascertain where our 2017 CAO has proved ineffective to address aspects of Kitsap County's environs.

Because Kitsap County has not answered our basic question or provided any documentation to report failures of our existing regulations to prevent or mitigate environmental feature damage, KAPO's review comes in the form of objections our organization has to the provisions in this proposed update.

These objections could have been presented in a line-by-line analysis but are best summarized herein by category where the ramifications of the proposed provisions can be explored. Part of our review shows what documentation Kitsap County has failed to provide to justify any new provisions to our 2017 CAO. KAPO's review, also, provides explanation of why most if not all of the new changes to the ordinance are not needed as no data has been provided to show what Kitsap County would gain by these new regulation additions. Further, we recommend that only changes be made to our 2017 CAO that are necessary to comply with the more recent State legislation and not the wishes, whim or even the recommendations of some State agency. Thus, our focus is with nine (9) aspects of the proposed CAO amendments as follows:

1. Kitsap County has failed to address the environmental impacts of the proposed changes as those regulatory measures would impact property inside the Urban Growth Area and in the Rural Portions of the County. Said impact analysis is a requirement of the State Environmental Policy Act, in this case for "non project" actions.
2. Kitsap County has failed to show how constitutional provisions for people to own and use their property is protected in keeping with Goal Number 6 of the Growth Management Act (GMA).
3. Kitsap County has failed to show how implementation of the new provisions to the CAO demonstrably improve permit approval per GMA Goal Number 7 – Permits Timely and Fair. (Fact is the proposal would make the process worse)
4. Kitsap County has failed to show what the impacts of the newly added restrictions in the CAO will be on the ability of Kitsap County to meet GMA Goal Number 4 Housing Affordable To All Income Groups.
5. Kitsap County has unwisely deferred criteria decisions to unelected State Agencies for enforcement of CAO provisions rather than decision making by local elected officials, thereby contravening "government, of the people, for the people and by the people" the core principle of our Republic.
6. Kitsap County has failed to show why the "Best Available Science" underpinning our 2017 existing CAO regulations has to be thrown out in favor of "new" or "newer" Best Available Science (both of which are not science, but at best "political science.")
7. Kitsap County is relying on vague terms like "habitat," "no net loss," "wildlife," and "functions and values" without clear definitions of what is meant by those terms or what criteria is to be used to impose restrictions on private property.

8. Kitsap County is proposing increases in wetland, creek and slope buffers without having established a credible scientific basis for such increases.
9. Kitsap County fails to show why property owners have to bear the burden of restrictive CAO provisions in actual costs, when the Public is demonstrably the beneficiary of such restrictions, but pays nothing for the that benefit.

There are many issues that could be addressed in KAPO's review of the CAO update provisions and if detailed, this letter would longer that it is. However, our expanded discussion of these nine (9), represent the greatest failings of the proposed ordinance's red text provisions / amendments.

1. **Lack of SEPA analysis for "Non-Project" actions** – Earlier in the code development process, i.e., May/June of 2023 KAPO members voiced our concern that Kitsap County was taking no steps to prepare a Draft and Final Impact Statement (EIS) on the proposed changes to the CAO. Instead, Department of Community Development (DCD) Staff opined that the Draft and Final EIS prepared for the 2024 Comprehensive Plan Update would suffice for both the Plan and the CAO. Also, staff concluded that a SEPA Checklist analysis could substitute for a more extensive analysis of regulatory impacts. Clearly, that was a false assumption, because the Draft EIS issued for the Comprehensive Plan in January 2024 did not evaluate specific proposed provisions of the CAO, one of which was the possible imposition of "Riparian Habitat Zones" along creeks and wetland areas and now larger buffer zones. Also, as explained in KAPO's critique of the Plan Draft EIS GMA Goal Number 10 calling for the protection of the "environment," this is nebulous nomenclature as GMA contains no definition of "environment" and only makes mention of air, water and water availability in association with that term.

Since, the CAO specifies specific environmental features, i.e., wetlands, steep slopes, ground water resource, flooding and forest cover, there is no way the Plan Draft or Final E.I.S or even a summary SEPA Checklist evaluation of CAO provisions can substitute for the kind of analysis needed here for the impacts of CAO implementation, especially when the Plan EIS is judged to be deficient for lack of address of specific environmental features. Also, the introduction of the "Type 0" stream classification, **will have a major impact** on Kitsap County's property owners and even the County's ability to accommodate people in Urban areas, as explained in KAPO's Point NO. 8B. A summary checklist analysis cannot adequately address this one impact.

Significant too, is the issue of the Urban to Rural interface that the State Legislature enacted last year relative of tree and understory growth's potential fire hazard and needed mitigation requirements. This particular issue needs to be addressed relative to the provisions of the CAO proposed restrictions on tree clearing.

While that analysis is undertaken, preservation of trees on property around a house, a road, a driveway or near neighbor's property can pose a liability for the County when property is subdivided or even when a new home is to be placed on a site. Consider, Gig Harbor's problem wherein their requirement for maintaining trees in a subdivision buffer along Borgen Boulevard, cost a driver his life one August day when the wind was blowing a few years ago. A contrasting provision for newly planted trees along the subdivision's other road boundary (Peacock Hill Avenue NW) produced an effective buffer in a period of five years. Issues like this need to be examined in an impact analysis such as required for State Environmental Policy Act (SEPA) compliance before such regulations will become part of the CAO.

2. Kitsap County has failed to show how constitutional provisions for people to own and use their property is protected in keeping with Goal Number 6 of GMA –

A.) There is no, nada, zilch background analysis provided in an appendix, or a "Written Summary" of environmental features as to how the rights of property owners to use their property (all of it) is protected. Both the US and Washington State Constitutions have provisions to protect those rights. And there are even US Supreme Court decisions that have a bearing on what jurisdictions can and cannot do in the imposition of regulatory measures that compromise or take away those rights. At the very least, these US Supreme Court decisions in Noland, Doland and Koontz v. St. Johns River Water Management District should have been examined before more CAO restrictions / regulations are proposed.

B.) There is also a need for Kitsap County to have included in their analysis of the rights of property owners the September 2018 Memorandum that our State Attorney General published addressing "regulatory taking" of those preeminent constitutional guarantees.

For the record, there are no constitutional provisions in either the US or Washington State Constitutions for the protection of the environment or any aspect thereof. By contrast, there are protections in both constitutions for the people who own private property.

C.) As an added note, even though there is a provision for Reasonable Use Exception (RUE), Section 19.100.140, somehow DCD Staff made a determination that Section 19.100.140 is not to be used. The Why? has never been satisfactorily explained. Witness the validity of this conclusion by the fact there is no such application a property owner can use to pursue the provisions pf 19.100.140 when no other relief is appropriate to allow use of

the property as it is zoned. Also, there is no fee to be charged for making a RUE claim (that fact considered in isolation is a good thing!).

If there is a need for a case example of where a RUE should be the application vehicle, it is for a waterfront parcel just north of Purdy (within Kitsap County's jurisdiction). Consider the fact this parcel has a Shoreline Buffer requirement from the Ordinary High Water Mark, a buffer from a CAO regulated wetland and Zoning setback requirements issues to make allowance for the imposition of some sort of a buffer. When added together there is no land area left on this parcel upon which a house can be built. But similar property just to the south does have a house on it. (The parcel reference number can be provided upon request).

DCD staff advice to the property owner is to pursue multiple variances for relief from the buffer and Zoning Ordinance setback requirements. Such variances are required because Kitsap County is unwilling to purchase the property based on a "regulatory taking" of land. If Kitsap County fails to approve the variances or a State Agency (as in case of Shoreline Permits and the Department of Ecology's review), then the property owner will have to pursue the matter in Court and it would be a "regulatory takings" case.

3. Kitsap County has failed to show how implementation of the new provisions in the CAO demonstrably improves permit process approval per GMA Goal Number 7 – Permits Timely and Fair –

A.) Clearly, DCD has already a broken permit processing system. Contrary to that which is advertised on DCD's website, building permit approvals are taking not the advertised 55-days for approval, but one and two-years with some even longer. Any land use application that requires public hearing approval takes a minimum of two-years just to get to public hearing and not to the decision.

State Law, 36.70B.070 and .080 specifies GMA planning cities and counties have 28-days to certify and application made for a CAO regulated activity to be complete (subsection 070). Then following that certification, the law only allows such jurisdictions 120-days for a decision on the application to be rendered. If, more time is needed to process a particular application, the application processing entity, be it a city or a county, must inform the applicant in writing of what additional time will be required to process a particular application(s). *Note: in the last 5-7-years no such written notice explaining how much time the DCD staff will need to prepare the staff report and schedule the application for a Type II or Type III decision has been issued.*

- B.) Kitsap County has adopted permit processing procedures in keeping with the portions of State Law cited above. Kitsap County's "Procedures Ordinance" 21.04 at subsection 250 has both the allowance for an application's completeness certification and the 120-day decision time frame.

Obviously, if Kitsap County is taking longer to process a land use related application and even building permits than either State Law or Kitsap County's own procedures allow, something is wrong! There are many summary assessments that might account for Kitsap County's "failure to comply" with permit processing time requirements such as mismanagement, under staffing or poor performance of staff when application review is conducted. Those assessments seem to account for a lot of the problem, either individually or collectively. However, most germane to the CAO is the "over regulation paralysis factor."

- C.) "Over regulation" comes in two-forms, multiplicity of regulatory measures and specificity to the "nth degree." Regarding the first, there are nine key plans and/or ordinances that any one application can be evaluated against, the Comprehensive Plan, the State Environmental Policy Act, the Zoning Ordinance, the Critical Areas Ordinance, the Land Division and Development Code, the Shoreline Master Program, the Storm Water Design Guidelines (over 800-pages in this two-volume tome), the Flood Hazard Areas and the Building and Fire Codes. If all of the pages of regulations were added together, that equates to over 2,000 – potential regulatory measures (and the actual number may well exceed that conservative estimate), which might come to bear on any particular application. It is not hard to imagine then that when staff members go to evaluate the merits of a development application there is likely fear that some pertinent evaluative factor might be missed.....hence paralysis.

Then there is the "nth degree" factor of paralysis. Aside from the fact all of the nine plans and ordinances cited above have regulatory measures to be considered, some require such detailed analysis and documentation that the old saying "the devil is in the details" comes true.

"Fear" is at the heart of any application analysis.....are enough details provided in any given application (regardless of a certification of application completeness) so a decision can be made to support an application? This is the puzzlement of permit reviewing staff. One example should suffice, since a staff member knows nothing about wildlife habitat, he or she wants a qualified professional to tell them what's out there in the world. A staff member, is thus unwilling to stick their neck out to recommend in favor a project unless someone with credentials tells them what is in the world of "habitats." Further, until the staff person has that information, nothing will be

done to process an application.....hence, another aspect of regulatory paralysis and this is most typical of the sort of delay the CAO causes.

NOTEWORTHY IN THIS DISCUSSION IS THE FACT THAT KITSAP COUNTY WILL SPEND THOUSANDS AND EVEN HUNDREDS OF THOUSANDS OF TAX PAYER DOLLARS TO DEVELOP AND IMPOSE NEW REGULATIONS AND WILL NOT SPEND ONE DIME IN AN ANALYSIS OF WHETHER REGULATIONS ALREADY ADOPTED OR EVEN NEW ONES PROPOSED ARE ACTUALLY NEEDED.

Also worthy of mention is that no one has made or will make an assessment of Kitsap County's urban and rural environment to determine what was lost, compromised or enhanced as a result of the development patterns we now have. If such an analysis should ever be conducted perhaps it is worthy of note that most all of the old growth (some second growth too) trees were clear cut in the early 1900s. In consideration of that fact perhaps it is not a stretch to contemplate that if trees are removed from a building site and new ones planted.....there will be a new crop of trees.

D.) KAPO has argued for years that whenever there is a needed update to existing plans and ordinances (whether promulgated by the State Legislature or Kitsap County's internal review) that the first assessment should be whether the existing regulations already adopted are sufficient to address the changes in State regulations. Consider the "Gap analysis" conducted by County Staff and their consultant. Even when there is a conclusive statement in that report that existing regulations are in force to address an issue, like development in or near a geologic hazard area, there are still recommendations for "more regulation" and that is a common conclusion throughout that report.

It is significant and therefore worthy of mention that for the first time ever, Kitsap County has made some attempt to analyze existing ordinance provisions against so-called new update requirements of State Law. Unfortunately, the Gap Analysis still recommended "more regulations" be imposed.

E.) What is not in the "Gap Analysis" and should be, is an assessment of *how* adding more regulations will make the permit process fair and timely. The disaster of untimely permit process has already been highlighted in this analysis, but the "fairness" issue still requires comment.

F.) On a monthly basis or at least every other month a comment or request for help will be submitted to KAPO's web page, kitsapalliance.wordpress.com, regarding problems property owners are having with Kitsap County's permit process. Most often the problems expressed are frustrations about length

of time, but often highlighted is the costs born by the property owner for studies, reports and site analysis not to forget application fees paid.

If a CAO ordinance provision is manifest in any permit application be it a building permit or a land use type permit, application fees for variances, especially applications that have to be approved in a public hearing will be, at a minimum \$6,850 and if combined with some other application fee, can easily exceed \$10 – \$12,000. When the cost of studies and reports are added such as for a “habitat report,” a wetlands analysis or a geo-tech study there will be another \$4,000 – \$5,000 added to the price tag. Likely, engineering fees, needed to control storm water run-off will be another added cost and the price tag for satisfying that application requirement will range between \$12,000 – \$16,000. Bottom line the applicant’s out of pocket expenses to go to a public hearing with engineering and these technical reports, not to forget application fees has a price tag of \$22,850 on the low end and very likely \$30,000+ at the upper end.

Even our individual Board of County Commissioners do not have that much cash sitting in their bank accounts to pay for a permit process that will put their money at risk (while paying interest charges) for two-years awaiting a decision by the County’s Hearing Examiner. And once the Hearing Examiner has issued a decision, now more money has to be spent at the very least for storm water facility design.

G.) In light of the fact there is a GMA mandate stipulating that each jurisdiction planning under that act *HAS TO ACCOMMODATE THE PROJECTED POPULATION INCREASE*, how is it “fair” that the property owner has to bear the burden of regulation compliance? The fact is, it is not fair! Especially in consideration of the loss of use of portions of his or her property for what is clearly a *PUBLIC BENEFIT*.

On behalf of Kitsap County property owners, KAPO objects to the imposition of regulatory measures causing property owners to pay out their hard-earned cash or investment capital for what is clearly a benefit to the public while restricting the use of their property.

4. Kitsap County has failed to show what the impacts of the newly added restrictions in the CAO will be on the ability of Kitsap County to meet GMA Goal Number 4 Housing Affordable To All Income Groups –

Already highlighted in the discussion about lack of fairness in the permitting process is the cost of doing business with Kitsap County. Just taking the low permit cost number as reported on this page of \$22,850.00, when added to the cost of a house, that means there is a house cost increase associated only with

regulation compliance. If the mortgage on the house extends for 30-years at 6% interest, that means the homeowner will have paid not \$22,850, but \$57,125.00 or an additional \$34,275.00 in loan finance costs.

Worse than the impact on new construction of that house is the effect on the existing housing stock with comparable features. The new house that otherwise might have been priced at, say \$385,000 will cost approximately \$408,000. And that means there is a new value for all homes in the existing market place.

The fact at issue here is that Kitsap County has presented no analysis of the proposed regulation changes that presents an argument for *how* Kitsap County can impose more restrictive regulations and meet its GMA Goal Number 4 obligations. Only one example has been cited of the problem the County will have in an attempt to make that argument, but there are other regulatory aspects of the CAO that are more onerous to the property owner than just paying for reports and application fees. The mere fact that Kitsap County has not attempted to perform this kind of analysis, is not just an oversight, it is a **deficit of significant proportions** and should be cured before the proposed CAO amendments are considered for adoption.

5. Kitsap County has unwisely deferred criteria decisions to unelected State Agencies for enforcement of CAO provisions rather than decision making by local elected officials, thereby contravening “government, of the people, for the people and by the people” the core principle of our Republic –

One glaring oversight in the material prepared for beginning the CAO update is the failure of Kitsap County to explain why assessments of wetland or stream categories and the companion buffer requirement cannot or could not be established by just Kitsap County. Assuming for the moment that Kitsap County established their own criteria (based on actual science which does exist) for what constitutes a wetland and the needed buffer, if any, what liability would the County incur? It does not seem to be the case that a State Agency, be it the Department of Ecology or the Department of Fish and Wildlife has any veto power over local determinations.

Certainly, there is no State Agency that can or does represent the people of Kitsap County. Thus, local elected officials are not beholden to State Agencies in their conduct of business as they represent the interest of Kitsap County’s citizens and not the interest of State Agencies.

Unlike the Shoreline Management Act, which provides for both local and state decision making, the CAO does not have a two-fold approval process. Even in the context of GMA the only requirement is that there be such an ordinance. The State Department of Commerce, which does review local ordinances for

compliance with GMA, does not have veto power over actions taken by local jurisdictions. Since the Department of Commerce has no inhouse experts with qualifications to review CAO provisions, it would seem then that Kitsap County elected officials are not obliged to defer their decision making to any other State Agency.

6. Kitsap County has failed to show why the “Best Available Science” underpinning our 2017 existing CAO regulations has to be thrown out in favor of “new” or “newer” Best Available Science (both of which are not science, but at best “political science” –

A.) There are two basic tests one can use to prove that so-called “Best Available Science” is not pertinent to Kitsap County’s environmental conditions. Test number 1, the scientific study would have to have been performed within Kitsap County’s jurisdiction, not somewhere else in the world. Test number 2, any study claiming to have scientific credibility must have been performed by a qualified expert, having a doctor’s degree in his or her field validated by a scientist who can duplicate the findings of the cited study. The individual performing the “validation study,” must have qualifications like the scientist who made original findings and conclusions. Thus, if a scientist with a Doctor’s degree in his or her field conducted the original study with findings and conclusions, the “validation study” must be undertaken by an individual with the same accreditation. Someone having only a Master’s degree is not so qualified, no mater his or her field experience.

Employing just these two tests, it is easy to conclude that “best available science” is not applicable to Kitsap County’s jurisdictional area and need not be the basis upon which to determine.....for example, buffer widths. This statement is made with full recognition that “best available science” is the chosen metric by the State of Washington for evaluating environmental conditions.

A third test has surfaced in the context of this CAO update. This third test is embodied in the question.....can credible scientific studies produce different results as in findings and conclusions from one time period to another? *Perhaps* is the answer depending on what factors were considered in the first study and how they compare with the conditions assessed in a later study. The key reference points are the conditions examined in the first study and if found to have changed in a later analysis, the second study would have to account for the changes and the apparent circumstances that produced the change.

Relevant to this third test, what changed from 2017 to 2024 that invalidates the “best available science” used to underpin 2017 CAO update? What are the

new studies now referenced as “best available science” and why do their conclusions not align with the data available in 2017?

The facts are, unless proven otherwise, that there have been no scientific studies undertaken in Kitsap County that contravene what was relied upon in 2017. Thus, no need to change any of the provisions of the 2017 adopted CAO except new requirements adopted by our State Legislature since June of 2017. If that statement is not accurate, because somewhere, somehow there is a study that meets this third test, it is nowhere to be found in the background material used to promulgate more restrictive CAO regulations nor in the reference data cited in Chapter 7 - References in the Best Available Science Summary Report for the Critical Areas Ordinance Update, Kitsap County, May 31, 2023.

- B.) New to this 2023 Best Available Science Summary Report is supposedly the underpinning studies promulgated for so-called “climate change.” Such a notion is just speculation.

Mostly, the people who are crying “climate change” are just a bunch of politically correct “chicken littles” who one day stayed out in the sunshine a bit too long and wound up with a sunburn. Rather than blame their now problem on lack of good sense, they riled up the other chickens in the flock to believe their world is coming to an end and the cause of the problem is automobile carbon emissions that are allowing our sun to burn hotter – hence the sunburn.

Ah, the story had to have other elements to make their manufactured crisis seem more universal, i.e., beyond their “chicken coop.” So, it was necessary to leverage others even others, outside this country to think about auto vehicle emissions, smoke from industrial plants, belching cows, rising sea levels due to calving ice bergs, polar bears losing their habitat (because of melting ice) and not to forget the deforestation of the Amazon Jungle and what could be done to buy us more time on this planet.

These politically correct “chicken littles” did manage to convince other people of a like mind (just like their chicken coop companions) and even some with apparent scientific credentials that their story was coming true. But in a detailed examination of all of the reported documentation supposedly supporting the “climate change” postulation there are, at best, some maybe conclusions, like a 1-2-degree rise in global temperature measurements and a 1-2-inch rise in our oceans. However, it is really difficult to extrapolate from suspect data a scenario of epic proportions.

Bottom line, there is no scientific proof (remember the earlier discussion as to what constitutes real scientific endeavors) that “the sky is falling” or that our planet is becoming too warm or inhospitable for human habitation

There are many inconvenient facts that tend to be glossed over, because they do not fit the “true believers” narrative of an imminent doom’s day. Here are just a few of those non-narrative facts:

1 – the temperatures experienced here on earth do have a functional relationship with sun cycles. This is true also for the other planets in our solar system.

2- Planet temperature measurements vary from season to season (when there is clearly “climatic changes”), from locale to locale (read one chicken coop to another) and there are deserts areas on the planet, like the Sahara Desert that once supported lush vegetation and snow- and ice-covered areas that once were farmed for agricultural produce. In short, there is evidence climate conditions have changed over time, may be changing now and will likely change in the future.

3- measurements of global temperatures are an advent primarily confined to the 19th, 20th and now the 21st centuries. But based on historic agricultural evidence it is apparent that there was in the 1500s a warmer climate in Greenland allowing crops to grow. By comparison with today’s conditions, snow and ice now cover those agricultural lands.

4 – plants take in carbon dioxide found in our atmosphere and in return produce the oxygen needed to sustain human life.

5 - India and China are not “players in the climate change game and they produce huge volumes of carbon emissions with no plans to curb them. The US on the other hand has significantly reduced such emissions – especially over the last 20-years. Without India and China in the game, whatever is done here in the US and in particular the State of Washington is insignificant and that statement is made making an assumption a problem exists, when in fact it does not.

6- building a predictive model to project future climate conditions is fraught with many challenges and impediments, chief among them being the changing climate conditions from local to local and even from moment to moment.

Resident in Boulder, Colorado, is not just the National Bureau of Standards, but several other federal installations like the National Center for Atmospheric Research (NCAR) and of course the University of Colorado. If there is any place in the United States where climate factors have been studied for more than 70-years and continue to be evaluated, it is there in Boulder. A lot of scientists associated with these institutions are actively studying climate conditions and they are equipped with access to Cray Computers which have great capacity to handle data inputs. So far, that “holy grail” predictive model has not been developed to validate the “sky is falling” end of our planet. But, as a result of

work performed there and elsewhere there are more accurate weather forecasts in a week to 2-week time frame.

All of the foregoing can be summarized by saying our State Legislature was sold what they thought was a race horse, but what they and we got instead was a nag that could hardly trot let alone run! And the price paid, which still has to be paid redounds **not to the public (who voted these “politically correct chicken littles” into office)** but the property owners, home owners, renters and the vehicle owners who wind up paying the bill for restrictions that are not needed.

KAPO objects to all of this climate related nonsense and the so-called “green build” and “sustainability” programs that are bandwagon follow-ons. Thus, if there are any measures related to climate the County must include in the CAO update, they should be the absolute minimum concessions to this “climate change hoax.”

7. Kitsap County is relying on vague terms like “habitat,” “no net loss,” “wildlife,” and “functions and values” without clear definitions of what is meant by those terms or what criteria is to be used to impose restrictions on private property –

A.) Once-upon-a-time, when creek and stream buffers were first made a part of Kitsap County’s CAO, circa 2005, such buffers were for the protection and in some instances enhancement of fish and wildlife. Back then fish and wildlife and their habitats were referred to **as listed** “endangered,” “threatened” or “sensitive” species, **documented in maps** or databases generally available in Kitsap County. And such categories of fish and wildlife were in habitats classified as Number 1 conservation areas.

Fast forward nineteen years the so-called Class I Wildlife Habitat Conservation areas have morphed into an apparent no priority classification applicable to all water conveyances, i.e., ditches, dry creek beds, creeks that have been paved over or diverted into a series of culverts and of course year-around streams. Except there is a definition of Priority Habitat (19.150.470) and Priority Species (19.150.475). Only problem is, even the Habitats of Local Importance (19.150.395), which are designated fish and wildlife habitat conservation areas found to be locally important by the county have to be.....mapped either by federal, state or by, in the case of priority habitats, Kitsap County. And such maps are to be made available to the citizens of Kitsap County.

SO, WHERE ARE THE MAPS? And why are such maps (and lists of endangered, threatened or “sensitive species”) not included in the existing CAO (KCC Title 19) or more particularly in the proposed ordinance amendments even if to be found in an appendix?

Likely, the reason the maps and list are not available for easy reference is two-fold, either they do not now exist or they are conveniently omitted because the real objective is to promote a generic “wildlife protection area” without having to map it. In that protection area wildlife could be vermin, snakes, bears, cougars, cats (likely feral), dogs, pet gold fish or who knows? The point is because there is no definitive identifier, “habitat” could be anything, even a house built by Habitat for Humanity. A vague term, in and of itself has no value to suggest there is a need for protective measures. The real reason for the failure to define terms is for development control so the property owner cannot use his or her property, an issue already highlighted at Point Number 2 and in relation to GMA Goal No: 6.

- B.) With respect to the use of the term “no net loss of functions and values,” that phrase first appeared in the 2005 adopted CAO. So, nineteen years have lapsed since then and Kitsap County has yet to establish a baseline study to document what “functions and values” are manifest in Kitsap County’s environment that have to be offset by compensating mitigation measures or restrictions on property development.

Earlier in the discussion of KAPO’s Point Number 2, mention was made that in the early 1900s clear cut harvesting of trees took place essentially radically altering most all of Kitsap County’s then environment. Recognizing that fact, brings to the forefront the question of what is the starting point for a “functions and values” assessment? Of course, there needs to be also a reference to what was considered “valuable” in the early 1900s as well as an assessment of what functions (assume but not stated, ecological functions) were manifest back then. A mostly clear cut / deforested Kitsap County, should that not be the starting point for a functions and values assessment?

Maybe, in the foregoing illustration it is too hard to wrap one’s mind around such a proposition, because it was so long ago. How about a more recent time example like the 1950s? What were conditions in the County like then?

One aspect relates to a site on the Sinclair Inlet side of Beach Drive in the South Kitsap where a beach front property was filled in the early 1950s along with the installation of a concrete bulkheadnot an uncommon activity in the 1950s. Once filled a house, garage, patios (even one covered) were installed. Nothing but scrub plants and some volunteer grass (not such to be categorized as a lawn) will grow on the filled earth material and that has been the case for 69-70-years.

Any site along the water, even ones extending onto once tideland areas that exhibit the characteristics of this property, should be considered a “fixture of

the environment” in a “not net loss” determination. So, the question is, what is the criteria for making a “function and values” assessment to derive, if possible, a “no net loss” conclusion? Let’s hone that question a bit more by stating the wishes of the property owner is to add a garage to the site and replace the covered patio area with an addition to the existing house. Both these improvements are to be made on this previously filled area protected by a concrete bulkhead, noting too that there is essentially no trees or shrubs to be lost or altered on the filled area.

Knowing these facts, will the new garage alter the “functions and values” (again assume ecological functions) of this waterfront property? Any reasonable person would come to the conclusion.....**NO WAY, NO HOW.** But, when there is vagueness in the regulatory measures and the objective is “control” of individuals and their plans, then code administrators believe that they can, in fact, postulate a set of functions and values that are arbitrarily manufactured to force the property owner to propose measures to offset his new garage and even the addition to his house.

Rules and regulations that make no provisions for existing conditions in the environment that are an exception to a perceived norm are an anathema to property owners and builder / developers. When there are situations as described above, the default position of administrative staff takes is to advise a property owner that “relief” can be granted from the strict enforcement of the rules through a public variance relief” process a concession that comes at a cost.....not to the County, but to the property owner who must pay for that application process and all of the ancillary costs that go with it including the time delays experienced when DCD staff cannot manage to find the time to process the variance application.

It is to be noted here that because of the criteria for what qualifies for variance relief,” is not always something a property owner can pursue. In that instance the property owner pays yet another price for rules that should not apply to his or her property and noting too, at an earlier time in Kitsap County, i.e., the 1950s there would have been no such restrictions, i.e., such as in this instance when the beach area was first filled to create a home site.

- C.) Pertinent to the foregoing discussions about wildlife and functions and values, there is a problem with the so-called “no net loss assessment.” Like the other two terms, this assessment is vague to the point of meaningless.

Why is it meaningless? Three reasons: **a.** there is no starting point for the measurement of loss, **b.** no baseline study has been performed to establish then (or now) existing environmental functions with an assignment of value and **c.** related to the lack of a baseline study, no distinctions have been made

to distinguish areas “of natural significance” (as in areas of state wide significance), growing trees, those lands in agricultural use, rural living environments and lands with urban development.

Regarding the start date of a “no net loss” assessment, was it in the early 1900s, the 1950s, is it now with existing conditions? Was it 2017 when the last CAO update occurred” or was it in 2005 when the first set of regulations were adopted to include this term? *Prior to 2005 the County had adopted only interim CAO regulations.*

The point is, regardless of which CAO ordinance the County has adopted with that language, *at no time has the County ever undertaken a baseline study to establish what is in the County’s environmental ecosystem in any of the areas of Kitsap County mentioned above or how they function.* Further emphasis to this lack of a baseline study is, 19-years has lapsed and there has been no inventory of existing conditions to document what has value to the public that if lost or compromised cannot be replaced. And recognition has to be given to the fact that “existing conditions” cannot be a static assessment when Kitsap County is obligated to make room for new people, only a few of which will be stacked in multi-story buildings.

If Kitsap County were ever to undertake the “baseline study” discussed herein, such analysis would have to include existing County roads and road-side ditches. According to a University of Washington study conducted several years ago, circa the 2016-2017 era, road run-off was shown to have a significant deleterious impact on aquatic life in streams and lakes, likely too, Puget Sound. Thus, Kitsap County and its municipal counterparts must be held accountable, just like private property owners for the role their infrastructure plays in an analysis of existing conditions.

Until such a baseline study is undertaken, KAPO members have no choice but to object to the continued use of this language in either the existing CAO or in any proposed amendments to the code.

8. Kitsap County is proposing increases in wetland, creek and slope buffers without having established a credible scientific basis for such increases –

See previous discussion on Best Available Science (KAPO Point Number 6).

A.) Before comments are made about buffer widths and why the proposed ordinance amendments are “bonkers.” Buffer averaging / reductions deserves some attention.

The theory seems to be that buffers, whether for a creek (one that actually has water flows year-around), wetlands or saltwater shorelines that buffers are inviolate and cannot be compromised regardless of whether that set aside area actually performs a function people assume. Refer now back to the example of the Beach Drive property mentioned in KAPO's point 7B.

Here is a situation (not unique in Kitsap County) where a site improvement as it now is, has no buffer between the development thereon and the water (Sinclair Inlet). DCD staff, in trying to apply the 2017 CAO and 2014 Shoreline Master Program rules, opines that there is an imaginary buffer and that there should be also an imaginary building setback from that concocted buffer.

So, in this game of **“let's pretend”** (and it truly is a game), DCD staff says what we have here is a need for a “Type II decision” before new building improvements can be placed on this site. As this game plays out the property owner has to create a “buffer mitigation area” (about the same size as their proposed garage) on his property as a compensatory measure for the loss of an imaginary buffer. This so-called “buffer mitigation area” requires the importation of soil to support plants that otherwise would not survive on this property (70+ years of such proof) and installation of “native plant species.”

Aside from the fact a qualified consultant had to be hired to prepare the paperwork for installation of a “compensatory buffer mitigation offset,” DCD staff has to go through a “process” to issue a “Type II Decision.” Supposedly, that is a more expeditious permit review than scheduling the matter for a decision by the County's Hearing Examiner.

Reality check, in today's DCD there is no such thing as a more expeditious process. The property owner who has now spent thousands of dollars to make his (really their) variance application has been waiting now five-months (150-days) for that written decision. But the wait is not over as there is no indication from DCD staff as to when they can make time to issue their Type II decision. *As a note of interest, this same property owner filed his building permit application for his garage and house addition in early, as in February of 2021, a three-years wait to build and counting.*

Other than a tale of woe, what is the point? It is this.....the CAO hamstring the administrative staff and imposes heavy costs on property owners because there is no provision in the CAO (either the 2017 version or in the proposed 2024 amendments) for existing situations and property conditions that do not fit the “one size fits all rules.” **What should be in the section of the CAO pertinent to “buffer averaging and buffer reductions,” is**

simple language where a documented finding can be made to take into consideration what the existing site conditions are and whether buffer serves a meaningful purpose. If that is the case, then property owners should not be hamstrung to go through a Type II process for projects to be approved.

Also, and just as important there should be no need for any coordination with the State Department of Fish and Wildlife before a County staff member can issue a written decision. Unless the property is in a **mapped area** of state-wide area of significance all administrative decisions about buffer averaging and buffer reductions should be made in the confines of Kitsap County's permit review process. Further, the property owner should not have to consult with that state, any other state or federal agency unless such agency has a separate permit process requirement. An example being an outfall into a body of water, which requires a F & W issued Hydraulics Permit Application.

The provision found in the proposed language for buffer reductions and buffer averaging that include such coordination needs to be struck as in eliminated.

Regarding buffer widths as found in the proposed amendments to the CAO with respect to both streams, wetlands and steep sloped areas (defined to be 25% or greater), **there is no justification for the proposed increases.** The 2017 CAO provisions are more than what is needed to protect those features of the environment. However,.....

IF ANY BUFFER WIDTH INCREASES ARE STILL CONTEMPLATED HERE IN 2024, BEFORE SUCH DECISIONS ARE MADE, THREE PROVISIONS HAVE TO BE INCLUDED IN THE ORDINANCE.

NUMBER 1, ALL PROPERTY ENCUMBERED BY AN INCREASE BUFFER MUST COME WITH A PAYMENT TO THE PROPERTY OWNER FOR THE REDUCTION IN HIS OR HER ABILITY TO USE THE PROPERTY THEY OWN, AND

NUMBER 2, ALL OF THE PROPERTY ENCUMBERED BY THE INCREASED BUFFER WIDTH AND IN FACT THE ENTIRE BUFFER AREA AS WELL AS THE STREAM CORRIDOR, STEEP SLOPED AREA OR MAPPED WETLAND AREA MUST BE DECLARED A NON-TAXABLE AREA, AND

NUMBER 3, IF THE BUFFER INCREASE DEPRIVES THE PROPERTY OWNER OF BUILDING SITES (TOGETHER WITH ACCESS AND AS THE CASE MAY BE AREAS FOR SEPTIC WASTE (PRIMARY AND RESERVE) AND STORM WATER DETENTION/INFILTRATION, THEN EITHER KITSAP COUNTY MUST PURCHASE THE

ENTIRE PROPERTY OR MAKE EXCEPTIONS FOR BUILDING ON THE PROPERTY IN ACCORDANCE WITH ZONING PROVISIONS WITHOUT ANY OTHER ENCUMBRANCE SUCH AS WOULD BE INCLUDED IN A TYPE II OR TYPE III PERMIT PROCESS.

B.) One further note, regarding the proposed introduction of “Type O” water types. This is a new proposed addition to the ordinance with a proposed 75-foot buffer in an urban area and elsewhere a 100-foot buffer. **This is an example of “overkill” in regulations.....to the max!**

The way Type O (other) so-called isolated streams are defined, roadside ditches would qualify for 100-foot buffers. As bad as that is, new roads meeting Low Impact Development (LID) standards also would qualify as a Type O (other) streams. *Whoever dreamed up this classification must have been smoking pot or living in some alternate universe.* Certainly, nobody with any reasoning skills considered the implications of this proposed so-called water type.

Let’s just examine one implication.....the roadside ditch. Unbeknownst to most Kitsap County citizens, the majority of County Road right-of-Way is an easement across private property. The County does the maintenance of the road surface to include the roadside ditches. However, that infrastructure exists on private property (in most all instances county-wide). So, if a roadside ditch is considered a Type O stream as proposed *and every such ditch would have to be so identified because all ditches all convey water at various times during a year, which works its way down to a stream or infiltrates water into the substrate*, then the 100-foot swath of buffer limits what can be done on the rest of the privately held property, not to forget the 15-foot buffer setback.

Regarding this roadside ditch example, it is often the case that between a road surface where a driveway might intersect, there will be a ditch to cross. Under today’s rules, in most instances there is either a 20-foot zoning setback (in urban and some rural settings) or a 50-foot building setback in Rural zoned areas. If this Type O stream category is introduced, the building front yard setback in urban areas would be 90-feet and in rural areas 115-feet. **Clearly an ill-conceived stupid idea!**

One cannot forget the impact of such a requirement for building in urban zoned areas. Many of the new lots being created are 70- 90 feet deep. So, a 90-foot building setback on such lots would render them unbuildable, unless of course Kitsap County wants to have all of those property owners go through a Type II or Type III variance process. Noteworthy too, in older subdivisions where there might be a vacant lot in urban areas the lot depth

may be only be 100–115–feet. Factoring in the rear yard setback of 15–feet along with the new 90–foot front yard setback and picking the 115–foot lot depth for this example, the house could be only 10–feet wide or deep with not enough room for an attached garage. Again, a variance would have to be pursued for relief from this standard. Once granted as it surely would be, what is the point of having such a ridiculous standard? Just as important, why would the County want to force people to locate outside the allocated urban areas, where there might be a chance to avoid the variance process in rural zoned areas?

KAPO vigorously objects to this proposed provision in the CAO update based on not just the example referenced here but other implications that could have been referenced too.

- 9. Kitsap County fails to show why property owners have to bear the burden of restrictive CAO provisions in actual costs, when the Public is demonstrably the beneficiary of such restrictions, but pays nothing for the that benefit -**

Several times in the discussion of KAPO's points 1-8 comments have been made about lack of consideration for who is actually paying the price for a public benefit. The fact is, that burden needs to be either reversed or at the very least, shared with the general citizenry of Kitsap County

For too long it seems that the property owner wishing to build something on his or her property or the builder/developer subdividing / improving property is the "bad guy." Why? Because land is cleared and roads and buildings replace trees and shrubs. But, is the property owner wishing to build a house on his land or make provisions for sons and daughters to do so too really a "bad guy?" Or is the builder/ developer investing substantial amounts of his or her capital assets to make provision for new people really a bad guy? The answer is no!

What a lot of the new comers.....pick a time.....since the early 1970's forget is that the people who were here before them objected to the then "newbies" because of the changes the "old timers" saw happening to the "resource" they enjoyed (but had not paid for). Now, these then "newbies" are upset to contemplate that what they like about Kitsap County will not be true after yet newer people come and settle here. What do the then "newbies" want now? They want preservation or at a minimum, very little disruption to the environment. And like the "old timers" before them.....they do not want to spend money out of their pockets to preserve what they like, perhaps value or prefer.

Never mind the fact that the preservation views of the "newbies" and some of the remaining "old timers" is incongruous with the precepts manifest in the

Growth Management Act. For example, Kitsap County cannot retain the qualities it once had, if there is a mandate and surely there is, for the County to accommodate its fair share of the State's incoming population.

While there are citizens with strong persuasions that CAO regulations should be the vehicle to protect a resource perceived to be valuable, picturesque even or habitat for fish and wildlife (but not bears and cougars in their back yards), there are others that need, want or have to convert their property to home sites, commercial or industrial development. So, why make the CAO a "club" to be used against the "others?" But that is actually how the CAO and its provisions are used.

Those with "preservationist views," whether they are a "newbie" or an "old timer," have too long gotten away with the notion that they can have what they want without cost. They do so by supporting restrictive planning, zoning, subdivision and development regulations (including the CAO and storm drainage regulations) to penalize the "others" in the community to pay for what they want.

NOW IS THE TIME TO CHANGE THAT MODEL, OR EXPRESSED ANOTHER WAY, "THE SOMETHING FOR NOTHING MENTALITY!"

In closing, KAPO recommends that the present proposed CAO Update changes (even if modified somehow) and the process to adopt them **be suspended** until a "shared impact expense" program can be developed to accompany that which is proposed for adoption. Also, there needs to be a full Draft and Final EIS analysis prepared for reasons previously explained.

Yes, both these recommendations would delay the adoption process. Off-setting that delay is an action to do what is best for all the citizens of unincorporated Kitsap County and certainly not for any of the State Agencies! Recall KAPO's concern about local elected officials making decisions regarding what is best for Kitsap County our Point Number 5.

If funding for the CAO Update process is somehow compromised because Kitsap County might have to extend its deadline for updating its ordinance, so be it!

Respectfully submitted,



William M. Palmer, President
KITSAP ALLIANCE OF PROPERTY OWNERS

[Return to Comment Matrix](#)



THE SUQUAMISH TRIBE

NATURAL RESOURCES DEPARTMENT
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8 April 2024

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Department of Community Development
Planning and Environmental Programs
614 Division Street, MS-36
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SUBJECT: Draft Kitsap County Comprehensive Plan 2024

The Natural Resource Department of Suquamish Indian Tribe of the Port Madison Reservation appreciates the opportunity to review the Draft Kitsap County's Comprehensive Plan 2024. The area covered by the Comprehensive Plan update lies entirely within the Suquamish Tribe's aboriginal homeland and includes treaty reserved fishing areas and hunting and gathering areas. The Tribe seeks protection of all treaty-reserved natural resources through avoidance of impacts to habitat and natural systems. The Tribe urges Kitsap County to avoid land use decisions that will impact natural resources within the Tribe's territory,

As noted in the Tribe's comments upon the DEIS (a document to be read in concert with these comments), it is difficult to comment upon a plan when many of the environmental protection measures associated with the plan, such as increased stream buffers are proposals (Figure 1) and might not be adopted. A detailed description of that is contained in the Tribe's comments on the Draft Environmental Impact Statement. However, the Tribe believes there is insufficient information to support an expansion of the UGA or reclassification requests for parcels outside the existing UGA. There is sufficient land within the UGA and upzoning has not occurred to the extent possible. To develop these areas without comprehensive planning has the potential to create "sprawling" development, traffic problems and conflicts with adjacent rural residential development. The comprehensive plan should not include rural comprehensive plan amendments/upzones that increase rural population and employment capacity as this violates the GMA and not consistent with MPP-RGS-14 which reads:

"Manage and reduce rural growth rates over time, consistent with the Regional Growth Strategy, to maintain rural landscapes and lifestyles and protect resource lands and the environment."

Additionally, the County's aspiration to reduce (1) sprawl (such as Alternative 2) and (2) impacts upon the natural environment will be constrained by the large number of non-conforming lots in the rural areas - lots that the County currently allows to be developed. Many of the owners are not innocent owners or purchasers, but people that purchased or will purchase these lots knowing critical areas existed on or adjacent to these properties. If a large number of applications to develop such lots are submitted, this could result in urban densities in the county's rural areas. This scale of development is contrary to the areas designated under the Growth Management Act and the County's Comprehensive Plan. The issue of these small legacy lots is compounded by Accessory Dwelling Units (ADUs). Take for example, a legacy lot of 1.0 acre in a region zoned 1 DU/5 acres if the owner requests to construct an ADU. The resulting effective density is 2

DU/acre. This is not a rural density, but an urban density and violates the GMA and is not consistent with Vision 2050 MPP-RGS-11 or MPP-RGS-12 which require the County to:

“MPP-RGS-11 Encourage growth in designated countywide centers.”

and

“MPP-RGS-12 Avoid increasing development capacity inconsistent with the Regional Growth Strategy in regional geographies not served by high capacity transit.”

The County must address these issues, particularly, since (1) the DEIS Alternative 2 does not in many cases increase stream buffers to those currently deemed by Best Available Science as needed to protect stream function; and (2) though the Critical Areas Ordinance Update 2024 *proposes* increases in stream buffers, the proposed buffer widths for Type N streams are generally half the width as called for by Best Available Science and only meet the base minimum width to meet the pollution removal function.

Non-conforming lots are a frequent source of requests for RUE or variances resulting in buffer reductions and failing to deal with this issue reduces environmental protections as smaller lots have less opportunity to avoid critical areas or their buffers.

Potential measures to deal with this legacy issue include, but are not limited to policies that require the ultimate landowner (to avoid adjacent lots be owned by multiple companies controlled by the same entity) to aggregate adjacent lots to extent possible to bring substandard lots to conforming status in terms of size. Additionally, when variances to buffer requirements are sought, the Special Reports must quantitatively describe buffer impacts and proposed mitigation, and the time required for the mitigation to achieve the same values and functions prior to the disturbance.

In regard to lot aggregation or lack of, the Tribe opposes Land Use Strategy 16.e. found on page 52 to *“Remove lot aggregation requirements in all Type 1 LAMIRDS to diversify housing types. (Alternative 3 only).”* Though currently worded for Alternative 3, the Board can mix and match from the alternatives, so the proposal could be carried forward into Alternative 2. The Tribe also opposes Suquamish Strategy 6.a to *“Allow accessory dwelling units to be permitted uses in Suquamish residential zones. (Alternative 2 only).”* Both proposals would result in increased density in areas where density is not to be focused and is a violation of the GMA.

The GMA requires that the County plan for annexation and incorporation of urban areas within a 20 year timeframe so that in the long-term, cities provide urban services and counties provide rural and regional services. The County’s Land Use Policy 13.1 to *“Facilitate and encourage urban areas to annex to associated cities or incorporate over the 20-year planning period and ensure compatibility of development with future planned uses”* acknowledges that. Yet, the County continues to expend funds supporting UGAs (Silverdale and Kingston) significantly past that 20 year timeframe. Furthermore, the Draft Plan provides no path forward for incorporation for Kingston or Silverdale.

Page 37 of the Draft Plan states in regard to the Kingston UGA, *“The community will explore incorporation during the planning period but may be limited by population and revenue opportunities.”* Page 79 of the Draft Plan states, *“Silverdale is also anticipated to incorporate as*

a city later in the planning period.” This are aspirational goals, however the intent of “MPP-RGS-16 Identify strategies, incentives, and approaches to facilitate the annexation or incorporation of unincorporated areas within urban growth areas into cities” is not aspirational, but clear guidance cities, not the County, should be providing these services. The Comp Plan needs to set out a path with implementation deadlines for incorporation.

The Tribe believes the County has excluded certain options to reduce the expansion of the UGA. Page 14 of the Plan states, *“Future population growth is accommodated by the capacity of residential units”* and page 82 notes, *“Kitsap County must plan for and accommodate 14,498 permanent housing units from 2020 through 2044, plus 612 emergency housing beds for persons experiencing homelessness.”*

Page 15 reads:

“In developing and analyzing its three alternatives, Kitsap applied different assumptions based upon the goals of each alternative (e.g., greater densities and land use intensities in urban centers in Alternative 2, greater critical area buffers and tree retention requirements in Alternative 3).”

This is followed by the statement on page 94:

*“Housing Strategy 2.e. Use the Land Capacity Analysis to ensure zoned capacity is available for middle housing types in unincorporated urban growth areas where housing growth is anticipated. Specific tools may include **lifting density minimums** or establishing density bonuses when middle housing types are proposed.”*

However, the County appears to have made a conscious decision to limit building height and densities urban centers to less than found in Bremerton. This might be the result of a desire to maintain views, local character as much as possible, *etc.*, and in terms of height constraints upon the ability of firefighting equipment. Explicit and implicit assumptions and constraints on building height (which for multi-family housing affects density) must be thoroughly described in the Comp Plan and note (1) why those assumptions and constraints cannot or should not be removed to encourage more housing in urban centers; and (2) how much additional growth could occur in urban centers or urban like centers such as Silverdale and Kingston if the constraints were relaxed.

For example, the County should conduct an analysis assuming densities within existing urban and urban-like centers to those similar to those allowed by the City of Bremerton. The City for some areas as well as it R-40 zone has a minimum density of 18 DU/Ac extending up to 40 DU/Ac. This analysis would provide input as to how much housing could be put into these areas and counter the perceived need to expand the UGA, until there is a documented need to expand the UGA.

Page 2 of the Draft Comp Plan contains the following Land Acknowledgment:

“Kitsap County is located on 396 square miles of land within the ancestral territory of the suq`abs. “People of Clear Salt Water” (Suquamish Tribe) and the Nux Sklai Yem “the Strong People” (Port Gamble S’Klallam Tribe). The Suquamish people live in harmony with the lands and waterways along Washington’s Central Salish Sea as they have for thousands of years. The Port Gamble S’Klallam people are the descendants of

the Salish people who have been well established in the Puget Sound basin and surrounding areas since 2400 B.C. In Kitsap County, the Suquamish and the Port Gamble S'Klallam people live on and protect the land and waters of their ancestors for future generations as guaranteed by the Point Elliot Treaty of 1855. In addition, the Treaty of Point No Point of 1855 ensures that the Jamestown S'Klallam, Skokomish, and Chimakum People maintain their hunting, fishing, and gathering rights on "usual and accustomed" grounds which include land and waterways within Kitsap County. With a deep historical connection and legacy of respect for the land and natural resources, these Tribal nations enrich Kitsap County through environmental stewardship, cultural heritage, and economic development, as well as collaboration with local governments to shape Kitsap County's future."

The Suquamish Tribe requests that the County strike this land acknowledgement from the entire Comp plan. It is not legally or factually accurate and differs from versions that had been discussed in the past. Any future land acknowledgments must be created in consultation with the Suquamish Indian Tribe to ensure its accuracy and that it does not misstate facts or the treaties.

Specific comments on the Comp Plan are found in the attached Table.

Thank you for the opportunity to comment on this scoping notice. The Tribe looks forward to working with the County to help the County better understand the Tribe's concerns. If you have any questions, please contact me directly at 360-394-8449.

Sincerely,

Roderick Malcom
Biologist
Suquamish Tribe

The Table below contains comments on specific sections of the Comp Plan. Many of these comments, even is not marked as so, apply to other sections of the Draft Comp Plan.

Draft Comp Plan page number	Draft Comprehensive Plan narrative (bold emphasis added)	Comment
11	The Land Use Element’s intent is to direct the majority of growth toward urban areas, provide greater distinction between urban and rural areas, guide land use patterns to allow for the efficient provision of urban services such as sewers and transportation systems, preserve open space, recognize and preserve historical and archaeological resources, and ensure compatibility between adjacent zones.	<p>This summarized intent does not reference protection of critical areas, but integration of growth with critical areas is a key aspect of the GMA. WAC 365-196-485 reads:</p> <p><i>1e Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.</i></p> <p><i>1(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include, but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.</i></p> <p><i>3(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process; however, counties and cities must address the requirements to include the best available science in reviewing designations and developing policies and development regulations to protect the functions and values of critical</i></p>

		<p><i>areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process must take this information into account unless the jurisdiction provides a reasoned, science-based justification for departure.</i></p>
31	Land Use Policy 1.3. Manage and maintain the County’s Official Zoning Map to ensure continued consistency with the Future Land Use Map (see Figure 1.1).	<p>To help with the policy, the County requires an accurate map of lands that already have urban services to focus growth there, when expansion is warranted.</p> <p>Additionally , the Comp Plan and the DEIS put great emphasis on the CAO to protect critical areas, yet the County’s Critical Area Maps are out of date, not regularly updated, and cannot be relied upon to support Environmental Policy 2.4, Environmental Policy 2.b. See comments to page 74 for more details.</p> <p>A Land Use Policy that requires DCD to manage and maintain the CAO maps to ensure they reflect the most recent information is required.</p> <p>Additionally, prior to adopting this Comp Plan, the County should review all existing Special Reports, stream type reports, <i>etc.</i>, and revise the Critical Area Maps as necessary to implement Environment Policy 2.4 which reads (emphasis added):</p> <p><i>“When considering expanding an urban growth area, avoid including lands that contain large amounts of mapped critical areas.”</i></p> <p>Going into the future, this would also reduce surprises for applicants and help ensure County staff are aware of key information when reviewing projects.</p>

		For potential benefits to applicants, see comments to page 61 of the Comp Plan (Economic Development Policy 2.5).
31	Land Use Policy 2.3. Reduce stormwater runoff.	<p>Clarification as to the intent of this policy would be helpful. For example, does reduce stormwater runoff mean reduce the total volume of stormwater runoff generated over the year, reduce peak flow, or something else.</p> <p>Additionally, infiltrating water is mentioned in the context of specific plans, but not in the context of reducing impacts to groundwater recharge on an increasing scales from sub-basin through basin to county wide. This is a key oversight given declining flows in many streams in Kitsap County and the expectation of even greater declines due to climate change.</p>
34	Land Use Goal 7. Historic, archaeological, and cultural resources	<p>Suggesting adding a new Land Use strategy:</p> <p><i>”Conduct early coordination with affected Tribes prior to issuing Notices of Applications or Threshold Determinations, or making an Administrative Decision.”</i></p>
45	Land Use Goal 14. Direct development to UGAs	<p>Suggest adding a new Land Use Goal:</p> <p><i>“Ensure consistency between the assumptions contained in the County’s Land Capacity Analysis, Buildable Lands data, Countywide Planning Policies, Comprehensive Plan, Critical Areas Ordinance, Stormwater Ordinance, and Shoreline Master Program..”</i></p>
47	The County has adopted a Critical Areas Ordinance which protects wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and critical aquifer recharge areas from the impacts of development and people from the consequences of developing in	<p>This wording implies a much stronger belief in the efficacy of the CAO that warranted. Though the Critical Areas Ordinance can reduce the impacts from development to Critical Areas, it cannot prevent alterations to ecological functions and values that existed before development, particularly if there is an intrusion into less disturbed buffers. This</p>

	unsuitable areas.	is because land development, as practiced today, is incompatible with the achievement of sustainable ecosystems. Unless development methods are adopted that cause significantly less disruption of ecological functions and values, the cycle of new development followed by impairment will continue.
47	The County has also adopted an ordinance for its Shoreline Master Program which protects shorelines based on preferred and existing patterns of development	It should be noted and decision makers made aware that buffers under the SMP are typically less than those under the CAO and thus even less protective of the natural environment. The WDFW on page 14 of Riparian Ecosystems, Volume 2: Management Recommendations, highlighting the weakness of many SMP, write“: <i>"To achieve that end, WDFW recommends local jurisdictions designate riparian areas and provide the same levels of protection for them within the SMA jurisdiction areas as they do under GMA</i>
47	access to recreation,	Suggest amending to read “access to nature based passive recreation”, otherwise some may construe this to include sports complexes, game centers, etc.
62	Economic Development Policy 2.5. Promote a balance between economic growth and protection of Kitsap County’s environmental assets and rural character.	It would help, particularly for small business if the County’s publicly accessible CAO database was kept current so people making decisions to site small rural based business are not surprised during an application for a permit to discover Critical Areas that could have influenced earlier decisions.
69	The following GMA planning goal directly addresses the environment: “Protect the environment and enhance the st’te's high quality of life, including air and water quality, and the availability of water.”	The Draft Comp Plan and the current CAO, SMP, Stormwater Ordinance do not achieve the enhance part, but cater to a slow decline. See the Tribe’s comments the DEIS for details. The Growth Management Act requires water quantity policies and regulations as

		<p>part of the 2024 comprehensive plan and development regulations update. These provisions will help protect senior water rights holders (Tribe) and protect streamflows to aid in salmon and steelhead recovery, a requirement under WAC 365-196-485:</p> <p><i>(d) RCW 36.70A.070 (1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and stormwater runoff in the area and in nearby areas, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.</i></p>
70	<p>In 2018, Kitsap County began working with the Washington Environmental Council, Port Gamble S'Klallam Tribe, and Suquamish Tribe to develop the natural asset management program. This new management program defines baseline levels of service or functional conditions of forest cover, streams, and shorelines and aims to develop goals or desired level of service for each asset. The desired levels of service will help guide investments and prioritization of actions to restore and protect natural systems. In addition, County staff continue to explore further implementation of the program into County planning.</p>	<p>The aspirational aspects of this program are counterbalanced by the insufficient protections to streams, riparian areas, wetlands, groundwater offered by County code. In addition, the priorities identified in this program do not necessarily reflect Tribal priorities.</p>
70	<p>Kitsap County works with area Tribes, agencies, and other groups to protect important natural environments prioritized by tribal treaty rights.</p>	<p>The statement “<i>prioritized by tribal treaty rights</i>” is vague and the meaning is unclear. The County should clarify what is meant. See also comments to page 123 and 151.</p>

71	<p>Low Impact Development is a stormwater and land-use management strategy that tries to mimic natural hydrologic conditions using practices such as bio-retention, rain gardens, permeable pavements, minimal excavation foundations, vegetated roofs, and rainwater harvesting.</p>	<p>An analysis is required prior to implementing purported LIDs as many sites are not able to accommodate due to infiltration limitations.</p> <p>Additionally, unless there is an analysis that quantitatively shows the development does not result in a loss of infiltration volume over the water year, then even a project considered to be LID cannot be construed to mimic natural hydrologic conditions and thus is lower impact, not low impact.</p>
71	<p>Best Available Science Under the state Growth Management Act (GMA), local governments are required to use the best available science in their policies and regulations on critical areas. Best available science means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by the Washington Administrative Code.</p>	<p>The explicit and implicit stream buffers in the Comp Plan and associated DEIS have restricted the use of the most current riparian Best Available Science to pollutant removal for type N streams . The BAS for other functions such as wood recruitment, shading, <i>etc.</i>, have been overlooked or excluded</p> <p>See the Tribe’s comments to the DEIS for concerns.</p> <p>The WDFW most recent document¹ on riparian buffers, a document that is considered Best Available Science, states emphatically on page 4 (emphasis added):</p> <p><i>“Restoration of riparian ecosystems is critically important because legacy of environmental impacts resulting from the ways land use has affected riparian areas over the past 200 years. In other words, what remains available for protection is not enough to provide the full functions and values Washington’s fish and wildlife need.”</i></p> <p>It is clear, that in most cases stream buffers that are less than a Site Potential</p>

1 Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

		<p>Tree Height (SPTH which is approximately 200 feet in width throughout most of Kitsap County) are inadequate to protect fish and wildlife.</p>
<p>71</p>	<p>No Net Loss is a standard that ensures new developments do not introduce new impacts that decrease ecological functions. If impacts do occur, projects must mitigate those impacts to demonstrate no net loss.</p>	<p>This is an incorrect reading. The current No Net Loss guidance allows for net loss if that loss is eventually compensated. This means there can be a net loss over a considerable period as indicated on page 10 of Department of Ecology’s “<i>Shoreline No Net Loss and Mitigation Guidance for local governments Shorelands</i>”, dated May 2023, which though written for the SMA is applicable to all developments, states:</p> <p><i>“Rectifying and replacing lost functions can take time, and there will often be lag time between when a mitigation plan is implemented and when all shoreline ecological functions return”</i></p> <p>Additionally, the NNL goal differs from the implied net gain found elsewhere in the Comp Plan such as that found on page 72 (emphasis added):</p> <p>Environment Goal 1. Ecosystems and Habitat</p> <p><i>Protect and enhance the health, resilience, functions, and processes of natural environments and ecosystems, including</i></p>
<p>72</p>	<p>Environment Strategy 1.d. Use the Kitsap Natural Resource Asset Management Program and other planning mechanisms to assess the potential impacts of higher intensity land uses and development in ecologically sensitive and critical areas.</p>	<p>The location of many critical areas and the correct stream type for many streams is unknown. As noted elsewhere, the County must have this information to assess potential impacts. Desktop review is a helpful first step, but does not replace site visits to verify onsite conditions.</p> <p>Additionally, this is where the incorporation of information from the Special Reports prepared for adjacent areas would be helpful in suggesting potential gross errors in regard to the</p>

		location of critical areas.
73	<p>Environment Strategy 1.j. Develop and adopt a salmon and ecosystem recovery plan for Kitsap County that guides funding and implementation of restoration and protection projects and programs using the Kitsap Natural Resource Asset Management Program and salmon and ecosystem recovery plans from Hood Canal Coordinating Council and West Sound Partners for Ecosystem Recovery.</p>	<p>This should be extended to include the habitat assessments the WDFW have done (https://wdfw.wa.gov/sites/default/files/publications/00734/wdfw00734.pdf.) In addition the Comp Plan should mention the shoreline inventory documents as well as completed watershed plans.</p> <p>Additionally, the County should adopt the WDFW riparian guidelines as found in “Riparian Ecosystems, Volume 2: Management Recommendations (Volume 2) (Rentz et al. 2020)”, which are based upon the Best Available Science document, “Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications (Volume 1) (Quinn et al. 2020)”, also prepared by the WDFW.</p>
73	<p>Environment Strategy 1.m. Establish and implement a monitoring and evaluation program to determine the effectiveness of restoration, enhancement, and recovery strategies for ESA-listed and other species of tribal significance.</p>	<p>WAC 197-11-238 SEPA/GMA integration monitoring states (emphasis added)</p> <p><i>“Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment”</i></p> <p>Rather than being aspirational, the County should implement a program to monitor and evaluate the effectiveness of the CAO and SMP, with close attention paid to the number of variances, buffer reductions, buffer averaging, etc. as well as the area (both project specific and by sub-basin) in which they intrude into a critical area or its buffer.</p>

		<p>Additionally, species of tribal significance extend beyond ESA species. However, the extent to which County Code will protect species or their habitats not specifically listed in the CAO is suspect. Page 11 of Hearing Examiners Decision dated 7 February 2024 for “<i>Shirley Wetland Buffer & Setback Reduction Critical Area Variance (CVAR) & Administrative Zoning Variance (ZVAR-Admin)</i>” reads (emphasis added):</p> <p><i>“Animals. Various commentators such as identified that the proposal would adversely affect wildlife at the project site, such as beaver and amphibians. None of the species identified in the comments are protected by the County’s critical areas ordinance so any impacts to them would not be considered significantly adverse.”</i></p>
73	<p>Environment Policy 2.1. Use the best available science in developing policies and development regulations to protect the functions and values of critical areas.</p>	<p>The County has not used Best Available Science to set stream buffers for Type N or) streams, or to include riparian areas as a critical area.</p> <p>See the Tribe’s comments to the DEIS for more details.</p>
73	<p>Environment Policy 2.2. Give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p>	<p>The methods to quantify impacts to ensure effective mitigation is proposed are absent from the Comprehensive Plan, the DEIS, and the CAO. Indeed, the County has no mechanisms in place to (1) cross check the accuracy of stream typing; (2) ensure that mean stream bankfull width and gradient are included in Special Reports to confirm that the efforts to down type streams or type new streams are in compliance with the physical criteria for presumed fish use (WAC 222-16-030 and WAC 222-16-031 and the manuals referenced in those WACs.) .</p>
73	<p>Environment Policy 2.3. Provide development regulations that protect all functions and values of</p>	<p>Unless the County adopts the SPTH as described in Rentz et al. 2020, the County's development regulations will not</p>

	critical areas to ensure no net loss of ecological functions and values.	<i>"protect all functions and values of critical areas to ensure no net loss of ecological functions and values."</i>
74	Environment Policy 2.4. When considering expanding an urban growth area, avoid including lands that contain large amounts of mapped critical areas.	<p>The wording in this sentence is ambiguous and should be clarified. For example, does "<i>large amounts of mapped critical areas</i>" mean areas currently mapped as shown on the County's website, does it include critical areas mapped by experts and contained in Special Reports but not included on the website, etc?</p> <p>Additionally, it should be clarified if large refers to the areal extent of the critical areas, or the number of critical areas, or some combination.</p> <p>Furthermore, unless the County proactively checks for critical areas, given the shortcomings in knowledge about the location critical areas such as wetlands, small streams, <i>etc.</i>, implementing this policy will ignore unmapped areas.</p> <p>Also see comments to page 31, Land Use Policy 1-3.</p>
74	Environment Strategy 2.b. Designate critical areas by using the best maps feasible and performance standards.	<p>Supplementing the existing maps with information contained in the Special Reports submitted to the county as part of the permit process will help locate currently unmapped critical areas as well as redefine the boundaries of existing critical areas. The County must prescribe a timely measure for incorporating such information into the online databases.</p> <p>Also see comments to page 31, Land Use Policy 1-3.</p>
74	Environment Strategy 2.d. Acknowledge the benefits of beavers to natural systems and water availability and explore designating beavers as Species of Local Importance in the Critical	<p>The Tribe supports this. However, the Tribe in its response to the Scope of the EIS for the Comprehensive Plan update also listed black bear, bobcat, cougar, heron rookeries, wood ducks as examples</p>

	Areas Ordinance.	to be included.
74	Environment Goal 3. Natural Resources as an Asset Formally treat natural environments and ecosystems including forest lands, shorelines, freshwater systems, and critical areas as essential assets that are planned for, managed, and invested in to meet the needs of current and future generations.	<p>The asset program is at pretty high level and relies on a set of indicators and so it often lacks accuracy for the stated purpose.</p> <p>Additionally, to meet this Environmental Goal, the location of critical areas need to be accurately known, new or revised locations updated, and a method to quantify the impacts prescribed. Great effort has been devoted by many agencies to determine impacts to wetlands, scant effort has gone into quantifying the impacts to other critical areas such as stream or stream buffers. Quantification must extend between comparison of the square footage of impacted area to square footage of proposed mitigation with a scaler not based on current science.</p>
75	Environment Policy 4.1. Collaborate across County programs and external agencies and organizations that supply data, analysis, and support for managing and restoring natural environments and resources.	The County has a tremendous wealth of site specific data generated by Special Reports. Unfortunately, that information is out of date and hard to access. To meet this Environmental Policy, the County must ensure the information provided in special reports is vetted and then incorporated into the County databases.
76	Environment Strategy 5.a. Explore opportunities for mitigation banks	As noted in the Tribe’s comment letter on the Scope of the EIS, the Tribe has numerous concerns about mitigation banks. The Tribe does not currently support the default use of mitigation banks or in lieu fee programs over onsite and in kind mitigation.
76	Environment Strategy 5.c. Ensure staff are trained on the use of emerging best practices in the area of sustainable land use practices, including green building and site design, and create awareness of these preferred practices through	Staff from the Tribe have participated in numerous site visits with County staff. Discussions during some site visits indicate County staff need additional training on stream typing requirements, how to ensure the narrative in a report downgrading a stream from Type F to N

	<p>the use of pilot programs, model ordinances, education, and incentives, while in balance with other Growth Management Act required elements.</p>	<p>or suggesting a newly discovered stream is a Type N, rather than a Type F complies with the WACs, etc..</p>
<p>95</p>	<p>Housing Strategy 3.b. Pursue tools to improve and streamline permit review processes, including efforts to reduce permitting timelines, bolster staff capacity for permit and application review, and other improvements to processes related to regulatory predictability.</p>	<p>The chronic out of date status of the critical area mapping detracts from the ability to streamline the permit review process. Properties showing no mapped critical areas are purchased and then during the permit process these innocent purchasers discover there are critical areas on the property or adjacent properties (increasing the likelihood of a critical area being on the property), Type F streams are incorrectly mapped as Type N</p> <p>Additionally, poor documentation in Special Reports leads to request for site visits which can take time to put together and sometimes results in a need to alter the proposal. To streamline the permit review process, the County must ensure that Special Reports are accurate, staff are trained to determine if the reports meet State requirements for water typing, etc. See also comments to page 76, Environmental Strategy 5.c.</p> <p>As noted before, the County must routinely update its critical area databased and included an overlay that shows what special reports have been prepared for each parcel to enable consultants to see what other reports might influence their conclusions and suggest additional work be conducted early rather than later when work has gone into project design.</p>
<p>123</p>	<p>Parks Policy 5.3. When implementing the Parks, Recreation, and Open Space Plan, ensure that coordination with Washington State Department of Fish and Wildlife, local Tribes, and other relevant stakeholders</p>	<p>The Tribe is a more than a stakeholder, it is a treaty rights holder.</p> <p>This is one of two direct references in the Comp Plan to protecting treaty reserved natural resources, the other is found on page 150 in the Climate Change Section.</p>

	occurs to ensure protection of treaty reserved natural and cultural resources.	Page 70 includes the wording, “ <i>Kitsap County works with area Tribes, agencies, and other groups to protect important natural environments prioritized by tribal treaty rights</i> ” but the intent is diminished by the word “ <i>prioritize</i> ”.
145	Tree Cover: the biophysical presence of trees including natural forests or plantations existing over a range of densities. Data used for analysis defined tree cover as any vegetation taller than 16.4 feet.	Tree cover should expand to include vegetative cover such as the shrubs as is contemplated by King County (King County Code 21A.60.060 GreenCenter requirements).
150	Acknowledge Tribal treaty rights and culturally important consumptive and non- consumptive resources including foods, medicinal plants, and materials. Climate Change Policy 4.1. Protect, enhance, and restore ecosystems to meet tribal treaty rights and conserve resources and materials that could be adversely impacted by climate change2. Climate Change Strategy 4.a. Implement the Kitsap Natural Resources Asset Management Program to assist in the enhancement, protection, and restoration ecosystem health.	This direct reference to meeting treaty rights is absent from other sections of the Comp Plan except for page 123 Parks Policy 5.3 which reads (emphasis added): <i>“When implementing the Parks, Recreation, and Open Space Plan, ensure that coordination with Washington State Department of Fish and Wildlife, local Tribes, and other relevant stakeholders occurs to ensure protection of treaty reserved natural and cultural resources.”</i> Page 70 includes the wording, “ <i>Kitsap County works with area Tribes, agencies, and other groups to protect important natural environments prioritized by tribal treaty rights</i> ” but the intent is diminished by the word “ <i>prioritize</i> ”. To achieve the goal, the County must ensure that the Tribe is able to review all permit applications before the County issues the public notice. This would be consistent with the following wording found on page 70: “ <i>Kitsap County works with area Tribes, agencies, and other groups to protect important natural environments prioritized by tribal treaty rights.</i> ”
191-195	Silverdale Regional Center	The Planning Area straddles Clear Creek’s lower reaches. Clear Creek in the

2 Add this to NNL comments.

	Planning Area and Boundary	<p>Planning Area is used by fall chinook, coho, fall chum, winter steelhead, and cutthroat. The SOUTHWEST portion of the Planning Area includes Strawberry Creek, used by the same species as Clear Creek, except for chinook. Alternative 3 (extends the Planning Area even further into the headwaters of a tributary to Strawberry Creek.</p> <p>Clear and Strawberry creeks already face many pressures and require additional protection. There should be no future development that could preclude culvert replacements the county is responsible for.</p>
211	Silverdale Regional Center Policy 7.2. Incentivize development that utilizes Low Impact Development (LID) Practices which improve stormwater quality and runoff flow control beyond minimum standards.	<p>Though this comment is listed here because the wording on page 211, it should be taken as a global comment on the County going beyond the minimum requirements.</p> <p>Though the intent to improve water quality and runoff flow control beyond the minimum standards is welcome, in practice the County might not be as welcoming when people argue to go beyond the minimum. During a Kitsap County Hearing Examiner Hearing on Permit #23-00913 & 23-02979 Silver View Apartments SEPA & Administrative Appeal of ACUP (18-0073) County staff were deferential to positions that water quality facilities were built to current requirements (which is the minimum standard), even though those standards did not consider 6PPD-Q and the issue of that compound was raised by the appellant (The issue of 6PPD-Q is also covered in the DEIS for this Comp Plan). Additionally, it is unclear what is meant by improving flow control beyond minimum standards. Current standards set the release rate at that below the channel erosion threshold. The County should indicate what benefits they</p>

		anticipate by going beyond the minimum flow control standards and how doing so will not increase inadvertent impact upon aquatic life such as increasing the duration of flow adverse to them.
212	Silverdale Regional Center Policy 8.5. Enhance Strawberry Creek and riparian corridor by including an expanded riparian area in the vicinity of Linder Field and Silverdale Way, public access or viewing facilities, trails, and paths along key portions of creek, and public access at the confluence of the creek and Dyes Inlet.	Public access, viewing facilities, trails and paths along needs need to be limited to avoid disturbing fish.
229	Any vision for Suquamish must balance the preservation of the rights of Tribal members and of non-Indian property owners to enjoy the reasonable use of their land.	This appears to be the only time reasonable use is used in the Comp Plan. The Treaties were a grant of rights from the Tribe to the United States. Nothing in the Treaties indicates that reasonable use allows for impairment of Treaty Rights.
230	The Suquamish Rural Village shall welcome all social and economic groups. It shall provide a sense of community, and the Tribe and the County shall work cooperatively.	This appears to be the only use in the Comp Plan to welcome all social and economic groups.
238	Gorst Neighborhood Plan	The landscape position makes the estuarine shoreline of the Gorst area important to salmonids, particularly juvenile chinook and chum. Development, including improving transportation infrastructure must consider foreclosure of potential restoration options, such as road widening occupying former intertidal areas or relict pocket estuaries. As juvenile salmonids move offshore as they grow the greater the distance from Gorst Creek, the fewer juveniles salmonids from Gorst will use the mitigation site compared to what would have occurred at the impacted site. The above is something to be considered during the implementation of Gorst Policy

		5.1 (Coordinate with the Cities of Bremerton and Port Orchard, the Port of Bremerton, the Department of Defense, WSDOT and state and federal legislators on developing and executing designs to expand SR3 and SR 16 in the Gorst area) and achieving this would help comply with Gorst Policy 2.2 (Promote shoreline and habitat restoration along Sinclair Inlet).
239	Gorst Creek supports a fish rearing facility managed by the Suquamish Tribe and Washington State Department of Fish and Wildlife.	The WDFW does not managed any of the rearing facility. It is managed by the Suquamish Tribe and the City owns the property, so it is a cooperative effort between the Tribe and City of Bremerton.
243	Gorst Strategy 2.a. Upon annexation, the City shall apply its Shoreline Master Program to Sinclair Inlet and Gorst Creek. In addition, the City shall apply a Gorst Creek Management Zone Overlay recognizing the habitat requirements of listed fish species, the current degraded buffer conditions, and tailored approaches to implement best management practices and incentives for restoration.	The differences between two and resulting levels of protection should be discussed in the FEIS. There should be no buffer reductions for wetlands or streams. See also comment to Gorst Strategy 2.b. Additionally, while some other Neighborhood Plans, such as that for Keyport has goals related to archaeological or cultural structures or places, there is none for Gorst. This is a tremendous oversight as the Gorst areas has a high probability of containing archaeological and cultural sites
243	Gorst Strategy 2.b. Prior to annexation, Kitsap County may consider City marine shoreline buffers and the Gorst Creek Management Zone Overlay as a means to mitigate negative impacts when reviewing site specific land use applications, such as variances.	These should be compared to <i>Rentz et al 2020</i> , and if less than the buffers stated in the WDFW Best Available Science document, the reduction in buffer values and functions should be compared to the document and not to a SMP whose buffers are designed to accommodate use.
244	Gorst Policy 3.1. , with a preference for infiltration to reduce fecal coliform.	The preference for infiltration will also reduce impacts to groundwater recharge.
244	Gorst Policy 3.4. Wherever practicable, require low impact development measures such as	This is a global comment elicited by this policy. The amount of stormwater generated can be reduced by building

	infiltration for new development and redevelopment. Where impractical, stormwater detention may be allowed.	higher buildings to achieve the same housing density, but reducing the ground footprint.
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Streams				
Water Type	Buffer Width	UGA Alternative Buffer Width*	Minimum Building Setback	Other Development Standards
S As defined and regulated in Title 22 (SMP)	See Title 22 (SMP)	NA	See Title 22 (SMP)	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
F	200±50 feet	150 feet	15 feet beyond buffer	
Np	100±50 feet	75 feet	15 feet beyond buffer	
Ns	100±50 feet	75 feet	15 feet beyond buffer	
O Lakes less than 20 acres	100 feet 100 feet	75 feet	15 feet beyond buffer 15 feet beyond buffer	<u>Where lakes have associated wetlands, a wetland delineation and rating may be required in accordance with KCC 19.200. The greater of buffers shall apply.</u>
Wildlife Habitat Conservation Areas				
Class I		Buffer widths and setbacks will be determined through a mandatory habitat management plan (HMP). In the case of bald eagles, a HMP will not be required, but additional state and federal permits and/or timing considerations for construction may be required to ensure compliance with all federal laws, including the federal Bald and Golden Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat.		
Class II		Site-specific conditions will determine the need for the preparation of a HMP.		

1 * See 19.300.315(A)(3) for criteria.

Fig 1. Table 19.300.315 Fish and Wildlife Habitat Conservation Area Development Standard

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from the Critical Areas Ordinance Update 2024

[Return to Comment Matrix](#)

The Kitsap Environmental Coalition Board sends these concerns about the Draft EIS report to you so that you can be aware of what several KEC members have been working on over past 2 months. Attached also are our specific comments, which are also being submitted to Mr. Diener as the Responsible Official. Our comments focus on Alternative 2 since this is the Alternative that is most closely aligned with the direction given to the County through PSRC and Legislative guidance. However, providing for the opportunity to “mix and match” alternatives makes it difficult to assess the impact of what is finally decided on as the “preferred alternative”, without any additional opportunity to comment on those impacts. We have noted specific impacts when possible in our comments, but the “preferred alternative” may require an additional opportunity for comment.

The Draft EIS for Kitsap County’s Comprehensive Plan and the draft plan itself makes it hard to do any analysis of the accuracy of the growth estimates on which it is based. There are estimates of the growth targets for certain areas, based on those adopted by KRCC. But these appear to be aspirational, since the population for Kitsap County has been growing over the past three years at about 1% a year, while the plan estimates increases of almost 3% for certain UGAs. This is unlikely, for a number of reasons, including reduced household size, aging population, and problems with ferry service, and health care, as well as other issues. The Draft plan in that case does not need to accommodate that estimated growth through expanded UGAs and zoning changes. This is an important consideration since throughout the document they propose UGA expansions although they are not necessary to accommodate even those ambitious population estimates, and these result in increased environmental impacts such as allowing building in critical areas. The impacts of these assumptions also carry over in the need for greater investment in mass transit and other non-motorized options although the availability of funding for these investments is far from assured.

The County does not have, or show, a good baseline of the current conditions of the environment. Without a baseline, how do we know how bad conditions will get? Data are available to evaluate water, wastewater, wildlife, tree cover, solid waste, cars, etcetera. Yes, we may not know which square kilometer will be impacted the most and how, but we can say that several positive factors will decline and several negative factors will increase in the County as a whole. Furthermore, citizens are not asking for precision. Assume 10% increase in population and then 20% increase and make estimates for County-wide impacts. If the County will not start the conversation about current and future environmental impacts, they will not be able to measure future declines, or more hopefully, improvements. This needs to be coupled with effective monitoring to measure those changes.

If the goal is truly to protect the environment, the County should strive not just to limit negative impacts but to work to actually improve the environment. The goal should be for Net Ecological Gain, rather than no net loss. The natural environment is dying by a thousand cuts, through the loss of trees, wildlife corridors, farmlands, degradation of parks, and diminished rural areas. This concept of NEG is not discussed in the DEIS but should be included.

In many areas the DEIS and the Comprehensive Plan are too vague on the actions that need to be taken, sometimes relying on plans (e.g. WRIA 15) that have not been adopted or implemented, or are not adequate to mitigate future actions. For example, the Critical Areas Ordinance is called out numerous times as a key mitigation measure, however that ordinance is currently under review. It will only be as effective as the strength of its final requirements. If it has too many opportunities for variances and waivers, this mitigation measure will be weak and useless. Rather than vaguely describing the direction the County plans to take, the EIS and Plan should spell out specifically what the County has to do. In certain cases this will require some hard decisions on what is allowed; to apply the rules and regulations without the use of variances.

Climate change should have a section of its own, perhaps at the front, to call attention both to the impacts of climate change, as well as the actions needed by the County to address them. More detail should be provided on sea level rise, increased storm intensities and health impacts from climate change. For example, although sea levels are expected to rise over a foot in the next 25 years, there are no proposed regulations governing the development of shoreline property.

Neither the draft EIS nor the draft Comprehensive Plan address or evaluate the so-called "Framework" for the Port Gamble Forest Heritage Park as required under GMA, and as the County said would be done. The park plan is a proposed revision to the Comprehensive Plan, so the environmental impacts of the park needs to be included in this EIS. It is insufficient to vaguely say it is incorporated by "reference", especially since significant environmental impacts are neither described nor addressed. The EIS and plan must acknowledge and address the significant issues and weaknesses remaining/imbedded in this proposed park plan. Further, all environmental impacts of the park plan are required to be expressly identified, studied, and analyzed in this EIS. If impacts caused by the park plan will be identified and analyzed under SEPA in the future then it should be clearly stated that the park plan (the "Framework") will not be adopted nor projects in it funded or completed until that happens. If the County does not evaluate all environmental impacts of the park plan in the

Final EIS, then it will be opening itself to potential legal challenges regarding the scope and adequacy of the County's SEPA review.

In conclusion, we hope to someday view an EIS that actually deals with real impacts to the environments of Kitsap County. If X impacts are happening in 2023-2024, predict how X will change. And precisely how finances and actions will differ from the past to accomplish that change. Don't simply state that one alternative is better than another in 4 ways and worse in 7 ways. And that more impacts can be avoided (even though they haven't been avoided in the past). Residents now know the environmental impacts that resulted from the 2016 Comp Plan. Give us a clear vision of the future not a blurry one.

Specific Comments

- 1.2.2 Please provide a link to view the comment letters received during the scoping period.
- 1.2.3.1 Phased review – Please explain this idea of a phased review in more detail. What exactly would be incorporated “by reference” and what would warrant a “narrower” or specific review?
- 1.3 Alternatives – Allowing a mix of Alternatives 2 and 3 can be problematic. You can’t have “your cake and eat it” - pursue both Compact Growth and Dispersed Growth. You should strengthen Alt 2, but not by allowing more dispersal.
- 1.5.3 Water Resources – Water quality and quantity needs to be more fully addressed, including establishing baseline measures for both. Several aspects of water resources were not addressed including impacts on “fish bearing” streams and the impact on small and intermittent streams and wetlands which are currently not regulated at any level (these are not regulated by the ACOE). These are critical habitats for a number of flora and fauna species. This is one area where Alt 3’s wider buffer requirements is preferable to Alt 2.
- 1.5.7 Summary of Impacts¹. – Population, Housing and Employment. As discussed above, the estimated population does not align with actual experienced population, nor is there a good rationale for why that will change, unless the County actually *encourages* growth through incentives. In fact, Alternative 2 actually *exceeds* the population growth targets provided to the County by PSRC. The County’s rationale for this is that it is necessary to meet the distribution of housing, i.e. to create more affordable housing options. But if the need is for a different *mix* of housing, it seems it is possible to do that without expanding the UGAs with associated adverse impacts. Up zoning within the UGA could be done with fewer adverse impacts, and might better meet the objective of denser, more accessible developments for a changing population. The County could also provide incentives by making it easier to develop in these existing urban areas through simplifying and streamlining the permit process, waiving permit costs and consultation fees for such developments, or providing density bonuses. There does not seem to be any need to expand the existing UGAs.
- 1.5-10 Each alternative results in similar levels of transportation impact. In total, the number of vehicle miles traveled (VMT) is expected to increase between 72 and 78 percent during the PM peak hour between now and 2044. (No mention of the chemicals from tires and from vehicle exhaust flowing into natural areas and our

water at levels 78% more than at present.) However PSRC traffic demand modeling assumes VMT reductions based on the RTP model (Cascadia Aug 2022).” Thus, the data show increasing per capita miles driven, but their mathematical model predicts fewer miles driven in the future given unknown assumptions and unknown (optimistic?) effort and financing by the County and State. A good but pessimistic model would likely show increases in VMT due to increases in both people and per capita miles driven. Later in the Transportation Section the LOS for each state roadway is shown to be barely adequate now.

- 1.5-15 If the population is increasing, especially if we want to develop greater density, there will be an even greater need for parks and natural areas. The need for people to have access to nature is well documented, and natural parks are an increasing refuge for the protection of native plants and animals. Therefore an important “mitigation” should include the expansion of natural parks. Funding for this effort might include creation of a parks district. On the other hand, the EIS fails to describe the contamination flowing in terms of water pollution, air pollution, noise, illegal movement of motorized bikes into parks from new adjacent subdivisions.
- 1.5-17 The sections pertaining to Solid Waste in this EIS fail to address the increasing amount of litter on roads and public properties. The simplest prediction is that litter will increase and illegal dumping will increase at the same rate as population growth. Illegal dumping is common in County Parks according to reports by citizens and park stewards. If the garbage dumped includes chemicals or biological waste, they are significant threats to humans, wildlife, and nature. According to the Department of Ecology’s 2022 litter pickup summary, (<https://ecology.wa.gov/Waste-Toxics/Solid-waste-litter/Litter/Litter-pickup>). In the March 13, 2023, issue of the Kitsap Sun, the Department of Ecology reported that 413,697 pounds of trash were collected along state highways in Kitsap County. Litter is increasing in the State. Kitsap led the whole group in the number of "dump sites" — more than even King County. The effort to clean it all up dramatically increased with more than 10,000 hours of work in Kitsap County recorded by paid workers and volunteers. However, only half the miles of road were cleared in 2022 compared to the recent past.
- 1.5-18 The current wastewater treatment facilities fail to stop unpermitted dumping of sewage into the bays and Sound every year. Why does the County believe that the future will be better? If the future is not better, then the statement above about absolutely no adverse impacts is wrong. And they are avoidable with better stormwater systems, but unavoidable under current conditions. We

recommend stronger BMPs for Water Quality improvement as necessary for the future of Kitsap's stream and nearshore health.

- 2.5 1-1 Table states no change to stream buffers for Alt 2 and no tree retention. What is the rationale for these decisions, especially since Alt 3 *does include* tree retention and an expanded stream buffer to 100 feet? Wouldn't this requirement be just as needed for Alt 2? County will consider other changes including "increase SEPA flexible thresholds for residential development in all UGAs." What does this mean? An explanation is needed.
- 2.5 4-1 UGA size changes of alternatives. Over 460 acres increased for Alt 2, although not needed to accommodate population. Why? As discussed earlier, there does not seem to be any need to increase the UGAs. Not only is it unnecessary, but it will result in allowing developments in areas of higher risk with greater environmental impacts.
- 3.1.1.2 Earth Impacts – under Alt 2 an additional 94 acres of high geologic hazard areas would be included in expanded UGAs. However, later it states that that "Reducing UGA expansions in Moderate and High Geologic Hazard areas would reduce the potential number of persons or structures exposed to risk of damage due to geologic hazards." These statements are inconsistent and, as discussed earlier, we don't believe it is necessary to expand UGAs.
- 3.1.2.4 Significant Unavoidable Adverse Impacts They state that "trees can minimize this unavoidable impact", but earlier they stated that there were no proposed tree protections under Alt 2. In talking about Greenhouse Gas (GHG) emissions, they also state that tree loss is responsible for ~15% of the increase. Seems like the County should include tree protections in all the alternatives including Alt 2.
- 3.1.3.1 Water Resources – Affected Environment. There is no discussion of the impact of rising sea levels due to climate change and how this should impact development regulations of shoreline property. It is estimated that sea levels will rise over a foot by 2050. The County has done its own study (Kitsap County Climate Assessment Study 2020) that summarizes the projected effects, yet it does not appear that is impacting how these areas can be developed. East Coast states like Florida and Georgia have required homeowners to implement significant changes to mitigate these effects including raising building heights, but there is no evidence of that happening in Kitsap. This is irresponsible, both to the taxpayer and the property owner.

Silverdale Subarea – As noted in the draft, two-thirds of the area is in a Category I or II CARA. According to data supplied by Silverdale Water District, the level of Island Lake has not reached the outflow from the lake into Barker Creek since February 2021. Since Island Lake is the headwaters to Barker Creek, no water being supplied at the headwaters means reduced water flow downstream which several fish species including salmon and cutthroat trout call home at various times of the year. As climate change continues, one can expect this trend to continue. Development next to Barker Creek and Island Lake will only make this situation worse. In addition, there are wetlands associated with Barker Creek that will suffer from development of the property. The rural area proposed for rezoning are the largest remaining mostly undeveloped tract that contributes to groundwater recharge of the Island Lake Aquifer which supplies drinking water for the residents of Central Valley, Ridgetop, and much of Silverdale. The loss of this vital resource to development will have a severe impact on aquifer recharge and possible contamination of the groundwater. Island Lake itself has been in peril as evidenced by the fact that tens of millions of gallons of water must be pumped into the lake each summer (since 1992) to maintain an acceptable water level.

3.1.3.2 Water Resources – Impacts In February, 2023, Dr. David Onstad studied all 14 watersheds for Kitsap Peninsula plus 1 for Bainbridge Island found on the web site <https://www.epa.gov/waterdata/how-my-waterway> for water quality information (recorded in 2018). The database contains information about inland water bodies (streams and lakes) and coastal sites. Several easy conclusions can be drawn. First, some rivers and streams have not been evaluated. Thus, their conditions are unknown. Second, of the 15 facilities with discharge permits, such as sewage treatment plants (STP) and wastewater treatment plants (WWTP), only 1 had no current violation identified in the database. The Naval facilities are included in this database. Third, all inland waterbodies are either impaired or have unknown quality. Fourth, of the 348 coastal sites along the edges of the Peninsula and Bainbridge Island, 107 are impaired (31%), 34 are rated good (10%), and the rest have unknown quality. The ratio of impaired to good is 3:1. If we omit the unknowns, 76% of tested sites along the coast are impaired. Impaired inland waterbodies include Square Lake in CCHP and Coulter Creek at the SW border of CCHP. Others include Long Lake and Kitsap Lake. Note that possibly the best evaluated watershed is the Big Beef Creek watershed near Seabeck on the western side of the Peninsula. All inland waterbodies for that watershed in the database are impaired except for 2 unknowns.

The Kitsap Public Health District monitors County lakes and streams for bacteria hazardous to humans. In its last two reports (2022-2023), the KPHD reported that the number of streams with high bacteria levels increased 50% from 16 in 2022 to 24 in 2023. For 17 lakes, the KPHD reported that 12-18% of the lakes had too much bacteria. Hazardous level advisories were posted for 21

days in 2022 and 127 days in 2023. The EIS does not explain how the County plans to improve the quality of these lakes and streams. Will the number of impaired coastal sites increase as population increases?

- 3.1.3.3 The Kitsap County Coordinated Water System Plan (CWSP) Regional Supplement 2005 Revision (May 9, 2005) presents an assessment of municipal and industrial water supply needs in Kitsap County and a program to effectively provide water supply and service to customers throughout the area. Exhibit (figure) 9-1 in the CWSP report shows a prediction made in 2004 that estimates water demand out to 2030. An extrapolation of that line out to 2044 has the demand exceeding water rights for all of Group A systems by 2035-2044 depending on assumptions. Furthermore, the predicted demand also approaches the water rights for all systems by the 2040s. Doesn't the County have a newer prediction? Doesn't the prediction depend on assumptions of infiltration in the future and climate change? There should be alternative curves on the chart based on alternative assumptions about the future. KPUD could make this a stochastic model and produce confidence intervals around projections. Also, the draft does not clearly state where the water will be extracted from to supply high-density communities. Are they outside of the County? How will increased groundwater extraction influence surrounding flows of groundwater needed to support streams in the dry season?
- 3.1.4.1 Plants & Animals This review of impacts on plant and animal communities does not address large and small mammals that live specifically in forested habitat, amphibians that live in wetlands and have migration patterns, native plants that are replaced by clearing and grading. In the specific case of amphibians, migration patterns need to be considered and also silt fences that block those pathways need to be discouraged. Vague descriptions of animals without specificity makes the EIS review very weak in this area; it needs more specificity. The EIS needs to add the adverse impact on all wildlife by natural areas' proximity to housing areas, causing more wildlife interactions that can result in animal deaths. Displaced wildlife such as bear and cougar wander into neighboring yards and end up being killed for human safety. This happened with a cougar incident in Kitsap in 2023.

This section also does not mention the bog plants found in at least one bog in North Kitsap – Carpenter Lake Bog. Please add mention of this and other bog/fen environments in the plants and wetland sections of this document. These are important and rare in our region and occur only because of unique surface water conditions that should be taken into account when land is considered for development. In addition, a rare plant, *Hypericum majus*, has been identified at Coulter Creek Heritage Park.

The map from WDFW ranking the condition of freshwater habitat (Exhibit 3.1.4 1-1) shows that Port Gamble ranks as high quality despite the comment that most intact habitats occur in the south county.

Exhibit 3.1.4 1-2 Known Occurrences of rare plants in Kitsap County – this table states that their habitats are wetlands and riparian areas, making these areas even more valuable for protection. Later Exhibit 3.3.4.2-1 Target LOS analysis for natural resource areas – shows a significant deficit that just increases over the planning period.

3.2 Land Use – The Plan needs to protect farmland in Kitsap County. This needs to be added to the land use section. Protection of local farmland helps climate resilience, habitat, and local food production. Protection of farmland is paramount to a healthy community.

3.2.1.3 Kitsap Environmental Coalition supports the recommendation by Washington Department of Fish and Wildlife to use Riparian Management Zones (RMZs) as a replacement for the standard stream buffer widths currently used in the Kitsap County Critical Areas Ordinances.

Riparian Management Zones look at several factors that play a part in the health of these ecosystems. Salmon need cooler water temperatures to thrive and survive and the shade of trees is essential for this function. Woody debris aids in regulating the velocity of the streams and helps trap sediment. Trees and other plants in the zone stabilize the bank and the riparian zone acts as a filter to greatly reduce pollution excess nutrients from fertilizers, pesticides, herbicides or other harmful chemicals from nearby roadway use.

These Riparian Management Zone buffer widths are based upon the height of the dominant trees in the area which in Kitsap County is most likely Douglas fir. The Washington Department of Wildlife has created an online map tool to indicate these heights using data on how tall they would be if 200-years old. In those areas of Washington with few or no trees along a stream bank the buffers would be as low as 100-feet to protect streams from pollution.

For an in depth examination of riparian management zones, please refer to Riparian Ecosystems, Volume 1 as it goes into great detail about these complex systems.

Two other Washington state governments have implemented critical areas ordinances based upon riparian management zones. The City of Anacortes implemented RMZ-based buffers in 2021 while Clark County implemented a hybrid of standard buffer widths and those based upon riparian management zones.

3.2.2.1 Rural Character - The Rural Wooded Zone is becoming less and less in this area. In addition, many rezone requests are also for the conversion of Rural Protection (1 DU/10 Ac) to Rural Residential. This decrease in larger rural lots will have a significant effect on the variety of rural densities. The variety is an important aspect of the rural character in Kitsap County. Otherwise, it seems the county may end up as Rural Residential only. Take measures to protect the large rural lots and the existing character that makes Kitsap the place people love. Rural rezones should be denied, and the County's rural development expectation should be in the single percentage range. A measure to support decreased rural growth would be to remove the Rural Residential Zone. Rural development for single family homes requires the use of an on-site septic (OSS), which usually fail at some point. This environmental impact needs to be addressed and mitigated.

3.2.6.1 Transportation - Affected Environment (pdf 276)

Sound to Olympics STO Trail (pdf 308)

The STO trail presents several issues that must be addressed by this EIS. First, the original STO alignments reviewed for SEPA DNS (for the String of Pearls and Non-Motorized plans) has changed greatly. About 90% of the reviewed alignments in the Poulsbo, Port Gamble, and Kingston area have been abandoned. Therefore, the earlier DNS determinations are inapplicable and a new SEPA evaluation is required.

Second, significant and unmitigatable adverse environmental impacts have been unacknowledged. The most recent example is an alignment through a Natural Area designated in North Kitsap Heritage Park. The construction would destroy important habitat that is an undeveloped, critical, and relatively large wildlife refugia and wildlife corridor adjacent to a large wetland and salmon stream complex. Bear, cougar, deer, bobcat, coyote, and beaver are among known species. No on-site mitigation is possible. There is no equivalent area available off-site anywhere in north Kitsap.

Third, because "significant adverse environmental impact for which mitigation cannot be easily identified" exists, a Determination of Significance must be issued and an EIS process started. Because alignments are connected and one section must begin where another ends, the project must be evaluated in total-- phasing is not appropriate.

3.3 Built Environment Public Services and Utilities – There is no mention of Health Services in this section. The Kitsap County Health Department declared a health emergency in Kitsap due to high health care costs and inadequate access to services. Although overall health services are not a function of County government, the crisis situation in our County's health services heavily impacts public services, including fire services. A health services section needs to be added addressing the impact of higher population with an already strained crisis health system.

3.3.4 Parks & Recreation (pdf 375)

There are unresolved difficulties with the SEPA and GMA status of Heritage Parks.

These parks have "land use policy plans" that bring them under the jurisdiction of the GMA. The plans have various names and purposes, including forestry plans, resource management plans, master plans, Framework, etc. Some have been approved by the Board of Commissioners, others not. None of these plans, separately or collectively, have been addressed within the context of the GMA. It is our understanding that all of these park land use policy plans must be evaluated under the GMA.

The SEPA status of some heritage parks also overlaps with planning of the Sound to Olympic trail (comment §3.2.6.1). Where Parks and Public Works planning and projects overlap geographically, all relevant plans must be evaluated for SEPA in concert.

3.3.4.2 Parks & Recreation - Impacts (pdf 378)

3.3.4.3 Parks & Recreation - Mitigation Measures

Applicable Regulations & Commitments

Kitsap County policy must incorporate current WDFW and Ecology recommendations for the use of Riparian Management Zones and appropriately amend the Critical Areas Ordinance.

Kitsap County must incorporate current Ecology recommendations for wetland buffers, specifically the Critical Areas Code be amended to ensure the integrity of buffers as undisturbed, well vegetated areas.

Other Potential Mitigation Measures

Mitigation for Heritage Parks and other large county areas must include monitoring programs of wildlife and habitat health. Results can be used to modify management plans and projects, thus avoiding and minimizing adverse environmental impacts.

Environmental impacts of the Sound to Olympic trail must be properly addressed and addressed within the context of the PROS Plan and individual park forestry, resource management, master or other plans. (ref. comment on §3.2.6.1)

3.3.4.3 Establish a policy standard to protect and restore wildlife habitat and natural ecological functions. Establish monitoring programs to identify the success of restoration efforts.

3.3.4.4 - Significant Unavoidable Adverse Impacts (pdf 382)

EIS must add additional information.

The Parks, Recreation and Open Space Plan for Heritage Parks specifies protection of wildlife and habitat as important park policies, which provide multiple environmental and quality of life benefits. Wildlife and habitat management is an important and critical aspect for these parks. So-called "unavoidable impacts" can be avoided by proper planning, which includes resource assessments and subsequent landscape classifications prior to

specifying development plans (PROS Plan Appendix 5). These elements must be augmented with monitoring programs of wildlife and habitat health. Results can be used to modify management plans and projects, thus avoiding and minimizing adverse environmental impacts.

3.3.4.23-212 Heritage Parks. Shows that County can meet the LOS for this metric assuming “consideration of concepts within the Port Gamble Heritage Park Framework completed in December 2022”. This is the only clear reference to PGHP. Since that Framework is not correct and needs changes, this reference is both insufficient and inaccurate as noted in the summary comments.

Additional environmental assessment is needed in regards toinal:

1. Identification of legal encumbrances and easements;
2. Identification of all existing physical features (including pipelines, wells, specialized recreation areas, etc.)
3. Identification of potential environmental hazards (water system);
4. Policies for conservation, preservation, and/or restoration of critical natural resources;
5. Lack of resource assessments including wetlands and buffers, streams and riparian management zones, wildlife habitat, and wildlife corridors;
6. Amendments to landscape classifications as necessitated by resource assessments;
7. Trail location procedures and lack of compliance with the Critical Areas Ordinance;
8. Level of usage in terms of carrying capacity;

[Return to Comment Matrix](#)

1 **Chapter 19.100**
2 **INTRODUCTION AND APPROVAL PROCEDURES**

3 Sections:

- 4 [19.100.105 Statement of purpose.](#)
- 5 [19.100.110 Applicability.](#)
- 6 [19.100.115 Relationship to other county regulations.](#)
- 7 [19.100.120 Review authority.](#)
- 8 [19.100.125 Exemptions.](#)
- 9 [19.100.130 Standards for existing development.](#)
- 10 [19.100.135 Variances.](#)
- 11 [19.100.140 Reasonable use exception.](#)
- 12 [19.100.145 Special use review.](#)
- 13 [19.100.150 Appeals.](#)
- 14 [19.100.155 General application requirements.](#)
- 15 [19.100.160 Inventory provisions.](#)
- 16 [19.100.165 Enforcement.](#)
- 17 [19.100.170 List of qualified consultants.](#)

18 **19.100.105 Statement of purpose.**

19 The purpose of the ordinance codified in this title is to identify and protect critical areas as
20 required by the Growth Management Act of 1990 (Chapter 17, Laws of 1990). Critical areas
21 include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas,
22 frequently flooded areas, and critical aquifer recharge areas, as defined in this title. This title
23 supplements the development requirements contained in the various chapters of the Kitsap
24 County zoning ordinance (Title [17](#)) by providing for additional controls and measures to protect
25 critical areas. This title is adopted under the authority of Chapters [36.70](#) and [36.70A](#) RCW and
26 the Kitsap County Code, as now or hereafter amended.

27 A. Goal Statement. It is the goal of Kitsap County that the beneficial functions and values of
28 critical areas be preserved, and potential dangers or public costs associated with the
29 inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent
30 to or directly affecting such areas, for the benefit of present and future generations.

31 B. Policy Goals. To implement the purpose and goal stated above, it is the intent of this title to
32 accomplish the following:

- 33 1. Conserve and protect the environmental factors that add to the quality of life
34 within the federal, state and county regulations that protect critical areas for the
35 benefit of current and future residents of Kitsap County and the state of Washington.

1 2. Protect the public against avoidable losses from maintenance and replacement
2 of public facilities, property damage, costs of publicly subsidizing mitigation of
3 avoidable impacts, and costs for public emergency rescue and relief operations.

4 3. Identify critical areas and their environmental functions and values.

5 4. Protect critical areas and their functions and values by regulating use and
6 management within these areas and adjacent lands while allowing for reasonable
7 use and protection of property rights as provided for in state and federal law.

8 5. Preserve the habitat, water quality, and water quantity functions and values of
9 wetlands.

10 6. Protect water quality by controlling erosion and carefully siting uses and
11 activities that can detrimentally affect stream flows or aquatic habitat quality.

12 7. Guide development proposals to the most environmentally suitable and stable
13 portion of a development site.

14 8. Avoid potential damage due to geological hazards or flooding.

15 9. Preserve natural flood control and storm water storage.

16 10. Maintain groundwater recharge and prevent the contamination of
17 groundwater.

18 ~~11. Prevent cumulative adverse environmental impacts to water, wetlands, fish and~~
19 ~~wildlife habitats, frequently flooded areas, geologically hazardous areas, and aquifer~~
20 ~~recharge areas. Consider the cumulative impacts of the proposed action on~~
21 ~~watershed processes to facilitate the goal of no net loss of critical areas. Such~~
22 ~~impacts shall include those to wildlife, habitat, and migration corridors; water quality~~
23 ~~and quantity; and other geologic or processes that relate to critical area condition or~~
24 ~~functions and values.~~

25 12. Whenever mitigation is required, pursue as a preferred option, restoration and
26 enhancement of previously impacted critical areas and their buffers.

27 ~~13. Encourage applicants to consider the potential impacts of climate change and~~
28 ~~sea level rise, particularly if development is near marine shorelines, adjacent flood~~
29 ~~hazard areas, or low-lying areas.~~

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 4, 2005: Ord. 217 (1998) § 3 (part), 1998)

31 | **19.100.110 Applicability.**

- 1 A. Kitsap County shall not grant any permit, license or other development approval for any
2 development proposal regulated by this title, except for those in compliance with the provisions
3 of this title. This includes permits, licenses or other development approval to alter the
4 conditions of any land, water or vegetation, or to construct or alter any structure or
5 improvement. Failure to comply with the provisions of this title shall be considered a violation
6 and subject to enforcement procedures as provided for in this title.
- 7 B. This title applies to all uses and activities within areas or adjacent to areas designated as
8 regulated critical areas unless identified as exempt in Section [19.100.125](#). The following permits
9 and approvals shall be subject to and coordinate with the requirements of this title: site
10 development activity permit, site plan approval, subdivision or short subdivision, building
11 permit, performance-based development, shoreline substantial development, variance,
12 conditional use permit, certain forest practice permits (Class IV general, Class III conversion
13 option harvest plans), other permits leading to the development or alteration of land, and
14 rezones if not combined with another development permit.
- 15 C. Nonproject actions including, but not limited to, rezones, annexations, and the adoption of
16 plans and programs, shall be subject to critical area review.
- 17 D. This title is an overlay to the zoning ordinance. Activities regulated by the zoning ordinance
18 are also subject to critical areas requirements but do not require an additional county permit.
19 Under limited circumstances, additional state or federal permits may be required.
- 20 E. The development standards and other requirements of this title shall be applied to uses
21 and activities for any permit review or approval process otherwise required by county
22 ordinances.
- 23 F. Uses and activities in critical areas or their buffers for which no permit or approval is
24 required by any other county ordinance remain subject to the development standards and
25 other requirements of this title. While this title does not require a review or approval process
26 for such uses and activities, they remain subject to the title.
- 27 G. For the purpose of this title, the area of review is defined as the critical area and its largest
28 potential buffer or setback. This defines the area of review only. Refer to
29 Chapters [19.200](#) through [19.600](#) for specific development standards.

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 5, 2005: Ord. 217 (1998) § 3 (part), 1998)

31 | **19.100.115 Relationship to other county regulations.**

32 When any provision of any other chapter of the Kitsap County Code conflicts with this title, that
33 which provides the most protection to the critical area, as determined by the department, shall
34 apply.

1 Applications for permits and approvals are subject to the provisions of this title as well as to
2 other provisions of state and county law, which include, but are not limited to the following:

- 3 A. Title [2](#), Government;
- 4 B. Title [9](#), Health, Welfare and Sanitation;
- 5 C. Title [12](#), Storm Water Drainage;
- 6 D. Title [14](#), Buildings and Construction;
- 7 E. Title [15](#), Flood Hazard Areas;
- 8 F. Title [16](#), Land Division and Development;
- 9 G. Title [17](#), Zoning;
- 10 H. Title [18](#), Environment;
- 11 I. Title [21](#), Land Use and Development Procedures;
- 12 J. Title [22](#), Shoreline Master Program;
- 13 K. Chapter [36.70A](#) RCW, Growth Management Act;
- 14 L. Chapter [90.58](#) RCW, Shoreline Management Act;
- 15 M. Chapter [43.21C](#) RCW, State Environmental Policy Act.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 6, 2005: Ord. 217 (1998) § 3 (part), 1998)

17 | **19.100.120 Review authority.**

18 A. In evaluating a request for a development proposal regulated by this title, it shall be the
19 responsibility of the department to determine the following:

- 20 1. The nature and type of critical area and the adequacy of any special reports
21 required in applicable sections of this title;
- 22 2. Whether the development proposal is consistent with this title, by granting,
23 denying or conditioning projects;

- 1 3. Whether proposed alterations to critical areas are appropriate under the
2 standards contained in this title, or whether it is necessary for the applicant to seek a
3 variance or other exception; and
- 4 4. Whether the protection mechanisms and the mitigation and monitoring plans
5 and bonding measures proposed by the applicant are sufficient to protect the public
6 health, safety and welfare consistent with the goals, purposes and objectives of this
7 title, and if not, condition the permit or approval accordingly.
- 8 B. The department shall have the administrative authority to reduce buffers and building
9 setbacks as outlined in specific critical area sections of this title.
- 10 C. Where projects have been approved with conditions to protect critical areas under previous
11 protection policies in effect prior to the ordinance codified in this title, those conditions will
12 apply. Nevertheless, this title shall apply to new applications where the department determines,
13 based on review of current information that the prior conditions will result in a detrimental
14 impact to a critical area.
- 15 D. Time Limitations.
- 16 1. Expiration of Approval.
- 17 a. Approvals granted under this title shall be valid for the same time period as
18 the underlying permit (e.g., preliminary plat, site development, building permit).
19 If the underlying permit does not contain a specified expiration date, then
20 approvals granted under this title shall be in writing and shall be valid for a
21 period of three years from the date of issue, unless a longer period is specified
22 by the department.
- 23 b. The approval shall be considered null and void upon expiration, unless a
24 time extension is requested and granted as set forth in subsection (D)(2) of this
25 section.
- 26 2. Time Extensions.
- 27 a. The applicant or owner(s) may request in writing a one-year extension of
28 the original approval.
- 29 b. Knowledge of the expiration date and initiation of a request for a time
30 extension is the responsibility of the applicant or owner(s).
- 31 c. A written request for a time extension shall be filed with the department at
32 least thirty days prior to the expiration of the approval.

1 d. Upon filing of a written request for a time extension, a copy shall be sent to
2 each party of record together with governmental departments or agencies that
3 were involved in the original approval process. By letter, the department shall
4 request written comments be delivered to the department within fifteen days of
5 the date of the letter.

6 e. Prior to the granting of a time extension, the department may require a new
7 application(s), updated study(ies), and fee(s) if:

8 i. The original intent of the approval is altered or enlarged by the renewal;

9 ii. The circumstances relevant to the review and issuance of the original
10 approval have changed substantially; or

11 iii. The applicant failed to abide by the terms of the original approval.

12 f. The department has the authority to grant or deny any requests for time
13 extensions based upon demonstration by the applicant of good cause for the
14 delay. Time extensions shall be granted in writing and documented in the file.

15 g. If approved, the one-year time extension shall be calculated from the date
16 of granting said approval.

17 E. The department or applicant may request, at the applicant's expense, third party review as
18 described in Section [21.04.140](#).

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 8, 2005: Ord. 217 (1998) § 3 (part), 1998)

20 **19.100.125 Exemptions.**

21 The following activities are exempt from the requirements of this title:

22 ~~A. Emergencies that threaten the public health, safety and welfare. An "emergency" is an~~
23 ~~unanticipated and immediate threat to public health, safety, or the environment that~~
24 ~~requires action within a time too short to allow compliance with this title. Emergency~~
25 ~~alterations or developments provided that:~~

26 1. ~~Emergency construction does not include development of new permanent~~
27 ~~structures where none previously existed. Where new protective structures~~
28 ~~are deemed by the Director to be appropriate means to address the~~
29 ~~emergency situation, upon abatement of the emergency situation the new~~
30 ~~structure shall be removed or any permit which would have been required,~~
31 ~~absent an emergency, shall be obtained;~~

- 1 2. The emergency action shall have the least possible impacts to the critical
2 area and its buffer as is reasonably judged in real time while still adequately
3 addressing the emergency situation;
- 4 3. The person or authorized representative of the agency undertaking such
5 action shall notify the department within ten (10) working days following
6 commencement of the emergency alteration or development. Within thirty
7 (30) days, the department shall determine if the action taken was within the
8 scope of the emergency actions allowed in this Subsection. If the
9 department determines that the action taken, or any part of the action, was
10 beyond the scope of an allowed emergency action, then the enforcement
11 provisions of KCC 19.100.165 shall apply; and
- 12 4. After the emergency, the person or authorized representative of the agency
13 undertaking the action shall conduct necessary restoration and/or
14 mitigation for any impacts to the critical area and buffers resulting from the
15 emergency action in accordance with an approved critical areas report and
16 mitigation plan. The person or authorized representative of the agency
17 undertaking the action shall apply for review, and the alteration, critical
18 areas report, and mitigation plan shall be reviewed by the department in
19 accordance with the review procedures contained herein.

20 B. Preexisting and ongoing agricultural activities on lands containing critical areas, as defined
21 in Section [19.150.285](#).

22 C. Normal and routine maintenance and operation of preexisting retention/detention
23 facilities, biofilters and other storm water management facilities, irrigation and drainage
24 ditches, farm ponds, fish ponds, manure lagoons, and livestock water ponds, provided that
25 such activities shall not involve conversion of any wetland not currently being used for such
26 activity.

27 D. Structural alterations to buildings, otherwise allowed under the Kitsap County Code and
28 that do not alter the structural footprint or introduce new adverse impacts to an adjacent
29 critical area.

30 E. Normal and routine maintenance or repair of existing utility structures within a right-of-way
31 or within existing utility corridor or easements, including the cutting, removal and/or mowing of
32 vegetation above the ground so long as in accordance with best management practices.

33 F. Forest practices conducted pursuant to Chapter [76.09](#) RCW, except Class IV (general
34 conversions) and conversion option harvest plans (COHP).

35 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 7, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.100.130 Standards for existing development.

A. Existing Nonconforming Structures.

1. "Existing nonconforming development" means a development that was lawfully constructed, approved or established prior to the effective date of the ordinance codified in this title, but does not conform to present regulations or standards of this title.

2. Structures in existence on the effective date of the ordinance codified in this title that do not meet the setback or buffer requirements of this title may be remodeled or reconstructed provided that the new construction or related activity does not further intrude into the critical area or its associated buffers.

~~3. New construction or related activity connected with an existing single-family dwelling shall not be considered further intruding into an associated buffer so long as the footprint of the structure lying within the critical area or its buffer is not increased by more than twenty percent and no portion of the new structure is located closer to the critical area than the existing structure; and provided further, that reconstruction or remodeling meets the requirements of Title 15 (Flood Hazard Areas) and shall only be allowed if it does not create or continue a circumstance where personal or property damage is likely due to the nature of the critical area.~~
New construction or related activity connected with an existing single-family dwelling may be considered exempt from additional critical area permitting, provided no such exemption has been previously granted and all the following criteria are met:

a) No portion of the new structure or addition is located closer to the critical area or buffer than the existing structure;

b) Any side(s) of the existing structure within the critical area or buffer may not expand laterally by more than 20% of the existing side in length;

c) Expansion is not feasible to the side opposite the critical area or buffer;

d) Reconstruction or remodeling meets the requirements of Title 15 (Flood Hazard Areas) and does not create or continue a circumstance where personal or property damage is likely due to the nature of the critical area;

e) The expansion does not result in the loss of significant trees; and

f) A Habitat Management Plan or Wetland Report that meets the requirements contained within Chapter 19.700 (Special Reports) is provided to support and mitigate for the expanded footprint.

4. Nonconforming structures which are damaged or destroyed by fire, explosion, or other casualty, may be restored or replaced if the application is made for the necessary permits within one year of the date of the damage or destruction occurred, and the reconstruction is completed within two years of permit issuance or the conclusion of any appeal on the permit. If a home is demolished, the date used

1 to determine when the damage or destruction occurred will be the date of final
2 inspection approval of the demolition permit. The reconstruction or restoration shall
3 not serve to expand, enlarge or increase the nonconformity except as allowed
4 through the provisions of this section.

5 B. Danger Tree Removal in a Critical Area or Buffer. Where a threat to human life or
6 permanent structure is demonstrated, the department may allow removal of danger ~~or hazard~~
7 trees subject to the following criteria:

8 1. The method of tree removal shall be the minimum necessary and not adversely
9 affect riparian ecosystem to the maximum extent practicable ~~is the minimum necessary~~
10 ~~to balance protection of the critical area and its buffer with protection of life and~~
11 ~~property;~~ and

12 2. Damage to remaining trees and vegetation in the riparian protection area shall be
13 avoided and minimized to the maximum extent practicable; and

14 3. (2) If the critical area or its buffer shall be replanted as determined by the department
15 and the property owner. The department shall coordinate review with the property
16 owner and Washington State Department of Fish and Wildlife as determined necessary
17 to assure habitat protection.

18 The department may require the applicant to consult with a professional forester or a certified
19 arborist through a risk assessment report, or by the department through a danger tree site
20 evaluation permit, prior to tree removal. Danger tree abatement can sometimes be achieved by
21 felling the tree or topping the tree. Habitat needs may require leaving the fallen tree or snag in
22 the riparian corridor or maintaining a high stump for wildlife habitat.

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 9, 2005: Ord. 217 (1998) § 3 (part), 1998)

24 **19.100.135 Variances.**

25 A. A variance in the application of the regulations or standards of this title to a particular piece
26 of property may be granted by Kitsap County, when it can be shown that the application meets
27 all of the following criteria:

28 1. Because of special circumstances applicable to the subject property, including
29 size, shape, or topography, the strict application of this title is found to deprive the
30 subject property of rights and privileges enjoyed by other properties in the vicinity;
31 provided, however, the fact that those surrounding properties have been developed
32 under regulations in force prior to the adoption of this ordinance shall not be the
33 sole basis for the granting of a variance.

34 2. The special circumstances referred to in subsection (A)(1) of this section are not
35 the result of the actions of the current or previous owner.

- 1 3. The granting of the variance will not result in substantial detrimental impacts to
2 the critical area, public welfare or injurious to the property or improvements in the
3 vicinity and area in which the property is situated or contrary to the goals, policies
4 and purpose of this title.
- 5 4. The granting of the variance is the minimum necessary to accommodate the
6 permitted use.
- 7 5. No other practicable or reasonable alternative exists. (See Definitions,
8 Chapter [19.150](#).)
- 9 6. A mitigation plan [that meets the requirements of Chapter 19.700](#) (where
10 required) has been submitted and is approved for the proposed use of the critical
11 area.
- 12 B. Kitsap County shall conduct a public hearing on all variance applications pursuant to the
13 review process and notice requirements established in Title [21](#) (Land Use and Development
14 Procedures), as now or hereafter amended.
- 15 C. Except when application of this title would deny all reasonable use of the property
16 (Section [19.100.140](#)), an applicant who seeks an exception from the standards and
17 requirements of this title shall pursue relief by means of a variance as provided for in this title.
- 18 D. Requests for variances shall include the application requirements of
19 Section [19.100.155](#) (General application requirements), or [19.200.215](#) (Wetland review
20 procedures), whichever is applicable.
- 21 E. The department shall review administrative buffer reductions based on the criteria and
22 standards referenced in this chapter.
- 23 F. The department may grant variances for public utilities to the substantive or procedural
24 requirements of this title when:
- 25 1. Application of this title to the utility's activities would be inconsistent with the
26 Comprehensive Plan and the utility's public service obligations;
- 27 2. The proposed utility activity does not pose an unreasonable threat to the public
28 health, safety or welfare on or off the development proposal site; and
- 29 3. Any alterations permitted to these critical areas shall be the minimum necessary
30 to reasonably accommodate the proposed utility activity and mitigate when feasible.

1 G. Where variances to dimensional standards in Chapter [17.420](#) might result in eliminating or
2 reducing the need for a critical area variance, those variances shall be considered and
3 exhausted prior to consideration of a critical area variance.

4 (Ord. 617 (2022) § 5, 2022; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 10, 2005; Ord. 217 (1998) § 3 (part), 1998)

5 | **19.100.140 Reasonable use exception.**

6 If the application of this title would deny all reasonable use of the property, the applicant may
7 apply for a reasonable use exception pursuant to this section:

8 A. The applicant shall apply to the department, and the department shall prepare a
9 recommendation to the hearing examiner. The applicant may apply for a reasonable use
10 exception without first having applied for a variance if the requested exception includes relief
11 from standards for which a variance cannot be granted pursuant to the provisions of the
12 section. The property owner and/or applicant for a reasonable use exception has the burden of
13 proving that the property is deprived of all reasonable uses. The examiner shall review the
14 application and shall conduct a public hearing pursuant to the provisions of Title [21](#) (Land Use
15 and Development Procedures). The examiner shall make a final decision based on the following
16 criteria:

- 17 1. The application of this title would deny all reasonable use of the property;
- 18 2. There is no other reasonable use which would result in less impact on the critical
19 area;
- 20 3. The proposed development does not pose an unreasonable threat to the public
21 health, safety or welfare on or off the development proposal site and is consistent
22 with the general purposes of this title and the public interest, and does not conflict
23 with the Endangered Species Act or other relevant state or federal laws; and
- 24 4. Any alterations permitted to the critical area shall be the minimum necessary to
25 allow for reasonable use of the property.

26 B. Any authorized alterations of a critical area under this section shall be subject to conditions
27 established by the examiner including, but not limited to, mitigation under an approved
28 mitigation plan [that meets the requirements of Chapter 19.700 \(Special Reports\)](#).

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 11, 2005; Ord. 217 (1998) § 3 (part), 1998)

30 | **19.100.145 Special use review.**

31 Special use review is an administrative process unless the underlying permit requires a public
32 hearing. Special use review may be requested for revisions to existing permits, or when review
33 by external authorities would be necessary to assure the department applies reasonable

1 conditions to minimize, rectify, or compensate for impacts to the critical area or buffer. Those
2 external authorities include, but are not limited to federal agencies, state agencies, tribes,
3 public utilities, and Kitsap public health.

4 The department is authorized to take action on permits as required by this title. Development
5 identified as a special use review may be approved, approved with conditions, or denied
6 according to the procedures and criteria outlined in this section.

7 A. The department may approve a permit after review of the application and any required
8 special reports submitted in accordance with this title. The department shall determine
9 whether the use or activity cannot be avoided because no reasonable or practicable alternative
10 exists, the proposed use is consistent with the spirit and intent of this title and it will not cause
11 adverse impacts to the critical area or the buffer which cannot be mitigated. In taking action to
12 approve a special use review, the department may attach reasonable conditions.

13 B. The department shall deny a special use review request when it finds that the proposed
14 use or activity is inconsistent with this title and/or will cause adverse impacts to the critical area
15 or the buffer, which cannot be adequately mitigated and/or avoided.

16 C. Special use review determinations are appealable to the hearing examiner pursuant to
17 Section [19.100.150](#) (Appeals).

18 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

19 **19.100.150 Appeals.**

20 A. Appealable Actions. The following decisions or actions required by this title may be
21 appealed:

22 1. Any decision to approve, condition or deny a development proposal, or any
23 disagreement on conclusions, methodology, rating systems, etc. between the
24 department and such person or firm which prepares special reports pursuant to
25 Chapter [19.700](#) may be appealed by the applicant or affected party to the Kitsap
26 County hearing examiner.

27 2. Any decision to approve, condition or deny a variance application by the
28 department may be appealed by the applicant or affected party to the Kitsap County
29 hearing examiner.

30 3. Any decision to require, or not require a special report pursuant to this title may
31 be appealed by the applicant or affected party to the Kitsap County hearing
32 examiner.

1 B. Appeal Process. The appeals process will be pursuant to procedures in Chapter [21.04](#), or as
2 amended hereafter.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 12, 2005: Ord. 217 (1998) § 3 (part), 1998. Formerly 19.100.145)

4 **19.100.155 General application requirements.**

5 A. All applicants for new development are encouraged to meet with the department prior to
6 submitting an application subject to Title [17](#). Fees for a staff consultation may be applied
7 towards the application fee for the same project. The purpose of this meeting is to discuss
8 Kitsap County's zoning and applicable critical area requirements, to review any conceptual site
9 plans prepared by the applicant and to identify potential impacts and mitigation measures.
10 Such conference shall be for the convenience of the applicant, and any recommendations shall
11 not be binding on the applicant or the county.

12 B. The applicant must comply with the standards and requirements of this title as well as
13 standards relating to Title [12](#) (Storm Water Drainage) set forth by the department, as now or
14 hereafter amended. To expedite the permit review process, the department shall be the lead
15 agency on all work related to critical areas. Development may be prohibited in a proposed
16 development site based on criteria set forth in this title; the applicant should first determine
17 whether this is the case before applying for permits from the department.

18 C. Application for development proposals, reasonable use exception or variances regulated by
19 this title or for review of special reports shall be made with the department by the property
20 owner, lessee, contract purchaser, other person entitled to possession of the property, or by an
21 authorized agent as listed in Chapter [19.700](#) (Special Reports).

22 D. Mitigation Sequencing. An applicant for a development proposal or alteration shall apply
23 the following sequential measures, which appear in order of priority, to avoid impacts to critical
24 areas and critical area buffers. Lower priority measures shall be applied only when higher
25 priority measures are determined to be infeasible or inapplicable:

- 26 1. Avoiding the impact by not taking a certain action;
- 27 2. Minimizing the impact by:
 - 28 a. Limiting the degree or magnitude of the action with appropriate technology; or
 - 29 b. Taking affirmative steps, such as project redesign, relocation or timing;
- 30 3. Rectifying the impact to critical areas by repairing, rehabilitating or restoring the
31 affected environment;
- 32 4. Reducing or eliminating the impact over time by preservation and maintenance
33 operations during the life of the action;
- 34 5. Compensating for the adverse impact by replacing, enhancing, or providing substitute
35 resources or environments; and
- 36 6. Monitoring the impact, hazard or success of required mitigation and taking remedial
37 action.

38

1 ~~E.D.~~ A filing fee in an amount established under Chapter [21.10](#) shall be paid to the
2 department at the time an application for a permit relating to a critical area or a special report
3 review is filed.

4 ~~F.E.~~ Applications for any development proposal subject to this title shall be reviewed by the
5 department for completeness and consistency or inconsistency with this title.

6 ~~G.F.~~ At every stage of the application process, the burden of demonstrating that any
7 proposed development is consistent with this title is upon the applicant.

8 ~~H.G.~~ All applications for development subject to this title shall include a site plan drawn to
9 scale identifying locations of critical areas, location of proposed structures and activities,
10 including clearing and grading and general topographic information as required by the
11 department. If the department determines that additional critical areas are found on the
12 subject property, the applicant shall amend the site plan to identify the location of the critical
13 area. When it is determined that regulated activities subject to the provisions of the State
14 Environmental Policy Act (SEPA) as implemented by Title [18](#) (Environment) are likely to cause a
15 significant, adverse environmental impact to the critical areas identified in this title that cannot
16 be adequately mitigated through compliance with this title, environmental assessment and
17 mitigation measures may be imposed consistent with the procedures established in
18 Title [18](#) (Environment).

19 ~~I.H.~~ Prior to taking action on a zone reclassification or a Comprehensive Plan amendment, the
20 proponent shall complete an environmental review to confirm the nature and extent of any
21 critical areas on or adjacent to the property; determine if the subsequent development
22 proposal would be consistent with this title; and determine whether mitigation or other
23 measures would be necessary if the proposal were approved. Such review shall occur prior to
24 any SEPA threshold determination. Findings of such review may be used to condition or
25 mitigate the impact through the SEPA threshold determination or to deny the proposal if the
26 impacts are significant and cannot be mitigated.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 14, 2005: Ord. 217 (1998) § 3 (part), 1998)

28 | **19.100.160 Inventory provisions.**

29 The approximate location and extent of mapped critical areas within Kitsap County are shown
30 on the maps adopted as part of this title, and incorporated herein by this reference. These
31 maps shall be used only as a general guide for the assistance of the department and the public;
32 the type, extent and boundaries may be determined in the field by a qualified specialist or staff
33 person according to the requirements of this title. In the event of a conflict between a critical
34 area location shown on the county's maps and that of an on-site determination, the on-site
35 determination will apply.

36 Kitsap County will review map inventory information of all critical areas as it becomes available.
37 Mapping will include critical areas that are identified through site specific analysis by local, state

1 and federal agencies, the Kitsap conservation district, tribal governments, citizen groups and
2 other sources.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 15, 2005: Ord. 217 (1998) § 3 (part), 1998)

4 **19.100.165 Enforcement.**

5 A. Authorization. The director is authorized to enforce this title, and to designate county
6 employees as authorized representatives of the department to investigate suspected violations
7 of this title, and to issue orders to correct violations and notices of infraction.

8 B. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this
9 title, or when the director or his/her designee has reasonable cause to believe that a condition
10 exists on property that is contrary to or in violation of this title, an authorized official may
11 investigate and in doing so may enter upon land when consent has been given or as otherwise
12 allowed by law.

13 C. Stop Work Orders. Whenever any work or activity is being done contrary to the provisions
14 of this title the director or his/her designee may order the work stopped by notice in writing,
15 served on any persons engaged in the doing or causing such work to be done, or by posting the
16 property, and any such persons shall forthwith stop such work or activity until authorized by
17 the director or his/her designee to proceed.

18 D. Penalties. The violation of any provision of this title shall constitute a Class I civil infraction.
19 Each violation shall constitute a separate infraction for each and every day or portion thereof
20 during which the violation is committed, continued, or permitted. Infractions shall be processed
21 in accordance with the provisions of Chapter [2.116](#), as now or hereafter amended.

22 E. Imminent and Substantial Dangers. Notwithstanding any provisions of these regulations,
23 the director or his/her designee may take immediate action to prevent an imminent and
24 substantial danger to the public health, welfare, safety or the environment by the violation of
25 any provision of this title.

26 F. Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy,
27 the director or his/her designee may seek legal or equitable relief to enjoin any acts or practices
28 or abate any conditions, which constitute or will constitute a violation of the provisions of this
29 title.

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 16, 2005: Ord. 217 (1998) § 3 (part), 1998)

31 **19.100.170 List of qualified consultants.**

32 As a resource to applicants, the department will maintain a list of arborists, habitat biologists,
33 hydrogeologists, geological engineers, geologists, land surveyors, and wetlands scientists who,
34 at the time of listing, are licensed in the state of Washington and meet the minimum

1 qualifications of Kitsap County Code to prepare certain documents required by this title. The list
2 will contain those consultants who have responded to Kitsap County's call to be listed. Kitsap
3 County makes no representation or guarantee as to the quality of services performed by those
4 listed, and reserves the right to discontinue the list at any time.

5 (Ord. 617 (2022) § 35, 2022)

6

DRAFT

Chapter 19.150
DEFINITIONS

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43 | 19.150.050 Generally.

1 As used in this title, the following terms have the meanings given in this chapter.

2 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

3 | **19.150.100 Adjacent.**

4 “Adjacent,” for the purposes of this title, means within an area containing the critical area in
5 question for the development proposal and its largest potential buffer or setback. This adjacent
6 area is for review purposes only.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

8 | **19.150.105 Agricultural activities.**

9 “Agricultural activities” means the normal actions associated with the production of crops such
10 as plowing, cultivating, minor drainage, and harvesting; and/or raising or keeping of livestock,
11 including operation and maintenance, and repair of farm and stock ponds, drainage ditches,
12 irrigation systems, and normal operation, maintenance, and repair of existing serviceable
13 agricultural structures, facilities, or improved areas. The term “agricultural activities” as used
14 within this title does not include the practice of aquaculture. Forest practices regulated under
15 Chapter [76.09](#) RCW and Title [222](#) WAC are not included in this definition.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

17 | **19.150.110 Alteration.**

18 “Alteration” means a human-induced action that changes the existing condition of a critical area
19 or its buffer. Alterations include but are not limited to: grading; grubbing; dredging;
20 channelizing; cutting, clearing, relocating or removing vegetation, except noxious weeds
21 identified by the Washington State Department of Agriculture or the Kitsap County Cooperative
22 Extension; applying herbicides or pesticides or any hazardous or toxic substance; discharging
23 pollutants; grazing domestic animals; modifying for surface water management purposes; or
24 any other human activity that changes the existing vegetation, hydrology, wildlife or wildlife
25 habitat.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

27 | **19.150.115 Anadromous fish.**

28 “Anadromous fish” means fish whose life cycle includes time spent in both fresh and salt water.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

30 | **19.150.120 Applicant.**

1 “Applicant” means the person, party, firm, corporation or legal entity, or agent thereof that
2 proposes a development of property in Kitsap County.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

4 | **19.150.125 Aquifer.**

5 “Aquifer” means a saturated body of rock, sand, gravel or other geologic material that is
6 capable of storing, transmitting and yielding water to a well.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.130)

8 | **19.150.130 Aquifer recharge.**

9 “Aquifer recharge” means the process by which water is added to an aquifer. It may occur
10 naturally by the percolation (infiltration) of surface water, precipitation, or snowmelt from the
11 ground surface to a depth where the earth materials are saturated with water. The aquifer
12 recharge can be augmented by “artificial” means through the addition of surface water (e.g.,
13 land application of wastewater or storm water) or by the injection of water into the
14 underground environment (e.g., drainfields and drywells).

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.135)

16 | **19.150.135 Aquifer recharge area.**

17 “Aquifer recharge area” means those areas overlying aquifer(s) where natural or artificial
18 sources of water can move downward to an aquifer(s).

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.140)

20 | **19.150.140 Aquifer vulnerability.**

21 “Aquifer vulnerability” means the combined effect of hydrogeological susceptibility to
22 contamination and the contamination loading potential as indicated by the type of activities
23 occurring on a project area.

24 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.145)

25 | **19.150.145 Aquitard.**

26 “Aquitard” means an underground geologic layer that has low permeability.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.147)

28 | **19.150.150 Bank stabilization.**

1 “Bank stabilization” means lake and stream modification including vegetation enhancement,
2 used for the purpose of retarding erosion, protecting channels, and retaining uplands.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

4 | **19.150.155 Best available science.**

5 “Best available science” means scientifically valid information in accordance with WAC [365-195-](#)
6 [900](#), as now or hereafter amended, that is used to develop and implement critical areas policies
7 or regulations.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

9 | **19.150.160 Best management practices (BMPs).**

10 “Best management practices” or “BMPs” means conservation practices (physical, structural
11 and/or managerial) or systems of practices and management measures typical of a particular
12 industry or use that:

13 A. Control soil loss and reduce water quality degradation caused by nutrients, pathogens,
14 bacteria, toxic substances, pesticides, oil and grease, and sediment;

15 B. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and
16 to the chemical, physical, and biological characteristics of critical areas.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

18 | **19.150.165 Bog.**

19 “Bog” means a low-nutrient, acidic wetland with organic soils and characteristic bog plants, as
20 described in Washington State Wetland Rating System for Western Washington: 2014 Update
21 (Washington State Department of Ecology Publication No. 14-06-29, Olympia, WA October
22 2014).

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

24 | **19.150.170 Buffer.**

25 “Buffer” means an area that is intended to protect the functions and values of critical areas.
26 Protecting these functions and values includes the preservation of existing native and
27 nonnative vegetation where it exists, unless otherwise required to be replaced with native
28 vegetation through mitigation or voluntarily enhanced or restored.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

1 | **19.150.175 Buffer, standard.**

2 | “Standard buffer” means the buffer width established by each chapter of this title before any
3 | buffer ~~adjustments~~ modifications are applied.

4 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.172)

5 | **19.150.180 Candidate species (state listed).**

6 | “Candidate species (state listed)” means species under review by the Department of Fish and
7 | Wildlife (WDFW) for possible listing as endangered, threatened or sensitive. A species will be
8 | considered for state-candidate designation if sufficient scientific evidence suggests that its
9 | status may meet criteria defined for endangered, threatened, or sensitive in WAC [220-610-](#)
10 | [110](#) as now or hereafter amended. Currently listed state-threatened or state-sensitive species
11 | may also be designated as a state-candidate species if their status is in question. State-
12 | candidate species will be managed by the Department of Fish and Wildlife, as needed, to
13 | ensure the long-term survival of populations in Washington. They are listed in WDFW, Policy
14 | 5301, or as amended.

15 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.175)

16 | **19.150.185 Channel migration zone (CMZ).**

17 | “Channel migration zone” or “CMZ,” as defined by WAC [173-26-020\(7\)](#), as now or hereafter
18 | amended, means the area along a river or stream within which the channel(s) can be
19 | reasonably predicted to migrate over time as a result of natural and normally occurring
20 | hydrological and related processes when considered with the characteristics of the river or
21 | stream and its surroundings.

22 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.180)

23 | **19.150.190 Clearing.**

24 | “Clearing” means the destruction, disturbance or removal of vegetation by physical, mechanical,
25 | chemical or other means.

26 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.185)

27 | **19.150.195 Compensation.**

28 | “Compensation” means replacement of project-induced critical area (e.g., wetland) losses of
29 | acreage or functions.

30 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.190)

1 | **19.150.200 Creation.**

2 "Creation" means the manipulation of the physical, chemical, or biological characteristics
3 present to develop a wetland on an upland or deepwater site, where a wetland did not
4 previously exist. Activities typically involve excavation of upland soils to elevations that will
5 produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant
6 species.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.195)

8 | **19.150.205 Conversion option harvest plan (COHP).**

9 As it relates to forest practices, a "COHP" means a plan for landowners who want to harvest
10 their land but wish to maintain the option for conversion pursuant to WAC [222-20-050](#).
11 "Conversion" to a use other than commercial timber operation shall mean a bona fide
12 conversion to an active use which is incompatible with timber growing.

13 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.200)

14 | **19.150.210 Critical aquifer recharge areas.**

15 "Critical aquifer recharge areas" means those areas with a critical recharging effect on aquifers
16 used for potable water, including areas where an aquifer that is a source of drinking water is
17 vulnerable to contamination that would affect the potability of the water, or is susceptible to
18 reduced recharge.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

20 | **19.150.215 Critical areas.**

21 "Critical areas" means those areas and ecosystems identified as: (A) wetlands; (B) areas with a
22 critical recharging effect on aquifers; (C) fish and wildlife habitat conservation areas;
23 (D) geologically hazardous areas; and (E) frequently flooded areas.

24 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

25 | **19.150.220 Critical area protection easement.**

26 "Critical area protection easement" means an agreement conveyed through a notice to title, or
27 shown on the face of a plat or site plan, for the purpose of perpetual or long-term conservation.

28 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

29 | **19.150.225 Critical facilities.**

1 “Critical facilities” means those facilities necessary to protect the public health, safety and
2 welfare, including but not limited to schools, hospitals, police stations, fire departments and
3 other emergency response facilities, and nursing homes. Critical facilities also include sites of
4 hazardous material storage or production.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

6 | **19.150.230 Danger trees.**

7 “Danger trees” means any tree of any height, dead or alive, that presents a hazard to the public,
8 public utility, or permanent structure because of rot; root, stem or limb damage; lean; or any
9 other observable condition created by natural process or manmade activity determined by a
10 certified arborist, or by the department through a danger tree site evaluation permit.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

12 | **19.150.235 Debris.**

13 See “Refuse.”

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

15 | **19.150.240 Department.**

16 “Department” means the Kitsap County department of community development.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

18 | **19.150.245 Detention facilities.**

19 “Detention facilities” means storm water facilities, including all the appurtenances associated
20 with their designed functions, maintenance and security that are designed to store runoff while
21 gradually releasing it at a predetermined controlled rate.

22 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

23 | **19.150.250 Development proposal site.**

24 “Development proposal site” means the legal boundaries of the parcel or parcels of land on
25 which an applicant has applied for authority from Kitsap County to carry out a development
26 proposal.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

28 | **19.150.255 Director.**

1 “Director” means the director of the Kitsap County department of community development or a
2 duly authorized designee in the department.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

4 | **19.150.256 Emergency.**

5 An “emergency” is an unanticipated and immediate threat to public health, safety, or the
6 environment that requires action within a time too short to allow immediate compliance with
7 this title.

8 | **19.150.260 Endangered species (state listed).**

9 “Endangered species” means a species native to the state of Washington that is seriously
10 threatened with extinction throughout all or a significant portion of its range within the state.
11 Endangered species are legally designated in WAC [220-610-010](#), as now or hereafter amended.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.265)

13 | **19.150.265 Enhancement.**

14 “Enhancement” means the manipulation of the physical, chemical, or biological characteristics
15 of a wetland to heighten, intensify, or improve specific wetland function(s). Enhancement is
16 undertaken for specified purposes such as water quality improvement, flood water retention,
17 or wildlife habitat. Enhancement results in the gain of selected wetland function(s) but may also
18 lead to a decline in other wetland function(s). Enhancement does not result in a gain in wetland
19 area. Enhancement activities could include planting vegetation, controlling non-native or
20 invasive species, and modifying site elevations to alter hydroperiods in existing wetlands.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.270)

22 | **19.150.270 Erosion.**

23 “Erosion” means the process whereby the land surface is worn away by the action of water,
24 wind, ice or other geologic agents, including processes such as gravitational creep or events
25 such as landslides caused by natural or manmade impacts.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.275)

27 | **19.150.275 Erosion hazard areas.**

28 “Erosion hazard areas” are those areas containing soils which, according to the U.S. Department
29 of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience
30 significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel
31 migration zones. This designation pertains to water erosion and not wind erosion. These areas

1 may not be highly erodible until or unless the soil is disturbed by activities such as clearing or
2 grading.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.280)

4 | **19.150.276 Establishment**

5 “Establishment” means the manipulation of the physical, chemical, or biological characteristics
6 of a site to develop a wetland on an upland where a wetland did not previously exist at an
7 upland site. Establishment results in a gain in wetland area and functions. An example activity
8 could involve excavation of upland soils to elevations that will produce a wetland hydroperiod
9 and hydric soils by intercepting groundwater, and in turn supports the growth of hydrophytic
10 plant species.

11 | **19.150.280 Excavation.**

12 “Excavation” means the mechanical removal of earth material.

13 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.285)

14 | **19.150.285 Existing and ongoing agriculture.**

15 “Existing and ongoing agriculture” means agricultural uses and activities on lands defined in
16 RCW [84.34.020](#)(2) or defined as agricultural activities in this title when undertaken pursuant to
17 agricultural best management practices to minimize impacts to critical areas. Enrollment in a
18 federally recognized conservation program or the Kitsap County open space taxation program
19 as farm and agricultural conservation land (Chapter [18.12](#)) within the past five years will not
20 defeat an activity’s status as “existing and ongoing” agriculture.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.290)

22 | **19.150.290 Exotic.**

23 “Exotic” means any species of plant or animal that is not indigenous (native) to an area.

24 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.295)

25 | **19.150.295 Extraordinary hardship.**

26 “Extraordinary hardship” means where the strict application of this title and/or other programs
27 adopted to implement this title by the regulatory authority would prevent all reasonable use of
28 the parcel.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.300)

1 | **19.150.300 Farm pond.**

2 "Farm pond" means an open-water habitat of less than five acres and not contiguous with a
3 stream, river, lake or marine water created from a nonwetland site in connection with
4 agricultural activities.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.305)

6 | **19.150.305 Fen.**

7 "Fen" means a wetland similar to a bog, dominated by organic soils, low nutrients, and low pH,
8 but receives some water from the surrounding landscape or groundwater, as described in
9 Washington State Wetland Rating System for Western Washington: 2014 Update (Washington
10 State Department of Ecology Publication No. 14-06-029, Olympia, WA October 2014).

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.315)

12 | **19.150.310 Filling or fill.**

13 "Filling" or "fill" means a deposit of earth or other natural or manmade material placed by
14 artificial means, including, but not limited to, soil materials, debris, or dredged sediments.

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.320)

16 | **19.150.315 Fish and wildlife habitat conservation areas.**

17 "Fish and wildlife habitat conservation areas" are those areas that serve a critical role in
18 sustaining needed habitats and species for the functional integrity of the ecosystem, and which,
19 if altered, may reduce the likelihood that the species will persist over the long term. These areas
20 may include, but are not limited to, rare or vulnerable ecological systems, communities, and
21 habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and
22 movement corridors; and areas with high relative population density or species richness. See
23 below "Priority habitat" and "Priority species" for further detail. The county may also designate
24 locally important habitats and species. "Fish and wildlife habitat conservation areas" do not
25 include such artificial features or constructs as irrigation delivery systems, irrigation
26 infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are
27 maintained by a port district or an irrigation district or company, or other entirely artificial
28 watercourses, except where they exist in a natural watercourse that has been altered by
29 humans.

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.325)

31 | **19.150.320 Fisheries biologist.**

1 “Fisheries biologist” means a person with experience and training in fisheries within the past
2 ten years who is able to submit substantially correct reports on fish population surveys, stream
3 surveys and other related data analyses of fisheries resources. “Substantially correct” is
4 interpreted to mean that technical or scientific errors, if any, will be minor and do not delay or
5 affect the site plan review process. Qualifications of a fisheries biologist include:

- 6 A. Certification by the American Fisheries Society; or
- 7 B. A Bachelor of Science degree in fisheries or the biological sciences from an accredited
8 institution and two years of professional fisheries experience; or
- 9 C. Five or more years professional experience as a practicing fisheries biologist with a
10 minimum three years professional field experience.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.330)

12 | **19.150.325 Floodplain.**

13 “Floodplain” means the floodway and associated special flood hazard areas having the potential
14 to flood once every one hundred years, or having a one percent chance of being equaled or
15 exceeded in any given year. The regulatory flood hazard areas, floodplains and floodways are
16 depicted on the Federal Emergency Management Agency (FEMA) flood insurance rate maps
17 (FIRM) for Kitsap County.

18 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.335)

19 | **19.150.330 Floodway.**

20 “Floodway” means the channel of a river or other watercourse and the adjacent land areas that
21 must be reserved in order to discharge the base flood without cumulatively increasing the
22 water surface elevation more than one foot.

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.340)

24 | **19.150.335 Forest practices.**

25 “Forest practices” means, as defined in WAC [222-16-010](#), as now or hereafter amended, any
26 activity conducted on or directly pertaining to forest land that is related to growing, harvesting,
27 or processing timber, or removing forest biomass, including but not limited to:

- 28 A. Activities in and over typed water;
- 29 B. Road and trail construction;
- 30 C. Harvesting, final and intermediate;

- 1 D. Precommercial thinning;
- 2 E. Reforestation;
- 3 F. Fertilization;
- 4 G. Prevention and suppression of diseases and insects;
- 5 H. Salvage of trees; and
- 6 I. Brush control.

7 “Forest practices” shall not include: forest species seed orchard operations and intensive forest
8 nursery operations; or preparatory work such as tree marking, surveying and road flagging; or
9 removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery,
10 mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result
11 in damage to forest soils, timber or public resources.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.350)

13 | **19.150.340 Frequently flooded areas.**

14 “Frequently flooded areas” are lands in the floodplain subject to at least a one percent or
15 greater chance of flooding in any given year, or within areas subject to flooding due to high
16 groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas,
17 wetlands, and areas where high groundwater forms ponds on the ground surface. Generally,
18 floodplains are designated by FEMA on flood insurance rate and boundary maps.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.355)

20 | **19.150.341 Functionally and effectively disconnected.**

21 “Functionally and effectively disconnected” means that the road or other significant
22 development blocks the protective measures provided by a buffer.

23 | **19.150.345 Functions and values.**

24 “Functions and values” are generally those natural processes and benefits performed or
25 provided by critical areas that are required to be protected by the GMA. These include, but are
26 not limited to, improving and maintaining water quality, providing fish and wildlife habitat,
27 supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, water
28 attenuation, historical or archaeological importance, educational opportunities, and recreation.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

1 | **19.150.350 Geologic assessment.**

2 A “geologic assessment” is an umbrella term used for the evaluation completed by a geologist
3 or geotechnical engineer to meet the requirements of Chapter [19.400](#). The geologic assessment
4 may be in the form of a letter, as described in Section [19.400.440](#), a geological report, or
5 geotechnical report (Section [19.150.370](#)).

6 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

7 | **19.150.355 Geologically hazardous areas.**

8 “Geologically hazardous areas” means areas that, because of their susceptibility to erosion,
9 sliding, earthquake, or other geological events, are not suited to siting commercial, residential
10 or industrial development consistent with public health or safety concerns.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.360)

12 | **19.150.360 Geologist.**

13 “Geologist” means a person who is licensed in the state of Washington and meets all experience
14 and training requirements in accordance with Chapter [308-15](#) WAC, as now or hereafter
15 amended.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.365)

17 | **19.150.365 Geotechnical engineer.**

18 “Geotechnical engineer” means a practicing geotechnical/civil engineer licensed as a
19 professional civil engineer with the state of Washington, with professional training and
20 experience in geotechnical engineering, including at least four years’ professional experience in
21 evaluating geologically hazardous areas.

22 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.370)

23 | **19.150.370 Geotechnical report and geological report.**

24 “Geotechnical report” and “geological report” mean a study of potential site development
25 impacts related to retention of natural vegetation, soil characteristics, geology, drainage,
26 groundwater discharge, and engineering recommendations related to slope and structural
27 stability. The geotechnical report shall be prepared by or in conjunction with a licensed
28 geotechnical engineer meeting the minimum qualifications as defined by this title. Geological
29 reports may contain the above information with the exception of engineering
30 recommendations, and may be prepared by a geologist (see Chapter [19.700](#), Special Reports,
31 for minimum qualifications).

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.375)

2 | **19.150.375 Grading (construction).**

3 “Grading” means any excavating, filling, grubbing, recontouring or mechanical removal of earth
4 materials on the surface layer or any combination thereof.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.380)

6 | **19.150.380 Grubbing.**

7 “Grubbing” means the removal of vegetative matter from underground, such as sod, stumps,
8 roots, buried logs, or other debris, and includes the incidental removal of topsoil to a depth not
9 exceeding twelve inches.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.390)

11 | **19.150.385 Groundwater.**

12 “Groundwater” means water that exists beneath the land surface or beneath the bed of any
13 stream, lake or reservoir, or other body of surface water, regardless of the geological formation
14 or structure in which such water stands or flows, percolates or otherwise moves.

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.395)

16 | **19.150.390 Habitat management plan.**

17 “Habitat management plan” means a report prepared by a professional wildlife biologist or
18 fisheries biologist that discusses and evaluates critical fish and wildlife habitat functions and
19 evaluates the measures necessary to maintain, enhance and improve habitat conservation on a
20 proposed development site.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.400)

22 | **19.150.395 Habitats of local importance.**

23 “Habitats of local importance” are designated fish and wildlife habitat conservation areas that
24 are found to be locally important by the county.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.405)

26 | **19.150.400 Hearing examiner.**

27 “Hearing examiner” means a person appointed to hear or review certain land use decisions
28 pursuant to RCW [36.70.970](#) and Chapter [2.10](#).

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.415)

2 | **19.150.411 Hydraulic Project.**

3 “Hydraulic Project” means construction or other work activities conducted in or near state
4 waters that will “use, divert, obstruct, or change the natural flow or bed of any of the salt or
5 fresh waters of the state.”

6 | **19.150.405 Hydric soils.**

7 “Hydric soils” means soils which are wet long enough to periodically produce anaerobic
8 conditions, thereby influencing the growth of hydrophytic plants.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.420)

10 | **19.150.410 Hydrogeologist.**

11 “Hydrogeologist” means a person who is qualified to engage in the practice of hydrogeology,
12 has met the qualifications in hydrogeology established under Chapter [18.220](#) RCW, and has
13 been issued a license in hydrogeology by the Washington State Geologist Licensing Board.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.425)

15 | **19.150.415 Infiltration rate.**

16 “Infiltration rate” means a general description of how quickly or slowly water travels through a
17 particular soil type.

18 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.430)

19 | **19.150.420 Landslide hazard areas.**

20 “Landslide hazard areas” means areas at risk of mass movement due to a combination of
21 geologic, topographic, and hydrologic factors.

22 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.435)

23 | **19.150.425 Liquefaction.**

24 “Liquefaction” means a process in which a water-saturated soil, upon shaking, suddenly loses
25 strength and behaves as a fluid.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.440)

27 | **19.150.430 Low impact activities.**

1 “Low impact activities” means activities that do not require a development permit and/or do not
2 result in any alteration of hydrology or adversely impact the environment.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.450)

4 | **19.150.435 Mitigation.**

5 “Mitigation” means avoiding, minimizing or compensating for adverse critical area impacts.
6 Mitigation includes the following specific categories:

7 A. Avoiding the impact altogether by not taking a certain action or parts of an action;

8 B. Minimizing impacts by limiting the degree or magnitude of the action and its
9 implementation, by using appropriate technology, or by taking affirmative steps to avoid or
10 reduce impacts;

11 C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

12 D. Reducing or eliminating the impact over time by preservation and maintenance operations
13 during the life of the action;

14 E. Compensating for the impact by replacing, enhancing, or providing substitute resources or
15 environments: and/or

16 F. Monitoring the impact and taking appropriate corrective measures.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.455)

18 | **19.150.436 Monitoring.**

19 “Monitoring” means evaluating the impacts of development proposals over time on the
20 biological, hydrological, and geological elements of critical area ecosystem functions and
21 processes, and/or assessing the effectiveness of required mitigation measures through the
22 collection and analysis of data by various methods for the purpose of understanding and
23 documenting changes in natural ecosystems and features compared to baseline or pre-project
24 conditions and/or reference sites. An important objective of monitoring mitigation projects is to
25 verify the impact of the project on the environment predicted in submitted/approved mitigation
26 plans. Monitoring also includes gathering baseline data.

27 | **19.150.440 Native vegetation.**

28 “Native vegetation” means vegetation indigenous to the Puget Sound coastal lowlands.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.470)

1 | **19.150.445 Normal maintenance.**

2 "Normal maintenance" means those usual acts to prevent a decline, lapse or cessation from a
3 lawfully established condition. Normal maintenance includes removing debris from and cutting
4 or manual removal of vegetation in crossing and bridge areas. Normal maintenance does not
5 include:

6 A. Use of fertilizer or pesticide application in wetlands, fish and wildlife habitat conservation
7 areas, or their buffers;

8 B. Redigging ditches in wetlands or their buffers to expand the depth and width beyond the
9 original ditch dimensions;

10 C. Redigging existing drainage ditches in order to drain wetlands on lands not classified as
11 existing and ongoing agriculture under Section [19.100.125](#) (Exemptions).

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.480)

13 | **19.150.450 Ordinary high water mark.**

14 "Ordinary high water mark" means that mark that will be found by examining the bed and
15 banks and ascertaining where the presence and action of waters are so common and usual,
16 and so long continued in all ordinary years, as to mark upon the soil a character distinct from
17 that of the abutting upland, in respect to vegetation as that condition existing on June 1, 1971,
18 as it may naturally change thereafter, or as it may change thereafter in accordance with permits
19 issued by a local government or the department: provided, that in any area where the ordinary
20 high water mark cannot be found, the ordinary high water mark adjoining salt water shall be
21 the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall
22 be the line of mean high water.

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.490)

24 | **19.150.455 Out-of-kind compensation.**

25 "Out-of-kind compensation" means to replace a critical area (e.g., wetland) with a substitute
26 critical area (e.g., wetland) whose characteristics do not closely approximate those destroyed or
27 degraded by an activity. It does not refer to replacement out-of-category such as replacement
28 of wetland loss with new stream segments.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.495)

30 | **19.150.460 Permeability.**

31 "Permeability" means the capacity of an aquifer or confining bed to transmit water.

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.505)

2 | **19.150.465 Practicable alternative.**

3 “Practicable alternative” means an alternative that is available and capable of being carried out
4 after taking into consideration cost, existing technology, and logistics in light of overall project
5 purposes, and having less impacts to critical areas. A practicable alternative may include an
6 area not owned by the applicant for which an easement has been obtained in order to fulfill the
7 basic purpose of the proposed activity.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.520)

9 | **19.150.466 Preservation.**

10 “Preservation” means the removal of a threat to, or preventing the decline of, wetlands by an
11 action in or near those wetlands. This term includes activities commonly associated with the
12 protection and maintenance of wetlands through the implementation of appropriate legal and
13 physical mechanisms such as recording conservation easements and providing structural
14 protection like fences and signs. Preservation does not result in a gain of aquatic resource area
15 or functions but may result in a gain in functions over the long term.

16 | **19.150.470 Priority habitat.**

17 “Priority habitat” means a habitat type with unique or significant value to many species and may
18 be described by a unique vegetation type or dominant plant species, by a successional stage, or
19 specific habitat features of key value to fish and wildlife. Priority habitats are established by the
20 Washington State Department of Fish and Wildlife within their priority habitats and species
21 database. An area identified and mapped as priority habitat has one or more of the following
22 attributes:

- 23 A. Comparatively high fish and wildlife density or species diversity;
- 24 B. Important fish and wildlife breeding habitat, seasonal ranges, or movement corridors;
- 25 C. Limited availability;
- 26 D. High vulnerability to habitat alteration; or
- 27 E. Unique or dependent species.

28 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.525)

29 | **19.150.475 Priority species.**

1 “Priority species” means species requiring protective measures and/or management actions to
2 ensure their persistence at genetically viable population levels. Priority species include state-
3 listed or state-proposed endangered, threatened or sensitive species and candidate and
4 monitored species. Priority species may also include vulnerable aggregations (heron rookeries,
5 seabird concentrations, shellfish beds, etc.), or species of recreational, commercial and/or tribal
6 importance, and are established by the Washington State Department of Fish and Wildlife
7 within their Priority habitats and species database.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.530)

9 | **19.150.480 Public facilities.**

10 “Public facilities” means facilities which are owned, operated or maintained by a public agency.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.535)

12 | **19.150.485 Public project of significant importance.**

13 “Public project of significant importance” means a project funded by a public agency,
14 department or jurisdiction that is found to be in the best interests of the citizens of Kitsap
15 County and is so declared by the Kitsap County board of commissioners in a resolution.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.540)

17 | **19.150.490 Public right-of-way.**

18 “Public right-of-way” means any road, alley, street, avenue, arterial, bridge, highway, or other
19 publicly owned ground or place used or reserved for the free passage of vehicular and/or
20 pedestrian traffic or other services, including utilities.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.545)

22 | **19.150.495 Public utility.**

23 “Public utility” means a business or service, either governmental or having appropriate approval
24 from the state, which is engaged in regularly supplying the public with some commodity or
25 service which is of public consequence and need, such as electricity, gas, sewer and/or
26 wastewater, water, transportation or communications.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.550)

28 | **19.150.500 Ravine.**

29 “Ravine” means a V-shaped landform, generally having little to no floodplain and normally
30 containing steep slopes, which is deeper than ten vertical feet as measured from the centerline

1 of the ravine to the top of the slope. Ravines are typically created by the wearing action of
2 streams.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.555)

4 | **19.150.505 Reasonable.**

5 “Reasonable” means not excessive or extreme; fair.

6 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.559)

7 | **19.150.510 Reasonable alternative.**

8 “Reasonable alternative” means an activity that could feasibly attain or approximate a
9 proposal’s objectives, but at a lower environmental cost or decreased level of environmental
10 degradation.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.560)

12 | **19.150.515 Reasonable use.**

13 “Reasonable use” is a legal concept articulated by federal and state courts in regulatory taking
14 cases. Generally, reasonable use applies to a property that is deprived of all reasonable use
15 when the owner can realize no reasonable return on the property or make any productive use
16 of the property. Reasonable return does not mean a reduction in value of the land, or a lack of
17 a profit on the purchase and sale of the property, but rather, where there can be no beneficial
18 use of the property; and which is attributable to the implementation of the critical areas
19 ordinance.

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.565)

21 | **19.150.520 Reasonable use exception.**

22 “Reasonable use exception” means an exception to the standards of this title that allows for the
23 use of a property that cannot otherwise conform to the requirements set forth in this title,
24 including the variance criteria. (See Section [19.100.140](#) for reasonable use exception
25 procedures.)

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.570)

27 | **19.150.525 Reestablishment.**

28 “Reestablishment” means the manipulation of the physical, chemical or biological
29 characteristics of a site with the goal of returning natural or historical functions to a former
30 wetland. Activities could include removing fill material, plugging ditches, or breaking drain tiles.

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.572)

2 | **19.150.530 Refuse.**

3 “Refuse” means material placed in a critical area or its buffer without permission from any legal
4 authority. Refuse includes, but is not limited to, stumps, wood and other organic debris, as well
5 as tires, automobiles, construction and household refuse. This does not include large woody
6 debris used with an approved enhancement plan.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.575)

8 | **19.150.535 Rehabilitation.**

9 “Rehabilitation” means the manipulation of the physical, chemical or biological characteristics of
10 a site with the goal of repairing natural or historical functions and processes of a degraded
11 wetland. Activities could involve breaching a dike to reconnect wetlands to a floodplain,
12 restoring tidal influence to a wetland, or breaking drain tiles and plugging drainage ditches.
13 Rehabilitation results in a gain in wetland function but does not result in a gain in wetland
14 acres.

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.582)

16 | **19.150.540 Restoration.**

17 “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a
18 site with the goal of returning natural or historic functions to a former or degraded wetland. For
19 the purpose of tracking net gains in wetland acres, restoration is divided into re-establishment
20 and rehabilitation.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.585)

22 | **19.150.545 Retention facilities.**

23 “Retention facilities” means drainage facilities designed to store runoff for gradual release by
24 evaporation, plant transpiration, or infiltration into the soil. Retention facilities shall include all
25 such drainage facilities designed so that none or only a portion of the runoff entering the
26 facility will be eventually discharged as surface water. Retention facilities shall include all
27 appurtenances associated with their designed function, maintenance and security.

28 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.590)

29 | **19.150.550 Riparian area.**

30 “Riparian area” means a vegetated ecosystem along a water body through which energy,
31 materials, and water pass. Riparian areas characteristically have a high water table and are

1 subject to periodic flooding and influence from the adjacent water body. These systems
2 encompass wetlands, uplands, or some combination of these two landforms. They will not in all
3 cases have all the characteristics necessary for them to be also classified as wetlands.

4 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.595)

5 | **19.150.555 Salmonid.**

6 “Salmonid” means a member of the fish family salmonidae. This family includes Chinook, coho,
7 chum, sockeye and pink salmon; rainbow, steelhead, cutthroat, brook, bull trout and brown
8 trout; and Dolly Varden char, kokanee, and whitefish.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.600)

10 | **19.150.560 Seismic hazard areas.**

11 “Seismic hazard areas” are areas subject to severe risk of damage as a result of earthquake-
12 induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or
13 tsunamis.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

15 | **19.150.565 Sensitive species (state listed).**

16 “Sensitive species” means a wildlife species, native to the state of Washington, that is vulnerable
17 or declining and is likely to become endangered or threatened in a significant portion of its
18 range within the state without cooperative management or the removal of threats. Sensitive
19 species are legally designated in WAC-220-200-100 as now or hereafter amended.

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.605)

21 | **19.150.570 Shorelines.**

22 “Shorelines,” as defined by Chapter [90.58](#) RCW, are regulated under Title [22](#), Shoreline Master
23 Program. Those portions of streams where the mean annual flow is twenty cubic feet per
24 second or less, lakes less than twenty acres in size, and wetlands associated with either, are
25 regulated under this title.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.610)

27 | **19.150.571 Significant development.**

28 “Significant development” means existing public or private roads, railroads, and other legally
29 established private developments such as homes or commercial structures; driveways are not
30 significant development.

1 | **19.150.575 Significant tree.**

2 “Significant tree” means any healthy tree that is at least eight inches in diameter at breast
3 height (forty-eight inches). A tree growing with multiple stems shall be considered significant if
4 at least one of the stems, as measured at a point six inches from where the stems digress from
5 the main trunk, is at least four inches in diameter. Any tree that is planted to fulfill
6 requirements of this title shall be considered significant, regardless of size or species.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

8 | **19.150.580 Single-family dwelling.**

9 “Single-family dwelling” (attached or detached) means a building or structure that is designed
10 for occupancy by not more than one family and including accessory structures and
11 improvements.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.615)

13 | **19.150.585 Special flood hazard areas.**

14 “Special flood hazard area” means an area subject to a base or one-hundred-year flood; areas
15 of special flood hazard are shown on a flood hazard boundary map or flood insurance rate map
16 as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, or V.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.620)

18 | **19.150.590 Species of concern.**

19 “Species of concern” means those species that have been classified as endangered, threatened,
20 sensitive, candidate, or monitored by the Washington State Department of Fish and Wildlife.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.625)

22 | **19.150.595 State Environmental Policy Act or SEPA.**

23 “State Environmental Policy Act” or “SEPA” means the state environmental law
24 (Chapter [43.21C](#) RCW) and rules (Chapter [197-11](#) WAC) as implemented by
25 Title [18](#) (Environment).

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.630)

27 | **19.150.600 Streams.**

28 “Streams” mean those areas in Kitsap County where the surface water flows are sufficient to
29 produce a defined channel or bed. A defined channel or bed is an area which demonstrates

1 clear evidence of the passage of water and includes but is not limited to bedrock channels,
2 gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not
3 contain water year-round. This definition is not meant to include irrigation ditches, canals,
4 storm or surface water runoff devices or other artificial watercourses unless they are used by
5 fish or used to convey streams naturally occurring prior to construction.

6 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.635)

7 | **19.150.605 Swale.**

8 “Swale” means a shallow drainage conveyance with relatively gentle side slopes, generally with
9 flow depths less than one foot.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.640)

11 | **19.150.610 Threatened species (state listed).**

12 “Threatened species” means a species, native to the state of Washington that is likely to become
13 endangered in the foreseeable future throughout a significant portion of its range within the
14 state without cooperative management or the removal of threats. Threatened species are
15 legally designated in WAC [220-200-100](#), as now or hereafter amended.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.645)

17 | **19.150.615 Toe of slope.**

18 “Toe of slope” means a distinct topographic break in a slope. Where no distinct break exists, this
19 point shall be the lowermost limits of the landslide hazard area as defined and classified in
20 Chapter [19.400](#).

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.650)

22 | **19.150.620 Top of slope.**

23 “Top of slope” means a distinct topographic break in a slope. Where no distinct break in a slope
24 exists, this point shall be the uppermost limit of the geologically hazardous area as defined and
25 classified in Chapter [19.400](#).

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.655)

27 | **19.150.625 Use or activity.**

28 “Use or activity” means any development proposal that includes or directly affects a critical area
29 or its buffer, or occurs within the area of review, as described in Section [19.100.110\(G\)](#), and is
30 not otherwise exempt under Section [19.100.125](#).

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

2 | **19.150.630 Utilities.**

3 “Utilities” means facilities or structures that produce or carry services consumed by the public,
4 such as electrical power, [solar power](#), gas, sewage, water, communications, oil, or publicly
5 maintained storm water facilities.

6 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.665)

7 | **19.150.635 Utility corridor.**

8 “Utility corridor” means areas set aside for or containing above- or below-ground utilities. A
9 utility corridor is usually contained within and is a portion of any right-of-way or easement.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.670)

11 | **19.150.640 Wellhead protection area.**

12 “Wellhead protection area” means the surface and subsurface area surrounding a well or
13 wellfield that supplies a public water system.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.671)

15 | **19.150.645 Wetland delineation.**

16 “Wetland delineation” means the identification of wetlands and their boundaries pursuant to
17 this title, which shall be done in accordance with the approved federal wetlands delineation
18 manual and applicable regional supplements.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.674)

20 | **19.150.650 Wetland determination.**

21 “Wetland determination” means an on-site determination as to whether a wetland exists on a
22 specific parcel, completed by either a wetland specialist or the department.

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.675)

24 | **19.150.655 Wetland edge.**

25 “Wetland edge” means the line delineating the outer edge of a wetland established in
26 Section [19.200.210](#).

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.680)

1 | **19.150.660 Wetlands.**

2 “Wetlands” means those areas that are inundated or saturated by surface or groundwater at a
3 frequency and duration sufficient to support, and that under normal circumstances do support,
4 a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands
5 generally include, but are not limited to, swamps, marshes, estuaries, bogs, and ponds less than
6 twenty acres, including their submerged aquatic beds and similar areas. Wetlands do not
7 include those artificial wetlands intentionally created from nonwetland sites, including, but not
8 limited to, irrigation and drainage ditches, grass-lined swales, canals, storm water facilities,
9 wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands
10 created after July 1, 1990, that were unintentionally created as a result of the construction of a
11 road, street, or highway. However, wetlands may include those legally established artificial
12 wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

13 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.685)

14 | **19.150.665 Wetlands, mosaic.**

15 “Wetlands, mosaic” or “mosaic wetlands” means an area with a concentration of multiple small
16 wetlands, in which each patch of wetland is less than one acre; on average, patches are less
17 than one hundred feet from each other; and areas delineated as vegetated wetland are more
18 than fifty percent of the total area of the entire mosaic, including uplands and open water.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.695)

20 | **19.150.670 Wetlands of regional significance.**

21 “Wetlands of regional significance” means those wetlands determined by the department, or
22 otherwise determined, to have characteristics of exceptional resource value which should be
23 afforded the highest levels of protection.

24 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.700)

25 | **19.150.675 Wetlands of statewide significance.**

26 “Wetlands of statewide significance” means those wetlands recommended by the Washington
27 State Department of Ecology (DOE) and determined by the department to have characteristics
28 of exceptional resource value which should be afforded the highest levels of protection.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.705)

30 | **19.150.680 Wetlands report.**

31 “Wetlands report” means a wetland delineation report or wetland mitigation plan consistent
32 with applicable provisions of Chapters [19.200](#) (Wetlands) and [19.700](#) (Special Reports).

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.710)

2 | **19.150.685 Wetlands specialist.**

3 “Wetlands specialist” means a person with experience and training in wetland issues who is
4 able to submit substantially correct reports on wetland delineations, classifications, functional
5 assessments and mitigation plans. Substantially correct is interpreted to mean that errors, if
6 any, will be minor and do not delay or affect the site plan review process. Qualifications of a
7 wetlands specialist include:

8 A. Certification as a professional wetland scientist (PWS) or wetland professional in training
9 (WPIT) through the Society of Wetland Scientists;

10 B. A Bachelor of Science degree in the biological sciences from an accredited institution and
11 two years of professional field experience; or

12 C. Five or more years professional experience as a practicing wetlands biologist with a
13 minimum three years professional experience delineating wetlands.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.715)

15 | **19.150.690 Wildlife biologist.**

16 “Wildlife biologist” means a person with experience and training within the last ten years in the
17 principles of wildlife management and with practical knowledge in the habits, distribution and
18 environmental management of wildlife. Qualifications include:

19 A. Certification as professional wildlife biologist through the Wildlife Society; or

20 B. Bachelor of Science or Bachelor of Arts degree in wildlife management, wildlife biology,
21 ecology, zoology, or a related field from an accredited institution and two years of professional
22 field experience; or

23 C. Five or more years of experience as a practicing wildlife biologist with a minimum of three
24 years of practical field experience.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.720)

26

Chapter 19.200

WETLANDS

Sections:

[19.200.205 Purpose and objectives.](#)

[19.200.210 Wetland identification and functional rating.](#)

[19.200.215 Wetland review procedures.](#)

[19.200.220 Wetland buffer requirements.](#)

[19.200.225 Additional development standards for certain uses.](#)

[19.200.230 Wetland mitigation requirements.](#)

[19.200.235 Incentives for wetland mitigation.](#)

19.200.205 Purpose and objectives.

This chapter applies to all uses within or adjacent to areas designated as wetlands, as defined in Section [19.150.660](#), except those identified as exempt in Section [19.100.125](#). The intent of this chapter is to:

- A. Achieve no net loss and increase the quality, function and values of wetland acreage within Kitsap County by maintaining and enhancing, when required, the biological and physical functions and values of wetlands with respect to water quality maintenance, stormwater and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, and education;
- B. Protect the public's health, safety and welfare, while preventing public expenditures that could arise from improper wetland uses and activities;
- C. Plan wetland uses and activities in a manner that allows property owners to benefit from wetland property ownership wherever allowable under the conditions of this title;
- D. Prevent turbidity and pollution of wetlands and fish or shellfish bearing waters; and
- E. Maintain the wildlife habitat.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 18, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.200.210 Wetland identification and functional rating.

A. General.

1. All wetland delineations shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement. All areas within the county meeting the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this title.

1 2. Identification of hydric soils per National Resources Conservation Service (NRCS)
2 soils survey mapping are also considered potential wetlands and subject to review
3 and request for wetland determination and delineation.

4 ~~2.3. All wetlands shall be categorized Kitsap County uses using the most recent~~
5 Washington Department of Ecology Washington State Wetland Rating System for
6 Western Washington, revised 2014 or as hereafter amended, ~~to categorize wetlands~~
7 ~~for the purposes of establishing wetland buffer widths, wetland uses and~~
8 ~~replacement ratios for wetlands.~~ Wetlands shall be generally categorized as provided
9 in this section, designated as follows. (See Chapter 19.800, Appendix A, for more
10 detailed description.)

11 B. Wetlands.

12 1. Category I Wetlands. Category I wetlands include, but are not limited to, wetlands
13 that represent rare or unique wetland types, those that are more sensitive to
14 disturbance than most wetlands, those that are relatively undisturbed and contain
15 ecological attributes that are impossible to replace within a human lifetime, or those
16 that provide a high level of function. ~~Category I wetlands score twenty-three points~~
17 ~~or more out of twenty-seven on the wetlands ratings system.~~

18 2. Category II Wetlands. Category II wetlands are those wetlands that are more
19 difficult to replace and provide high levels of some functions. ~~Category II wetlands~~
20 ~~score between twenty and twenty-two points out of twenty-seven on the wetlands~~
21 ~~ratings system.~~

22 3. Category III Wetlands. Category III wetlands are those wetlands with a moderate
23 level of function and can often be adequately replaced with mitigation. ~~Category III~~
24 ~~wetlands score between sixteen and nineteen points on the wetlands ratings system.~~

25 ◀ 4. Category IV Wetlands. Category IV wetlands have the lowest level of function and
26 are often heavily disturbed. ~~Category IV wetlands score less than sixteen points out~~
27 ~~of twenty-seven on the wetlands ratings system.~~

28 C. Exemptions for Small Wetlands. Category III wetlands that are less than one thousand
29 square feet and Category IV wetlands that are less than **four thousand square feet** are exempt
30 from the buffer provisions in this chapter when the following are met:

- 31 1. They are isolated wetlands and not part of a wetland mosaic;
- 32 2. They are not associated with riparian areas or their buffers;
- 33 3. They are not associated with shorelines of the state or their associated buffers;

1 4. They do not contain a Class I fish and wildlife habitat conservation area,
2 identified by the Washington Department of Fish and Wildlife;

3 5. They do not contain federally listed species or their critical habitat; ~~and~~

4 6. They do not score 6 or more points for habitat function based on the
5 Washington State Wetland Rating System for Western Washington;

6 ~~7.6.~~ A wetland report is prepared that identifies the specific wetland function
7 affected or at risk, and provides mitigation to replace the affected or lost wetland
8 function, on a per function basis; ~~;~~ ~~and~~

9 8. The fifteen-foot building and impervious surface setback in 19.200.220.F also
10 applies to exempt wetlands.

11 (Ord. 598 (2021) § 5, 2021; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 376 (2007) § 4, 2007; Ord. 351 (2005) § 19, 2005)

12 **19.200.215 Wetland review procedures.**

13 A. Application Requirements. Except as otherwise provided herein, all applications for
14 development within a wetland or its largest potential buffer width shall include the following
15 special reports at the time of application. This shall not prohibit the department from
16 requesting reports or other information.

17 1. Wetland delineation report (Section [19.700.710](#)).

18 2. Wetland mitigation report (Section [19.700.715](#)).

19 B. Delineation of Wetland Boundaries.

20 1. Wetland delineations shall use the most recent edition of the federal wetland
21 delineation manual and applicable regional supplement consistent with wetland
22 delineation resources listed by the Washington State Department of Ecology.

23 ~~2.4.~~ The applicant shall be responsible for hiring a qualified wetlands specialist to
24 determine the wetland boundaries by means of a wetland delineation. This specialist
25 shall stake or flag the wetland boundary. When required by the department, the
26 applicant shall hire a professional land surveyor licensed by the state of Washington
27 to survey the wetland boundary line. The wetland boundary and wetland buffer
28 established by this chapter shall be identified on all grading, landscaping, site, on-site
29 septic system designs, utility or other development plans submitted in support of the
30 project.

1 ~~3.2.~~ If resources allow, the department may perform a delineation of a wetland
2 boundary on parcels where no more than one single-family dwelling unit is allowed.

3 ~~4.3.~~ Where the applicant has provided a delineation of a wetland boundary, the
4 department may verify the wetland boundary at the cost of the applicant and may
5 require that a wetland specialist make adjustments to the boundary.

6 C. Wetland Review Process for Single-family Dwellings.

7 1. Expedited Approval. Applicants proposing a single-family dwelling may receive
8 expedited approval by the department if they choose to adopt the largest buffer
9 width from the appropriate wetland category. Expedited approval removes the
10 requirements of the wetland certification process for single-family dwellings
11 (subsection (C)(2) of this section); provided, that the wetland delineation and/or
12 wetland rating is not disputed. Administrative buffer reductions or variances will not
13 apply. Expedited approval is not the same as expedited review, which is sometimes
14 available for additional fees.

15 2. Wetland Certification Process for Single-Family Dwellings (No Encroachment into
16 a Wetland or Its Standard Buffer).

17 a. Prior to issuance of a building permit, site development permit, or on-site
18 sewage system permit, the applicant may submit a single-family wetland
19 certification form completed by a wetland specialist that certifies either:

20 i. No wetlands are present within ~~three hundred two hundred fifty~~ feet of
21 the project area; or

22 ii. Wetlands are present within ~~three hundred two hundred fifty~~ feet of
23 the project area, but all regulated activities associated with the dwelling
24 (e.g., landscaped areas, septic facilities, outbuildings, etc.) will occur outside
25 of the standard buffer of the identified wetland.

26 b. If wetland buffers extend onto the site, the wetland specialist shall place
27 permanent, clearly visible, wetland buffer signs at the edge of the buffer. A
28 wetland buffer sign affidavit, signed by the wetland specialist, shall be
29 submitted to the department as verification that the wetland buffer signs have
30 been placed on the subject site.

31 c. The wetland certification shall include a site plan provided by the wetland
32 specialist that includes wetland location, buffer, and structure setback. The
33 certification shall also include current wetland rating forms.

1 ~~d.e.~~ A survey will not be required with a single-family wetland certification
2 form.

3 ~~e.d.~~ The single-family certification form may be used only to authorize single-
4 family dwellings and associated home-site features such as driveways, gardens,
5 fences, wells, lawns, and on-site septic systems. It may not be used for new
6 agricultural activities, expansion of existing agricultural activities, forest practice
7 activities, commercial projects, land divisions, buffer width modifications, or
8 violations.

9 ~~f.e.~~ The single-family certification process will be monitored by the
10 department for accuracy, and enforcement actions will be initiated should
11 encroachment into a wetland or buffer occur.

12 ~~g.f.~~ The applicant/property owner assumes responsibility for any and all errors
13 of the single-family certification form, as well as responsibility for all associated
14 mitigation required by the department.

15 ~~h.g.~~ Single-family certification forms shall be filed with the Kitsap County
16 auditor's office.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 20, 2005)

18 **19.200.220 Wetland buffer requirements.**

19 A. Determining Standard Buffer Widths. The following buffer widths are based on three
20 factors: the wetland category, the intensity of the impacts, and the functions or special
21 characteristics of the wetland that need to be protected as established through the rating
22 system. These factors must be determined by a qualified wetland professional using the most
23 recent Washington State Wetland Rating System for Western Washington, revised 2014 or as
24 hereafter amended: 2014 Update (Ecology Publication No. 14-06-029, or as revised and
25 approved by the Washington State Department of Ecology). If a wetland meets more than one
26 of the characteristics listed in Tables 19.200.220(B) through (E), the greater of the buffers
27 recommended to protect the wetland is applied. Buffers shall be measured horizontally from a
28 perpendicular line established at the wetland edge based on the buffer width identified using
29 the tables below.

30

Table 19.200.220(A)
Land Use Impact “Intensity” Based on Development Types

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
High	Commercial, urban, industrial, institutional, retail sales, residential subdivisions with more than 1 unit/acre, new agriculture (high-intensity processing such as dairies, nurseries and greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), new transportation corridors, high-intensity recreation (golf courses, ball fields), hobby farms
Moderate	Single-family residential lots, residential subdivisions with 1 unit/acre or less, moderate-intensity open space (parks), new agriculture (moderate-intensity such as orchards and hay fields), transportation enhancement projects
Low	Forestry, open space (low-intensity such as passive recreation and natural resources preservation, minor transportation improvements)

1

Table 19.200.220(B)
Width of Buffers for Category IV Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Score for all 3 basic functions is less than 16 points	Low – 25 feet Moderate – 40 feet High – 50 feet	None

2

Table 19.200.220(C)
Width of Buffers for Category III Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (6 – 7 points)*	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Score for habitat 3 – 5 points	Low – 40 feet Moderate – 60 feet High – 80 feet	None

3

*If wetland scores 8 – 9 habitat points, use Table 19.200.220(D) for Category II buffers.

Table 19.200.220(D)
Width of Buffers for Category II Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
High level of function for habitat (score 8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas
Moderate level of function for habitat (6 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff
Estuarine	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Interdunal	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Not meeting above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

TABLE 19.200.220(E)
Width of Buffers for Category I Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Wetlands of high conservation value	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries No septic systems within 300 feet of wetland Restore degraded parts of buffer
Bogs	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
Forested	Buffer width to be based on score for habitat functions or water quality functions	If forested wetland scores high for habitat (8 – 9 points), need to maintain connections to other habitat areas Restore degraded parts of buffer
Estuarine	Low – 100 feet Moderate – 150 feet High – 200 feet	None
Wetlands in coastal lagoons	Low – 100 feet Moderate – 150 feet High – 200 feet	None
High level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Interdunal wetland with high level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (6 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	None
Not meeting any of the above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

1 ~~B.—Modification of Buffer Widths. The following modifications to buffer widths may be~~
2 ~~considered provided the applicant first demonstrates that reductions or alterations to the~~
3 ~~required wetland buffer cannot be avoided, minimized or mitigated (in that order):~~

4 ~~1.—Buffer Averaging. Standard buffer widths may be modified by the department for~~
5 ~~a development proposal first by averaging buffer widths, but only where the~~
6 ~~applicant can demonstrate that such averaging can clearly provide as great or~~
7 ~~greater functions and values as would be provided under the standard buffer. The~~
8 ~~following standards shall apply to buffer averaging:~~

9 ~~a.—The decrease in buffer width is minimized by limiting the degree or~~
10 ~~magnitude of the regulated activity.~~

11 ~~b.—For wetlands and/or required buffers associated with documented habitat~~
12 ~~for endangered, threatened, or sensitive fish or wildlife species, a habitat~~
13 ~~assessment report has been submitted that demonstrates that the buffer~~
14 ~~modification will not result in an adverse impact to the species of study.~~

15 ~~c.—Width averaging will not adversely impact the wetland.~~

16 ~~d.—The total buffer area after averaging is no less than the total buffer area~~
17 ~~prior to averaging.~~

18 ~~e.—For Category III and IV wetlands with habitat scores less than five points for~~
19 ~~habitat function based on the Washington State Wetland Rating System for~~
20 ~~Western Washington: 2014 update, as amended, the minimum buffer width at~~
21 ~~any point will not be less than fifty percent of the widths established after the~~
22 ~~categorization is done and any buffer adjustments applied in accordance with~~
23 ~~this chapter.~~

24 ~~f.—For all other wetlands, the minimum buffer width at any point will not be~~
25 ~~less than seventy-five percent of the widths established after the categorization~~
26 ~~is done and any buffer adjustments applied in accordance with this chapter.~~

27 ~~g.—If significant trees are identified, such that their drip line extends beyond~~
28 ~~the reduced buffer edge, the following tree protection requirements must be~~
29 ~~followed:~~

30 ~~i.—A tree protection area shall be designed to protect each tree or tree~~
31 ~~stand during site development and construction. Tree protection areas~~
32 ~~may vary widely in shape, but must extend a minimum of five feet beyond~~
33 ~~the existing tree canopy area along the outer edge of the dripline of the~~
34 ~~tree(s), unless otherwise approved by the department.~~

1 ~~ii.—Tree protection areas shall be added and clearly labeled on all~~
2 ~~applicable site development and construction drawings submitted to the~~
3 ~~department.~~

4 ~~iii.—Temporary construction fencing at least thirty inches tall shall be~~
5 ~~erected around the perimeter of the tree protection areas prior to the~~
6 ~~initiation of any clearing or grading. The fencing shall be posted with~~
7 ~~signage clearly identifying the tree protection area. The fencing shall~~
8 ~~remain in place through site development and construction.~~

9 ~~iv.—No clearing, grading, filling or other development activities shall occur~~
10 ~~within the tree protection area, except where approved in advance by the~~
11 ~~department and shown on the approved plans for the proposal.~~

12 ~~v.—No vehicles, construction materials, fuel, or other materials shall be~~
13 ~~placed in tree protection areas. Movement of any vehicles within tree~~
14 ~~protection areas shall be prohibited.~~

15 ~~vi.—No nails, rope, cable, signs, or fencing shall be attached to any tree~~
16 ~~proposed for retention in the tree protection area.~~

17 ~~vii.—The department may approve the use of alternate tree protection~~
18 ~~techniques if an equal or greater level of protection will be provided.~~

19 ~~2.—Administrative Buffer Reductions. Standard buffer widths may be modified by~~
20 ~~the department for a development proposal by reducing buffers, but only where~~
21 ~~buffer averaging is not feasible and the applicant can demonstrate that such is the~~
22 ~~minimum necessary to accommodate the permitted use and that the reduction can~~
23 ~~clearly provide as great or greater functions and values as would be provided under~~
24 ~~the standard buffer requirement. This may be accomplished through enhancement~~
25 ~~of a degraded buffer. The following standards shall apply to buffer reductions:~~

26 ~~a.—The department may administratively reduce the buffer pursuant to the~~
27 ~~variance criteria listed in Section 19.100.135. Applicants may propose to utilize~~
28 ~~provisions contained in Section 19.200.230.~~

29 ~~b.—For proposed single-family dwellings, the department may administratively~~
30 ~~reduce a buffer by up to twenty-five percent of the area required under the~~
31 ~~standard buffer requirement, but not less than thirty feet.~~

32 ~~c.—For all other proposed uses, the department may administratively reduce~~
33 ~~the buffer by up to twenty-five percent of the area required under the standard~~
34 ~~buffer requirement, but not less than forty feet.~~

1 ~~d.—To minimize impacts and provide equivalent functions and values as~~
2 ~~required by this section, applicants may propose:~~

3 ~~i.—Enhancement of existing degraded buffer area and replanting of the~~
4 ~~disturbed buffer area;~~

5 ~~ii.—The use of alternative on-site wastewater systems in order to minimize~~
6 ~~site clearing;~~

7 ~~iii.—Infiltration of stormwater where soils permit; and~~

8 ~~iv.—Retention of existing native vegetation on other portions of the site in~~
9 ~~order to offset habitat loss from buffer reduction;~~

10 ~~v.—To utilize provisions contained in Section 19.200.230.~~

11 B. Increased or Enhanced Wetland Buffer Width.

- 12 1. The buffer widths in Tables 19.200.220(B) through (E) assume that the buffer is
13 vegetated with a native plant community appropriate for the ecoregion.

14 In addition to the buffer widths based on the criteria in Tables 19.200.220(B) through (E),
15 the department may increase buffer widths or require enhanced buffer vegetation on a
16 case-by-case basis when necessary and in consultation with the Washington
17 Department of Fish and Wildlife and affected Tribes(s) as applicable:

- 18 a. To protect wetland functions and values to meet the 'no net loss' objective of
19 this chapter;
20 b. When the wetland or buffer area is located within a landslide or erosion
21 hazard area; or
22 c. When the standard buffer has minimum vegetation cover or is vegetated
23 with non-native or invasive species that do not perform needed functions.

- 24
25 2. If any of the scenarios in subsection 1 apply, the buffer width may be increased to the
26 next highest buffer width for the identified wetland category in the buffer tables in
27 19.200.220(A), unless a wetland report demonstrates an alternative buffer width meets
28 the 'no net loss' objective.

29
30 For example, a Category III wetland with a moderate level of function for habitat,
31 adjacent to a single-family residential use (moderate land use) would have a standard
32 buffer of 110-feet. If determined a greater width is necessary, the increased buffer width
33 would be 150-feet. If the land use intensity is already rated as high, then the next largest
34 buffer width for the higher wetland category will apply.

- 1 3. When required, buffer enhancement is preferred to increasing the buffer width.
2 Enhancement of the buffer through native planting or invasive species removal shall be
3 demonstrated infeasible or ineffective prior to buffer width increases.

4 **C. Provisions for Decreasing Buffer.**

- 5 1. Consistent with this section, the department may reduce the standard buffer width by
6 up to twenty-five percent (to a width of no less than 30-feet for a single-family residence
7 and 40-feet for all other uses) in a Type I decision under Chapter 21.04. Reductions
8 greater than twenty-five percent but less than or equal to fifty percent for single-family
9 dwellings will be a Type II decision and require notification (see chapter 19.800,
10 Appendix F). Buffer reductions for single-family residences greater than fifty percent,
11 and reductions greater than twenty-five percent for all other uses shall be pursuant to a
12 variance under Section 19.100.135. In all cases, mitigation sequencing shall be
13 demonstrated per Chapter 19.100.155.D. When applicable, the order of sequence for
14 buffer reductions shall be as follows:

- 15
16 a. Use of buffer averaging under KCC 19.200.220.C, maintaining one hundred
17 percent of the buffer area under the standard buffer requirement;
18 b. Type I administrative critical area buffer reduction;
19 c. Type II administrative critical area buffer reduction;
20 d. Type III quasi-judicial critical area variance.

- 21
22 2. When proposing buffer averaging, the following shall be met;

- 23
24 a. The applicant submits a Wetland Mitigation Plan that meets the
25 requirements as described in Chapter 19.700 (Special Reports), including
26 demonstration of mitigation sequencing as described in 19.100.155.D and
27 that such averaging can clearly provide as great or greater functions and
28 values as would be provided under the standard buffer, and that the
29 decrease in buffer width is minimized by limiting the degree or magnitude of
30 the regulated activity;
31 b. The conditions are sufficient to assure 'no net loss' of ecological functions of
32 the wetland;
33 c. The total buffer area after averaging is no less than the total buffer area prior
34 to averaging;
35 d. The minimum buffer width at any point will not be less than 75% of the
36 standard buffer width for a Category I and II wetland, 50-feet for a Category
37 III wetland, and 25-feet for a Category IV wetland, whichever is greater; and
38 e. For Category III and IV wetlands with habitat scores five points or less for
39 habitat function, the minimum buffer width at any point will not be less than
40 50% of the standard buffer width for the category of wetland.

- 41
42 3. When proposing a Type I or Type II administrative buffer reduction, the following shall
43 be met:

- 1 a. The applicant demonstrates that the criteria in Section 19.100.135.A are met,
2 and buffer averaging under KCC 19.200.220.C is not feasible;
3 b. The applicant submits a wetland mitigation plan that meets the
4 requirements as described in Chapter 19.700 (Special Reports), including a
5 demonstration of mitigation sequencing as described in 19.100.155.D; and
6 c. The conditions are sufficient to assure no net loss of ecological functions of
7 the affected wetland.
8
9 4. Protection of significant trees. In all cases of wetland buffer reduction or averaging,
10 significant trees within the buffer shall be identified as part of the Wetland Mitigation
11 Plan. Any such tree that has a drip line extending beyond the reduced buffer edge shall
12 follow the tree protection requirements below:
13
14 a. A tree protection area shall be designed to protect each tree or tree stand
15 during site development and construction. Tree protection areas may vary
16 widely in shape, but must extend a minimum of five feet beyond the existing
17 tree canopy area along the outer edge of the dripline of the tree(s), unless
18 otherwise approved by the department;
19 b. Tree protection areas shall be added and clearly labeled on all applicable site
20 development and construction drawings submitted to the department;
21 c. Temporary construction fencing at least thirty inches tall shall be erected
22 around the perimeter of the tree protection areas prior to the initiation of
23 any clearing or grading. The fencing shall be posted with signage clearly
24 identifying the tree protection area. The fencing shall remain in place
25 through site development and construction;
26 d. No clearing, grading, filling or other development activities shall occur within
27 the tree protection area, except where approved in advance by the
28 department and shown on the approved plans for the proposal;
29 e. No vehicles, construction materials, fuel, or other materials shall be placed in
30 tree protection areas. Movement of any vehicles within tree protection areas
31 shall be prohibited;
32 f. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed
33 for retention in the tree protection area; and
34 g. The department may approve the use of alternate tree protection techniques
35 if an equal or greater level of protection will be provided.
36
37 5. Functionally Disconnected Buffer Area. Buffer areas that are functionally disconnected
38 from a wetland by significant development may be excluded from buffer requirements
39 as provided herein. Significant development for purposes of this subsection means
40 existing public or private roads, railroads, and other legally established private
41 developments such as homes or commercial structures; driveways are not significant
42 development. The Director shall determine if a buffer area is functionally disconnected
43 and whether the disconnect affects all or a portion of the buffer. Where only a portion
44 of the buffer area is affected, the buffer exclusion shall be limited in scope to that
45 affected area.

1 To establish that a buffer is functionally disconnected, the applicant must provide a
2 Wetland Report, meeting the requirements of chapter 19.700 (Special Reports),
3 confirming the existence of a distinct break in connectivity of the buffer, that there are
4 no other hydraulic connections across the significant development (e.g., culvert), and
5 that the disconnect blocks the protective measures provided by the buffer. Where a
6 buffer area has been determined to be functionally disconnected, whether in whole or
7 in part, that area may be excluded from the buffer with the following conditions:

- 8 a. All other applicable provisions of this chapter shall be met, including
9 demonstration of no net loss of applicable functions; and
10 b. All Significant Trees within the wetland buffer shall be identified and
11 retained.

12
13 6. e. Alternatives to reducing standard buffer width. The buffer widths recommended for
14 proposed land uses with high-intensity impacts to wetlands can be administratively
15 reduced to those recommended for moderate-intensity impacts under the following
16 conditions:

17 a.i. For wetlands that score moderate or high for habitat (six five points or
18 more for habitat functions), the width of the buffer can be reduced if both of the
19 following criteria are provided met:

20 i. (A) A corridor. The corridor must be relatively undisturbed, and
21 vegetated corridor at least one hundred feet wide, is protected between
22 the wetland and any other priority habitats as defined by the Washington
23 Department of Fish and Wildlife. The corridor must be protected for the
24 entire distance between the wetland and the priority habitat by some type
25 of legal protection such as a conservation easement. It must be legally
26 protected, such as through a conservation easement, and connect the
27 wetland to any of the following:

28 (A) A legally protected, relatively undisturbed and vegetated area
29 (such as priority habitats as defined by the Washington
30 Department of Fish and Wildlife, compensatory mitigation sites,
31 wildlife areas/refuges, parks with management plans that identify
32 with identified areas designated as natural, natural forest, or
33 natural area preserve);

34 (B) An area that is the site of a Watershed Project identified within,
35 and fully consistent with, a Watershed Plan as defined by RCW
36 89.08.460;

37 (C) An area where development is prohibited according to the
38 provisions of the shoreline master program; or

(D) An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with Washington Department of Fish and Wildlife.

ii. (B) Minimization Measures. Measures to minimize the impacts of different land uses on wetlands, ~~such as the examples~~ summarized in Table 19.200.220(F). Though not every measure is required, all applicable and practicable measures shall be implemented.

b. ii. For wetlands that score less than six five points for habitat, the buffer width can be reduced to that required for moderate land use impacts by applying measures to minimize the impacts of the proposed land uses, ~~such as the examples~~ summarized in Table 19.200.220(F). Though not every measure is required, all applicable and practicable measures shall be implemented.

**Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands**

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Stormwater runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping • Commercial 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Residential areas 	<ul style="list-style-type: none"> • Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract

Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Dust	• Tilled fields	• Use best management practices to control dust

1

2

3

Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands

Examples of disturbance	Activities and uses that cause disturbances	Examples of measures to minimize impacts
<u>Lights</u>	<ul style="list-style-type: none"> • <u>Parking lots</u> • <u>Commercial/Industrial</u> • <u>Residential</u> • <u>Recreation (e.g., athletic fields)</u> • <u>Agricultural buildings</u> 	<ul style="list-style-type: none"> • <u>Direct lights away from wetland</u> • <u>Only use lighting where necessary for public safety and keep lights off when not needed</u> • <u>Use motion-activated lights</u> • <u>Use full cut-off filters to cover light bulbs and direct light only where needed</u> • <u>Limit use of blue-white colored lights in favor of red-amber hues</u> • <u>Use lower-intensity LED lighting</u> • <u>Dim light to the lowest acceptable intensity</u>
<u>Noise</u>	<ul style="list-style-type: none"> • <u>Commercial</u> • <u>Industrial</u> • <u>Recreation (e.g., athletic fields, bleachers, etc.)</u> • <u>Residential</u> • <u>Agriculture</u> 	<ul style="list-style-type: none"> • <u>Locate activity that generates noise away from wetland</u> • <u>Construct a fence to reduce noise impacts on adjacent wetland and buffer</u> • <u>Plant a strip of dense shrub vegetation adjacent to wetland buffer</u>
<u>Toxic runoff</u>	<ul style="list-style-type: none"> • <u>Parking lots</u> • <u>Roads</u> • <u>Commercial/Industrial</u> • <u>Residential areas</u> • <u>Application of pesticides</u> • <u>Landscaping</u> • <u>Agriculture</u> 	<ul style="list-style-type: none"> • <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u> • <u>Establish covenants limiting use of pesticides within 150 ft. of wetland</u> • <u>Apply integrated pest management (These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)</u>

<u>Stormwater runoff</u>	<ul style="list-style-type: none"> • <u>Parking lots</u> • <u>Roads</u> • <u>Residential areas</u> • <u>Commercial/industrial</u> • <u>Recreation</u> • <u>Landscaping/lawns</u> • <u>Other impermeable surfaces, compacted soil, etc.</u> 	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized or sheet flow from lawns that directly enters the buffer</u> • <u>Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Residential areas</u> • <u>Recreation</u> 	<ul style="list-style-type: none"> • <u>Use privacy fencing</u> • <u>Plant dense native vegetation to delineate buffer edge and to discourage disturbance</u> • <u>Place wetland and its buffer in a separate tract</u> • <u>Place signs around the wetland buffer every 50-200 ft., and for subdivisions place signs at the back of each residential lot</u> • <u>When platting new subdivisions, locate greenbelts, stormwater facilities, and other lower-intensity uses adjacent to wetland buffers</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Tilled fields</u> • <u>Roads</u> 	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>

1

2 7.3. Variance. In cases where proposed development cannot meet the buffer
3 averaging or the administrative buffer reduction criteria described in this section, a
4 Type III quasi-judicial variance shall be required as described in Section 19.100.135.
5 ~~Applicants may propose to utilize provisions contained in Section 19.200.230.~~

6 ~~D.C. Fencing and Signs.~~ Protection of Buffers. The buffer shall be identified on a site plan and
7 on site as required by the department and this chapter. Refuse shall not be placed in buffers.

8 1. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as
9 required by the department, between the area where the construction activity occurs
10 and the buffer. Fences shall be made of a durable protective barrier and shall be
11 highly visible. Silt fences and plastic construction fences may be used to prevent
12 encroachment on wetlands or their buffers by construction. Temporary fencing shall
13 be removed after the site work has been completed and the site is fully stabilized per
14 county approval.

1 2. The department may require that permanent signs and/or fencing be placed on
2 the common boundary between a wetland buffer and the adjacent land of the
3 project site. Such signs will identify the wetland buffer. The department may approve
4 an alternate method of wetland and buffer identification, if it provides adequate
5 protection to the wetland and buffer.

6 ~~D. Protection of Buffers. The buffer shall be identified on a site plan and on site as required by~~
7 ~~the department and this chapter. Refuse shall not be placed in buffers.~~

8 E. Building or Impervious Surface Setback Lines. A building or impervious surface setback line
9 of fifteen feet is required from the edge of any wetland buffer, including exempt wetlands in
10 19.200.210.C. Minor structural or impervious surface intrusions into the areas of the setback
11 may be permitted if the department determines that such intrusions will not adversely impact
12 the wetland. The setback shall be identified on a site plan.

13 (Ord. 598 (2021) § 6, 2021; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 21, 2005)

14 **19.200.225 Additional development standards for certain uses.**

15 In addition to meeting the development standards of this chapter, those uses identified below
16 shall also comply with the standards of this section and other applicable state, federal and local
17 laws.

18 A. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber
19 harvesting and associated development activity, such as construction of roads, shall comply
20 with the provisions of this title, including the maintenance of buffers around wetlands.

21 B. Agricultural Restrictions. In all development proposals that would introduce or expand
22 agricultural activities, a net loss of functions and values to wetlands shall be avoided. Wetlands
23 shall be avoided by at least one of the following methods:

24 1. Locate fencing no closer than the outer buffer edge; or

25 2. Implement a farm resource conservation and management plan agreed upon by
26 the conservation district and the applicant to protect and enhance the functions and
27 values of the wetland.

28 C. Road/Street Repair and Construction. Any private or public road or street repair,
29 maintenance, expansion or construction may be allowed within a critical area or its buffer only
30 when all of the following are met:

31 1. No other reasonable or practicable alternative exists and the road or street
32 serves multiple properties whenever possible;

1 2. For publicly owned or maintained roads or streets, other purposes, such as utility
2 crossings, pedestrian or bicycle easements, viewing points, etc., shall be allowed
3 whenever possible;

4 3. The road or street repair and construction are the minimum necessary to
5 provide safe roads and streets; and

6 4. Mitigation shall be performed in accordance with specific project mitigation plan
7 requirements. Applicants may propose to utilize provisions contained in
8 Section [19.200.230](#).

9 **D. Land Divisions and Land Use Permits.** All proposed divisions of land and land uses
10 (including but not limited to the following: short plats, large lot subdivisions, performance-
11 based developments, conditional use permits, site plan reviews, binding site plans) which
12 include regulated wetlands, shall comply with the following procedures and development
13 standards:

14 1. The area of a wetland and its buffers may be included in the calculation of
15 minimum lot area for proposed lots, except for the area with permanent open water.

16 2. Land division approvals shall be conditioned to require that wetlands and
17 wetland buffers be dedicated as open space tracts, or an easement or covenant
18 encumbering the wetland and wetland buffer. Such dedication, easement or
19 covenant shall be recorded together with the land division and represented on the
20 final plat, short plat or binding site plan, and title.

21 3. In order to implement the goals and policies of this title, to accommodate
22 innovation, creativity, and design flexibility, and to achieve a level of environmental
23 protection that would not be possible by typical lot-by-lot development, the use of
24 the clustered development or similar innovative site planning is strongly encouraged
25 for projects with regulated wetlands on the site.

26 4. After preliminary approval and prior to final land division approval, the
27 department may require the common boundary between a regulated wetland or
28 associated buffer and the adjacent land be identified using permanent signs and/or
29 fencing. In lieu of signs and/or fencing, alternative methods of wetland and buffer
30 identification may be approved when such methods are determined by the
31 department to provide adequate protection to the wetland and buffer.

32 **E. Surface Water Management.** Surface water discharges from stormwater facilities or
33 structures may be allowed in wetlands and their buffers when they are in accordance with
34 Title [12](#) (Stormwater Drainage) subject to the provisions of Section [19.100.145](#), Special use
35 review, and this subsection. The discharge shall neither significantly increase nor decrease the
36 rate of flow or hydroperiod, nor decrease the water quality of the wetland. Pretreatment of

1 surface water discharge through biofiltration or other best management practices (BMPs) shall
2 be required.

3 1. 2. Projects in the vicinity of bog wetlands shall be subject to additional stormwater
4 requirements to avoid altering hydrologic inputs to these acidic wetlands that are
5 highly sensitive to disturbance. The following regulations apply to bog wetlands, in
6 addition to all other applicable requirements of this chapter:

7 a. Stormwater facilities must be placed outside the bog wetland buffer
8 whenever feasible;

10 b. Stormwater facilities inside a bog wetland buffer are limited to the outer
11 25 percent of the buffer and must not create a single-point discharge;

13 c. Stormwater inputs must not alter wetland hydrology or pH;

15 d. Any mitigation monitoring of a bog system must include review of
16 stormwater facilities and monitoring for pH and retention/health of bog plant
17 species.

18 F. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related
19 facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland
20 buffers pursuant to the following standards:

21 1. Trails and related facilities shall, to the extent feasible, be placed on existing road
22 grades, utility corridors, or any other previously disturbed areas.

23 2. Trails and related facilities shall be planned to minimize removal of trees, soil
24 disturbance and existing hydrological characteristics, shrubs, snags and important
25 wildlife habitat.

26 3. Viewing platforms, interpretive centers, benches, picnic areas, and access to
27 them, shall be designed and located to minimize disturbance of wildlife habitat
28 and/or critical characteristics of the affected wetland. Platforms shall be limited to
29 one hundred square feet in size, unless demonstrated through a wetland mitigation
30 plan that a larger structure will not result in a net loss of wetland functions.

31 4. Trails and related facilities shall generally be located outside required buffers.
32 Where trails are permitted within buffers they shall be located in the outer twenty-
33 five percent of the buffer, except where wetland crossings or for direct access to
34 viewing areas have been approved by the department.

35 5. Trails shall generally be limited to pedestrian use unless other more intensive
36 uses, such as bike or horse trails, have been specifically allowed and mitigation has

1 been provided. Trail width shall not exceed five feet unless there is a demonstrated
2 need, subject to review and approval by the department. Trails shall be constructed
3 with pervious materials except where determined infeasible.

4 6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap
5 County Non-Motorized Facility Plan (and associated recognized community trails),
6 and as amended, and provided design considerations are made to minimize impacts
7 to critical areas and buffers, shall not be subject to the platform, trail width, or trail
8 material limitations above. Such trails and facilities shall be approved through special
9 use review (Section [19.100.145](#)), unless any underlying permit requires a public
10 hearing.

11 G. Utilities. Placement of utilities within wetlands or their buffers may be allowed pursuant to
12 the following standards and any other required state and federal approvals:

13 1. The utility maintenance or repair, as identified in Section [19.100.125](#)(E), shall be
14 allowed in wetlands and wetland buffers so long as best management practices are
15 used.

16 2. Construction of new utilities outside the road right-of-way or existing utility
17 corridors may be permitted in wetlands or wetland buffers only when: (a) no
18 reasonable alternative location is available, (b) the new utility corridor meets the
19 requirements for installation, replacement of vegetation and maintenance outlined
20 below, and (c) as required in the filing and approval of applicable permits and special
21 reports (Chapter [19.700](#)) required by this title.

22 3. Construction of sewer lines or on-site sewage systems may be permitted in
23 wetland buffers only when: (a) the applicant demonstrates that the location is
24 necessary to meet state or local health code minimum design standards (not
25 requiring a variance for either horizontal setback or vertical separation), and (b) there
26 ◀ are no other practicable or reasonable alternatives available and (c) construction
27 meets the requirements of this section. Joint use of the sewer utility corridor by other
28 utilities may be allowed.

29 4. New utility corridors shall not be allowed when the wetland or buffer has known
30 locations of federal- or state-listed endangered, threatened or sensitive species,
31 heron rookeries or nesting sites of raptors which are listed as state candidate or
32 state monitor, except in those circumstances where an approved habitat
33 management plan indicates that the utility corridor will not significantly impact the
34 wetland or wetland buffer.

35 5. New utility corridor construction and maintenance shall protect the wetland and
36 buffer environment by utilizing the following methods:

1 a. New utility corridors shall be aligned to avoid cutting trees greater than
2 twelve inches in diameter at breast height (four and one-half feet), measured on
3 the uphill side, unless no reasonable alternative location is available.

4 b. New utility corridors shall be revegetated with appropriate native vegetation
5 at not less than preconstruction densities or greater immediately upon
6 completion of construction, or as soon thereafter as possible if due to seasonal
7 growing constraints. The utility shall ensure that such vegetation survives.

8 c. Any additional utility corridor access for maintenance shall be provided at
9 specific points rather than by parallel roads, unless no reasonable alternative is
10 available. If parallel roads are necessary, they shall be the minimum width
11 necessary for access, but no greater than fifteen feet, and shall be contiguous to
12 the location of the utility corridor on the side away from the wetland. Mitigation
13 will be required for any additional access through restoration of vegetation in
14 disturbed areas.

15 d. Drilling for new utility corridors shall have entrance/exit portals located
16 completely outside of the wetland buffer boundary, and drilling shall not
17 interrupt the groundwater connection to the wetland or percolation of surface
18 water down through the soil column. Specific studies by a hydrologist are
19 necessary to determine whether the groundwater connection to the wetland or
20 percolation of surface water down through the soil column would be disturbed.

21 e. The department may require other additional mitigation measures.

22 6. Utility corridor maintenance shall include the following measures to protect the
23 wetland and buffer environment:

24 a. Painting of utility equipment, such as power towers, shall not be sprayed or
25 sandblasted, unless appropriate containment measures are used. Lead-based
26 paints shall not be used.

27 b. No pesticides, herbicides or fertilizers may be used in wetland areas or their
28 buffers except those approved by the U.S. Environmental Protection Agency
29 (EPA) and Washington Department of Ecology. Where approved, they must be
30 applied by a licensed applicator in accordance with the safe application
31 practices on the label.

32 H. Parks. Development of public park and recreation facilities may be permitted in wetlands
33 or their buffers subject to the provisions of Section [19.100.145](#), Special use review, and other
34 applicable chapters of the Kitsap County Code, and any state or federal approvals. For example,
35 enhancement of wetlands and development of trails may be allowed in wetlands and wetland
36 buffers subject to special use requirements and approval of a wetland mitigation plan.

2 **19.200.230 Wetland mitigation requirements.**

3 A. Mitigation Sequencing. All impacts to wetlands or buffers shall be mitigated according to
4 this title ~~as described in 19.100.155.D. in the following order:~~

5 ~~1.—Avoiding the impact altogether by not taking a certain action or parts of actions.~~

6 ~~2.—Minimizing impacts by limiting the degree or magnitude of the action and its~~
7 ~~implementation by using appropriate technology or by taking affirmative steps to~~
8 ~~reduce impacts.~~

9 ~~3.—Using one of the following mitigation types, listed in order of preference:~~

10 ~~a.—Rectifying the impact by reestablishing, rehabilitating, or restoring the~~
11 ~~affected environment;~~

12 ~~b.—Compensating for the impact by replacing or providing substitute resources~~
13 ~~or environments; or~~

14 ~~c.—Compensating for the impact by improving the environmental processes~~
15 ~~that support wetland systems and functions.~~

16 ~~4.—Monitoring the impact and compensation and taking appropriate corrective~~
17 ~~measures.~~

18 B. Mitigation Report. Where mitigation is required under the sequencing in subsection (A) of
19 this section, a mitigation report shall be provided in accordance with Section [19.700.715](#).
20 ~~Mitigation compliance is required per KCC 19.200.230.F. Acceptance of the mitigation report~~
21 ~~shall be signified by a notarized memorandum of agreement signed by the applicant and~~
22 ~~department director or designee. The agreement shall refer to all requirements for the~~
23 ~~mitigation project.~~


24 ~~C. Native Species. Planting used in all mitigation actions shall be native species appropriate to~~
25 ~~the ecoregion.~~

26 ~~D. Wetland Buffer Mitigation Ratio. Unless otherwise specified during the agency review~~
27 ~~process, mitigation for impacts to wetland buffers caused by new or re-development activity~~
28 ~~shall be at a minimum 1:1 ratio.~~

29 ~~E. Wetland Mitigation Replacement Ratios.~~

1 1. The following ratios appearing below in Table 19.200.230 (Wetland Mitigation
 2 Replacement Ratios), as well as consideration of the factors listed in this section,
 3 shall be used to determine the appropriate amounts of restored, rehabilitated,
 4 created or enhanced wetland that will be required to replace impacted wetlands. The
 5 first number specifies the amount of wetland area to be restored, rehabilitated,
 6 created or enhanced, and the second number specifies the amount of wetland area
 7 lost.

Table 19.200.230
Wetland Mitigation ~~Replacement~~ Ratios

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	Preservation^{1,2} 1:1 Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement¹ Only
All Category IV other (based on functions)	1.5:1	3:1	6:1 1:1 R/C and 2:1 E	6:1
All Category III other (based on functions)	2:1	4:1	8:1 1:1 R/C and 4:1 E	8:1
Category III and IV Interdunal wetlands	1.5:1	3:1 (limited circumstances)	6:1	Not considered an option
Category II  estuarine	4:1 (re-establishment) Case-by-case	8:1 4:1 rehabilitation of an estuarine wetland	16:1 Case-by-case	Case-by-case
Category II Interdunal wetlands	2:1	4:1 (limited circumstances)	8:1	Not considered an option
Category II wetlands in coastal lagoons	3:1 (re-establishment only)	6:1	12:1	Not considered an option
All other Category II other (based on functions)	3:1	8:1	12:1 1:1 R/C and 8:1 E	12:1
Category I forested	6:1	12:1	24:1 1:1 R/C and 20:1	24:1
Category I other (based on functions)	4:1	8:1	16:1 1:1 R/C and 12:1 E	16:1
Category I Interdunal wetlands	4:1	8:1 (limited circumstances)	16:1	Not considered an option

**Table 19.200.230
Wetland Mitigation **Replacement** Ratios**

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	Preservation^{1,2} 4:1 Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement¹ Only
Category I Wetlands of high conservation value	Consult with WA DNR Not considered possible	Consult with WA DNR Case-by-case	24:1 Case-by-case	Consult with WA DNR Case-by-case
Category I coastal lagoon	4:1 Case-by-case	8:1 6:1 rehabilitation of a coastal lagoon	16:1 Case-by-case	Not considered an option Case-by-case
Bogs Category I bog	NA Case-by-case	NA 6:1 rehabilitation of a bog	24:1 Case-by-case	NA Case-by-case
Category I Estuarine	3:1 Case-by-case	6:1 rehabilitation of an estuarine wetland	12:1 Case-by-case	Case-by-case
<p>¹<u>Ratios for rehabilitation, preservation, and enhancement may be reduced when combined with 1:1 replacement through re-establishment or creation. See Table 6B-2 in Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance –Version 2 (Ecology et al., 2021 or as revised).</u></p> <p>²<u>All proposed preservation sites need to meet the preservation criteria listed in KCC 19.200.230.E.3.c.</u></p>				

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2. The above ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Accordingly, in the appropriate circumstances identified below, the department may increase or decrease the ratios based on one or more of the following:

- a. Replacement ratios may be increased under the following circumstances:
 - i. Uncertainty exists as to the probable success of the proposed restoration or creation;
 - ii. A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site;
 - iii. Proposed compensation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

- 1 iv. The impact was an unauthorized impact.
- 2 b. Replacement ratios may be decreased under the following circumstances:
 - 3 i. Documentation by a qualified wetland specialist demonstrates certainty
 - 4 that the proposed compensation actions will be successful. For example,
 - 5 demonstrated prior success with similar compensation actions as those
 - 6 proposed, and/or extensive hydrologic data to support the proposed water
 - 7 regime;
 - 8 ii. Documentation by a qualified wetland specialist demonstrates that the
 - 9 proposed compensation actions will provide functions and values that are
 - 10 significantly greater than the wetland being impacted; or
 - 11 iii. The proposed mitigation actions are conducted in advance of the
 - 12 impact and are shown to be successful.

3. Methods of Compensatory Mitigation. Mitigation for wetland and buffer impacts shall rely on the method listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the department's satisfaction that all higher ranked types of mitigation are not viable, consistent with the criteria in this section.

a. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former or degraded wetland. Restoration is divided into two categories:

i. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions. Example activities could include removing fill, plugging ditches, or breaking drain tiles to restore a wetland hydroperiod, which in turn will lead to restoring wetland biotic communities and environmental processes.

ii. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland area. The area already meets wetland criteria, but hydrological processes have been altered. Rehabilitation involves restoring historic hydrologic processes. Example activities could involve

1 breaching a dike to reconnect wetlands to a floodplain or return tidal
2 influence to a wetland.

3 b. Establishment (Creation): The manipulation of the physical, chemical, or
4 biological characteristics of a site to develop a wetland on an upland where a
5 wetland did not previously exist at an upland site. Establishment results in a gain
6 in wetland area and functions. An example activity could involve excavation of
7 upland soils to elevations that will produce a wetland hydroperiod and hydric
8 soils by intercepting groundwater, and in turn supports the growth of
9 hydrophytic plant species.

10 i. If a site is not available for wetland restoration to compensate for
11 expected wetland and/or buffer impacts, the department may authorize
12 establishment of a wetland and buffer upon demonstration by the
13 applicant's qualified wetland professional that:

14 (A) The hydrology and soil conditions at the proposed mitigation
15 site are conducive for sustaining the proposed wetland and that
16 establishment of a wetland at the site will not likely cause
17 hydrologic problems elsewhere;

18 (B) Adjacent land uses and site conditions do not jeopardize the
19 viability of the proposed wetland and buffer (e.g., due to the
20 presence of invasive plants or noxious weeds, stormwater runoff,
21 noise, light, or other impacts);

22 (C) The proposed wetland and buffer will eventually be self-
23 sustaining with little or no long-term maintenance; and

24 (D) The proposed wetland would not be established at the cost of
25 another high-functioning habitat (i.e., ecologically important
26 uplands).

27 c. Preservation. The removal of a threat to, or preventing the decline of, wetlands
28 by an action in or near those wetlands. This term includes activities commonly
29 associated with the protection and maintenance of wetlands through the
30 implementation of appropriate legal and physical mechanisms such as recording
31 conservation easements and providing structural protection like fences and
32 signs. Preservation does not result in a gain of aquatic resource area but may
33 result in a gain in functions over the long term. When restoration and/or
34 establishment are not viable, preservation of a wetland and associated buffer
35 can be used only if:

1 i. The department determines that the proposed preservation is the
2 best mitigation option;

3 ii. The proposed preservation site is under threat of undesirable
4 ecological change due to permitted, planned, or likely actions that will not
5 be adequately mitigated under existing regulations;

6 iii. The area proposed for preservation is of high quality or critical for the
7 health and ecological sustainability of the watershed or sub-basin. Some
8 of the following features may be indicative of high-quality sites:

9 (A) Category I or II wetland rating pursuant to KCC 19.200.210.

10 (B) Rare or irreplaceable wetland type [e.g., mature forested
11 wetland, estuaries, etc.] or aquatic habitat that is rare or a limited
12 resource in the area.

13 (C) The presence of habitat for threatened or endangered species
14 (state, federal, or both).

15 (D) Provides biological and/or hydrological connectivity to other
16 habitats.

17 (E) Priority sites identified in an adopted watershed plan.

18 iv. Permanent preservation of the wetland and buffer shall be provided
19 through a legal mechanism such as a conservation easement or tract.

20 v. The department may approve another legal and administrative
21 mechanism in lieu of a conservation easement if it is determined to be
22 adequate to protect the site in perpetuity.

23 d. Enhancement. The manipulation of the physical, chemical, or biological
24 characteristics of a wetland to heighten, intensify, or improve specific wetland
25 function(s). Enhancement is undertaken for specified purposes such as water
26 quality improvement, flood water retention, or wildlife habitat. Enhancement
27 results in the gain of selected wetland function(s) but may also lead to a decline
28 in other wetland function(s). Enhancement does not result in a gain in wetland
29 area. Enhancement activities could include planting vegetation, controlling non-
30 native or invasive species, and modifying site elevations to alter hydroperiods in
31 existing wetlands. Applicants proposing to enhance wetlands and/or associated
32 buffers shall demonstrate how the proposed enhancement will increase the
33 wetland and/or buffer functions, how this increase in function will adequately

1 compensate for the impacts, and how existing wetland functions at the
2 mitigation site will be protected.

3 F. Mitigation Compliance

4 1. Unless otherwise specified, mitigation shall take place prior to final project
5 inspection to provide assurance that it will be completed and to mitigate for temporal
6 loss of wetland functions.

7 2. Mitigation requirements shall run with the parcel, and notice of such requirements
8 shall be recorded as a covenant. Mitigation as conditioned under project approval shall
9 be maintained in perpetuity, except where authorized through review of an alternative
10 mitigation plan.

11 3. In the event that a subsequent landowner applies for additional permits, the
12 electronic permit database will be queried for past mitigation and monitoring
13 requirements. If such mitigation is no longer in place or functioning, it shall be
14 reinstalled prior to permit issuance.

15 4. Mitigation enforcement shall occur under the authority of Chapter 19.100,
16 Introduction and Approval Procedures.

17 5. Monitoring shall be required for all wetland mitigation. Kitsap County shall require
18 monitoring reports on an annual basis for a minimum of five years and up to ten years,
19 or until the department determines that the mitigation project has achieved success.
20 The wetland mitigation plan shall provide specific criteria for monitoring the mitigation
21 project. Criteria shall be project-specific and use best available science to aid the
22 department in evaluating whether or not the project has achieved success (see Chapter
23 19.700 and Sections 19.700.710 and 19.700.715, Special Reports).

24 ~~G.D.~~ Alternative Mitigation Plans.

25 1. The department may approve alternative wetland mitigation plans identified in
26 this section that are based on best available science, such as priority restoration
27 plans that achieve restoration goals identified in Title 22, Appendix C, Shoreline
28 Restoration Plan. Alternative mitigation proposals must provide an equivalent or
29 better level of protection of wetland functions and values than would be provided by
30 the strict application of this chapter. Mitigation requirements may be determined
31 using the Credit-Debit Method described in Calculating Credits and Debits for
32 Compensatory Mitigation in Wetlands of Western Washington (Ecology Publication
33 #10-06-011), or as amended.

34 The department shall consider the following for approval of an alternative mitigation
35 proposal:

1 a. The proposal uses a watershed approach consistent with Selecting Wetland
2 Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology
3 Publication No. 09-06-32, Olympia, WA, December 2009), or as amended.

4 b. Creation or enhancement of a larger system of natural areas and open
5 space is preferable to the preservation of many individual habitat areas.

6 c. Other on-site mitigation, as described above, is not feasible due to site
7 constraints, such as parcel size, stream type, wetland category, or geologic
8 hazards.

9 d. There is clear potential for success of the proposed mitigation at the
10 proposed mitigation site.

11 e. The plan contains clear and measurable standards for achieving compliance
12 with the specific provisions of the plan. A monitoring plan shall, at a minimum,
13 meet the provisions of the wetland mitigation plan (Chapter [19.700](#), Special
14 Reports).

15 2. Off-Site Compensatory Mitigation.

16 a. Considerations for determining whether off-site mitigation is preferable
17 include, but are not limited to:

18 i. On-site conditions do not favor successful establishment of the
19 required vegetation type, or lack the proper soil conditions, or hydrology,
20 or may be severely impaired by the effects of the adjacent development;

21 ii. On-site compensation would result in isolation from other natural
22 habitats;

23 iii. Off-site location is crucial to one or more species that is threatened,
24 endangered, or otherwise of concern, and the on-site location is not;

25 iv. Off-site location is crucial to larger ecosystem functions, such as
26 providing corridors between habitats, and the on-site location is not; and

27 v. Off-site compensation has a greater likelihood of success or will
28 provide greater functional benefits.

29 b. When determining whether off-site mitigation is preferable, the value of the
30 site-specific wetland functions at the project site, such as flood control, nutrient
31 retention, sediment filtering, and rare or unique habitats or species, shall be
32 fully considered.

1 c. When conditions do not favor on-site compensation, off-site compensatory
2 mitigation should be located as close to the impact site as possible, but at least
3 within the same watershed, while still replacing lost functions.

4 d. Off-site compensatory mitigation may include the use of a wetland
5 mitigation bank or an in-lieu fee program.

6 i. Mitigation Banking. Kitsap County encourages the creation of a public
7 or private mitigation banking system when feasible.

8 (A) The approval authority determines that it would provide appropriate
9 compensation for the proposed impacts;

10 (B) The impact site is located in the service area of the bank;

11 (C) The proposed use of credits is consistent with the terms and
12 conditions of the certified mitigation bank instrument; and

13 (D) Replacement ratios for projects using bank credits is consistent with
14 replacement ratios specified in the certified mitigation bank instrument.

15 ii. In-Lieu-Fee Mitigation. Credits from an approved in-lieu-fee program
16 may be used when all of the following apply:

17 (A) The approval authority determines that it would provide
18 environmentally appropriated compensation for the proposed impacts.

19 (B) The proposed use of credits is consistent with the terms and
20 conditions of the approved in-lieu-fee program instrument.

21 (C) Projects using in-lieu-fee credits shall have debits associated with the
22 proposed impacts calculated by the applicant's qualified wetland
23 professional using the credit assessment method specified in the approved
24 instrument of the in-lieu-fee program.

25 (D) The impacts are located within the service area specified in the
26 approved in-lieu-fee instrument.

27 3. Advance Mitigation. Mitigation for projects with preidentified impacts to wetlands may be
28 constructed in advance of the impacts if the mitigation is implemented according to federal,
29 state and local laws and guidance on advance mitigation, and state water quality regulations
30 consistent with Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation
31 (Ecology Publication No. 12-06-15).

1 ~~E.—Monitoring Requirements. Kitsap County shall require monitoring reports on an annual~~
2 ~~basis for a minimum of five years and up to ten years, or until the department determines that~~
3 ~~the mitigation project has achieved success. The wetland mitigation plan shall provide specific~~
4 ~~criteria for monitoring the mitigation project. Criteria shall be project-specific and use best~~
5 ~~available science to aid the department in evaluating whether or not the project has achieved~~
6 ~~success (see Chapter 19.700 and Sections 19.700.710 and 19.700.715, Special Reports).~~

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 25, 2005. Formerly 19.200.250)

8 **19.200.235 Incentives for wetland mitigation.**

9 Kitsap County recognizes that property owners wish to gain economic benefits from their land.
10 The county encourages such mechanisms as the open space tax program (Chapter [18.12](#)),
11 conservation easements and donations to land trusts, in order to provide taxation relief upon
12 compliance with the regulations in this title. Buffers dedicated as permanent open space tracts
13 may qualify for the open space taxation program and will be offered the opportunity to be
14 entered into this program. Kitsap County may offer to purchase these lands through the
15 conservation futures fund, as funding is available.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 27, 2005 Ord. 217 (1998) § 3 (part), 1998. Formerly 19.200.260)

17

DRAFT

Chapter 19.300

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Sections:

[19.300.305 Purpose.](#)

[19.300.310 Fish and wildlife habitat conservation area categories.](#)

[19.300.315 Development standards.](#)

19.300.305 Purpose.

This chapter applies to all uses within or adjacent to fish and wildlife habitat conservation areas, defined in Section [19.150.315](#) except those identified as exempt in Section [19.100.125](#). The intent of this chapter is to identify fish and wildlife habitat conservation areas and establish habitat protection procedures and mitigation measures designed to achieve no net loss of critical area functions and values and to maintain viable fish and wildlife populations and habitat over the long term. Further, it is also the intent of this chapter to:

- A. Preserve natural flood control, storm water storage, and drainage or stream flow patterns;
- B. Prevent turbidity and pollution, control siltation, protect nutrient reserves, and maintain water flows and quality for anadromous and resident fish, marine shellfish and forage fish;
- C. Encourage nonregulatory methods of habitat retention whenever practical, through mechanisms such as education and the open space tax program; and
- D. Avoid or minimize human and wildlife conflicts through planning and implementation of wildlife corridors where feasible.
- [E. Retain and restore riparian buffers to the maximum extent practicable to preserve functions and values over time.](#)

19.300.310 Fish and wildlife habitat conservation area categories.

- A. General. Fish and wildlife habitat conservation areas are typically identified by known locations of specific species (such as a nest or den) or by habitat areas or both and may occur on both public and private lands.
- B. Classification and Designation. The following categories shall be used in classifying and designating fish and wildlife habitat conservation areas:

1 1. Streams. All streams which meet the criteria for Type F, Np or Ns waters as set forth in
 2 WAC [222-16-030](#) of the Washington Department of Natural Resources (DNR) Water Typing
 3 System, as now or hereafter amended, and Table 19.300.310 (see also Chapter [19.800](#),
 4 Appendix B). Type S waters are regulated through the shoreline master program (Title [22](#)).
 5 The DNR stream maps should not be the only source for identifying regulated areas or
 6 establishing buffers. Other modeled or field-verified stream type maps should also be
 7 used, and stream conditions, identification of flow alterations, and location of fish
 8 passage barriers shall be identified through a site-specific field visit. Field verification of all
 9 intermittent or non-fish-bearing streams should occur during the wet-season months of
 10 October to March if feasible, or as determined by the department.

**Table 19.300.310
 DNR Water Typing System**

Water Type	
Current DNR Water Typing	Previous DNR Water Typing
Type S	Type 1
Type F	Type 2 and 3
Type Np	Type 4
Type Ns	Type 5

11
 12 2. Lakes Less Than Twenty Acres in Surface Area. Those lakes which meet the criteria for
 13 Type F, Np, and Ns waters as set forth in WAC [222-16-030](#), as now or hereafter amended.
 14 This includes lakes and ponds less than twenty acres in surface area and their submerged
 15 aquatic beds, and lakes and ponds planted with game fish by a governmental or tribal
 16 authority.

17 3. Type O (“Other”). There exist isolated streams in the County that have no surface
 18 connection to Type S, F, or N waters, are non-fish-bearing, but infiltrate entirely and are
 19 critical to downstream flows and overall watershed health. In addition to the DNR stream
 20 types above, a Type O stream classification shall be included as Fish and Wildlife Habitat
 21 Conservation Areas when verified on-site by a qualified habitat biologist.

22 43. Wildlife Habitat Conservation Areas.

- 23 a. Class I Wildlife Habitat Conservation Areas.
 - 24 i. Habitats recognized by federal or state agencies for federal and/or state-
 25 listed endangered, threatened and sensitive species documented in maps or
 26 databases available to Kitsap County, including but not limited to the database

1 on priority habitats and species provided by the Washington Department of Fish
2 and Wildlife and the Washington Department of Natural Resources Natural
3 Heritage Program;

4 ii. Areas targeted for preservation by the federal, state and/or local
5 government which provide fish and wildlife habitat benefits, including but not
6 limited to important waterfowl areas identified by the U.S. Fish and Wildlife
7 Service and WDFW wildlife areas; or

8 iii. Areas that contain habitats and species of local importance have not been
9 identified at this time, and may be identified at a later date through a public
10 process when information necessitating such identification is made known.

11 b. Class II Wildlife Habitat Conservation Areas. Habitats for state-listed candidate
12 and monitored species documented in maps or databases available to Kitsap County
13 and which, if altered, may reduce the likelihood that the species will maintain a viable
14 population and reproduce over the long term.

15
16 | **19.300.315 Development standards.**

17 Activities within a designated fish and wildlife habitat conservation area and with its buffer are
18 subject to the regulatory provisions of this chapter and shall comply with the performance
19 standards outlined in this chapter as well as the mitigation sequencing requirements contained
20 within Section 19.100.155.D.

21 A. Buffers and Building Setbacks.

22 1. Buffers. Buffers shall remain undisturbed natural vegetation areas except where the
23 buffer can be enhanced to improve its functional attributes. Buffers shall be maintained
24 along the perimeter of fish and wildlife habitat conservation areas, as listed in Table
25 19.300.315. Refuse, fill, yard-waste or other debris shall not be placed in buffers.

Table 19.300.315
Fish and Wildlife Habitat Conservation Area Development Standards

Streams				

Water Type	Buffer Width	UGA Alternative Buffer Width*	Minimum Building Setback	Other Development Standards
S As defined and regulated in Title 22 (SMP)	See Title 22 (SMP)	NA	See Title 22 (SMP)	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
F	200 150 feet	150 feet	15 feet beyond buffer	
Np	100 50 feet	75 feet	15 feet beyond buffer	
Ns	100 50 feet	75 feet	15 feet beyond buffer	
O	100 feet	75 feet	15 feet beyond buffer	
Lakes less than 20 acres	100 feet		15 feet beyond buffer	<u>Where lakes have associated wetlands, a wetland delineation and rating may be required in accordance with KCC 19.200. The greater of buffers shall apply.</u>
Wildlife Habitat Conservation Areas				
Class I		Buffer widths and setbacks will be determined through a mandatory habitat management plan (HMP). In the case of bald eagles, a HMP will not be required, but additional state and federal permits and/or timing considerations for construction may be required to ensure compliance with all federal laws, including the federal Bald and Golden Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat.		
Class II		Site-specific conditions will determine the need for the preparation of a HMP.		

1 * See 19.300.315(A)(3) for criteria.

2 2. Buffer Measurement. Distances shall be measured from the ordinary high water mark
3 (OHM) or from the top of the bank where the OHM cannot be identified. Buffer widths
4 shall be measured from the edge of the Channel Migration Zone, where applicable. The
5 buffer width shall be increased to include streamside wetlands, which provide overflow
6 storage for storm waters, feed water back to the stream during low flows or provide
7 shelter and food for fish. In braided channels, the ordinary high water mark or top of
8 bank shall include the entire stream feature.

1 Buffers shall be retained in their natural condition. It is acceptable, however, to enhance
2 the buffer by planting indigenous vegetation, or by removal of invasive species, if prior
3 approval is obtained by the department as approved by the department. Alteration of
4 buffer areas and building setbacks may be allowed for development authorized by
5 Section 19.100.140 (Reasonable use exception), 19.100.125 (Exemptions), 19.100.130
6 (Standards for existing development) or 19.100.135 (Variances). The buffer width shall be
7 increased to include streamside wetlands, which provide overflow storage for storm
8 waters, feed water back to the stream during low flows or provide shelter and food for
9 fish. In braided channels, the ordinary high water mark or top of bank shall include the
10 entire stream feature.

11 3. UGA Alternative Buffer Widths. In limited circumstances as described in this subsection,
12 the alternative buffer widths in Table 19.300.315(A) may be used as the starting, standard
13 buffer width for the proposed development without first having to undergo a formal
14 buffer reduction process as described in subsection 19.300.315(A)(4) below. In these
15 cases, any necessary buffer decreases will use the alternative buffer width as the starting,
16 standard buffer width. The use of UGA Alternative Buffer Widths will not be allowed
17 without a Habitat Management Plan from a qualified habitat biologist proving that all of
18 the conditions in this subsection are met.

19 a. For multi-family, restoration or redevelopment within Urban Growth Areas,
20 the Alternative Buffer Widths may be utilized when:

- 21 i. The existing buffer has function-limited vegetation or
22 predominantly invasive vegetation;
- 23 ii. The proposal provides a HMP which demonstrates greater
24 riparian function will be provided than currently exists;
- 25 iii. The proposal will not significantly increase the threat of
26 erosion, flooding, slope stability or other hazards on the site
27 or on adjacent properties; and
- 28 iv. The current buffer conditions are not the result of a willful
29 code violation.

30 b. For use of the Alternative Buffer Widths, restoration projects are those
31 actions that manipulate the physical, chemical or biological characteristics of a
32 site with the goal of returning natural or historic functions. Restoration requires
33 more than vegetative buffer enhancement and can include, but is not limited to,
34 daylighting of a piped stream, re-meandering of a channelized stream, or re-
35 establishment of a habitat corridor through removal of existing barriers. The
36 Director shall determine, in consultation with affected agencies and tribes as
37 necessary, whether a restoration project will qualify for the Alternative Buffer
38 Width.

39 c. For use of the Alternative Buffer widths, redevelopment projects are limited to
40 changes in uses or replacement of structures that:

- 1 i. Result in no increases in impervious surface within the Alternative
- 2 Buffer width;
- 3 ii. Result in no new structures closer to the critical area than existing
- 4 structures; and
- 5 iii. Meet the Flood Hazard Area development standards in Title 15
- 6 KCC.

7 43. Provisions for Decreasing Buffer.

8 a. Consistent with this section, the department may reduce the standard buffer

9 width by up to twenty-five percent in a Type I decision under Chapter 21.04.

10 Reductions of greater than twenty-five percent but less than or equal to fifty

11 percent for single-family dwellings will be a Type II decision and require

12 notification (see Chapter 19.800, Appendix F). Buffer reductions for single-family

13 residences greater than fifty percent, and reductions greater than twenty-five

14 percent for all other uses shall be pursuant to a Type III variance under

15 Section 19.100.135, as appropriate. In all cases, mitigation sequencing shall be

16 demonstrated per Chapter 19.100.155.D. When applicable, the order of

17 sequence for buffer reductions shall be as follows:

18 i. Use of buffer averaging, maintaining one hundred percent of the

19 buffer area under the standard buffer requirement;

20 ii. Type I administrative critical area buffer reduction;

21 ii. Type II administrative critical area buffer reduction;

22 iii. Type III quasi-judicial critical area variance.

23 b. When proposing buffer averaging, the following shall be met:

24 i. The applicant submits a habitat management plan (HMP) that meets

25 the requirements as described in Chapter 19.700 (Special Reports),

26 including demonstration of mitigation sequencing as described in

27 19.100.155.D and that such averaging can clearly provide as great or

28 greater functions and values as would be provided under the standard

29 buffer, and that the decrease in buffer width is minimized by limiting the

30 degree or magnitude of the regulated activity;

31 ii. The HMP is reviewed and DCD, in consultation as necessary with the

32 Washington State Department of Fish and Wildlife, determines that the

33 averaging is the minimum necessary for the permitted use;

1 iii. The minimum buffer width at any point will not be less than 75% of
2 the standard buffer width;

3 iv. The conditions are sufficient to assure no net loss of ecological
4 functions of the fish and wildlife habitat conservation area; and

5 v. The area added to the buffer as part of averaging shall connect to
6 existing habitat corridors whenever feasible.

7 c. When proposing a Type I or II administrative buffer reduction the following
8 shall be met:

9 i. The applicant demonstrates that the criteria in Section 19.100.135 (A)
10 are met and buffer averaging under Section 19.300.315(A)(5)(b) is not
11 feasible;

12 ii. The applicant submits a habitat management plan (HMP) that meets
13 the requirements as described in Chapter 19.700 (Special Reports),
14 including demonstration of avoidance and minimization (mitigation
15 sequencing);

16 iii. The HMP is reviewed and DCD, in consultation as necessary with the
17 Washington State Department of Fish and Wildlife, determines that a
18 reduction is the minimum necessary for the permitted use; and

19 iv. The conditions are sufficient to assure no net loss of ecological
20 functions of the affected fish and wildlife habitat conservation area.

21 d. Protection of significant trees. In all cases of buffer reduction or averaging,
22 significant trees within the standard buffer shall be identified as part of the
23 Habitat Management Plan. Any such tree that has a drip line extending beyond
24 the reduced buffer edge shall follow the tree protection requirements below:

25 i. A tree protection area shall be designed to protect each tree or tree
26 stand during site development and construction. Tree protection areas
27 may vary widely in shape, but must extend a minimum of five feet
28 beyond the existing tree canopy area along the outer edge of the dripline
29 of the tree(s), unless otherwise approved by the department;

30 ii. Tree protection areas shall be added and clearly labeled on all
31 applicable site development and construction drawings submitted to the
32 department;

1 iii. Temporary construction fencing at least thirty inches tall shall be
2 erected around the perimeter of the tree protection areas prior to the
3 initiation of any clearing or grading. The fencing shall be posted with
4 signage clearly identifying the tree protection area. The fencing shall
5 remain in place through site development and construction;

6 iv. No clearing, grading, filling or other development activities shall occur
7 within the tree protection area, except where approved in advance by the
8 department and shown on the approved plans for the proposal;

9 v. No vehicles, construction materials, fuel, or other materials shall be
10 placed in tree protection areas. Movement of any vehicles within tree
11 protection areas shall be prohibited;

12 vi. No nails, rope, cable, signs, or fencing shall be attached to any tree
13 proposed for retention in the tree protection area; and

14 vii. The department may approve the use of alternate tree protection
15 techniques if an equal or greater level of protection will be provided.

16 e. Functionally Disconnected Buffer Area. Buffer areas that are functionally
17 disconnected from a fish and wildlife habitat conservation area by significant
18 development may be excluded from buffer requirements as provided herein.
19 Significant development for purposes of this subsection means existing public or
20 private roads, railroads, and other legally established private developments such
21 as homes or commercial structures; driveways are not significant development.
22 The Director shall determine if a buffer area is functionally disconnected and
23 whether the disconnect affects all or a portion of the buffer. Where only a
24 portion of the buffer area is affected, the buffer exclusion shall be limited in
25 scope to that affected area.

26 To establish that a buffer is functionally disconnected, the applicant must
27 provide a Habitat Management Plan, meeting the requirements of chapter
28 19.700 (Special Reports), confirming the existence of a distinct break in
29 connectivity of the buffer, that there are no other hydraulic connections across
30 the significant development (e.g., culvert), and that the disconnect blocks the
31 protective measures provided by the buffer. Where a buffer area has been
32 determined to be functionally disconnected, whether in whole or in part, that
33 area may be excluded from the buffer with the following conditions:

34 i. All other applicable provisions of this chapter shall be met, including
35 demonstration of no net loss of applicable functions; and

36 ii. All Significant Trees within the fish and wildlife habitat conservation
37 buffer shall be identified and retained.

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~~a.—The department may grant an administrative reduction to buffer widths when the following are met:~~

~~i.—The applicant demonstrates that buffer widths cannot be met, according to the variance criteria in Section 19.100.135;~~

~~ii.—The applicant submits a habitat management plan (HMP) that meets the requirements as described in Chapter 19.700 (Special Reports);~~

~~iii.—The HMP is reviewed and consultation with the Washington State Department of Fish and Wildlife determines that a reduction is the minimum necessary for the permitted use; and~~

~~iv.—The conditions are sufficient to assure no net loss of ecological functions of the affected fish and wildlife habitat conservation area.~~

~~b.—The department may reduce the buffer width by up to twenty-five percent in a Type I decision under Chapter 21.04. Reductions of greater than twenty-five percent but less than fifty percent for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800, Appendix F). Buffer reductions for single-family residences greater than fifty percent, and reductions greater than twenty-five percent for all other uses shall be pursuant to a variance under Section 19.100.135. When applicable, the order of sequence for buffer reductions shall be as follows:~~

~~i.—Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement;~~

~~ii.—Reduction of the overall buffer area by no more than twenty-five percent of the area required under the standard buffer requirement;~~

~~iii.—Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;~~

~~iv.—Use of alternative on-site wastewater systems in order to minimize site clearing;~~

~~v.—Infiltration of storm water where soils permit; and~~

~~vi.—Retention of native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.~~

1 54. Provision for Increasing Buffer. The department may increase the buffer width
2 whenever a development proposal has known locations of endangered or threatened
3 species for which a habitat management plan indicates a larger buffer is necessary to
4 protect habitat values for such species, or when the buffer is located within a landslide
5 or erosion hazard area, beyond the standard buffer width when greater protection is
6 necessary based on specific site conditions and project features, to preserve riparian
7 functions and values and protected species. A determination that a larger protection
8 area is needed shall be based on the following factors:

9 a. The development proposal has known locations of endangered or threatened
10 species for which a habitat management plan indicates a larger buffer is
11 necessary to protect habitat values for such species; or

12 b5. Buffers for Streams in Ravines. For streams in ravines with ravine sides ten
13 feet or greater in height, the buffer width shall be the minimum buffer required
14 for the stream type, or a buffer width that extends twenty-five feet beyond the
15 top of the slope, whichever is greater. Building setbacks for geologically
16 hazardous areas may still apply (Chapter 19.400), if determined necessary.

17 c. 6. Channel Migration Zones. In areas where channel migration zones can be
18 identified the buffer distance shall be measured from the edge of the channel
19 migration zone.). Building setbacks for geologically hazardous areas may also
20 apply (Chapter 19.400), if determined necessary.

21 6.7. Protection of Buffers. Buffer areas shall be protected as required by the
22 department. The buffer shall be identified on a site plan and on site as required by the
23 department and this chapter. The buffer shall be identified on a site plan and on site as
24 required by the department and this chapter. Refuse shall not be placed in buffers.

25 a. Fish and wildlife habitat conservation area buffers shall be temporarily
26 fenced or otherwise suitably marked, as required by the department, between
27 the area where the construction activity occurs and the buffer. Fences shall be
28 made of a durable protective barrier and shall be highly visible. Silt fences and
29 plastic construction fences may be used to prevent encroachment on fish and
30 wildlife habitat conservation areas or their buffers by construction. Temporary
31 fencing shall be removed after the site work has been completed and the site is
32 fully stabilized per county approval.

33 b. The department may require that permanent signs and/or fencing be placed
34 on the common boundary between a fish and wildlife habitat conservation area
35 buffer and the adjacent land of the project site. Such signs will identify the fish
36 and wildlife habitat conservation area buffer. The department may approve an
37 alternate method of fish and wildlife habitat conservation area and buffer
38 identification, if it provides adequate protection to the fish and wildlife habitat
39 conservation area and buffer.

1 7.8. Building or Impervious Surface Setback Lines. A building or impervious surface
2 setback line of fifteen feet, or as determined by a HMP, is required from the edge of any
3 fish and wildlife habitat conservation area buffer. Minor structural or impervious surface
4 intrusions into the areas of the setback may be permitted if the department determines
5 that such intrusions will not adversely impact the fish and wildlife habitat conservation
6 area. The setback shall be identified on a site plan.

7 8. Piped watercourses. It is recognized that within the urban environment, many historical
8 streams have been substantially modified to accommodate development. Development
9 along an underground piped watercourse may only require a 15-foot setback on either
10 side (unless otherwise required or otherwise recorded), of the centerline of the piped
11 watercourse when demonstrated that:

12 a. The segment or immediately adjacent stream segments are not feasible for
13 future restoration;

14 b. The piped stream is currently of adequate size to accommodate flow capacity
15 within the watershed; and

16 c. Riparian functions are still enhanced to the greatest extent possible (rain
17 gardens, native vegetation enhancement, etc.).

18 B. Class I Wildlife Habitat Conservation Areas Development Standards. All development
19 permits within known Class I wildlife habitat conservation areas will require the submittal and
20 approval of a habitat management plan (HMP) as specified in Chapter [19.700](#) (Special Reports).
21 In the case of bald eagles, a HMP will not be required, but additional state and federal permits
22 and/or timing considerations for construction may be required to ensure compliance with all
23 federal laws, including the Federal Bald and Golden Eagle Protection Act ([16 USC 668](#)) to avoid
24 impacting eagles and their habitat. In the case of listed fish species, a HMP shall be required
25 only if a buffer reduction is proposed under the provisions of Section [19.300.315\(A\)](#). The HMP
26 shall consider measures to retain and protect the wildlife habitat and shall consider effects of
27 land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of
28 natural vegetation.

29 C. Class II Wildlife Habitat Conservation Area Development Standards. All development
30 permits within known Class II wildlife conservation areas may require the submittal of a habitat
31 management plan (HMP), as determined during the SEPA/critical areas review on the project.
32 The HMP shall consider measures to retain and protect the wildlife habitat and shall consider
33 effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and
34 retention of natural vegetation.

35 D. Stream Crossings. Any private or public road expansion or construction proposed to cross
36 streams classified within this title, shall comply with the following minimum development
37 standards. All other state and local regulations regarding water crossing structures will apply,

1 and the use of the Water Crossing Design Guidelines (WDFW, 2013) or as amended, is
2 encouraged.

3 1. Crossings shall not occur in salmonid streams unless no other feasible crossing site
4 exists. For new development proposals, if existing crossings are determined to adversely
5 impact salmon spawning or passage areas, new or upgraded crossings shall be relocated
6 as determined by the Washington State Department of Fish and Wildlife (WDFW).

7 2. Bridges or bottomless culverts shall be required for all Type F streams that have
8 salmonid habitat. Other alternatives may be allowed upon submittal of a habitat
9 management plan that demonstrates that other alternatives would not result in
10 significant impacts to the fish and wildlife conservation area, as determined appropriate
11 through the Washington State Department of Fish and Wildlife (WDFW) hydraulic project
12 approval (HPA) process. The plan must demonstrate that salmon habitat will be replaced
13 on a 1:1 ratio.

14 3. Bridge piers or abutments shall not be placed in either the floodway or between the
15 ordinary high water marks unless no other feasible alternative placement exists or to
16 provide mid-span footings for the purpose of increased floodplain connectivity.

17 4. Crossings shall not diminish flood carrying capacity.

18 5. Crossings shall serve multiple properties whenever possible.

19 6. Where there is no reasonable alternative to providing a culvert, the culvert shall be
20 the minimum length necessary to accommodate the permitted activity.

21 E. Stream Relocations. Stream relocations shall not be permitted unless for the purpose of
22 flood protection and/or fisheries restoration and only when consistent with the WDFW
23 hydraulic project approval (HPA) process and the following minimum performance standards:

24 1. The channel, bank and buffer areas shall be replanted and maintained with native
25 vegetation that replicates a natural, undisturbed riparian condition, when required by a
26 habitat management plan; and

27 2. For those shorelands and waters designated as frequently flooded areas pursuant to
28 Chapter [19.500](#), a professional engineer licensed in the state of Washington shall provide
29 information demonstrating that the equivalent base flood storage volume and function
30 will be maintained.

31 3. Relocated stream channels shall be designed to meet or exceed the functions and
32 values of the stream to be relocated.

1 F. Pesticides, Fertilizers and Herbicides. No pesticides, herbicides or fertilizers may be used in
2 fish and wildlife habitat conservation areas or their buffers, except those approved by the U.S.
3 EPA or Washington Department of Ecology for use in fish and wildlife habitat conservation area
4 environments and applied by a licensed applicator in accordance with the safe application
5 practices on the label.

6 G. Land Divisions and Land Use Permits. All proposed divisions of land and land uses
7 (subdivisions, short subdivisions, short plats, long and large lot plats, performance-based
8 developments, conditional use permits, site plan reviews, binding site plans) that include fish
9 and wildlife habitat conservation areas shall comply with the following procedures and
10 development standards:

11 1. The open water area of lakes, streams, and tidal lands shall not be used in calculating
12 minimum lot area.

13 2. Land division approvals shall be conditioned so that all required buffers are dedicated
14 as open space tracts, or as an easement or covenant encumbering the buffer. Such
15 dedication, easement or covenant shall be recorded together with the land division and
16 represented on the final plat, short plat or binding site plan, and title.

17 3. In order to avoid the creation of nonconforming lots, each new lot shall contain at
18 least one building site that meets the requirements of this title, including buffer
19 requirements for habitat conservation areas. This site shall also have access and a sewage
20 disposal system location that are suitable for development and does not adversely impact
21 the fish and wildlife conservation area.

22 4. After preliminary approval and prior to final land division approval, the department
23 may require that the common boundary between a required buffer and the adjacent
24 lands be identified using permanent signs. In lieu of signs, alternative methods of buffer
25 identification may be approved when such methods are determined by the department to
26 provide adequate protection to the buffer.

27 5. In order to implement the goals and policies of this title; to accommodate innovation,
28 creativity, and design flexibility; and to achieve a level of environmental protection that
29 would not be possible by typical lot-by-lot development, the use of the performance-
30 based development process is strongly encouraged for projects within designated fish
31 and wildlife habitat conservation areas.

32 H. Agricultural Restrictions. In all development proposals that would introduce or expand
33 agricultural activities, a net loss of functions and values to the critical area shall be avoided by at
34 least one of the following methods:

35 1. Locate fencing no closer than the outer buffer edge; or

1 2. Implement a farm resource conservation and management plan agreed upon by the
2 conservation district and the applicant to protect and enhance the fish and wildlife habitat
3 conservation area.

4 I. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related
5 facilities, such as benches, interpretive centers, and viewing platforms, may be allowed in fish
6 and wildlife habitat conservation areas or their buffers pursuant to the following standards:

7 1. Trails and related facilities shall, to the extent feasible, be placed on existing road
8 grades, utility corridors, or other such previously disturbed areas.

9 2. Trails and related facilities shall be planned to minimize removal of trees, shrubs,
10 snags and important wildlife habitat.

11 3. Viewing platforms, interpretive centers, benches, and picnic areas, and access to
12 them, shall be designed and located to minimize disturbance of wildlife habitat and/or
13 critical characteristics of the affected conservation area. Platforms shall be limited to one
14 hundred square feet in size, unless demonstrated through a habitat management plan
15 that a larger structure will not result in a net loss of habitat and critical functions.

16 4. Trails and related facilities shall generally be located outside required buffers. Where
17 trails are permitted within buffers they shall be located in the outer twenty-five percent of
18 the buffer, except where stream crossings or for direct access to viewing areas have been
19 approved by the department.

20 5. Trails shall generally be limited to pedestrian use unless other more intensive uses,
21 such as bike or horse trails have been specifically allowed and mitigation has been
22 provided. Trail width shall not exceed five feet unless there is demonstrated need, subject
23 to review and approval by the department. Trails shall be constructed with pervious
24 materials except where determined infeasible.

25 6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap
26 County Non-Motorized Facility Plan (and associated recognized community trails) and as
27 amended, and provided design considerations are made to minimize impacts to critical
28 areas and buffers shall not be subject to the platform, trail width, or trail material
29 limitations above. Such trails and facilities shall be approved through special use review
30 (Section [19.100.145](#)), unless any underlying permit requires a public hearing.

31 J. Utilities. Placement of utilities within designated fish and wildlife habitat conservation areas
32 and buffers may be allowed pursuant to the following standards:

33 1. The normal and routine utility maintenance or repair authorized in
34 Section [19.100.125](#) shall be allowed within designated fish and wildlife habitat
35 conservation areas, subject to best management practices.

1 2. Construction of utilities may be permitted in fish and wildlife habitat conservation
2 areas or their buffers, only when no practicable or reasonable alternative location is
3 available. Utility construction shall adhere to the development standards set forth in
4 subsections (J)(5) and (6) of this section. As required, special reports (Chapter [19.700](#)) shall
5 be reviewed and approved by the department.

6 3. Construction of sewer lines or on-site sewage systems may be permitted in fish and
7 wildlife habitat conservation areas or their buffers only when: (a) the applicant
8 demonstrates that the location is necessary to meet state or local health code
9 requirements; (b) there are no other practicable alternatives available, and
10 (c) construction meets the requirement of this chapter. Joint use of the sewer utility
11 corridor by other utilities may be allowed.

12 4. New utility corridors shall not be allowed in Class I or II fish and wildlife habitat
13 conservation areas (Section [19.300.310](#)(B) and (C)) except in those circumstances where
14 an approved HMP indicates that the utility corridor will not significantly impact the
15 conservation area.

16 5. Utility corridor construction and maintenance shall protect the environment of fish
17 and wildlife habitat conservation areas and their buffers by utilizing the following
18 methods:

19 a. New utility corridors shall be aligned to avoid cutting trees greater than twelve
20 inches in diameter at breast height (four and one-half feet) measured on the uphill
21 side, unless no reasonable alternative location is available.

22 b. In order of preference, new utility corridors shall be located:

23 i. On an existing road;

24 ii. On an existing bridge;

25 iii. Placed deep enough under the culvert to allow for future culvert
26 replacement and to avoid grade barriers.

27 c. New utility corridors shall be revegetated with appropriate native vegetation at
28 not less than preconstruction vegetation densities or greater, immediately upon
29 completion of construction, or as soon thereafter as possible due to seasonal
30 growing constraints. The utility entity shall ensure that such vegetation survives.

31 d. Any additional corridor access for maintenance shall be provided at specific
32 points rather than by parallel roads, unless no reasonable alternative is available. If
33 parallel roads are necessary, they shall be the minimum width necessary for access,
34 but no greater than fifteen feet; and shall be contiguous to the location of the utility

1 corridor on the side away from the conservation area. Mitigation will be required for
2 any additional access through restoration of vegetation in disturbed areas.

3 6. Utility corridor maintenance shall include the following measures to protect the
4 environment of fish and wildlife habitat conservation areas:

5 a. Utility towers shall be painted with brush, pad or roller and shall not be
6 sandblasted or spray painted, unless appropriate containment measures are used.
7 Lead-based paints shall not be used.

8 b. No pesticides, herbicides or fertilizers may be used in fish and wildlife habitat
9 conservation areas or their buffers except those approved by the U.S. Environmental
10 Protection Agency (EPA) and Washington Department of Ecology. Where approved,
11 they must be applied by a licensed applicator in accordance with the safe application
12 practices on the label.

13 K. Bank Stabilization. A stream channel and bank, or shoreline, may be stabilized when
14 documented naturally occurring earth movement presents an imminent threat to existing
15 primary structures (defined as requiring a building permit pursuant to Chapter [14.04](#), the Kitsap
16 County Building and Fire Code), to public improvements, to unique natural resources, to public
17 health, safety or welfare, to the only feasible access to property, or, in the case of streams,
18 when such stabilization results in the maintenance of fish and wildlife habitat, flood control for
19 the protection of primary structures and appurtenances, or improved water quality.

20 1. Channel, bank and shoreline stabilization may also be subject to the standards of
21 Titles [15](#) (Flood Hazard Areas) and [22](#) (Shoreline Master Program). Documentation of
22 earth movement and/or stability shall be provided through Section [19.700.725](#) (special
23 reports), geological and geotechnical report requirements.

24 2. Where bank stabilization is determined to be necessary, soft-shore protective
25 techniques shall be evaluated and may be required over other types of bank protection.
26 Techniques include, but are not limited to, gravel berms, vegetation plantings, and
27 placement of large, woody debris (logs and stumps), or recommended techniques in
28 accordance with an approved critical area assessment and the guidelines of the
29 Washington State Integrated Streambank Protection Guidelines (2003, or as amended).
30 Special consideration shall be given to protecting the functions of channel migration
31 zones.

32 3. Bulkheads and retaining walls may only be utilized as an engineering solution where it
33 can be demonstrated through a geotechnical report (see Section [19.700.725](#)) that an
34 existing residential structure cannot be safely maintained without such measures, and
35 that the resulting retaining wall is the minimum length necessary to provide a stable
36 building area for the subject structure. A variance pursuant to Section [19.100.135](#) must be
37 obtained in all other cases.

1 4. The department may require that bank stabilization be designed by a professional
2 engineer licensed in the state of Washington with demonstrated expertise in hydraulic
3 actions of rivers and streams. Bank stabilization projects may also require a Kitsap County
4 site development activity permit under Title [12](#) (Storm Water Drainage) or a hydraulic
5 project approval (HPA) from WDFW.

6 ~~L.—Fencing and Signs. Prior to approval or issuance of permits for land divisions and new
7 development, the department may require that the common boundary between a required
8 buffer and the adjacent lands be identified using fencing or permanent signs. In lieu of fencing
9 or signs, alternative methods of buffer identification may be approved when such methods are
10 determined by the department to provide adequate protection to the buffer.~~

11 ~~LM.~~ Forest Practice, Class IV General and Conversion Option Harvest Plans (COHPs). All timber
12 harvesting and associated development activity, such as construction of roads, shall comply
13 with the provisions of this title, and with Titles [12](#) (Storm Water Drainage) and [22](#) (Shoreline
14 Master Plan), including the maintenance of buffers, where required.

15 ~~MA.~~ Road/Street Repair and Construction. When no other reasonable or practicable
16 alternative exists, road or street expansion or construction is allowed in fish and wildlife habitat
17 conservation areas or their buffers, subject to the following minimum development standards:

- 18 1. The road or street shall serve multiple properties whenever possible;
- 19 2. Public and private roads should provide for other purposes, such as utility corridor
20 crossings, pedestrian or bicycle easements, viewing points, etc.;
- 21 3. The road or street construction is the minimum necessary, as required by the
22 department, and shall comply with the department’s guidelines to provide public safety
23 and mitigated storm water impacts;
- 24 4. Construction time limits shall be determined in consultation with WDFW in order to
25 ensure habitat protection; and
- 26 5. Mitigation shall be performed in accordance with specific project mitigation
27 requirements.

28 ~~N. Enhancement Activities. The following development activities shall be exempt from the
29 habitat assessment report and mitigation requirements of this section:~~

30 ~~1. Development undertaken for the sole purpose of creating, restoring, or enhancing the
31 natural functions of floodplains, streams, watercourses, fish and wildlife habitat, or
32 riparian areas; provided, that:~~

33 ~~a. The project complies with all other applicable federal, state, and local permit
34 requirements and regulations; and~~

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b. The development activities do not include the placement of fill or the creation of additional impervious surface areas.

2. Enhancement projects sponsored by Kitsap County, Washington Department of Fish and Wildlife, Kitsap County Conservation District, U.S. Natural Resources Conservation Service, U.S. Fish and Wildlife Service, Washington Department of Natural Resources, or other public agency approved by the Director which are consistent with the County Comprehensive Plan, County floodplain management plans, water quality plans, and other plans adopted by the Kitsap County Board of Commissioners.

DRAFT

Chapter 19.400

GEOLOGICALLY HAZARDOUS AREAS

Sections:

[19.400.405 Purpose and applicability.](#)

[19.400.410 General requirements.](#)

[19.400.415 Designation of geologically hazardous areas.](#)

[19.400.420 Erosion hazard areas.](#)

[19.400.425 Landslide hazard areas.](#)

[19.400.430 Seismic hazard areas.](#)

[19.400.435 Development standards.](#)

[19.400.440 Review procedures.](#)

[19.400.445 Recording and disclosure.](#)

19.400.405 Purpose and applicability.

A. This chapter regulates uses and activities in those areas susceptible to erosion, sliding, earthquake, or other geologic events. Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized.

The intent of this chapter is to:

1. Provide standards to protect human life and property from potential risks;
2. Regulate uses of land in order to avoid damage to structures and property being developed and damage to neighboring land and structures;
3. Control erosion, siltation, and water quality to protect anadromous and resident fish and shellfish;
4. Provide controls to minimize erosion caused by human activity; and
5. Use innovative site planning by placing geologically hazardous areas and buffers in open space and transferring development density to suitable areas on the site.

B. This chapter applies to development activities, actions requiring project permits, and clearing, except those identified as exempt in Section [19.100.125](#) and except those activities related to soils testing or topographic surveying of slopes for purposes of scientific investigation, site feasibility analysis, and data acquisition for geotechnical report preparation, provided it can be accomplished without road construction.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 30, 2005: Ord. 217 (1998) § 3, (part), 1998)

19.400.410 General requirements.

A. Any development activity or action requiring a project permit or any clearing within an erosion or landslide area shall:

1. Comply with the requirements in an approved geotechnical report when one is required, including application of the largest buffer and/or building setback;
2. Utilize best management practices (BMPs) and all known and available technology appropriate for compliance with this chapter and typical of industry standards;
3. Prevent collection, concentration or discharge of storm water or groundwater within an erosion or landslide hazard area and be in compliance with Title [12](#) (Storm Water Drainage);
4. Minimize impervious surfaces and retain vegetation to minimize risk of erosion or landslide hazards.

B. Any development activity or action requiring a project permit or any clearing within an erosion or landslide area shall not:

1. Result in increased risk of property damage, death or injury;
2. Cause or increase erosion or landslide hazard risk;
3. Increase surface water discharge, sedimentation, slope instability, erosion or landslide potential to adjacent downstream and down-drift properties beyond predevelopment conditions;
4. Adversely impact wetlands, fish and wildlife habitat conservation areas or their buffers; or
5. Be identified as a critical facility necessary to protect public health, safety and welfare. This includes, but is not limited to, schools, hospitals, police stations, fire departments and other emergency response facilities, nursing homes, and hazardous material storage or production.

C. Field Marking Requirements. The proposed clearing for the project and all critical area buffers shall be marked in the field for inspection and approval by the department prior to beginning work. Field marking requirements for construction of a single-family dwelling will be determined on a case-by-case basis by the department. The field marking of all buffers shall remain in place until construction is completed, and final approval is granted by the department. Permanent marking may be required as determined necessary to protect critical areas or its buffer.

1 D. Clearing, Grading and Vegetation Removal.

2 1. Minor pruning of vegetation for view enhancement may be allowed through
3 consultation with the department. The thinning of limbs on individual trees is preferred to
4 topping of trees for view corridors. Total buffer thinning shall not exceed twenty-five
5 percent and no more than thirty percent of the live tree crowns shall be removed.

6 2. Vegetation shall not be removed from a landslide hazard area or erosion hazard area,
7 except for hazardous trees based on review by a qualified arborist or as otherwise
8 provided for in a vegetation management and restoration plan and with support of the
9 qualified geological or geotechnical engineer as required by this Chapter.

10 3. Seasonal Restrictions. Clearing and grading shall be limited to the period between
11 May 1st and October 1st, unless the applicant provides an erosion and sedimentation
12 control plan prepared by a professional engineer licensed in the state of Washington that
13 specifically and realistically identifies methods of erosion control for wet weather
14 conditions.

15 4. Only the clearing necessary to install temporary erosion control measures will be
16 allowed prior to clearing for roads and utilities construction.

17 5. The faces of cut and fill slopes shall be protected to prevent erosion as required by
18 the engineered erosion and sedimentation control plan.

19 6. Clearing for roads and utilities shall be the minimum necessary and shall remain
20 within marked construction limits.

21 7. Clearing for overhead power lines shall be the minimum necessary for construction
22 and will provide the required minimum clearances for the serving utility corridor.

23 E. Existing Logging Roads. Where existing logging roads occur in geologically hazardous areas,
24 a geological assessment may be required prior to use as a temporary haul road or permanent
25 access road under a conversion or COHP forest practices application.

26 F. The department may also require:

27 1. Clustering to increase protection to geologically hazardous areas; or

28 2. Enhancement of buffer vegetation to increase protection to geologically hazardous
29 areas.

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

31 **19.400.415 Designation of geologically hazardous areas.**

1 The county has designated geologically hazardous areas pursuant to RCW [36.70A.170](#) by
2 defining them and providing criteria for their identification. Project proponents are responsible
3 for determining whether a geologically hazardous area exists and is regulated pursuant to this
4 chapter. The department will verify on a case-by-case basis the presence of geologically
5 hazardous areas identified by project proponents. Specific criteria for the designation of
6 geologically hazardous areas are contained in this chapter. While the county maintains some
7 maps of potentially geologically hazardous areas, they are for informational purposes only and
8 may not accurately represent all such areas.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

10 **19.400.420 Erosion hazard areas.**

11 A. General. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep
12 slopes, and areas with unconsolidated soils. These include coastal erosion-prone areas and
13 channel migration zones, and may be inclusive of landslide areas.

14 B. Potential Erosion Hazard Areas. Potential erosion hazard areas are depicted on the Kitsap
15 County erosion hazards map. These potential erosion hazard areas are identified using the
16 following criteria:

17 1. Areas of High Erosion Hazard.

18 a. Channel migration zones, as mapped by the Washington Department of Ecology
19 [or other source mapped in accordance with Washington Department of Ecology](#)
20 [guidance, such as the Department of Natural Resources Geologic Information Portal;](#)

21 b. Coastal erosion with a sediment source rating value of 0.6 to 1.0, per the
22 Prioritization Analysis of Sediment Sources in Kitsap County;

23 2. Areas of Moderate Erosion Hazard.

24 a. Slopes fifteen percent or greater, not classified as I, U, UOS, or URS, with soils
25 classified by the U.S. Department of Agriculture NRCS as “highly erodible” or
26 “potentially highly erodible”;

27 b. Coastal erosion with a sediment source rating value of 0.3 to 0.6 per the
28 Prioritization Analysis of Sediment Sources in Kitsap County.

29 C. Erosion Hazard Indicators. The project proponents are responsible for determining actual
30 presence and location of an erosion hazard area. These areas may be indicated by, but not
31 limited to, the following:

1 1. Any of the above criteria currently identified in subsection (B) of this section or
2 amended hereafter.

3 2. Coastal Erosion Hazards.

4 a. Areas with active bluff retreat that exhibit continuing sloughing or calving of bluff
5 sediments, resulting in a vertical or steep bluff face with little or no vegetation;

6 b. Lands located directly adjacent to freshwater or marine waters that are
7 identified as regressing, retreating, or potentially unstable as a result of undercutting
8 by wave action or bluff erosion. The limits of the active shoreline erosion hazard area
9 shall extend landward to include that land area that is calculated, based on the rate
10 of regression, to be subject to erosion processes within the next ten-year time
11 period.

12 3. Channel Migration Zones. The lateral extent that a river or stream is expected to
13 migrate over time due to hydrologically and geomorphologically related processes, as
14 indicated by historic record, geologic character, and evidence of past migration over the
15 past one hundred years.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

17 **19.400.425 Landslide hazard areas.**

18 A. General. Landslide hazard areas include those areas at risk of mass movement due to a
19 combination of geologic, topographic, and hydrologic factors, such as bedrock, soil, slope
20 (gradient), slope aspect, structure, hydrology, and other factors. Landslide hazards are further
21 classified as either shallow or deep-seated.

22 B. Potential Landslide Hazard Areas. Potential landslide hazard areas are depicted on the
23 Kitsap County landslide hazards map. These potential landslide hazard areas are identified
24 using the following criteria:

25 1. Areas of High Landslide Hazard.

26 a. Shallow landslide areas with factor of safety (FS) of 0.5 to 1.5. FS is a method
27 (Harp, 2006) for determining slope stability based on the angle of the slope from
28 LiDAR elevation data and strength parameters.

29 b. Areas with slopes greater to or equal to 30 percent in grade and deemed by a
30 qualified geologist or geotechnical engineer to meet the criteria of U, UOS, or URS.

31 c. All deep-seated landslide areas.

- 1 2. Areas of Moderate Landslide Hazard.
- 2 a. Shallow landslide areas with FS of 1.5 to 2.5.
- 3 b. Slopes of fifteen percent or greater and not classified as I, U, UOS, or URS, with
4 soils classified by the U.S. Department of Agriculture NRCS as “highly erodible” or
5 “potentially highly erodible”; or slopes of fifteen percent or greater with springs or
6 groundwater seepage.
- 7 c. Slopes in all areas equal to or greater than forty percent.
- 8 C. Landslide Hazard Indicators. Project proponents are responsible for determining the actual
9 presence and location of a landslide hazard area. These areas may be indicated by, but not
10 limited to, the following:
- 11 1. Any of the above criteria currently identified in subsection (B) of this section or
12 amended hereafter;
- 13 2. Areas of historic failures, including areas of unstable, old and recent landslides or
14 landslide debris within a head scarp;
- 15 3. Areas within active bluff retreat that exhibit continuing sloughing or calving of bluff
16 sediments, resulting in a vertical or steep bluff face with little or no vegetation;
- 17 4. Hillside that intersect geologic contacts with a relatively permeable sediment
18 overlying a relatively impermeable sediment or bedrock;
- 19 5. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes,
20 joint systems, and fault planes in subsurface materials;
- 21 6. Areas exhibiting geomorphological features indicative of past slope failure, such as
22 hummocky ground, back-rotated benches on slopes, etc.;
- 23 7. Areas with tension cracks or ground fractures along and/or near the edge of the top
24 of a bluff or ravine;
- 25 8. Areas with structures that exhibit structural damage such as settling and cracking of
26 building foundations or separation of steps or porch from a main structure that is located
27 near the edge of a bluff or ravine;
- 28 9. The occurrence of toppling, leaning, bowed, or jackstrawed trees that are caused by
29 disruptions of ground surface by active movement;

1 10. Areas with slopes containing soft or liquefiable soils, such as areas with
2 unconsolidated glacial deposits subject to elevated groundwater levels after prolonged
3 rainfall or rain-on-snow events;

4 11. Areas where gullying and surface erosion have caused dissection of the bluff edge or
5 slope face as a result of drainage or discharge from pipes, culverts, ditches, and natural
6 drainage courses;

7 12. Areas where seeps, springs or vegetative indicators of a shallow groundwater table
8 are observed on or adjacent to the face of the slope;

9 13. Areas that include alluvial or colluvial fans located at the base of steep slopes and
10 drainages;

11 14. Areas within two hundred feet of areas classified as U, UOS, or URS.

12 15. Areas within potential landslide runout distance greater than the slope height as
13 measured from toe of slope or as determined in a geological hazards geotechnical report.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

15 **19.400.430 Seismic hazard areas.**

16 A. General. Seismic hazard areas are areas subject to severe risk of damage as a result of
17 earthquake-induced land sliding, seismic ground shaking, dynamic settlement, fault rupture,
18 soil liquefaction, or flooding caused by tsunamis and seiches.

19 B. Potential Seismic Hazard Areas. Potential seismic hazard areas are depicted on the Kitsap
20 County seismic hazards map. These potential seismic hazard areas are identified using the
21 following criteria:

22 1. Areas of high seismic hazard are those areas with faults that have evidence of rupture
23 at the ground surface.

24 2. Areas of moderate seismic hazard.

25 a. Areas susceptible to seismically induced soil liquefaction, such as hydric soils as
26 identified by the NRCS, and areas that have been filled to make a site more suitable
27 for development. This may include former wetlands that have been covered with fill.

28 b. Areas identified as Seismic Site Class D, E, and F.

29 c. Faults without recognized evidence of rupture at the ground surface.

1 C. Seismic Hazard Indicators. Project proponents are responsible for determining actual
2 presence and location of a seismic hazard area. These areas may be indicated by, but not
3 limited to, the following:

4 1. Any of the above criteria currently identified in subsection (B) of this section or
5 amended hereafter;

6 2. Areas identified as potential landslide areas, including slopes that can become
7 unstable as a result of strong ground shaking, even though these areas may be stable
8 under nonseismic conditions;

9 3. Areas identified as high and moderate liquefaction and dynamic settlement hazard
10 areas by the Washington Department of Natural Resources, including areas underlain by
11 unconsolidated sandy or silt soils and a shallow groundwater table (static groundwater
12 depth less than thirty feet) capable of liquefying in response to earthquake shaking.
13 Dynamic settlement hazard areas are those underlain by more than ten feet of loose or
14 soft soil not susceptible to liquefaction, but that could result in vertical settlement of the
15 ground surface in response to earthquake shaking;

16 4. Tsunami and seiche hazard areas. Generally, these are areas that are adjacent to
17 Puget Sound marine waters and lakes with shoreline elevations at risk of flooding under
18 projected wave propagation models. These include, but are not limited to, areas that are
19 designated as "A" or "V" zones as identified by FEMA and depicted on the FEMA maps or
20 other maps adopted by Kitsap County;

21 5. Fault rupture hazard areas, including areas where displacement (movement up,
22 down, or laterally) of the ground surface has occurred during past earthquake(s) in the
23 Holocene Epoch, and areas adjacent that may be potentially subject to ground surface
24 displacement in a future earthquake.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

26 **19.400.435 Development standards.**

27 A. Erosion and Landslide Hazard Development Standards.

28 1. Development activities or actions requiring project permits or clearing shall not be
29 allowed in landslide hazard areas or erosion hazard areas unless a geological assessment
30 geotechnical report demonstrates that development building within a landslide hazard
31 area will provide protection commensurate to being located outside the landslide hazard
32 area and meets the requirements of this section. This may include proposed mitigation
33 measures.

1 2. Top of Slope ~~Buffer and~~ Building Setback. All development activities or actions that
2 require project permits or clearing in erosion and landslide hazard areas shall provide
3 native vegetation from the toe ~~to the top of the slope of the slope to twenty-five feet~~
4 ~~beyond the top of slope, with an additional minimum fifteen-foot building and impervious~~
5 ~~surface setback, unless otherwise allowed through a geologic assessment.~~ The minimum
6 ~~buffer and~~ building ~~and~~ setback shall be ~~modified increased~~ from the top of the slope as
7 follows:

8 ~~a.~~ For moderate and high erosion hazard areas, the vegetated buffer shall be
9 twenty-five feet beyond the top of slope, with an additional minimum fifteen-foot
10 building and impervious surface setback, unless otherwise allowed through a
11 geologic assessment.

12 ~~b.a.~~ For high landslide hazard areas, the vegetated buffer shall be twenty-five feet
13 beyond the top of the slope, and the overall setback shall be equal to the height of
14 the slope (1:1 horizontal to vertical) plus the greater of one-third of the vertical slope
15 height or twenty-five feet.

16 ~~c.b.~~ For moderate landslide hazard areas, the vegetated buffer shall be twenty-five
17 feet beyond the top of the slope, and the overall setback shall be forty feet from the
18 top of slope.

19 3. Toe of Slope Building Setback. A geotechnical report may be required based on slope
20 height and stability indicators. Where slope hazard indicators are not identified, the
21 requirements of Chapter [14.04](#), the Kitsap County Building and Fire Code, will apply.

22 4. The department may require a larger native vegetation width than the standard
23 buffer distance as determined above, if any of the following are identified through the
24 geological assessment process:

25 ~~a.~~ The adjacent land is susceptible to severe erosion and erosion control measures
26 will not effectively prevent adverse impacts; or

27 b. The area has a severe risk of slope failure or downslope storm water drainage
28 impacts.

29 5. The minimum native vegetation width and/or building setback requirement may
30 be decreased if a geotechnical report demonstrates that a lesser distance, through
31 design and engineering solutions, will adequately protect both the proposed
32 development and the erosion or landslide hazard area. The department may
33 decrease the setback when such a setback would result in a greater than 1:1 slope
34 setback.

35 B. Seismic Hazard Development Standards.

1 1. Development activities or actions requiring a project permit occurring within two
2 hundred feet of a “high hazard” seismic hazard area may be allowed with an approved
3 geotechnical report that confirms the site is suitable for the proposed development and
4 addresses any fill or grading that has occurred on the subject parcel.

5 2. For “moderate hazard” seismic hazard areas, a geologic assessment may be
6 requested by the department to confirm the site is suitable for the proposed
7 development.

8 ~~3.2.~~ Development activities or actions requiring a project permit within a seismic hazard
9 area shall be in accordance with Chapter [14.04](#), the Kitsap County Building and Fire Code.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 32, 2005. Formerly 19.400.415)

11 **19.400.440 Review procedures.**

12 A. Map Review. The Kitsap County geologically hazardous areas maps (erosion, landslide, and
13 seismic) provide an indication of where potential geologically hazardous areas are located
14 within the county. The department will complete a review of the map to determine if the
15 proposed activity is located within a hazard area.

16 B. A geological assessment shall be required when the proposed activity is located within a
17 potential hazard area.

18 C. A qualified professional, as described in Section [19.700.715](#), shall complete a field
19 investigation and geological assessment to determine whether or not the site for the proposed
20 activity is affected by the geologic hazard, as provided in subsection (D) of this section.

21 D. The geological assessment shall be submitted in the most applicable form as follows:

22 1. A geological letter. When the geologist or geotechnical professional finds that no
23 hazard area exists within two hundred feet of the site, a stamped letter may be submitted
24 demonstrating those findings;

25 2. A geological report. When the geologist finds that a geologically hazardous area exists
26 within two hundred feet of the site, but will not impact the site or need engineering
27 design recommendations;

28 3. A geotechnical report. When the geotechnical engineer finds that a geologically
29 hazardous area exists within two hundred feet of the site, and will require engineering
30 design recommendations or other mitigation measures necessary in order to construct or
31 develop within the geologically hazardous area.

32 E. The department shall review the geological assessment and either:

- 1 1. Accept the geological assessment and approve the application; or
- 2 2. Reject the geological assessment and require revisions or additional information.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

4 **19.400.445 Recording and disclosure.**

5 A. The following information shall be included in a notice to title that must be signed,
6 notarized, and recorded with the county auditor prior to permit issuance for development in a
7 geologically hazardous area where a geotechnical report has identified recommended actions
8 and/or mitigation measures that are in addition to the standard development requirements of
9 KCC 19.400.435 requiring a geotechnical report:

10 1.A. An abstract and description of the specific types of risks identified in the
11 geotechnical report;

12 2.B. A statement that the owner(s) of the property understands and accepts the
13 responsibility for the risks associated with developments on the property given the
14 described condition, and agrees to inform future purchasers and other successors and
15 assignees of the risks; and

16 3.C. A statement that the owner(s) of the property acknowledge(s) that this chapter
17 does not create liability on the part of Kitsap County or any officer or employee thereof
18 for any damages that result from reliance on this chapter or any administrative decision
19 lawfully made thereunder.

20 B. Any monitoring recommendations stated in a geological assessment is the responsibility of
21 the landowner.

22 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

23

Chapter 19.700

SPECIAL REPORTS

Sections:

- [19.700.705 Special reports.](#)
- [19.700.710 Wetland delineation report.](#)
- [19.700.715 Wetland mitigation report.](#)
- [19.700.720 Habitat management plan \(HMP\).](#)
- [19.700.725 Geological assessments.](#)
- [19.700.730 Hydrogeological report.](#)

19.700.705 Special reports.

A. Purpose. The following special reports may be required to provide environmental information and to present proposed strategies for maintaining, protecting and/or mitigating impacts to critical areas:

1. Wetland delineation report (Section [19.700.710](#)).
2. Wetland mitigation plan (Section [19.700.715](#)).
3. Habitat management plan (Section [19.700.720](#)).
4. Geotechnical report/geological report (Section [19.700.725](#)).
5. Hydrogeological report (Section [19.700.730](#)).

B. When Required. Special reports shall be submitted by the applicant for approval by the department when required by this title.

C. Responsibility for Completion. The applicant shall pay for or reimburse the county for the costs incurred in the preparation of special reports or tests, and for the costs incurred by the county to engage technical consultants or staff for review and interpretation of data and findings submitted by or on behalf of the applicant. The applicant shall pay permit fees or technical assistance fees as required by Title [21](#), as now or hereafter amended. In such circumstances where a conflict in the findings of a special report and the findings of the county in review of the special report exists, the applicant or affected party may appeal such decisions of the county pursuant to the procedures in Section [19.100.150](#) (Appeals) and Chapter [21.04](#).

D. Qualifications of Professionals. Any special report required herein shall be prepared and signed by the professionals identified below and in Chapter [19.150](#), and shall include his or her resume, or other list of qualifications, to aid the department in assessing these qualifications.

1 E. Timeframe. All special reports shall be considered valid for a period of 5-years from the date
2 of the report unless otherwise indicated by the author for a greater or lesser timeframe.
3 Reports may be required to be supplemented with an addendum letter or report should a
4 complete application be received more than 5 years from the date of the original report, if the
5 report is not addressing the specific proposal, or if the criteria for assessing the critical area has
6 been updated after the date on the report (wetland rating system, for example).

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

8 | **19.700.710 Wetland delineation report.**

9 A. Wetland delineation reports shall be valid for a period of five years from the date of the
10 report unless a longer or shorter period is specified by the department. An extension of an
11 original report may be granted upon submittal of a written request to the department prior to
12 expiration. Prior to granting an extension, the department may require updated studies if, in its
13 judgment, the original intent of the application is altered, enlarged or if circumstances relevant
14 to the review and issuance of the original permit have changed substantially, or if the applicant
15 failed to abide by the terms of the original approval. Time extensions shall be granted in writing
16 and documented in the file.

17 B. A wetland delineation report shall include, but not be limited to, the following:

18 1. Vicinity map;

19 2. When available:

20 a. A copy of a National Wetland Inventory Map (U.S. Fish and Wildlife Service)
21 and/or a Kitsap County wetland inventory map identifying the wetlands on or within
22 three hundred two hundred fifty feet of the site;

23 b. A copy of any known previous delineations or investigations;

24 c. A copy of forms used to delineate the wetland area (1987 Wetland Delineation
25 Manual, Western Mountains, Valleys, and Coast Regional Supplement);

26 3. A site map setting forth all of the following:

27 a. Surveyed wetland boundaries based upon a delineation by a wetlands specialist;

28 b. Site boundary property lines and roads;

29 c. Internal property lines, rights-of-way, easements, etc.;

- 1 d. Existing physical features of the site including buildings, fences, and other
2 structures, roads, parking lots, utilities, water bodies, etc.;
- 3 e. Contours at the smallest readily available intervals, preferably at two-foot
4 intervals;
- 5 f. Hydrologic mapping showing patterns of surface water movement and known
6 subsurface water movement into, through, and out of the site area;
- 7 g. Location of all test holes and vegetation sample sites, numbered to correspond
8 with flagging in the field and field data sheets;
- 9 h. The most recent, dated air photo with overlays displaying the site boundaries
10 and wetland delineation;
- 11 4. Location information (legal description, parcel number and address);
- 12 5. Discussion of wetland boundary. The delineation report shall delineate the entire
13 wetland boundary. If the wetland extends outside the site, the delineation report shall
14 discuss methods for delineation beyond the site if physical access was not granted.
15 Remote mapping methods may be used, but this should be noted in the report;
- 16 6. General site conditions within one-quarter mile of the subject wetland(s), including
17 topography, acreage, and surface areas of all wetlands identified in the Kitsap County
18 wetland inventory map and water bodies, including ditches and streams;
- 19 7. Hydrological analysis, including topography, of existing surface and known significant
20 subsurface flows into and out of the subject wetland(s), and location of the wetland within
21 the watershed;
- 22 8. Analysis of the functional values of existing wetland(s), including vegetative, fauna,
23 habitat, water quality, and hydrologic conditions;
- 24 9. A summary of proposed activity and potential impacts to the wetland(s);
- 25 10. Recommended wetland category using the Washington State Wetlands Rating
26 System categories (see Chapter [19.800](#), Appendix A), including rationale for the
27 recommendation and a copy of the completed Wetland Rating Summary Form with
28 associated figures;
- 29 11. Recommended buffer boundaries, including rationale for boundary locations;

1 12. Site plan of proposed activity, including location of all parcels, tracts, easements,
2 roads, structures, and other modifications to the existing site. The location of all wetlands
3 and buffers shall be identified on the site plan.

4 C. Administrative Wetland Boundary and Ranking Evaluation.

5 1. ~~If resources allow, t~~The department may delineate and evaluate wetland areas for any
6 proposed single-family dwelling project listed in Chapter [19.200](#) (Wetlands), unless the
7 applicant wishes to employ a qualified wetland biologist at the applicant's expense, or a
8 wetland delineation report is required by the department. Fees may be collected for this
9 determination and evaluation, as specified in Title [21](#).

10 2. The wetland boundary shall be field-staked prior to department review and this line
11 shall be depicted on the building site plan application.

12 3. The wetland boundary and buffer shall be identified on all grading, building site, utility
13 or other development plans submitted on the project. Wetland delineation stakes shall
14 remain in place for the duration of the application process and not removed until project
15 completion/final inspection when wetland buffer signs have been reviewed and installed.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

17 **19.700.715 Wetland mitigation report.**

18 A. Compensatory mitigation shall be required for activities that result in the loss of wetland
19 acreage or functions, in accordance with Section [19.200.230](#) (Wetland mitigation requirements).

20 1. A compensatory mitigation plan shall be completed. The applicant shall submit a
21 detailed mitigation plan for compensatory mitigation to the department.

22 2. The detailed mitigation plan shall be prepared, signed, and dated by the wetland
23 specialist to indicate that the plan is in accordance with specifications as determined by
24 the wetland specialist. A signed original mitigation plan shall be submitted to the
25 department.

26 3. Approval of the detailed mitigation plan shall be signified by a notarized
27 memorandum of agreement, signed by the applicant and department director or
28 designee. The agreement shall refer to all requirements for the mitigation project.

29 4. The mitigation project shall be completed according to a schedule agreed upon
30 between the department and the applicant.

31 5. Wetland mitigation shall occur according to the approved wetland mitigation plan and
32 shall be consistent with provisions of this chapter and title.

1 6. The wetland specialist shall be on site during construction and plant installation
2 phases of all mitigation projects.

3 7. Upon completion of construction for the wetland mitigation project, the wetland
4 specialist shall submit an as-built report to the department for review and approval.

5 B. As required by Section [19.200.230](#) (Wetland mitigation requirements), a mitigation report
6 shall be prepared and shall contain the following:

7 1. Cover/Title Page.

8 a. Project name.

9 b. Reference numbers to other permit applications (local, state and/or federal).

10 c. Date of publication.

11 d. Who it was prepared for/contact information.

12 e. Who it was prepared by/contact information.

13 2. Table of contents, including a list of figures and tables.

14 3. Responsible Parties. Provide the names, titles, addresses, phone numbers, and
15 information regarding the professional experience (if applicable) for those involved in the
16 development and mitigation projects. Provide the name of the company or agency, as
17 well as the individuals involved.

18 a. Applicant(s).

19 b. Applicant's representative/agent.

20 c. Preparer(s) of the wetland delineation report.

21 d. Preparer(s) of the mitigation report, mitigation construction plans and
22 specifications.

23 e. Parties responsible for monitoring, long-term maintenance, and contingency
24 plans. If this is unknown at the time the mitigation report is submitted, provide this
25 information with the monitoring reports.

26 4. Executive summary that summarizes the project, its potential wetland-related
27 impacts, and the proposed mitigation. The executive summary shall include the following
28 information:

- 1 a. Applicant name/address/phone.
- 2 b. Agent/consultant.
- 3 c. Description of land use proposal and location.
- 4 d. Description of the measures taken to avoid and minimize the impacts to the
- 5 wetland and other aquatic resources.
- 6 e. Description of unavoidable wetland impacts and the proposed compensatory
- 7 mitigation measures:
 - 8 i. Size (acres);
 - 9 ii. Cowardin wetland classification;
 - 10 iii. Hydrogeomorphic (HGM) classification;
 - 11 iv. Wetland rating;
 - 12 v. Wetland functions;
 - 13 vi. Compensation ratios used.
- 14 f. Description of mitigation area.
- 15 g. Explanation of other unavoidable impacts to other aquatic resources.
- 16 h. Other relevant details, including but not limited to:
 - 17 i. Goals and objectives.
 - 18 ii. Proposed improvements to the functions and environmental processes of
 - 19 the larger watershed.
 - 20 iii. Proposed buffers for the compensatory mitigation site (minimum and
 - 21 maximum width and total area).
- 22 5. Project Description.
 - 23 a. Type of development (existing and proposed land uses).
 - 24 b. Development project size.

- 1 c. Implementation schedule (start date and duration).
- 2 d. Project Location and Maps.
- 3 i. Section, township, range.
- 4 ii. Water resource inventory area (WRIA).
- 5 iii. Watershed and subwatershed.
- 6 iv. Vicinity map.
- 7 e. Description of the Development Site.
- 8 i. Historic and current land uses, zoning designations, and structures on
9 development site and adjacent properties (if known).
- 10 ii. A local area map (zoning, land use, wetlands, other aquatic resources, one-
11 hundred-year floodplain).
- 12 iii. Existing wetlands on or adjacent to the development site. Attach
13 delineation report.
- 14 iv. Other aquatic resources on the site or adjacent properties, noting
15 hydrologic connections. Describe any flooding that affects the development site
16 and the location of the development within the floodplain, where applicable.
- 17 v. Known historic or cultural resources on the development site.
- 18 6. Ecological Assessment of Impact.
- 19 a. Description of the impacts and extent of disturbance to wetlands (including
20 acreage). This includes temporary, indirect, and direct impacts.
- 21 b. Description of the site in context of other wetlands/water bodies.
- 22 c. Description of the Water Regime.
- 23 i. Describe the source of water to the wetland being affected by the
24 development project. For multiple sources, estimate the percentage of each.
- 25 ii. Describe the hydrologic regime of the wetland being affected through
26 qualitative estimates of duration and frequency of inundation/saturation.

- 1 iii. Map of the surface and groundwater flowing into the impacted areas with
2 the directions of water flow indicated.
- 3 d. Description of the Soils.
- 4 i. Description of the soil characteristics of the wetland being affected including
5 soil type and classification, and a description of texture, color, structure,
6 permeability, and organic content.
- 7 ii. Soil survey map (indicate the source of the map).
- 8 iii. Map showing soil sampling locations (typically the location of the soil pits
9 used for delineation).
- 10 e. Description of the Plant Communities.
- 11 i. Qualitative descriptions of the different Cowardin (1979) classes at the
12 wetland being affected (including subclass and water regime modifiers). If a
13 forested class is present, also estimate the average age of the canopy species.
- 14 ii. Estimate the relative abundance of dominant and subdominant plants
15 within each Cowardin class (use information collected during routine
16 delineation unless more detailed data are available).
- 17 iii. List of the wetland indicator status of dominant and subdominant species
18 (obligate – OBL, facultative – FAC, facultative wet – FACW).
- 19 iv. Description of the prevalence and distribution of nonnative and/or invasive
20 species, if any are present at the wetland being affected.
- 21 v. General description of upland plant communities within three hundred
22 thirty feet (one hundred meters) of the wetland being affected, if any.
- 23 vi. List of rare plants and plant communities that are known to occur on the
24 development project site or adjacent properties. If any of these species are
25 observed on the site, include descriptions of the occurrence and any potential
26 impacts to them.
- 27 f. Description of any fauna using the site. If a biological assessment was prepared
28 for the project, the report may simply be referenced in this mitigation report.
- 29 i. Description of any animals (including amphibians) using the wetland being
30 affected or its buffer. Especially note evidence of past or present beaver use. In

1 most cases, a list of species likely to use the habitats on the site is sufficient,
2 with brief descriptions of the existing habitats.

3 ii. Include a description of endangered, threatened, sensitive, and candidate
4 animal species that are known to occur in the general areas (distance depends
5 on species) of the development site, as well as observations of such species.
6 Also, include those listed as priority species or species of concern by the
7 Washington Department of Fish and Wildlife.

8 g. Landscape Position and Geomorphology.

9 i. Class of the wetland being affected by the development project. Use the
10 hydrogeomorphic classification (class and subclass) to describe its position in
11 the watershed.

12 ii. Qualitative description of the functions performed by the wetland affected
13 relative to the position in the watershed. This may include its role in attenuating
14 flooding, as a corridor for wildlife between different regions of the watershed,
15 as part of a regional flyway, or in improving water quality regionally.

16 h. Description of Functions Provided.

17 i. Description of the functions provided by the wetland being affected and to
18 what level they are performed. The method used to assess functions varies
19 depending on the scale of the impact (size/type), the complexity of the wetland,
20 etc. The same method must be used for assessing the impact site and the
21 mitigation site, as well as for monitoring.

22 ii. Qualitative or quantitative description of the characteristics that enable the
23 wetland being affected to perform specific functions, depending on the method
24 used.

25 iii. Description of the sampling and assessment methods used.

26 iv. Documentation of the training of professionals assessing the functions.

27 v. List of the references consulted.

28 i. Wetland Category Rating and Buffer Requirements.

29 i. The category of the wetland being affected using the Washington State
30 rating system for Western Washington, as revised.

31 ii. Copies of the original data sheets used to rate the wetland.

1 iii. Size (width) of the undeveloped upland buffer within three hundred feet
2 (one hundred meters) of the wetland being affected by the development
3 project.

4 iv. Qualitative description of the dominant vegetation in the buffer and the
5 physical structure of the plants in it (e.g., deciduous forest, coniferous forest,
6 and prevalence of snags and downed woody debris).

7 v. Maps of the buffer areas and the vegetation types.

8 j. Information on Water Quality, Where Applicable.

9 i. Description of any known or observable water quality problems at the
10 development site and whether they will continue after the development project
11 is completed. Basic water quality parameters that should be considered include
12 dissolved oxygen (DO), pH and alkalinity, temperature, turbidity/suspended
13 solids/sediment accretion, nutrients, fecal coliform, and heavy metals.

14 ii. Assessment of whether the development project is expected to worsen or
15 improve existing water quality conditions.

16 7. Mitigation Approach.

17 a. Mitigation Sequencing Followed.

18 i. Descriptions of the specific steps taken to avoid and minimize impacts to the
19 maximum extent practicable. Larger projects may need to include an
20 alternatives analysis in an appendix.

21 ii. Description of the specific steps to minimize wetland impacts to the site or
22 reduce impacts over time (timing of project, redesign of project, orientation
23 and/or location). Where applicable, note how proposed stormwater treatment
24 facilities may reduce water quality impacts.

25 iii. Discussion of wetland rectification strategies. Where applicable note how
26 temporary impacts, occurring during implementation of the development
27 project, could be rectified through restoration and maintenance activities.

28 iv. Notation of the size and type of compensation being proposed. Include a
29 description of the mitigation ratios and why they are adequate to compensate
30 for the lost or degraded area and functions. A full description of the
31 compensatory mitigation should be provided as described in the following
32 sections.

1 b. Goals and Objectives. Identify the goal or goals of the compensatory mitigation
2 project.

3 c. Mitigation Strategy. Describe in general terms the strategies (actions) that will be
4 used to achieve the goals.

5 8. Proposed Mitigation Site.

6 a. Site Description (Location, Size, Maps).

7 i. Ownership;

8 ii. Total area of mitigation site (acres);

9 iii. Current/past land use. Include, also, a description of the constraints at the
10 mitigation site that could affect the success of the mitigation project, and
11 strategies used to address each constraint.

12 b. Site Selection Rationale. Discuss how the site fits with the environmental needs
13 in the watershed. If watershed or regional planning efforts exist for the area, explain
14 how the selection of the compensation site is consistent with those plans.

15 c. Existing/Baseline Ecological Conditions of the Mitigation Site.

16 i. Summary of Historic and Current On-Site and Nearby Land Uses.

17 (a) Historic land uses and structures on the mitigation site and adjacent
18 properties, if known;

19 (b) Current land uses and structures on the mitigation site;

20 (c) Current land uses and zoning designations of adjacent properties;

21 (d) A local area map showing land uses and zoning designations.

22 ii. Description of Any Known Cultural Resources on the Site. If a separate
23 report on cultural/historic resources was prepared, it may be referenced in the
24 mitigation report.

25 (a) List of structures listed or eligible for historic registers;

26 (b) Brief description of resources having archaeological or cultural
27 significance.

1 iii. Description of the Site in Context of Other Wetlands. Any existing wetland
2 boundaries shall be summarized here, but may reference the delineation
3 report.

4 (a) A topographic base map (scale one inch equals four hundred feet or
5 smaller) outlining the boundaries of the wetlands that are under state,
6 federal, or local jurisdiction;

7 (b) Name of the delineation manual and method used. Include the date
8 field work was performed, field data sheets documenting the data
9 collected on the three criteria (hydrology, vegetation, soils);

10 (c) Provide the total area of wetlands on the mitigation site, identifying
11 the area (acres) of individual wetlands.

12 iv. Description of Other Aquatic Resources on the Mitigation Site and Adjacent
13 Properties.

14 (a) Description of the other aquatic resources (e.g., streams, lakes, tidal
15 waters) on the mitigation site and adjacent properties, noting hydrologic
16 connections among them and with existing wetlands.

17 (b) Include and/or reference a map showing the approximate location of
18 all aquatic resources.

19 (c) Description of any flooding that affects the mitigation site and location
20 of the development within the floodplain, where applicable, indicating on a
21 map whether the project is located within the mapped one-hundred-year
22 floodplain).

23 v. Description of the Water Regime.

24 (a) Description of the source of water to the mitigation site. If several
25 sources are present, estimate the percentage contribution from each.

26 (b) Description of the existing water regimes at the mitigation site (i.e.,
27 rough, qualitative estimate of duration and frequency of inundation and/or
28 saturation).

29 (c) Map of the surface and groundwater flowing into the mitigation area
30 with the directions of water flow indicated.

31 vi. Description of the Soils.

1 (a) Description of the soil characteristics of the mitigation site including
2 soil type and classification, and a description of texture, color, structure,
3 permeability, and organic content. Use soil surveys confirmed by
4 representative soil samples;

5 (b) Soil survey map (indicate source);

6 (c) Map showing soil sampling locations (typically the location of the soil
7 pits used for delineation).

8 vii. Description of the Plant Communities.

9 (a) Qualitative descriptions of the different Cowardin (1979) classes at the
10 mitigation site (include subclass and water regime modifiers). If a forested
11 class is present, also estimate the average age of the canopy species;

12 (b) Estimate the relative abundance of dominant and subdominant plants
13 within each Cowardin class (use information collected during routine
14 delineation unless more detailed data are available);

15 (c) List of the wetland indicatory status of dominant and subdominant
16 species (obligate – OBL, facultative – FAC, facultative wet – FACW);

17 (d) Description of the prevalence and distribution of nonnative and/or
18 invasive species, if any are present;

19 (e) General description of upland plant communities within three
20 hundred thirty feet (one hundred meters) of the mitigation site, if any;

21 (f) List of rare plants and plant communities that are known to occur on
22 the mitigation site or adjacent properties. If any of these species are
23 observed on the site, include descriptions of the occurrence and any
24 potential impacts to them.

25 viii. Description of Any Fauna Using the Site. If a biological assessment was
26 prepared for the project, the report may simply be referenced in this mitigation
27 plan.

28 (a) Description of any animals (including amphibians) using the wetland
29 being affected or its buffers. Especially note evidence of past or present
30 beaver use. In most cases, a list of species likely to use the habitats on the
31 site is sufficient, with brief descriptions of the existing habitats.

1 (b) Include a description of endangered, threatened, sensitive, and
2 candidate animal species that are known to occur in the general areas
3 (distance depends on species) of the development site, as well as
4 observations of such species. Also, include those listed as priority species
5 or species of concern by the Washington Department of Fish and Wildlife.

6 ix. Landscape Position and Geomorphology.

7 (a) Class of any existing wetlands on the mitigation site. Use
8 hydrogeomorphic classification (class and subclass) to describe the
9 position in the watershed;

10 (b) Qualitative description of the functions performed by the mitigation
11 site relative to the position in the watershed. This may include its role in
12 attenuating flooding, as a corridor for wildlife between different regions of
13 the watershed, as part of a regional flyway, or in improving water quality
14 regionally.

15 x. Description of Functions Provided.

16 (a) Description of the functions provided by the wetland being affected
17 and to what level they are performed. The method used to assess
18 functions varies depending on the scale of the impact (size/type), the
19 complexity of the wetland, etc. The same method must be used for
20 assessing the impact site and the mitigation site, as well as for monitoring;

21 (b) Qualitative or quantitative description of the characteristics that
22 enable the wetland being affected to perform specific functions, depending
23 on the method used;

24 (c) Description of the sampling and assessment methods used;

25 (d) Documentation of the training of professionals assessing the
26 functions; and

27 (e) List of the references consulted.

28 xi. Wetland Rating of Any Existing Wetlands, Buffer Requirements.

29 (a) The category of the wetland being affected using the Washington State
30 rating system for Western Washington, as revised;

31 (b) Copies of the original data sheets used to rate the wetland;

1 (c) Size (width) of the undeveloped upland buffer within three hundred
2 thirty feet (one hundred meters) of the mitigation site. Note how much of
3 the existing buffers extend off-site;

4 (d) Qualitative description of the dominant vegetation in the buffer and
5 the physical structure of the plants in it (e.g., deciduous forest, coniferous
6 forest, and prevalence of snags and downed woody debris); and

7 (e) Maps of the buffer areas and the vegetation types.

8 xii. Information on Water Quality, Where Applicable.

9 (a) Description of any known or observable water quality problems at the
10 mitigation site and whether they will continue after the mitigation project is
11 completed. Basic water quality parameters that should be considered
12 include dissolved oxygen (DO), pH and alkalinity, temperature,
13 turbidity/suspended solids/sediment accretion, nutrients, fecal coliform,
14 and heavy metals.

15 (b) Assessment of whether the mitigation project is expected to worsen
16 or improve existing water quality conditions.

17 d. Site constraints.

18 9. Preliminary Site Plan.

19 a. A qualitative description of the water regime and of how adequate hydrology will
20 be provided to support a wetland over the long term.

21 b. Discussion of how project was designed to provide the proposed functions,
22 including description of the hydrologic data that will support the proposal. Provide a
23 rationale for each proposed function and describe the design features that will
24 contribute to providing the function.

25 c. Schematic Drawings.

26 i. Change in topography;

27 ii. Hydrologic (water control) structures;

28 iii. Soils;

29 iv. Vegetation distributions;

- 1 v. Habitat attributes (structures) and their location;
- 2 vi. Existing and proposed buffers.
- 3 d. Section drawings showing relationship of topography to water regime and
4 vegetation.
- 5 10. Final Site Plan/Design.
- 6 a. Site Survey and Topography.
- 7 i. Site surveys are needed when the mitigation project includes changes to
8 ground elevations. If no changes to grade are proposed, then a simpler map of
9 the site will be sufficient showing property and wetland boundaries, landmarks,
10 scale, site features, and other existing conditions;
- 11 ii. Orientation and scale (north arrow; typically scales are one inch equals
12 twenty-five or fifty feet);
- 13 iii. Existing and proposed elevation contours. Contours at one-foot intervals
14 are typically sufficient for most mitigation reports. Contours at six-inch intervals
15 may be desirable in certain cases where the seasonal fluctuation of water levels
16 is low or in specific areas on the mitigation site where it is critical to have a high
17 level of accuracy;
- 18 iv. Spot elevations for low points, high points and structures (culverts,
19 hydraulic controls, utilities, and roads);
- 20 v. Property boundaries;
- 21 vi. On-site wetland boundaries (including all wetlands existing and after
22 mitigation);
- 23 vii. Survey benchmarks;
- 24 viii. Location and elevation of soil borings or test pits and water level sampling
25 devices;
- 26 ix. Location of soils to be stockpiled, if any;
- 27 x. Description of methods of erosion control and bank stabilization, if
28 applicable;
- 29 xi. Buffer areas proposed for the mitigation site and their boundaries.

- 1 b. Water regime including:
- 2 i. Description of the proposed frequency and duration of flooding, inundation,
3 or soil saturation;
- 4 ii. Description of the proposed groundwater and surface water sources and
5 characteristics;
- 6 iii. Description of the elevation of the water table and dates when measured
7 (note if table is perched);
- 8 iv. Engineering drawings of any proposed water control structures.
- 9 c. Soil Amendments.
- 10 i. Soil Logs from an On-Site Evaluation. Depending on proposed depth of
11 grading, soil information may come from hand-dug shallow pits or from deeper
12 samples that are typically obtained with small drilling rigs. At a minimum, the
13 shallow soil profile should be described even if no changes in site elevations are
14 proposed.
- 15 ii. Description of how the soil characteristics will be affected by the mitigation
16 activities.
- 17 d. Landscape Plans. For most projects, planting plans should be prepared by a
18 landscape architect with assistance from a wetland or plant ecologist. In some cases
19 where very simple planting plans are proposed for small areas, the level of expertise
20 provided by a landscape architect may not be needed. The list below includes the
21 minimum information needed for planting plans.
- 22 i. Section drawing of proposed plant distribution, density and spacing, in
23 relation to topography and water levels. The projected average water level
24 during winter wet season, early growing season, and late summer dry season
25 should be displayed;
- 26 ii. List of plant materials (common and Latin names, sizes, sources, quantity,
27 etc.);
- 28 iii. Location of existing or proposed upland buffers;
- 29 iv. Description of the methods that will be used to control invasive and exotic
30 plants if they exist in the vicinity;

- 1 v. A plan for irrigating the plants until they are established, including method,
2 frequency, and amount of water;
- 3 vi. Erosion control;
- 4 vii. Map of the location of habitat structures or habitat features;
- 5 viii. Location of upland buffers;
- 6 ix. Description of the soil amendments, including use and sources of mulch.
- 7 e. Construction specifications.



8 11. Monitoring Plan. A monitoring plan describes the methods used to collect and
9 analyze data needed to show that performance standards are being met. They are also
10 used to track environmental changes at mitigation sites throughout the monitoring
11 period. Monitoring plans will vary depending on mitigation objectives and performance
12 standards, but all must be designed to assess the quantitative or qualitative performance
13 standards. The methods used for monitoring specific variables generally need to be the
14 same as those used in establishing baseline data at the wetland affected by the
15 development project. Monitoring plans will typically include the elements described
16 below.



- 17 a. Variables to be measured (plant survival, canopy cover, plant diversity, water
18 levels and duration or inundation/saturation);
- 19 b. Sampling methods for each variable;
- 20 c. A map of the sampling locations for each variable or a description of the
21 methods that will be used to determine sampling locations for each monitoring
22 event. Permanent sampling locations may be the best choice for some variables, but
23 for others, such as percent cover of vegetation, sampling locations may be varied
24 through random selection or other methods for each monitoring event. The map
25 should include clearly identifiable markers on the ground to act as reference points
26 for orientation. These may include roads, benchmarks, and permanent structures;
- 27 d. Laboratory methods to be used, if applicable;
- 28 e. Provide a timetable for reporting monitoring results to the agencies. It is
29 preferred to tie the specific dates to the start of construction.

30 12. Site Protection. The mitigation area and any associated buffer shall be protected by
31 a legal mechanism such as a critical area tract or a conservation easement. The
32 department may approve another legal and administrative mechanism if it is determined

1 to be adequate to protect the site. The following shall be required to demonstrate
2 compliance and ensure adequate protection of the wetland functions and values:

- 3 a. Physical site protection of the remaining wetland boundaries and buffer.
- 4 b. Proof of establishment of a covenant or other approved legal mechanism for the
5 remaining wetlands and buffers on the development project site (if any) and a legal
6 site protection mechanism for the compensatory mitigation areas. Legal protection
7 (deed restriction, conservation easement). Provide copies.

8 ~~c. Buffers.~~

9 13. Maintenance and Contingency Plans. The need for activities such as inspecting
10 irrigation systems, replacing plants, weeding, preventing or managing herbivory,
11 removing trash, and controlling erosion (and the funding to conduct them) should be
12 anticipated based on the site characteristics, level of public access to the mitigation site,
13 and typical uses of adjacent areas. Frequency of the activities may change through the
14 monitoring period, so maintenance plans should be written with room for flexibility.
15 Contingency plans contain corrective measures that will be taken if monitoring indicates
16 that performance standards are not being met.

17 a. Maintenance schedule for each activity. Include a description of and reason for
18 each maintenance activity planned.

19 b. Contingency Plan.

20 i. Description of initiating procedures. If a performance standard is not met
21 within the time specified in the mitigation plan the permittee will be required to
22 complete the activities in the following list:

- 23 (a) An analysis of the causes of failure;
- 24 (b) Description of the proposed corrective actions;
- 25 (c) Time frame for implementing these actions.

26 ii. Description of a Contingency Fund. A contingency fund should be
27 established for use if any corrective actions are necessary. The description
28 should include what funds will be available for planning, implementing and
29 monitoring any contingency procedures that may be required to achieve the
30 mitigation goals. Generally, the fund amount should equal twenty percent of the
31 total cost of mitigation associated with the project.

32 iii. Responsible parties.

- 1 14. Implementation Schedule.
- 2 a. Construction sequence and time schedule for project start, grading, water
3 diversions, plantings, completion, etc. The applicant must work with the department
4 to develop an agreed construction schedule for the mitigation project. Delays in
5 implementing the construction of the mitigation site may result in an increase in the
6 mitigation required and enforcement actions.
- 7 b. Completion. Acknowledgment that the wetland specialist will submit an as-built
8 report to the department for review and acceptance.

9 15. Permit Conditions. Any compensation project prepared pursuant to this section and
10 approved by the department shall become part of the application for the permit. The
11 department will require an additional growing season year for approval of the mitigation
12 plan unless the applicant requests an inspection for final monitoring year during the final
13 monitoring year assessment.

14 16. Performance Bonds and Demonstration of Competence. A demonstration of
15 financial resources, administrative, supervisory, and technical competence and scientific
16 expertise of sufficient standing to successfully execute the compensation project shall be
17 provided. A compensation project manager shall be named, and the qualifications of each
18 team member involved in preparing the mitigation plan and implementing and
19 supervising the project shall be provided, including educational background and areas of
20 expertise, training and experience with comparable projects. A performance bond,
21 assignment of savings, or other like security will be required by the department in an
22 amount necessary to provide for future site monitoring and possible corrective action
23 required for compensatory mitigation projects. Typically, this amount is one and one-half
24 times the estimated cost of mitigation. Once the project is completed and a maintenance
25 bond is established, the performance bond will be released. The maintenance bond, as
26 determined by the wetland specialist, will be released upon success of the project, as
27 determined by the metrics in the mitigation plan, and no earlier than five years and up to
28 ten years after completion of the mitigation project unless mitigation success is
29 demonstrated through two consecutive monitoring reports. If the approved mitigation is
30 not completed or fails to meet its success standards, the property owner must agree to a
31 property access release form, with forfeiture of funds after the specified monitoring
32 period.

33 17. Waiver. The department may waive portions of a wetland mitigation report if there is
34 adequate information available on the site to determine its impacts and appropriate
35 measures.

36 (Ord. 617 (2022) § 36, 2022; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 36 (part), 2005)

37 | **19.700.720 Habitat management plan (HMP).**

1 A. A HMP is a site investigation report to evaluate the potential presence or absence of a
2 regulated fish or wildlife species or habitat affecting a subject property and proposed
3 development. This report shall identify how development impacts to fish and wildlife habitat
4 from a proposed project will be mitigated. WDFW Priority Habitat and Species (PHS)
5 Management Recommendations, dated May 1991, or as amended, and any applicable species
6 and/or habitat-specific management regulations approved by WDFW ~~all applicable volumes and~~
7 ~~revisions, or the National Bald Eagle Management Guidelines~~ may serve as guidance for this
8 report.

9 B. The HMP shall contain a map prepared at an easily readable scale, showing:

- 10 1. The location of the proposed development site;
- 11 2. The relationship of the site to surrounding topographic, water, and cultural features;
- 12 3. Proposed building locations and arrangements;

13 4. All fish and wildlife habitat conservation areas, inclusive of any standard or proposed
14 buffer widths and building setbacks;

15 5. The locations of any significant trees, per 19.200 and 19.300;

16 6.4. A legend that includes a complete legal description, acreage of the parcel, scale,
17 north arrow, and date of map revision; and

18 7.5. Identification of any species of local importance, priority species, or endangered,
19 threatened, sensitive, or candidate species that have a primary association with habitat
20 on or adjacent to the project area, and assessment of potential project impacts to the use
21 of the site by the species. A WDFW PHS database search that is no older than one year
22 from the project submittal.

23 C. The habitat management plan shall also contain a report which describes:

- 24 1. The nature and intensity of the proposed development;
- 25 2. An analysis of the existing species, habitats, and ecological quality, functions and
26 values. This includes but is not limited to a detailed description of vegetation on
27 and adjacent to the project area and its associated buffer, and a discussion of any federal,
28 state, or local special management recommendations, including
29 Washington Department of Fish and Wildlife habitat management recommendations, that
30 have been developed for species or habitats located on or adjacent to the project area;
31 the effect of the proposed development, activity or land use change upon the wildlife
32 species and habitat identified for protection; and

1 3. An analysis of the effect of the proposed development, activity or land use change
2 upon the existing species, habitats, and ecological functions and values wildlife species
3 and habitat identified for protection; and

4 4. A discussion on how the applicant proposes to avoid, minimize and mitigate any
5 adverse impacts to fish and wildlife habitats created by the proposed development. (See
6 Sections 19.700.710 and 19.700.715, wetland report/wetland mitigation plan
7 requirements.). In all cases, mitigation sequencing shall be demonstrated per Chapter
8 19.100.155.D. When compensatory mitigation is necessary, a mitigation plan shall be
9 provided that ensures no net loss of ecological functions and must meet the following
10 requirements:

11 a. Mitigation sites must be located to preserve or achieve contiguous wildlife
12 habitat corridors to minimize the isolating effects of development on habitat
13 areas;

14 b. The mitigation of aquatic habitat shall be located within the same aquatic
15 ecosystem as the area disturbed; and

16 c. The mitigation plan shall include standards for ongoing management practices
17 that will protect habitat after the project site has been developed, including
18 consistency with 19.300.315(A)(7).

19 5. When necessary per this Title, the HMP shall also include:

20 a. An analysis of how the remaining buffer will be enhanced to meet full buffer
21 function. Any functions that are diminished or lost will be required to be
22 mitigated with in-kind enhancements to the greatest extent feasible. Out of kind
23 mitigation will be considered on a case-by-case basis.

24 b. An analysis based on site specific conditions and project features that greater
25 protection than standard buffers are necessary to preserve riparian functions
26 and protected species.

27 c. Discussion of identified significant trees to be retained per 19.300.315(A)(4)(d).

28 D.—Examples of mitigation measures to be included in the HMP report, include, but are not
29 limited to:

30 1.—Establishment of Buffer Zones. When applicable, the order of sequence for buffer
31 reductions shall be as follows:

32 a.—Reduction of building setback;

~~b.—Use of buffer averaging maintaining one hundred percent of the buffer area under the standard buffer requirement;~~

~~c.—Reduction of the overall buffer area by no more than twenty-five percent of the area required under the standard buffer requirement;~~

~~d.—Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;~~

~~e.—The use of alternative on-site wastewater systems in order to minimize site clearing;~~

~~f.—Infiltration of storm water where soils permit; and~~

~~g.—Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction;~~

~~2.—Preservation of native plants and trees that are essential to maintaining habitat function, including connection to existing wildlife corridors;~~

~~3.—Limitation of access to habitat areas;~~

~~4.—Seasonal restriction of construction activities; and~~

~~5.—Establishing phased development requirements and/or a timetable for periodic review of the plan.~~

~~6.E.~~ A HMP shall be prepared by a fish or wildlife biologist, as defined at Sections [19.150.320](#) and [19.150.690](#). For proposed single-family dwelling construction, the department may complete the plan. Fees may be collected for this plan as specified in Title [21](#).

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

19.700.725 Geological assessments.

Whenever development is proposed in a potentially geologically hazardous area or shoreline setback as defined in Chapters [19.300](#) and [19.400](#), or when the department determines that additional soils and slope analysis is appropriate on a particular site, the applicant is required to submit a geological assessment. This assessment may be in the form of a letter, a geological report, or geotechnical report, as determined in Chapter [19.400](#). These assessments evaluate the surface and subsurface soil conditions on the site.

A. Qualifications.

1 1. Geotechnical reports shall be prepared by a geotechnical engineer (defined at
2 Section [19.150.365](#)).

3 2. Geological reports or letters may be prepared by a licensed geologist
4 (Section [19.150.360](#)) or geotechnical engineer (Section [19.150.365](#)).

5 B. General Provisions. Report recommendations for earthwork, clearing or siting structures in
6 geologically hazardous areas shall be based on existing site conditions rather than measures
7 that have not yet been successfully approved, designed, or constructed (e.g., slope
8 recontouring, slope retaining walls, vegetation improvements, bulkheads, etc.). Shoreline
9 bulkheads and retaining walls may only be utilized as an engineering solution where it can be
10 demonstrated that:

11 1. An existing residential structure or other permitted existing public or private
12 structures or public facilities such as roads or highways cannot be safely maintained
13 without such measures;

14 2. Other nonstructural methods of beach stabilization have been considered and
15 determined infeasible; and

16 3. The resulting stabilization structure is the minimum necessary to provide stability for
17 the existing structure and appurtenances.

18 Minor repair activities on existing permitted structures (i.e., those that do not involve design
19 modifications, changes in structure location, and/or demolition or abandonment of failed
20 structure and replacement with new structure) are not subject to the following project
21 submittal standards.

22 C. Geological Report Submittal Standards. A geological report is required for site development
23 proposals that involve development activity or the installation of structures within a geologically
24 hazardous area or shoreline setback, or as otherwise required pursuant to
25 Chapters [19.300](#) and [19.400](#), but do not involve or require engineering design
26 recommendations. The following minimum information is required:

27 1. Site information regarding the Kitsap County shoreline environment designation and
28 critical areas designations that affect site features;

29 2. Description of surface and subsurface conditions, including ground materials,
30 vegetation, surface drainage, groundwater, and a preliminary geologic hazard assessment
31 which includes the locations of structures and the identification of the slope and/or
32 coastal processes occurring at the site and factors that contribute to them;

33 3. Review of available site information, literature, and mapping;

- 1 4. Detailed description of slope and other topographic features; ~~and~~
- 2 5. A site plan depicting top or toe of slope and any required buffers and/or setbacks;
- 3 and

4 6.5. Conceptual siting of structures and general recommendations, which include

5 methods and practices that avoid and/or reduce slope and shore impacts. Minimum

6 recommendations should include upland and slope drainage control, groundwater

7 control, site vegetation management, and erosion control.

8 D. Geotechnical Report Submittal Standards. A geotechnical report is required when the

9 department or a geological report determines that a site development proposal requires

10 additional site information such as engineering design recommendations, slope stability

11 analysis, subsurface exploration and testing, coastal process analyses, or construction

12 recommendations. Depending on the level of activity proposed, the report will either be a more

13 limited geotechnical slope evaluation report or a full geotechnical design investigation report as

14 described below.

15 1. Geotechnical Slope Evaluation Report. A geotechnical slope evaluation report is

16 required when slope stability analyses are confined to addressing only existing surface

17 and/or drainage conditions, including the relationship of natural and constructed slope

18 features to proposed changes in environmental conditions such as drainage, vegetation

19 removal and slope geometry. The following minimum information is required:

- 20 a. All the information required under subsection (C) of this section (geological
- 21 report);
- 22 b. Subsurface data, exploration logs, and testing data, when required by the
- 23 geotechnical engineer;
- 24 c. Estimated (or surveyed) site plan with ground surface profiles and typical cross-
- 25 sections;
- 26 d. Relative location of ordinary high water (OHW) on the surface profile and cross-
- 27 sections, which includes mean higher high water (MHHW) for the site location, where
- 28 applicable;
- 29 e. Soil strength parameters;
- 30 f. Stability analysis of existing site;
- 31 g. Analysis of the relationship of vegetation and slope stability; and
- 32 h. Conceptual site development plans and cross-sections.

1 2. Geotechnical Design Investigation Report. A geotechnical design investigation report
2 is required for site development activities that propose design and construction measures
3 at the slope crest, face and/or toe. If a designed structure does not impact slope stability
4 or coastal processes, the report will not be required to perform all items listed under this
5 section, as long as each item is addressed and the report details why a particular item
6 does not apply. The report shall include all items considered necessary by the engineer to
7 fully address the engineering design requirements of the site. The following minimum
8 information is required:

9 a. All the information required under subsection (D)(1) of this section (Geotechnical
10 Slope Evaluation Report);

11 b. Geotechnical requirements and measures to reduce risks;

12 c. Geotechnical criteria used for any designs including all critical dimensions, lateral
13 earth pressures, soil bearing pressures, location and limits of structures on or near
14 the slope, maximum constructed slope angles, minimum soil reinforcement
15 embedment, soil compaction requirements, and structure heights;

16 d. Temporary construction slope stability recommendations and analysis of
17 proposed final site stability measures;

18 e. Required construction specifications and construction monitoring procedures;

19 f. Revegetation and surface and groundwater management requirements;

20 g. Evaluation of erosion potential, recommendations for erosion avoidance and any
21 proposed mitigation measures;

22 h. Detailed tabulation of all basic geotechnical engineering test results pertinent to
23 design and construction, and when required for clarification, detailed examples of
24 tests conducted for the project; and

25 i. Information outlined in the geotechnical design investigation report site
26 evaluation checklist (see subsection (F) of this section).

27 E. Additional Requirements for Sites in Geologically Hazardous Areas. When a project site is
28 located within a landslide-prone geologically hazardous area, as classified in
29 Section [19.400.415](#), the following additional project submittal requirements shall apply:

30 1. Erosion Control Information. An evaluation of the erosion potential on the site during
31 and after construction is required. The evaluation shall include recommendations for
32 mitigation, including retention of vegetative buffers and a revegetation program. The
33 geotechnical engineer shall provide a statement identifying buffer areas at the top or toe

1 of a slope based on geotechnical site constraints and the impacts of proposed
2 construction methods on the erosion potential of the slope.

3 2. Seismic Information. The geotechnical engineer shall submit a statement that the
4 design criteria consider the one-in-one-hundred-year seismic event (an earthquake
5 ground motion that has a forty percent probability of exceedance in fifty years).
6 Calculations of soil bearing capacity, general soil stability, and wall lateral earth pressures
7 shall be adjusted to reflect a one-in-one-hundred-year seismic event and the structural
8 plans for the project shall be reviewed by the geotechnical engineer for consistency with
9 these design criteria.

10 Analysis for the one-in-one-hundred-year seismic event shall be based on a near-
11 crustal event having an assumed magnitude of 6.5 and occurring directly below the
12 site. Based on regional studies performed by others, the department will allow the
13 use of the following minimum general values of horizontal peak ground
14 accelerations for this event:

15 a = 0.2g for fill, alluvial soils

16 a = 0.17g for till, firm glaciated soils

17 a = 0.15g for rock.

18 The appropriateness of the above accelerations shall be confirmed by the
19 geotechnical engineer based on the actual site characteristics. Reduction in the
20 above values may be considered when supported by the appropriate analytical
21 evidence. Slope stability, lateral pressures, and liquefaction of the site shall be
22 assessed by using subsurface soil, rock and groundwater conditions, as well as the
23 seismic parameters discussed above.

24 3. Recommendations on Relative Site Stability. The geotechnical engineer shall make
25 recommendations as to which portions of the site are the least prone to instability and
26 the preferred location of the structure. The limits of any area proposed for grading activity
27 shall be identified.

28 4. Construction Season Limitation. In general, no excavation will be permitted in
29 landslide-prone geologically hazardous areas during the typically wet winter months.
30 When excavation is proposed, including the maintenance of open temporary slopes,
31 between October 1st and April 30th, technical analysis shall be provided to ensure that no
32 environmental harm, threat to adjacent properties, or safety issues would result. In
33 addition, recommendations for temporary erosion control and shoring/mitigating
34 measures shall be provided. The technical analysis shall consist of plans showing
35 mitigation techniques and a technical memorandum from the geotechnical engineer.

1 5. Revisions to Geotechnical Report. Further recommendations shall be provided by the
2 geotechnical engineer should there be additions or exceptions to the original
3 recommendations based on the plans, site conditions, or other supporting data. If the
4 geotechnical engineer who revises the plans and specifications is not the same engineer
5 who prepared the geotechnical report, the new engineer shall, in a letter to the
6 department, express his or her agreement or disagreement with the recommendations in
7 the geotechnical report and state whether the plans and specifications conform to his or
8 her recommendations.

9 6. Plan and Specification Review. The geotechnical engineer shall submit a statement
10 that, in his or her judgment, the plans and specifications (if prepared by others) conform
11 to the recommendations in the geotechnical report and that all portions of the site which
12 are disturbed or impacted by the proposed development have appropriate measures or
13 specifications that permit construction to occur while addressing slope stability so that
14 the work does not create additional risk. The statement shall also indicate whether or not
15 a relative gain in slope stability will be achieved after construction is complete.

16 7. Construction Inspection. A final inspection report shall be provided by the
17 geotechnical engineer stating that construction has or has not implemented the design
18 recommendations of the geotechnical report, and evaluating any deviation from the
19 design recommendations.

20 F. Geotechnical Design Investigation Report – Site Evaluation Checklist. The following are
21 general report guidelines for geotechnical design investigation reports. The following guidelines
22 are not intended to be all-inclusive. It is the responsibility of the geotechnical engineer to
23 address all factors which in their opinion are relevant to the site. The checklist information shall
24 be included as part of the geotechnical design investigation report. All items listed below must
25 be addressed in the report. Information shall be provided for those items which are not
26 relevant to a given site to demonstrate why the items are not applicable.

27 1. Project information:

- 28 a. Site owner name;
- 29 b. Project proponent name;
- 30 c. Shoreline environment designation (where applicable); and
- 31 d. Critical areas ordinance (CAO) designations affecting site features.

32 2. Project description:

- 33 a. Description of proposed structures, site improvements, and adverse impact
34 avoidance and reduction methods.

1 b. Location and total area of the construction zone.

2 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

3 | **19.700.730 Hydrogeological report.**

4 The report shall address the impact the proposed land use will have on both the quality and
5 quantity of the water transmitted to the aquifer.

6 A. The report shall be submitted to the department and shall address, at a minimum, the
7 following criteria:



- 8 1. Surficial soil type and geologic setting;
- 9 2. Location and identification of wells within one thousand feet of the site;
- 10 3. Location and identification of surface water bodies and springs within one thousand
11 feet of the site with recharge potential;
- 12 4. Description of underlying aquifers and aquitards, including water level, gradients and
13 flow direction;
- 14 5. Available surface water and groundwater quality data;
- 15 6. Effects of the proposed development on water quality;
- 16 7. Sampling schedules required to assure water quality;
- 17 8. Discussion of the effects of the proposed development on the groundwater resource;
- 18 9. Recommendations on appropriate BMPs (best management practices) or mitigation
19 to assure no significant degradation of groundwater quality;
- 20 10. Other information as required by Kitsap public health; and
- 21 11. The report shall also address the types of pesticides, herbicides and fertilizers that
22 can safely be used for the care of landscaping proposed by the applicant.

23 B. The hydrogeologic report shall be prepared by a professional geologist/hydrologist or by a
24 soil scientist with a strong background in geology (see Section [19.150.410](#)).

25 C. Applications for development or operations with underground storage of petroleum
26 products will be processed using the appropriate procedure as specified in existing Kitsap
27 County ordinances.

1 D. Analysis for a specific parcel(s), using the criteria outlined below, will be employed to
2 confirm if the soils present require a recharge area designation. Data collection will include, at a
3 minimum, six soil logs to a depth of ten feet (or to a depth four feet below the lowest proposed
4 excavation point whichever is greater) for each acre in the parcel(s) being evaluated. At least
5 one well, two hundred feet or greater in depth with an adequate drilling report, must be
6 available within one mile. The associated data shall be analyzed and included in the
7 hydrogeologic report to determine the presence of highly permeable soils with the recharge
8 area designation.

9 For development proposals within aquifer recharge areas of concern, the hydrogeological
10 report may be based on a quarter-quarter section basis where the number of wells within a
11 half-mile radius is thirty-six or more. To facilitate computer analysis, the evaluation may be
12 done on a quarter-quarter section basis using the quarter-quarter section in which a parcel of
13 interest is located and all the surrounding quarter-quarter sections, in place of the half-mile
14 circle.

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1 **Chapter 19.800**
2 **APPENDICES**

3 The purpose of the appendices is to provide supporting documentation to assist in the
4 implementation of the ordinance codified in this title.

5 Contents:

- 6 ~~Appendix A—Washington State Wetlands Rating System Categories.~~
7 **Appendix BA** Washington State Department of Natural Resources Stream Typing
8 System.
9 **Appendix CB** Kitsap County’s GIS Database of Critical Areas Information.
10 **Appendix DC** Site Development Figures.
11 **Appendix ED** Kitsap County Geologically Hazardous Area and Buffer Notice.
12 **Appendix FE** Critical Area Decision Types.
13 **Appendix GF** Checklist and Sample Outline for a Delineation Report.
14 **Appendix HG** Mitigation Plan Checklist.

15 ~~Appendix A—Washington State Wetlands Rating System Categories (See~~
16 ~~Section 19.200.210)~~

17 ~~This system utilizes a four-tier process. The following text includes an additional categorization~~
18 ~~system for wetlands.~~

19 ~~A.—Category I Wetlands are:~~

20 ~~1.—Wetlands that 1) represent a unique or rare wetland type; or 2) are more sensitive to~~
21 ~~disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological~~
22 ~~attributes that are impossible to replace within a human lifetime; or 4) provide a high level~~
23 ~~of functions.~~

24 ~~2.—Wetlands with high quality native or regionally rare wetland communities with~~
25 ~~irreplaceable ecological functions including, but not limited to, sphagnum bogs and fens,~~
26 ~~estuarine wetlands, mature forested wetlands, or wetlands which qualify for inclusion as a~~
27 ~~Wetland of High Conservation Value.~~

28 ~~3.—Wetlands scoring 23 points or more (out of 27) on the questions related to functions~~
29 ~~in the *Washington State*, revised 2014, or as hereafter amended.~~

30 ~~B.—Category II Wetlands are:~~

31 ~~1.—Wetlands that are difficult, though not impossible, to replace, and provide high levels~~
32 ~~of some functions.~~

1 ~~2.—Wetlands which are disturbed and may be estuarine and interdunal greater than 1~~
2 ~~acre.~~

3 ~~3.—Wetlands scoring between 22 – 22 points (out of 27) on the questions related to~~
4 ~~functions in the *Washington State Wetland Rating System for Western Washington*, revised~~
5 ~~2014, or as hereafter amended.~~

6 ~~C.—Category III Wetlands are:~~

7 ~~1.—Wetlands that are 1) wetlands with a moderate level of functions (scores between 16 –~~
8 ~~19 points) and 2) interdunal wetlands between 0.1 and 1 acre in size.~~

9 ~~2.—Wetlands scoring between 16 – 19 points and have generally been disturbed in some~~
10 ~~ways, and are often less diverse or more isolated from other natural resources in the~~
11 ~~landscape than Category II wetlands.~~

12 ~~D.—Category IV Wetlands are:~~

13 ~~1.—Wetland with the lowest levels of function (scores less than 16 points) and are often~~
14 ~~heavily disturbed.~~

15 ~~2.—Wetlands that may provide some important functions and have a high probability for~~
16 ~~successful replacement and/or improvement.~~

17 ~~(Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 37 (part), 2005)~~

18 **Appendix B A- Washington State Department of Natural Resources Stream Typing**
19 **System**

Water Type Conversion Table

Permanent Water Typing	Previous Water Typing
Type S	Type 1
Type F	type 2 and 3
Type Np	Type 4
Type Ns	Type 5

20 A. **“Type S Streams”** are those surface waters which meet the criteria of the Washington
21 Department of Natural Resources, WAC [222-16-030](#)(1) as now or hereafter amended, as a Type
22 S Water and are inventoried as “Shorelines of the State” under the Shoreline Management
23 Master Program for Kitsap County, pursuant to RCW Chapter [90.58](#). Type S waters contain
24 salmonid fish habitat.

1 B. **“Type F Streams”** are those surface waters, which meet the criteria of the Washington
 2 Department of Natural Resources, WAC [222-16-030](#)(2) as now or hereafter amended, as Type F
 3 Water. Type F streams contain habitat for fish.

4 C. **“Type Np Streams”** are those surface waters, which meet the criteria of the Washington
 5 Department of Natural Resources, WAC [222-16-030](#)(3) as now or hereafter amended, as Type
 6 Np Water. Type Np waters do not contain fish habitat.

7 D. **“Type Ns Streams”** are those surface waters, which meet the criteria of the Washington
 8 Department of Natural Resources, WAC [222-16-030](#)(4) as now or hereafter amended, as a Type
 9 Ns Water. These streams are areas of perennial or intermittent seepage, ponds, and drainage
 10 ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

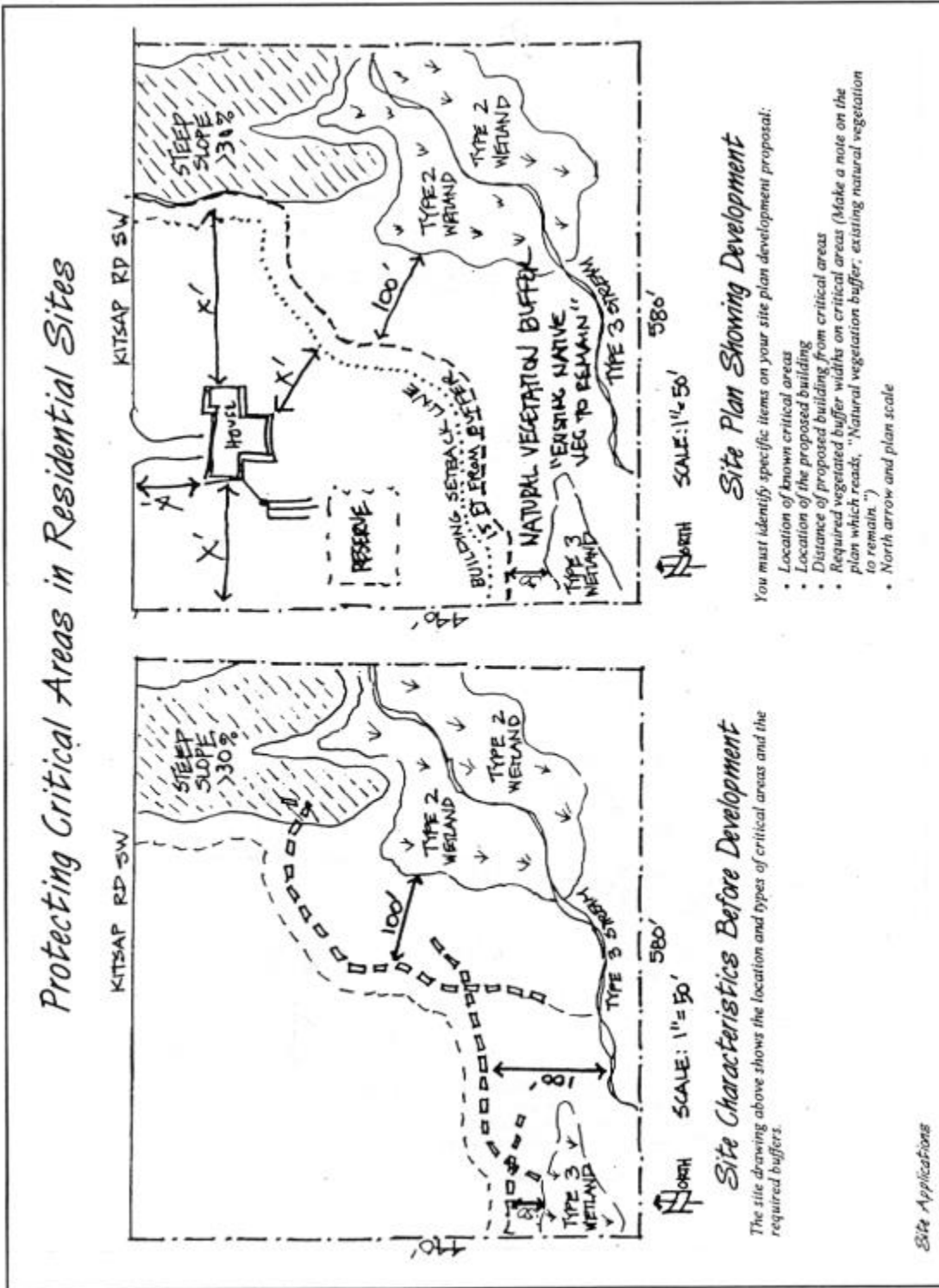
12 | **Appendix C B- Kitsap County’s GIS Database of Critical Areas Information**

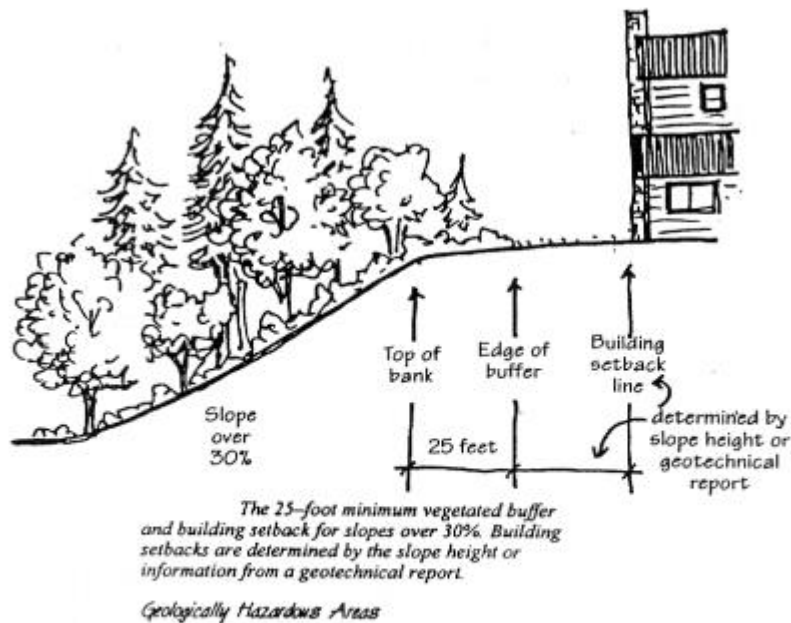
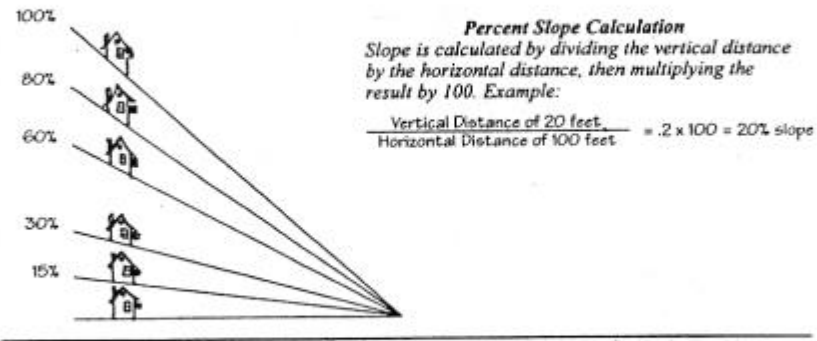
CRITICAL AREA	GIS DATA	INFORMATION SOURCE
Wetlands	National Wetlands Inventory	U.S. Fish and Wildlife Service
	Soil Survey of Kitsap County	U.S. Dept. of Agriculture — Natural Resource Conservation Service
Fish And Wildlife Habitat Conservation Areas	National Wetlands Inventory Information System Database	U.S. Fish and Wildlife Service
	Priority Species Habitat Database Washington Rivers	WA. Dept. of Fish and Wildlife
	Waters of Washington State	WA. Dept. of Natural Resources
	Washington Coastal Zone Atlas	WA Dept. of Ecology
	Stream Typing of Select WRIA 15 Watersheds	Wild Fish Conservancy
Frequently Flooded Areas	Flood Insurance Rate Map	Federal Emergency Management Agency
Geologically Hazardous Areas	Washington Coastal Zone Atlas	WA Dept. of Ecology

CRITICAL AREA	GIS DATA	INFORMATION SOURCE
	Soil Survey of Kitsap County Quaternary Geology and Stratigraphy of Kitsap County	U.S. Dept. of Agriculture — Natural Resource Conservation Service Jerald Deeter, 1979
	Light Distancing and Radar (LiDAR) Mapping	Puget Sound LiDAR Consortium
	Geologically Hazardous Areas Map Update	Kitsap County (GRI Consulting)
Aquifers	Critical Aquifer Recharge Areas Aquifer Recharge Areas of Concern	Kitsap Public Utilities District (PUD) #1 Kitsap PUD #1
	Principal Aquifers	Kitsap PUD #1
	Soil Survey of Kitsap County	U.S. Dept. of Agriculture — Natural Resource Conservation Service

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 37 (part), 2005)

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2 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 37 (part), 2005)

3 | **Appendix ED - Kitsap County Geologically hazardous area and Buffer Notice**

1 **When recorded, Return to:**

2 **Kitsap County Department of**
3 **Community Development**
4 **MS-36**

5 **Kitsap County Geologically Hazardous Area Notice**

6 Tax Account # Parcel Number

7 ABBREVIATED LEGAL DESCRIPTION: Quarter, quarter, section, township, range; or Plat name, lot
8 and/or block number; or Short plan or large lot name or number, lot number and Auditor's file
9 number

10 Current Property Owner: Legal Tax Payer Name

11 NOTICE IS HEREBY GIVEN that the above identified property has been found to contain a
12 geologically hazardous area as defined by the Kitsap County Department of Community
13 Development's Critical Area Ordinance. Abstract or description of the specific types of risks
14 identified in the geotechnical report. Information regarding the geologically hazardous area, the
15 associated geotechnical report(s), and any restrictions imposed on the development or use of
16 the property can be obtained by the Department of Community Development in the files of the
17 following permits:

Enter Type of Permit Application # , filed on Date

18 Development in geologically hazardous areas inherently includes an elevated risk which can be
19 mitigated through proper development practices. To ensure continued safety and habitability
20 any future use and alteration of the land and structures thereon within the geologically
21 hazardous area or its buffer may only occur following a review for compliance with the Kitsap
22 County Critical Areas Ordinance.

23 The owner(s) of the property understands and accepts the responsibility for the risk associated
24 with development on the property given the described condition, and agrees to inform future
25 purchasers, successors, and assignees of the risks. The owner(s) of the property also
26 acknowledges that any damages that result from reliance on the Kitsap County Critical Areas
27 Ordinance, or any administrative decision lawfully made thereunder, does not create liability on
28 the part of Kitsap County, any officer or employee thereof.

29 STATE OF WASHINGTON)

30)

1 COUNTY OF KITSAP)

2 On this day, before me, personally appeared _____, to me known to
3 be the individual(s) described herein and who executed the within and foregoing instrument,
4 and acknowledged that they signed the same as their free and voluntary act and deed, for the
5 uses and purposes therein mentioned.

6 GIVEN under my hand and official seal the ____ day of _____, 20__

7 _____

8 NOTARY PUBLIC in and for the State of Washington,

9 Residing at _____

10 *Notary Seal* My Commission expires: _____

11 _____

12 Property Owner signature Property Owner signature

13 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 37 (part), 2005)

14 | **Appendix FE - Critical Area Decision Types**

15 Below are the decisions and their respective decision-making bodies included in Title 19 of the
16 Kitsap County Code.

CRITICAL AREA DECISION TYPES			
	Type I	Type II	Type III
Written Notice (To Interested Parties and Neighbors Within 400 feet of Project)	No	Yes	Yes
Decision Making Body	Director	Director	Hearing Examiner (Public Hearing)
WETLANDS			
Uses within Wetlands and Buffers	X		
Mitigation Plans/Requirements	X		
Buffer Averaging (Cat. III and IV w/habitat scores <5, up to 50%)	X		
Buffer Averaging (all other wetlands, <25%)	X		

CRITICAL AREA DECISION TYPES			
	Type I	Type II	Type III
Administrative Buffer Reduction (<25% and not less than 30 feet for single family residence, and not less than 40 feet for all other uses)	X		
Variance (>25% for buffer reduction or averaging, or >50% for buffer averaging of Cat. III and IV wetlands w/habitat scores <5)			X
Appeals			X
STREAMS AND SHORELINES			
Buffer Averaging	X		
Administrative Buffer Reduction (<25%)	X		
Administrative Buffer Reduction (25-50% for single-family residence)		X	
Variance (>50% for single-family residence, or >25% for all other uses)			X
Appeals			X
WILDLIFE CONSERVATION AREAS			
Habitat Management Plan Approval	X		
Appeals			X
GEOLOGICALLY HAZARDOUS AREAS (STEEP SLOPES)			
Buffer/Setback Reduction (with Geotechnical Report Approval)	X		
Appeals			X
CRITICAL AQUIFERS RECHARGE AREAS			
Hydrological Report Approval	X		
Appeals			X

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 37 (part), 2005)

2 | **APPENDIX GE – Checklist and Sample Outline for a Delineation Report**

3 At a MINIMUM, a delineation report should include:

- 4 Field data sheets (complete set that were filled out during the wetland determination and
5 delineation). These could be added as an Appendix to the report.

- 1 □ A map identifying wetland boundaries and the locations of all data collection points (for
2 large and/or complex projects, a large scale [1":400' to 1":100'] aerial photo with overlays
3 displaying site property and wetland boundaries is helpful). This map must also clearly
4 delineate the boundaries of the area evaluated.

- 5 □ An explanation of the approach used to delineate the wetlands and synthesize the data.
6 Describe the vegetation, soils, and hydrologic characteristics and summarize the available
7 information used in making the wetland determination. The following are examples of potential
8 sources of information¹:

- 9 ▪ USGS quadrangle map (or other topographic map of the area).

- 10 ▪ National Wetland Inventory (NWI) map.

- 11 ▪ Local wetland inventories.

- 12 ▪ County soil surveys.

- 13 ▪ Stream and tidal gage data.

- 14 ▪ Previous site documentation and/ or analysis (e.g., environmental checklist, environmental
15 impact assessment or statement (EIA or EIS), geotechnical report).

- 16 ▪ Federal Emergency Management Agency (FEMA) flood insurance rate maps.

- 17 ▪ Regional maps that characterize the area.

- 18 ▪ Local experts.

- 19 ▪ USGS land use and land cover maps.

- 20 ▪ Survey plans and engineering designs for the proposed development project.

- 21 ▪ Aerial photos.

- 22 ▪ Other site specific information.

- 23 □ Information on rare plants and high-quality wetlands from the Washington National
24 Heritage Program.

- 25 □ Information on priority habitats and species from the Washington Department of Fish and
26 Wildlife.

1 The following sample outline for a wetland delineation report has been copied with permission
2 from the *Field Guide for Wetland Delineation: 1987 Corps of Engineers Manual* prepared by the
3 Wetland Training Institute. Additional information can be found at the end of that field guide in
4 the section of the document entitled "Preparing a Delineation Report."

5 **I. Introduction**

- 6 A. Who authorized the delineation
- 7 B. Why is it being done
- 8 C. Location of site (Map)
- 9 D. Date of site visit(s)
- 10 E. Identification of delineators

11 **II. Methods**

- 12 A. Brief description of method used
- 13 B. Any modification of methods
- 14 C. Sources of existing information used

15 **III. Results and Discussion**

- 16 A. Description of the site
 - 17 1. Topography
 - 18 2. Plant communities
 - 19 3. Soils mapped and found (map)
 - 20 4. Hydrology information
 - 21 5. Existing wetland mapping (e.g., NWI/state/local)
- 22 B. Findings
 - 23 1. Types of wetlands identified (e.g., Cowardin, et al 1979)
 - 24 a. Description

- 1 b. Locations
- 2 c. Area
- 3 d. Contrast with nonwetland
- 4 e. How was boundary chosen (e.g., feature on the landscape)
- 5 2. Types of other waters identified
- 6 a. Description
- 7 b. Locations
- 8 c. Area
- 9 d. Contrast with nonwetland
- 10 e. How was boundary chosen (e.g., feature on the landscape)

11 3. Include maps/drawings showing results

12 **IV. Conclusion**

- 13 A. Brief summary of total area and the types of wetlands and other regulated waters
- 14 B. Statement regarding the need for permits
- 15 C. Caution that final authority rests with the appropriate agencies

16 **V. Literature Cited**

17 **VI. Appendix A (Data Sheets)**

18 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 37 (part), 2005)

19 | **Appendix HG - Mitigation Plan Checklist**

Included	Omitted	Introduction and Summary of Document
		Cover/Title Page
		Project Name
		Reference #'s (e.g., Corps application #)

Included	Omitted	Introduction and Summary of Document
		Date of publication
		Who it was prepared for and by/contact information
		Table of Contents
		List of Figures
		List of Tables
		Responsible Parties
		Executive Summary
		Proposed Development Project
		Project description
		Project location, maps
		Type of development (existing and proposed land uses)
		Size of the development project
		Construction schedule
		Description of the development site (baseline conditions)
		Historic and current land uses and zoning designations
		Existing wetlands on or adjacent to the development site
		Other aquatic resources on or adjacent to the development site
		Known historic or cultural resources on the development site
		Maps showing the baseline conditions of the development site and adjacent properties
		Assessment of the Impacts at the Development Site
		Area (acreage) of wetland impacts
		Description of the water regime
		Description of the soils
		Description of the vegetation
		Description of fauna using the site
		Position and function of the wetland(s) in the landscape
		Description of functions provided by the wetlands
		Wetland rating
		Buffers

Included	Omitted	Introduction and Summary of Document
		*Water quality
		Mitigation Approach
		Mitigation sequencing
		Project-specific goals
		Mitigation strategy
		Proposed Mitigation Site(s)
		Location, including map
		Site ownership
		Site selection rationale
		Site constraints
		Existing (Baseline) Conditions of the Mitigation Site
		Historic and current land uses and zoning designations
		Known historic or cultural resources on the mitigation site
		Existing wetlands on or adjacent to the development site
		Other aquatic resources on or adjacent to the development site
		*Maps showing current contours as surveyed. This is needed particularly when mitigation activities will alter ground elevations.
		Description of the water regime
		Description of the soils
		Description of the vegetation
		Description of fauna using the site
		Position and function of the wetland(s) in the landscape
		Description of functions provided by the wetlands
		Wetland rating
		Buffers
		*Water quality
		Maps related to the existing conditions of the mitigation site, existing wetlands, and adjacent properties
		Mitigation Site Plans/Design
		Description of Site Plan/Design

Included	Omitted	Introduction and Summary of Document
		Description of the water regime and how adequate amounts of water will be provided to support a wetland
		Type of development (existing and proposed land uses) Discussion of how the mitigation plan will compensate for lost and degraded functions
		Schematic drawings
		*Section drawings showing relationship of topography to water regime and vegetation
		Grading Plan/Site Maps
		Orientation and scale
		*Existing and proposed elevation contours
		*Spot elevations for low points, high points, and structures
		Property boundaries
		On-site wetland boundaries
		*On-site floodplain and ordinary high water mark boundaries
		*Survey of benchmarks
		*Location and elevation of soil borings or test pits
		*Location and elevation of water level sampling devices
		*Location of soils to be stockpiled, if any
		*Description of methods of erosion control and bank stabilization
		Buffer areas for the mitigation site and their boundaries
		Water Regime
		Description of the proposed frequency and duration of flooding, inundation, or soil saturation
		Description of the proposed groundwater and surface water sources and characteristics
		*Description of the elevation of the water table and dates measured
		*Engineering drawings of any proposed water control structures
		Soils
		Soils logs from on-site evaluation
		Description of how the soil characteristics will be affected by the mitigation activities

Included	Omitted	Introduction and Summary of Document
		*Description of the elevation of the water table and dates measured
		*Engineering drawings of any proposed water control structures
		Planting/Landscape Plans
		Topographic map showing typical planting scheme (distribution and spacing of vegetation)
		List of plant materials
		Other planting details
		Expected natural revegetation from existing seed bank and natural recruitment from nearby sites
		Description of methods to control invasive species
		A plan for irrigating the plants
		Description of soil amendments
		*Section drawings showing water levels in relation to plant distributions
		Description of protective features (fences, signs)
		Map of location and type of habitat structures
		*Examples of Similar Mitigation Projects
		*Description of the experience the designer has had with the type of mitigation proposed
		*Examples of other sites that have used the same approach
		*Other information that demonstrates that the high-risk plan will be successful
		Site-Specific Goals, Objectives, and Performance Standards
		Goals
		Objectives for each goal
		Performance standards for each objective
		Monitoring Plan
		Variables to be measured
		Sampling methods for each variable
		Schedule for sampling each variable
		A map of sampling locations or describe how the locations will be determined for each monitoring event

Included	Omitted	Introduction and Summary of Document
		*Laboratory methods to be used, if applicable
		Timetable for reporting monitoring results to the agencies (final plan only)
		Site Protection
		Describe measures that will be taken to protect the site over the long term
		Copies of legal documents (e.g., conservation easement, deed restriction) (final plan only)
		Maintenance and Contingency Plans (final plan only)
		Maintenance plan
		Description of and reason for each maintenance activity planned
		Maintenance schedule for each activity (where applicable)
		Contingency plan
		Initiating procedures
		*Description of contingency funds
		Implementation Schedule (final plan only)
		Construction sequence for grading, water diversions, plantings, etc.
		Time schedule and completions dates
		Permit conditions specifying time limits
		*Financial Assurances (final plan only)

1 **Items with asterisk (*) are required for more complex projects. If an item is not**
2 **required for a draft mitigation plan, it is indicated in parenthesis (final plan only).**

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)



4
5 [1](#) These are potential sources of information that may have been helpful in making a
6 determination, but not all listed sources of information may be applicable to a given situation.
7 The delineator is not required to obtain information from all of the listed sources of
8 information.

9

10

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April 23, 2024

Dear Commissioners and Department of Community Development,
These are my comments regarding the update for the Kitsap County Critical Areas Ordinance. Thank you for reading and considering.

As I reviewed the Kitsap County proposed updates to the Critical Areas Ordinance, I was struck by the ineffective, vague, unclear language of the KC Code. Too much of the Code is vague and “aspirational”, not giving clear guidance that can be actionable toward the goal of protection of our critical areas. As citizens we expect the Critical Areas Ordinance to be effective and protective of our community’s critical areas; the CAO code should be a tool for this with clear guidelines and definitions. In addition, KC CAO is not easily readable by the general public.

I wondered if there was a municipality that did a better job at effective guidance and clear language in their CAO / code, and I started with looking at Bainbridge Island. I found their code to be much more strong, effective, clear, and readable.

I am asking Kitsap County to look to our neighbor Bainbridge Island (part of Kitsap County) as an example of well written code language.

<https://www.codepublishing.com/WA/BainbridgeIsland/html/BainbridgeIsland16/BainbridgeIsland1620.html>

Here are some examples, just a few that I (a layperson) found in my short comparison. I am certain that there are further examples of the more clear and descriptive code language Bainbridge has adopted.

It appears to set out a stronger intention to be effective in implementing protection.

-KC 19.100.105 B11 PREVENT ADVERSE IMPACTS INSTEAD OF “CONSIDER” .

- The language “Consider” - is weak and ineffective, not protective or actionable in meeting the mandate of No Net Loss. In the use of the word “Consider” there is no incentive to take any protective action. This is going backward and does not meet the goal of No Net Loss. Keep “Prevent adverse impacts” to align with meeting the goal of No Net Loss.

Here is the comparative Bainbridge Code as an example from BI Code 16.20.010 D 3

“Prevent cumulative adverse environmental impacts to water quality, water quantity, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, aquifer recharge areas, and habitat conservation areas”

FULLY DESCRIBE FUNCTIONS OF CRITICAL AREAS

- Describe more completely the functions of critical areas and why they need to be protected.

-Please look at Bainbridge Island Code language, Dec 2023 and consider additional descriptions.

This code language is more descriptive of the crucial functions of critical areas. Section D3 Bainbridge Code keeps the language of “prevent adverse impacts.”

*Code from Bainbridge is in Italics. *

BI 16.20.010 C. “Critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents. Critical areas may also pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood waters, groundwater recharge and discharge, erosion control, wave attenuation, and protection from hazards and the impacts of climate change. Groundwater recharge is of particular concern for the city because the Island’s drinking water is supplied solely by groundwater.

D. By limiting adverse impacts to and alteration of critical areas, this chapter seeks to accomplish the following goals:

1. To conserve the biodiversity of plant and animal species, protect, maintain and restore healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including, but not limited to, ground and surface waters, wetlands, fish and wildlife and their habitats;

2. Direct development, uses and activities to less environmentally sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;

3. Prevent cumulative adverse environmental impacts to water quality, water quantity, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, aquifer recharge areas, and habitat conservation areas;

4. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding; and

5. Alert owners, potential purchasers, real estate agents, appraisers, lenders, builders, developers and other members of the public to natural conditions that pose a hazard or otherwise limit development.”

19.100.105.B13 CLIMATE CHANGE POTENTIAL IMPACTS

-Use this stronger and more descriptive language and use wording to state the goal of prevention of environmental damage (instead of “consider” potential impacts)

-Kitsap County Code 19.100.105 B 13 reads:

“Encourage applicants to *consider* the potential impacts of climate change and sea level rise, particularly if development is near marine shorelines, adjacent flood hazard areas, or low-lying areas.”

Instead of “consider” use language such as : “ Guide and provide assistance for applicants to thoroughly evaluate and explore data regarding the potential impacts and hazards of climate change on development.” Make this more active and not as vague.

PRECAUTIONARY PRINCIPLE

This seems like a foundational principle in any Critical Areas Ordinance-I did not find this statement in Kitsap County Code and would ask that it be considered.

Bainbridge Code 16.20.030 B. The precautionary principle shall be applied in the review of any action, taken or proposed, that does not conform to the requirements of this chapter. The burden of proof that the action will cause no net loss or harm to persons or property falls on the applicant or the property owner. (Ord. 2018-01 § 2 (Exh. A), 2018)

KC 19.100.130 B. GUIDANCE FOR HAZARD TREE REMOVAL

-Danger Tree removal in critical area. Change language to Hazard tree.

Give more detail and guidance for hazard tree removal such as in Bainbridge Island Code, which is in Italics:

BI 16.20.090 C 2. Hazard Trees.

a. Hazard tree removal or wildlife snag creation not within erosion and landslide hazard areas or a landslide hazard area setback at the top of slope is allowed; provided, that it shall comply with the following standards and submittal requirements:

i. A report from an International Society of Arboriculture (ISA) tree risk assessment qualified (TRAQ) arborist that documents the hazard and provides a replanting plan for replacement trees;

ii. Land owners are encouraged, but not required, to retain all or portions of removed hazard trees on site to provide wildlife habitat;

iii. The land owner shall replace any trees that are removed with new trees at a minimum ratio of two replacement trees for each tree removed (2:1) within the first appropriate growing season in accordance with an approved planting plan. Replacement trees may be planted at a nearby location. Replacement trees shall be species that are native and

indigenous to the site and a minimum size of six feet in height measured from top of root flare, with a minimum trunk diameter of one inch measured at four inches above top of root flare for both evergreen and deciduous trees. Smaller replacement trees are acceptable, at a minimum ratio of three replacement trees for each tree removed (3:1) and a minimum size of three feet (36 inches) in height measured from top of root flare;

iv. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and

v. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the land owner prior to receiving approval from the city; provided, that within 14 days following such action, the land owner shall submit the report required by subsection C.2.a.i of this section and a planting plan that demonstrates compliance with the provisions of this title.

DEFINITIONS

- Need to add NO NET LOSS definition. Per Bainbridge code, in Italics:

59. “No net loss” means the maintenance of the aggregate total of the COUNTY’s critical areas functions and values over time. The no net loss standard requires that the impacts of a proposed use and/or development, whether permitted or exempt from permit requirements, be identified and mitigated on a project-by-project basis, so that as development occurs critical areas functions and values stay the same.”

-19.150.230 Change “danger tree” to hazard tree. Use Bainbridge Island definition. “43. “Hazard tree” means a tree that has significant structural defects that are likely to lead to failure and possibly cause injury or damage as identified in a report from an International Society of Arboriculture (ISA) tree risk assessment qualified (TRAQ) arborist. In the case of steep slopes, a hazard tree can also be a tree that is a hazard to stability of the slope, as determined by a geotechnical engineer.”

-19.150.345 “Functions and Values” definition.

Consider change to “Ecological functions and values.”

Add to definition: Water quality AND QUANTITY. Add Protection and enhancement of water quality and quantity. Add: groundwater recharge and discharge as another function and value.

Look at BI code definition, in italics:

“38. “Functions and values” means the natural processes and beneficial roles performed or provided by critical areas including, but not limited to, water quality and quantity protection and enhancement, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, providing flood storage, conveyance and attenuation, groundwater

recharge and discharge, erosion control, wave attenuation, protecting aesthetic value, and providing recreational and educational opportunities. These roles are not listed in order of priority.”

NOTICE TO TITLE FOR CRITICAL AREAS

Kitsap County currently requires notice to title for geologically hazardous areas. I am unsure if Notice to Title is being required in the proposed update for all Critical Areas.

If not, please look at BI Code 16.20.070 G as an example. Notice to Title for ALL critical areas should be required for long term recording.

G. Notice on Title.

1. The owner of any property with field-verified presence of critical area or buffer on which a development proposal is submitted shall file for record with the Kitsap County auditor a notice approved by the director in a form substantially as set forth in subsection G.2 of this section. Such notice shall provide notice in the public record of the presence of a critical area and buffer, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

2. Form of Notice.

Critical Areas and/or Critical Areas Buffer Notice (form is included in the CAO)

Legal Description:

Present owner:

NOTICE: This property contains critical areas or their buffers as defined by the City of Bainbridge Island Ordinance No. _____. The property

_____ *was the subject of a development proposal for _____ (type of permit) application*

_____ filed on ____ (date) _____. Restrictions on use or alteration of the critical areas or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of critical areas or critical area buffers and

restrictions on their use through setback areas. A copy of the plan showing such setback areas and other restrictions or required enhancements is attached hereto.

Signature of owner

STATE OF WASHINGTON)

COUNTY OF _____)

On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein stated.

Given under my hand and official seal this ____ day of _____, _____. NOTARY PUBLIC
in and for the state of Washington, residing at _____.

Conclusion:

These are a small sampling of a more clear, specific use of language in a code that sets out to take stronger well-defined actions for the protection of critical areas. The language in Kitsap County’s proposed language as written is needs additional work.

Please look to our neighbor Bainbridge Island for suggestions on improved language and overall code.

Thank you,

**Beth Nichols
Indianola WA**

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Critical Areas Ordinance comments

Doug Hayman, Indianola, WA

Limit all buffer reductions or variances to no greater than 25-percent.

Whether critical area buffers remain the same or increase with the 2024 update, what is of paramount concern is the confusing variance process carried out by the Kitsap Department of Community Development (DCD). Recent approved buffer reductions have ranged from 50-percent to as high as 89-percent reduction. What good is a science-based buffer width meant to protect critical areas if it is then ignored and greatly reduced? Allow no buffer reduction higher than 25-percent in any scenario.

Changes to public notice for any permits requesting a buffer reduction

Currently, Kitsap County DCD states that they provide public notice in the Kitsap Sun. They occasionally post a small sign near the property where a buffer reduction is requested, but not always. And DCD sometimes mails out notification of such via postcards sent by an outside mailing service which has failed to reach all relevant parties. All permits where a critical area buffer reduction is involved should have the following additional public notice provided:

1. Post these in a dedicated, easily found location on the Kitsap County DCD official web site with links to the permit, parcel number and other relevant information.
2. Create a new checkbox and email notification to go along with what is commonly used for many issues in the county citizens can sign up for via:
<https://public.govdelivery.com/accounts/WAKITSAP/subscriber/new>

For the above two bullet points there would be increased access by citizens to information they sought. This could also save the county money fielding duplicate requests regarding pending permit information in the county.

I support the Port Gamble S'Klallam Tribe's position that "Any buffer reduction should require consultation with tribes."

Consider existing Critical Area Ordinance buffers to already be backed by "expert opinion" in the hearings process.

Hearing examiners working on behalf of Kitsap County in regard to Critical Areas Ordinance buffer reduction disputes give great weight to "expert opinion" regarding wetlands,

streams, stormwater and so on. If an applicant requesting a buffer reduction hires an expert in one of their area disciplines, the hired consultant opinion stands alone in the decision-making process of the hearing examiner if those in opposition don't also provide expert testimony. This bias towards one paid expert opinion neglects to consider that the Critical Areas Ordinance have relied upon Best Available Science by using expert guidance from the Washington Department of Ecology, the Washington Department of Fish and Wildlife and, the experts they cite in well-researched documentation. The absence of those particular experts in hearings should not be ignored by the hearing examiner where reductions in Critical Areas Ordinance buffers are concerned. The county DCD planning staff should make this clear in the presentation to the hearing examiner.

Allow opposing experts to gain reasonable physical access to properties where buffer reductions have been requested.

In recent cases brought before the hearing examiner the applicant requesting buffer reduction has provided physical access to their property by their own paid experts who support their development. Not allowing physical access by opponents creates a biased situation when opponents are not allowed to have their experts also evaluate the parcel(s) in question to make a thorough counter view to present to the hearing examiner. If the hearing examiner makes his or her determinations and approves buffer reductions based on expert opinion, they should allow a fair and balanced process to carry this out.

Current Critical Areas Ordinance should be the standard used in hearings and determinations with no grandfathered-in “vested developments” using outdated CAO regulations.

There should be no further allowance for developers or individuals to rely upon older CAO regulation standards. Permits initiated more than 2-years ago should be required to comply with the latest Critical Areas Ordinance and not be exempt from compliance by using ordinance which is no longer the latest standard in Kitsap County.

Require compliance with a standard file naming convention for files submitted to and shared out by Kitsap County Department of Community Development.

There is currently no file name convention used for the permit process for what is submitted to DCD or shared with the public in regard to Critical Areas Ordinance buffer reduction requests or general permit documentation. It is essential for all interested parties to have such filename conventions be used. The public has a right to know what is being done in their county regarding compliance with protecting critical areas. Looking at Kitsap Parcel search documents it is reasonable to follow a standard like:

- Siteplan.pdf
- Siteplan-amended.pdf
- Siteplan-final.pdf
- SepticDrainfield.pdf
- SepticDrainfield-amended.pdf

And not, for example “sp547.pdf” or “88tt7.pdf”, neither of which gives the public any idea what those documents contain or if they pertain to critical area buffer reduction requests.

Provide Updates to interested parties to any critical areas ordinance update process with ALL relevant documents.

In some recent situations where an applicant has requested a critical area buffer reduction the public has asked for and been placed on a list of “interested persons” to then receive email notification of relevant information. Being on such lists has not provided interested parties with all documents submitted relevant to the reduction request nor is there a way to find all of these via the current Kitsap Parcel search site. People have been told there is an additional internal system containing documents that does not reflect what is visible on the public facing web site. And they have been told they need to ask for specific documents when they aren’t even aware if such documents might exist.

Additionally, requiring each and every interested person to submit a public records request is a time-consuming and inefficient way to do county business, especially when the permit process is already known to take a lot of time.

There are many instances of conflicting or unclear terms throughout the Critical Areas Ordinance. The Department of Community Development should survey average everyday citizens to identify content in the Critical Areas Ordinance that need greater clarity.

Request further guidance from Ecology and WDFW for metrics to assess “No Net Loss”

In striving to meet the goal of No Net Loss of ecological function as it pertains to critical areas one would need to first make one or more measurements of the current ecological function and then compare that with the results from a later measurement using the same criteria. And while it is impossible to measure every ecological function in a critical area, we should at least be able to measure some key conditions. As much of the guidance that Kitsap County is using came from Ecology and WDFW, request guidance from both agencies for some core indicators that should be measured in order to show that No Net Loss has taken place with any critical area buffer reduction.

Use permanent signage and instruments attached to property deeds to maintain delineation of critical area buffers.

Once the boundary of a critical area is determined, these should have permanent durable signs to delineate their location. These should be maintained by the property owner and be maintained by all subsequent renters or owners. Additionally, notification of such boundaries should remain with deeds and online property records so that future owners or users of the land may also protect these critical areas.

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Comments on April 2024 Draft of CAO

David Onstad, Ph.D., Port Orchard, dwonstad@gmail.com

First Chapter of CAO 19.100

19.100.105 Statement of purpose.

The purpose of the ordinance codified in this title is to identify and protect critical areas as required by the Growth Management Act of 1990 (Chapter 17, Laws of 1990). Critical Areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and critical aquifer recharge areas, as defined in this Title.

19.100.105

A. **Goal Statement.** It is the goal of Kitsap County that the beneficial functions and values of critical areas be preserved, and potential dangers or public costs associated with the inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to or directly affecting such areas, for the benefit of present and future generations.

Table of Policy Goals listed on pages 1-2 in CAO 2024 Update

<u>Policy Supports Environment</u>	<u>One Policy Supports Other</u>	<u>Policy Supports Property Rights</u>
1 conserve and protect		
2	limit economic costs	
3 identify critical areas		
4 protect critical areas		allow reasonable use
5 preserve wetlands		
6 protect water quality		
7 environmental suitability		
8 avoid flooding, other hazards		
9 preserve natural water flow		
10 protect groundwater		
11 consider cumulative impacts		
12 restore critical areas		
13 consider climate change		

The first two paragraphs and the 13 policy goals shown above seem to assure the public that the County and DCD are going to emphasize environmental protection. Yet experience and knowledge of DCD's actions lead one to ask Do the 11 and ½ policy goals really protect critical areas in Kitsap County? Or does the ½ (of #4) trump the rest? At the least, we have concluded based on observing the decisions by DCD that property rights and development are given equal weight in determining outcomes. Thus, our trust in the system has been eroded by the contradiction between words in the CAO and DCD's actions.

No Net Loss vs. Net Ecological Gain

We urge the County to adopt a Net Ecological Gain approach to wildlife conservation. The consultants for WA Department of Fish and Wildlife (Davis et al. 2022) stated "Washington currently has a No Net Loss (NNL) policy for development involving shorelines, wetlands, and certain other critical habitats. Despite significant investments in the recovery of salmon and other fish and wildlife species, scientific evidence of continued ecosystem decline in Washington indicates that NNL policies are not working or are not going far enough to protect our state's rich natural heritage." "In advancing Net Ecological Gain standards, the state must simultaneously address these issues and others tied to NNL."

The WDFW report expands upon these concerns in the following statements "The decline in ecosystem function and biodiversity in the state indicates that NNL is not being achieved, experts said. However, this failure is tied to a lack of proper implementation of the standards and other key gaps in the policy, including:

(a)The baseline for which impacts are measured against is undefined or inconsistent, and there are not clear metrics for monitoring success or failure through time.

(b)There is not enough scientific understanding around site specific ecosystem function degradation and whether offsite (and especially out-of-kind) mitigation is equal to or outperforms the site-specific degradation.

(c)Overall, there is insufficient monitoring of NNL standards.

(d)There has been a persistent lack of accountability and enforcement, which exacerbates noncompliance."

Thus, we conclude that variances in the County are permitted too often with required mitigation procedures that rarely produce equal or better ecological function. In essence, destroying one tree in a riparian zone cannot simply be mitigated by planting a tree anywhere. Replacing an entire stream that nature has developed over a thousand years cannot be replaced with a few-months effort.

Chapter 19.300 of KC CAO

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Intent and Purpose

The CAO states “The intent of this chapter is to identify fish and wildlife habitat conservation areas and establish habitat protection procedures and mitigation measures designed to achieve no net loss of critical area functions and values and to maintain viable fish and wildlife populations and habitat over the long term. Further, it is also the intent of this chapter to: Avoid or minimize human and wildlife conflicts through planning and implementation of wildlife corridors where feasible.”

Although mention is made of wildlife corridors in the first part of the chapter, we believe that the County rarely considers them at both large and small spatial scales. For example, where erosion can cause soil to flow from a development, silt fencing is often used to protect critical areas. However, the County must not authorize the use of silt fencing without techniques that allow crossing by small wildlife such as amphibians and reptiles. Silt fencing can harm wildlife in and moving in and out of critical areas. The Washington Department of Ecology knows of better techniques that slow erosion flow and protect small wildlife that migrate seasonally. Extra requirements should be required for sediment management for projects lasting more than 1 year.

Buffer Reduction and Mitigation

The problems with any reductions relate back to the concerns described above that ecological function, especially long-term function, is not maintained or improved. Buffer averaging removes riparian area and replaces it with non-riparian area. Native vegetation planted in upland is not the same as native vegetation in lowland and certainly does not usually have the same function.

Definitions

19.300.305 D. wildlife corridors are mentioned as positive features (page 78). The Kitsap County DCD and its CAO must realize that the large buffers needed by amphibians and other animals moving to and from wetlands are essentially corridors. Thus, a definition of corridors and large buffers that defines these similarities should be published in the CAO.

The CAO currently states (page 90) “the use of the performance based development process is strongly encouraged for projects within designated fish and wildlife habitat conservation areas.” A definition of performance based development process must be given in the CAO.

Trails

Section I regarding trails starts with good constraints on development, but then continues with major exceptions. As noted below, and in our concerns about general goals and policies, the CAO allows major development as long as the politics and social economics justify the destruction of the environment.

5. Trails shall generally be limited to pedestrian use unless other more intensive uses, such as bike or horse trails have been specifically allowed and mitigation has been provided. Trail width shall not exceed five feet unless there is demonstrated need, subject to review and approval by the department. Trails shall be constructed with pervious materials except where determined infeasible.

6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap County Non-Motorized Facility Plan (and associated recognized community trails) and as amended, and provided design considerations are made to minimize impacts to critical areas and buffers shall not be subject to the platform, trail width, or trail material limitations above. Such trails and facilities shall be approved through Special Use Review (19.100.145), unless any underlying permit requires a public hearing.

We believe that Point 5 should not be amended by Point 6. Essentially, the current CAO makes destruction of critical areas, with no net loss, acceptable as long as politicians and advocates for non-motorized transportation believe that their plans are more important than the critical areas. This is the type of effort that Washington regulation and the CAO's purpose is meant to prevent. The burden on non-motorized plans should be to avoid critical areas.

Pesticides and Fertilizers

Page 90 and other Chapters

The current exemption for pesticide use is too broad. Pesticides should be a technique of last resort. Per EPA pesticides is the general term that includes herbicides, biocides, insecticides, etc.

In addition, the prohibition should apply equally to wetlands and their buffers. Wetlands are high use habitat areas for multiple species. Amphibians, who use wetlands for reproduction and growth, are particularly sensitive to pesticides.

Recommendations.

New section:

19.200.220.F. Fertilizers and Pesticides. No fertilizers may be used in wetlands or their buffers. Pesticides, which includes herbicides, cannot be used in wetlands or their buffers, except under the following three conditions. First, only those pesticides approved by the U.S. EPA or Washington Department of Ecology for use in wetland

environments and applied by a licensed applicator in accordance with the safe application practices on the label can be used. Second, use of pesticides is only to be allowed against invasive species. Third, the pesticides can only be used when other control measures are not possible or other measures would cause more damage to habitat and animals than the pesticides.

Revision:

19.300.315.F. Fertilizers and Pesticides. No fertilizers may be used in fish and wildlife habitat conservation areas or their buffers. Pesticides, which includes herbicides, cannot be used in fish and wildlife habitat conservation areas or their buffers, except under the following three conditions. First, only those pesticides approved by the U.S. EPA or Washington Department of Ecology for use in fish and wildlife habitat conservation area environments and applied by a licensed applicator in accordance with the safe application practices on the label can be used. Second, use of pesticides is only to be allowed against invasive species. Third, the pesticides can only be used when other control measures are not possible or other measures would cause more damage to habitat and animals than the pesticides.

Development Projects near or in buffers

M. Road repair and construction

4. Construction time limits (page 94)

Why do you only mention time limits for road-related activities. General housing or commercial plot development also needs time limits as the disaster at the silt fence installed at the Arborwood sub-division demonstrated in 2022. The silt fence between Arborwood and North Kitsap Heritage Park remained up too long and caught amphibians for a few weeks. Many amphibians died trying to follow normal, semi-annual migration routes to and from wetlands.

General Points

Throughout the CAO, it is made clear that the burden is on protectors of critical areas to actively defend these areas. Private landowners, politicians, and public works proponents simply need to claim some greater public or private good from development to bypass the protections, causing ecological loss.

A major concern about mitigation is another one highlighted in the WDFW report (Davis et al. 2022) "Mitigation required by local and state agencies does not have a long-term requirement beyond the initial monitoring period, meaning that when properties are sold, the new owners can degrade the mitigation." Neither structure nor function can be measured over short term and declared sufficient. Serious and effective monitoring must be required and maintained for 10 years (as described on Ecology's web site) after restoration and mitigation to ensure sustainable conditions.

Upgrade park plans, county handbooks and ordinances to include the latest scientific understanding of wildlife and critical areas. Lack of knowledge is not the same as lack of critical areas, wetlands, and valuable wildlife other than salmon.

Limiting Direct Harm to Fish and Wildlife

Only two statements in the CAO indicate that Kitsap County is attempting to reduce direct harm to fish and wildlife (animals). The first is on page 2 in revised policy goal #11 with a phrase “Such impacts shall include those to wildlife” The second is on page 78 in Chapter 19.300 in the Purpose “maintain viable fish and wildlife populations” The rest of the CAO focuses on areas and habitats. Kitsap County DCD’s hope is that protection and conservation of habitat will do the same for animal species. I encourage the DCD and CAO to focus more on direct harm to animal populations, recognize that many species are harmed directly during development, and realize that mitigation may not help the same species or be enough to counteract the massacre at the site being developed.

Reasons why Kitsap County's DCD and its CAO must include larger wetland buffers and consider more recent best available science

Summary points:

- Proposed CAO buffer widths do not incorporate best available science.
- Current and proposed buffer widths are inadequate for many species.

In August 2023, David Onstad emailed a short report to the DCD describing the inadequacy of the report prepared by consultants to describe the best available science (BAS) that the DCD should use in revising its CAO (**Watershed 2023**). The current analysis focuses on amphibians, but similar conclusions can be drawn about other small animals. Many amphibians and insects do not just live in wetlands. One or two life stages live in the water and the other life stages live on dryland close or far away (from animal's perspective). Thus, the buffers are critical areas for the animals.

In addition to this general failure to consider recent (post 2013) BAS, we conclude that the April 8, 2024, draft of the CAO fails to consider both the importance of amphibians but also the WA Department of Ecology's own evaluation of BAS concerning buffers for amphibians. **Walls et al. (2016)** described the problem that herpetologists and others concerned about the fate of amphibian populations face as regulatory agencies (such as KC DCD) deal with protecting threatened species. At least 33% of amphibian species are at risk of extinction around the world. Over 80% of at-risk amphibian species in the US remained unlisted (in 2012) under the Endangered Species Act (ESA). They focused on amphibians because of "the severity of their declines and because of the ecosystem services they provide. The loss of these services could have cascading impacts on the structure, composition, and dynamics of food webs, as well as on the transfer of energy and nutrients between aquatic and terrestrial ecosystems."

Walls et al. (2016) concluded that "Of the 35 US amphibian species and distinct population segments ("taxa") listed under the ESA, 40% currently lack a final (completed) recovery plan, 28.6% lack designated critical habitat, and 8.6% lack both. For taxa that have recovery plans, the time between their listing and the development of those plans was from 2 to 29 years, and the time between their listing and the designation of critical habitat ranged from 0 to 14 years."

Walls et al. (2016) also described "the importance of spatial scale and connectivity to population declines and potential recovery has been undervalued, even though local extirpations of fragmented populations are common. Considering the spatial relationships among landscape elements, the movement and dispersal characteristics of the species of interest, and the temporal changes in the landscape structure is essential when making decisions about critical habitat. Although such information can be scant for many species, the necessary habitat features of both wetlands and surrounding upland terrestrial core habitat are well defined for a variety of pond-breeding amphibians"

In fact, the Department of Ecology has good references that are being ignored by DCD. In **Ecology’s 2013 Update of its Best Available Science for Wetlands (Hruby 2013)**, Table 1 shows smallest mean minimum core habitat (buffer) for reptiles and amphibians 117 m or over 350 ft.. In another study cited in Ecology’s 2013 review, half of amphibians were found within 93 m or about 300 ft of wetland. So DCD should choose a value between 300-350 ft for buffers based on the Best Available Science according to Ecology and the scientific literature.

Ecology’s 2013 Update (Page 5-23) stated “The literature on buffers related to wildlife is, in general, less focused. Most studies document the needs of a particular species or guild relative to distances for breeding or other life-history needs within a radius from aquatic habitats.

Update: Studies that document the needs of particular species or guilds continue to be published. However, there have also been recent attempts to document and model the abundance and extinction rates of amphibian populations relative to specific buffer widths (e.g. 5, 29).” DCD should use this knowledge and find the most recent literature published after 2013.

Table 1 on page 18 of Ecology’s 2013 Update [Distances in meters (1 m ~ 3 ft)]

<i>Group</i>	<i>Mean minimum (m)</i>	<i>Mean maximum (m)</i>
Frogs	205	368
Salamanders	117	218
Amphibians	159	290
Snakes	168	304
Turtles	123	287
Reptiles	127	289
Herpetofauna	142	289

**Values represent mean linear radii extending outward from the edge of aquatic habitats compiled from summary data in Appendices 1 and 2.*

Ecology’s 2013 Update (pages 20-21) stated “Table 2 summarizes the information on upland habitat use by amphibians found in Washington State. The research on a species may not have been done in Washington State, but we assume that the habitat needs for an individual species will not change significantly within its natural geographic range. Furthermore, the data summarized in Table 2 indicate that the habitat requirements of species found in Washington fall within the range found for species that have been studies more intensely.”

The consequences of misunderstanding animal movement and miscalculating buffer/corridor size can be catastrophic to a population. In 2021-22, the silt fence approved by DCD for the border of Arborwood housing development adjacent to North Kitsap Heritage Park had no openings for amphibians and remained in place for many months. The fence acted as a trap for migrating amphibians leading to the deaths of hundreds or more.

Recent literature not included in DCD's Best Available Science Review (Watershed 2023).

Some of the recent literature not included in the DCD review of BAS (2023 report) includes the following two studies that were easily found in a 5-minute, bibliographic-database search (2020 to present) using three keywords: amphibian, buffer, and United States (affiliation).

Olson and Ares (2022) in *Forest Ecology and Management* stated “Riparian-management zones protect aquatic species and their habitats in managed forests, yet the effects of riparian-management alternatives warrant further study. We examined effects of alternative riparian-*buffer* widths on fish and *amphibians* in small headwater streams with upland forest thinning in western Oregon, USA. Previously, we reported apparent lag-time effects developing 10 years after thinning of upland second-growth forest, and additional effects 1–2 years after a second-thinning harvest. Here, we analyze effects on fish and *amphibian* abundances, body-size metrics, and habitats 5 years after the second thinning at 58 stream reaches across eight study sites. Riparian-*buffer* effects were evident for several species and species groups: higher densities of fish and *amphibians* (e.g., coastal giant salamander [*Dicamptodon tenebrosus*], torrent salamanders [*Rhyacotriton* spp.], sculpins [family Cottidae]) were detected in reaches with a no-entry one site-potential tree-height *buffer* (~70 m wide) in comparison with lower densities in two narrower no-entry *buffers* (6-m-wide, and a variable-width *buffer* with a 15-m minimum width) and a thin-through managed *buffer* (two site-potential tree-heights wide, ~140 m). In addition, indicator-species analyses showed that torrent salamander densities were positively associated with stream reaches in unmanaged controls. Some *amphibians* changed habitat affinities slightly, being found during the most-recent sampling in locations with habitats related to larger stream sizes (i.e., more-perennial stream flows) than they had been in earlier sampling. Analyses of body-size metrics showed associations with *buffers* across 42% of species × post-treatment years analyzed, yet patterns were inconsistent within species, and more consistent associations of body metrics were found with microhabitat types, finding larger animals in pools. Although the mechanism driving changes is unclear, the positive associations of species' densities with one-tree buffers suggest that either lag-time or cumulative effects of factors associated with treatments are developing, with benefits of wider streamside protections over longer time periods for headwater-associated fish and amphibians. Our findings of higher densities of headwater-reliant *Rhyacotriton* species in stream-reach treatments with the one-tree *buffers*, and affinities with unthinned control reaches, support the benefits of greater headwater-stream protections for that species complex, which includes species of conservation concern. The mix of different *buffer* widths and unmanaged units across our eight sites may be promoting site-scale persistence of a community of aquatic-vertebrate species—a mix of *buffer* widths with upslope forest management may be an alternative for larger-scale riparian forest-management objectives.”

Devan-Song et al. (2022) in *Ecosphere* stated “Biotic and abiotic factors drive assortative mixing (preference for or sorting with individuals with similar characteristics) in animal populations on a landscape, with implications for dispersal, population structuring, and other ecological and evolutionary processes. However, patterns and generative mechanisms of assortative mixing

are overlooked in *amphibians* outside of specific life history events such as reproduction. The aims of this project were to determine whether there is assortative mixing by size and life history category in eastern spadefoots (*Scaphiopus holbrookii*), whether these patterns are preserved across time and spatial scale, and quantify the nature and relative role of various habitat and soil features in explaining observed patterns in spatial organization of individuals. We conducted field surveys in southeastern Virginia, USA, in 2016 and 2017 during nonbreeding periods to create spatial networks of *S. holbrookii*. We quantified spatial assortativity by size and life history stage and evaluated the roles of multiple landscape features in explaining spatial organization of *S. holbrookii*. We found that *S. holbrookii* sorted spatially by size and sex outside of breeding periods, with juveniles and adults less likely to sort with each other. Within each life history stage, *S. holbrookii* sorted by size. These patterns were similar across time and spatial scale. Soil and habitat types had no effect on assortativity. Instead, the distance to nearest breeding pool, wetland, and meadow were related to life history stage assortativity, as well as size assortativity in males and subadults. Adult males and females displayed affinity for breeding pools and meadows and avoidance of other types of wetlands, while subadults and nonbreeding adults showed opposite patterns compared with breeding adults. Our results indicate that (1) previously established guidelines for the minimum size of buffer zones to protect wetland-breeding *amphibians* may be inadequate, (2) nonbreeding wetlands may be important core habitat for subadults, and (3) the upland spatial organization of *amphibians* may be used to predict locations of undetected breeding pools.

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Subject: Comments on the Critical Areas Ordinance Update

Kitsap County Code Section 19.100

19.100.155.D. Mitigation Sequencing. An applicant for a development proposal or alteration shall apply the following sequential measures, which appear in order of priority, to avoid impacts to critical areas and critical area buffers. Lower priority measures shall be applied only when higher priority measures are determined to be infeasible or inapplicable:

The word avoid should not be in the opening paragraph as currently presented in the code revisions. We suggest the following wording from the Pierce County FWHCA.

19.100.155.D. Regulated activities shall occur as defined in this section with avoidance of impacts being the highest priority. Lower priority measures shall be applied only when higher priority measures are determined to be infeasible or inapplicable.

By moving Section 19.100.155 D mitigation sequence it will apply to all CAO sections which includes Geological Hazards and Aquifer Recharge. Geo Hazards can be designed around for the most part rather than be avoided, they are not like a stream or wetlands or flooded areas. Seismic Hazard requires special design not avoidance or minimization. Erosion hazards are type A and B soils which are what we are encouraged to infiltrate stormwater into not to buffer from or avoid, what is the beneficial function and value especially if this slope is man-made? Erosion, Seismic Hazard and manmade slopes should be removed from the CAO document as it doesn't meet goals 1-8, 11-13 of the policies and put it where they belong in the Stormwater and Building code. Stormwater code already does more for policy goals 9 and 10 with stormwater's minimum requirement 2 for all projects, additionally requiring SWWPP's, erosion control plans, Level 2 inspections in the winter, etc.

At a minimum section D mitigation sequence should be removed from Geo Hazards and Critical Aquifer.

Avoidance of Critical Aquifer is just plain confusing, what are there 50 uses that require a hydrogeologist report before they can be sited in a recharge area but now those uses would be prohibited due to avoidance? The new Kitsap County North Shed site would be prohibited because it would need to be avoided or minimized?

Kitsap County Code Section 19.200

1. Section 19.200.210.B defines WA Wetland Rating System Categories. Why remove the scoring system points?
2. Section 19.200.215.C.2.C states that wetland certification shall include a site plan provided by the wetland specialist that includes wetland location, buffer, and structure setback. The certification shall also include current wetland rating forms.
 - a. Wetland specialists do not commonly prepare site plans because we don't know all of the requirements per zoning, etc.
 - b. We have been signing site plans prepared by others to confirm we've seen them and they have what is needed for a building permit. We only sign them if they have the wetlands and buffers added.

County Response: That is still acceptable. We do not expect wetland specialists to provide their own, fully-completed site plan. A basic drawing indicating locations relative to other features is acceptable, as is verifying another dated site plan by others. The site plans we do receive usually meet our needs. Unfortunately, there are still some wetland specialists that do NOT provide any geo-referenced site plan with their certification, so we do need to include this as a requirement.

We weren't aware others aren't providing them. We thought it was a requirement. We typically ask clients to provide their formal site plan, which is often the septic design, before we sign and complete the SFC. The clients don't like it much, but we want them to go through without too much trouble.

RESOLVED

3. Section 19.200.220.B.1 In addition to buffer widths based on the criteria in Tables 19.200.220(B) through (E) the department may increase buffer widths or require enhanced buffer vegetation on a **case-by-case basis when necessary** and in consultation with the WDFW and the affected tribes.
 - a. WDFW and tribal biologists are not typically certified to conduct wetland delineations.
 - b. Too vague and not specific enough for specialists to make the determination.
 - c. What happens when they are outside the standard buffer but it is invasive or minimum vegetation cover do they have to increase the buffer or plant it? Above and beyond for something that is existing conditions.
 - d. How can WDFW or the Tribe confirm the rest of this section (protect wetland functions/values for no net loss; in a landslide area or the standard buffer has minimum vegetation cover) if they don't have the training to complete wetland functions assessments or delineations?
 - e. Wouldn't it be more suitable for the wetland specialist to make that determination and the county confirm particularly when they are on the approved wetland specialist list?

4. Section 19.200.220.B.2. is difficult to understand and will be difficult to implement particularly since this will cause delays in permitting and multiple return of reports for update or clarification.
 - a. How is this determined?
 - b. Are there guidelines for specialists to follow so they don't get reports back repeatedly?
 - c. The specialist has determined that a wider buffer is not required, and the project designed. The tribe and WDFW come out and say "this wetland needs a wider buffer." How is this protecting the resource and keeping the review process consistent?
5. 19.200.220.B.3: When required buffer enhancement is preferred to increasing the buffer. Enhancement of the buffer through native planting or invasive species removal shall be demonstrated infeasible or ineffective prior to buffer width increases.
 - a. How is this determined and when required?
 - b. Is this a mitigation plan that requires a monitoring period?
6. Section 19.200.220.C.2.a:
 - a. Change Wetland Mitigation Plan to Buffer Mitigation Plan because wetland implies fill of the wetland for which compensatory mitigation is required.
7. **Section 19.200.220.E.** Building and impervious surface setback lines-
 - a. What is considered a minor intrusion? Can the code add some examples of potential acceptable minor intrusions, i.e. driveways, roads, patios?
 - b. *Is a setback also required from roads and driveways? RESOLVED-not considered a structure.*
8. **19.200.220.C.7 Variances:** this section mentions Type III variances for development that cannot meet the buffer averaging or administrative buffer reduction criteria.
 - a. Should it be a Type II variance then a Type III? Spell out variance levels.
9. **Table 19.200.220(F):**
 - a. Lights: there will be a lot of backlash because safety issues are becoming a significant concern and having lights working all night and in dark areas are necessary.
 - b. Noise: fencing could cut off the corridor connection to other habitats as required for functions.
 - c. Toxic Runoff: only stormwater in the previous code, why is this added now because has the same requirements and impacts to wetlands as the stormwater runoff row.
 - d. Stormwater runoff: Isn't all of the items in the table included in the stormwater manual requirements.
 - e. Pets and human disturbance: Most pets can get through anything so there are no effective means of keeping them out. New subdivisions typically locate low intensity uses adjacent to buffers.
10. **19.200.230 Wetland Mitigation Requirements**
 - a. **Table 19.200.230:** Should remove wetlands that we don't have in Kitsap (i.e., interdunal).

- b. **19.200.230.E.3.:** Methods of Compensatory Mitigation-Methods shall rely on the methods listed in the code in order of preference. A lower preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the department's satisfaction that all higher ranked types of mitigation are not viable.
 - i. How is this determined? One suggestion is to add that if the project gets a federal or state permit that allows the lower preference method it should be to the department's satisfaction. Not sure what the criteria are, so need to identify some.
- c. This section should only apply to wetlands because the listed mitigation methods are not used for buffer impacts.
- d. If mitigation project not in order of Kitsap CAO preference, is approval at federal or state level sufficient for approval at the county level?

Kitsap County Code Section 19.300

11. Section 19.300.310.B.3 defines a Type O (“Other”) stream as: There exist isolated streams in the County that have no surface connection to Type S, F, or N waters, are non-fish-bearing, and infiltrate entirely (does not enter a Type S, F, or N water). and are critical to downstream flows and overall watershed health. In addition to the DNR stream types above, a Type O stream classification shall be included as Fish and Wildlife Habitat Conservation Areas when verified on-site by a qualified habitat biologist.

County Response: This is not specific to Kitsap County. Pierce, Thurston and King Counties also have added a Type “O” stream. The DNR stream type system is not required to be used for CAOs but is in an existing option. Therefore, it is well within the WAC guidelines to implement additional criteria for identifying fish and wildlife habitat conservation areas. We agree this section needs more work and are open to suggestions. The intent was for this to be identified by the habitat biologist; however it may also be used during the multi-agency Stream ID Team process.

As an example, King County defines Type O as:

Type O waters include all segments of aquatic areas that are not type S, F or N waters and that are not physically connected to type S, F or N waters by an above-ground channel system, pipe or culvert, stream or wetland.

Suggested Wording Revision: There exist isolated streams in the County that have no surface connection to Type S, F, or N waters, are non-fish-bearing, channelized (meeting the Type N definition), and infiltrate entirely (does not enter a Type S, F, or N water in an above or below ground channel). In addition to the DNR stream types above, a Type O stream classification shall be included as Fish and Wildlife Habitat Conservation Areas when verified on-site by a qualified habitat biologist.

- a. Suggest a lower buffer width for Type O waters to create differentiation between Type N and O waters.

12. Section 19.300.315.A.2 states, “The buffer width shall be increased to include streamside wetlands, which provide overflow storage for storm waters, feed water back to the stream during low flows or provide shelter and food for fish”

County Response: That is not the intent, and we can look at clarifying this to ‘may be increased’. This is how code is applied currently, where the greater buffer width shall apply when critical areas overlap.

Suggested wording: The buffer width shall be increased where streamside wetland buffers exceed the stream buffer width. The greater buffer width shall apply when critical area buffer widths overlap.

13. Type N streams all have a buffer width of 100ft. Can we tease it out like this:

Table 1: Stream Buffers

Stream Type	Buffer Width
F	200
Np	100
Ns (connected to F or Np)	75
Ns (not connected to F, Np)	50

14.

County Response: *This would no longer be consistent with BAS, which is now stating that buffers need to be a minimum of 100-feet to provide adequate riparian function & pollutant removal.*

Using BAS seems inconsistent throughout the update. Why was this revised to increase buffer widths, however, in other areas different portions of the BAS criteria are used. For example, the UGA alternative buffer width for a Type N stream is 75 feet. This is below the recommended buffer width in the WDFW guidance.

15. Table 19.300.315 It shows the UGA buffer for a Type F stream will be 150 feet, which is consistent with the current buffer width. Can the UGA buffer for Type N streams be consistent with the current buffer width as well and be 50 feet? The alternative buffer width is proposed to be 75 feet for a Type N stream. This below the 100 feet recommended in the guidance. In addition, if stormwater manual requires clean water couldn't the buffer width remain 50 feet within the UGA?

16. Section 19.300.315.A.3 states an applicant can use the UGA Alternative Buffer Widths in limited circumstances. It then states, the alternative buffers can be used “without first having to undergo a formal buffer reduction process as described in subsection 19.300.315(A)(4).” However, it states that. “The use of UGA Alternative Buffer Widths will not be allowed without a Habitat Management Plan from a qualified habitat biologist proving that all of the conditions in this subsection are met.” Please expand on this.

County Response: *This is a great question. We can certainly clarify, but what is envisioned is similar to the Engineered Waiver process that is done for stormwater review. For that process, you may still need to provide staff with a geotechnical report to verify there are no concerns. We would expect to see a modified report/letter from the biologist outlining why this alternative can be applied. Similarly, we envision this being an over-the-counter process and are working on a form that is a hybrid of the wetland certification and engineered waiver form that would be submitted for this verification/review.*

There was some resolution during the meeting, but section needs more clarification and

17. Can we introduce a Single-Family Certificate for streams?

County Response: Currently, if an applicant submitted an email or letter from the biologist verifying that the proposal will be outside the required buffer (noting date of site plan they reviewed or providing it with the letter), we would accept that. If it is preferred to have a more formal document that can be filled out, we can consider that.

We suggest developing a form similar to the wetland certification for projects outside of buffers for expediting single family projects that do not propose buffer impacts.

Sincerely,

Kitsap Building Association

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April 26, 2024

To: Commissioners Rolfes, Garrido and Walters and Chairman Phillips and members of the Kitsap County Planning Commission.

Re: Comments on the Critical Areas Ordinance.

Following are comments from a working committee of the Kitsap Environmental Coalition on DCD's proposed changes to the Critical Areas Ordinance, dated April 8, 2024. Code writing is an iterative process. Thus, our comments are not final, but should be considered as strong but tentative recommendations.

We believe the code should meet the following basic criteria, all with the overriding intention of protecting our shared environment.

1. The code should be specific, consistent, clear, and easily readable by the public. Specialist knowledge should not be required. The code should require adherence by staff and limit excessive discretion, as recently acknowledged by the Hearing Examiner in an appeal.
2. The code should not rely on aspirational clauses to address policy issues.
3. Public notification and a reasonable appeal time should be required for any buffer modification.
4. The code should protect buffers for wetlands, streams, and wildlife areas. The best available science is that buffers are necessary, multi-functional, and of moderate width. The ecological functions of buffers must be identified.
5. Effectiveness of the code requires permanent status of boundaries and effective protection against transgression.
6. Set a minimum setback of 15' from structures and impervious surfaces for maintenance and use in order to avoid transgressions of buffers.
7. The code should require that evaluation of different ecological functions be performed by appropriate specialists or professionals. Items in a specialist report may only be relied upon when within a specialist's area of expertise.
8. Specialist reports must be subject to verification.
9. The criterion of "no net loss of ecological functions" lacks definition and methodology. Specialist reports should not rely on 'hand-waving', but be based on objective scientific analysis and be subject to verification. The "no adverse impact" requirement in buffer averaging should be retained. Monitoring requirements must address all ecological

functions, not just vegetation, and the County must provide for effective review of monitoring reports.

10. Minimization of impact to wetlands should be in accord with Washington State agency guidances. Consider both large and small spatial scales during evaluation of wildlife corridors.
11. The Code shall recognize amphibians and reptiles as two of the five classes of vertebrate 'wildlife' that are most endangered, locally and globally, and that they deserve protection and preservation. Vernal pools and intermittent streams are the lifeblood of larval amphibians. Additionally, endemic juvenile amphibians and all reptiles shall have unimpeded access to extensive forested uplands.
12. Regional trails and shared-use-paths should be regulated with roads, not trails.
13. Fertilizers and pesticides should generally be prohibited in critical areas and buffers.
14. The lower width for riparian buffer widths in UGAs is scientifically unsupported.
15. Clarifications are requested for Type I and special use review procedures.

Sincerely,
Tom Doty
Doug Hayman
Joe Lubischer
Elizabeth Nichols
David Onstad
Beverly Parsons
Carol Price
Dave Shorett

COMMENTS FROM THE KEC WORKING COMMITTEE ON THE PROPOSED CAO

1. CLARITY

Standard buffer widths. Actual standard buffer widths must be inferred. Tables 19.200.220(B) through (D) and Table 19.300.315 should be identified as "Widths of Standard Buffers" or "Standard Buffer Widths."

Table 19.200.220(C) for Category III wetlands is missing the row for 'high level of function.' Even though a footnote is present, the missing row is confusing to the reader and makes the table difficult to read. Delete the footnote and insert the row for 'high level of function.'

19.200.220.B.2

Revise §B.1 to read “The standard buffer widths...”

Delete the first line of §B.1 ,2nd¶, to start “The department shall increase...”

The second ¶ §B.2 is awkward. We recommend text be re-written.

“Modification, Increase, Reduce, Reduction, & Decrease” terms are not always clear and frequently require prior knowledge or inferences by the reader. We see our suggestion to use “modification”--meaning any change in required buffer width--has been accepted.

The terms “reduction and reduce” are used to refer to buffer decreases in general, as well as to specific methods. The choice of words has been confusing in both the 2007 and 2017 versions and frequently requires the reader to make inferences.

Whereas the term buffer averaging” has a single meaning, the clarity of “Administrative Buffer Reduction” is compromised by non-specific uses of “reduction and reduce.” We suggest “administrative buffer reduction” be given a new name, such as “Buffer Decrease.” Such a convention would allow occasional use of “reduce or reduction” as non-specific words. Other solutions are possible.

§19.200.220.C and 19.300.315.

The structure of §C is very confusing and lacks specificity. Staff have stated the intent is to retain the current three mitigation options of Type I buffer averaging, Type II reduction, and Type III variance. However, proposed §C.1 details a four-option structure and §C.2 and C.3 separate buffer averaging from a Type I/II reduction. Theoretically, a third-party could force the department to allow buffer averaging outside of departmental decision, notification, or public review.

The identical problem also exists in proposed 19.300.315.A.4.

There are different approaches to addressing the above confusion and we advise that such corrections meet the standards of being clear to a new reader and not allowing alternative interpretations.

2. ASPIRATIONAL CLAUSES

Aspirational terms, such as “consider, encourage, or may,” have no enforceable meaning and are essentially irrelevant to the code and policy. We recommend either deletion or a requirement for action, as appropriate.

Reject the insert and deletion for 19.100.105.B.11. We support existing code language seeking to “prevent cumulative adverse environmental impacts.”

For 19.100.105.B.13, we support a positive requirement:

“Applicants shall address the impact of climate change and sea level rise if the proposed development is near a marine shoreline, flood hazard area, or low-lying area.”

19.200.220.B.1. Replace second paragraph:

“For degraded buffers, the department must require enhancement of buffer functionality and/or increase the buffer above the required standard buffer width in Tables 19.200.220(B) through (E). The department shall consult with the Washington Department of Fish and Wildlife and affected Tribe(s).”

Revise 19.200.220.B.

§B.1 “The department ~~may~~ shall increase buffer widths...”

§B.2 “...the buffer width ~~may~~ shall be increased...”

3. PUBLIC NOTIFICATION

Any buffer modification should require public notification. Therefore, the Type I process should not be used.

Current public notification only requires publishing in the Kitsap Sun. That newspaper has not had reliable delivery in the past. The department should work with the Board to provide reliable electronic notification, such as augmenting the current email notification system with a choice for “zoning, stormwater, and critical area decisions and approvals.”

4. BUFFER INTEGRITY

We support elimination of the bad buffer bonus in proposed 19.200.220.B by requiring restoration and enhancement of degraded buffers. Amend §B.1 (also suggested above) as follows:

“For degraded buffers, the department must require enhancement or restoration of buffer functionality and/or increase the buffer area or width above the required standard buffer width in Tables 19.200.220(B) through (E). The department shall consult with the Washington Department of Fish and Wildlife and affected Tribe(s).”

And:

“Enhancement or restoration of an existing buffer shall not count as mitigation.”

Best available science and guidance from state agencies (Ecology, WDFW, Commerce) concur that buffers for wetlands, streams, and habitat areas are necessary, multi-functional, of moderate width, and should be undisturbed and well-vegetated. In addition, Ecology stated that buffer widths are considered “moderate”, indicating that widths are not excessive and reductions are undesirable.

Current code §19.300.315.A.1 requires that *“Buffers shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes.”* Furthermore, DCD Decisions have also included the above code as a Condition that *“Permit application approval is subject to chapter 19.200.215 and 19.300.315 of the Kitsap County Code, which states that buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.*

Despite these clear code items, buffer integrity has been compromised by DCD practices, which have allowed use of buffers for development activities. These activities include clearing, excavation, grading, and placement of permanent compacted fill. Staff have stated that such work is acceptable as long as the area is restored by planting. DCD apparently has mis-read the code phrase “*except where the buffer can be enhanced*” to mean that a buffer can be disturbed provided the area is replanted. In doing so, DCD turns the plain text of the code on its head. The intent of the ordinance and the specific requirement for buffers to “remain undisturbed” are being ignored.

A more complete definition of “buffer” is required, including a list of ecological functions by which buffers (1) protect functions and values of critical areas and (2) independently provide ecological functions.

There is no scientific basis for decreasing buffers. Because buffers widths are moderate to inadequate, decreases in buffer width or area will generally decrease the ecological functions and reduce the protective benefit for critical areas. We therefore support only a Type III variance process for reducing buffers.

Whereas ‘hand-waving’ in wetland reports has been observed in place of actual analysis of “great or greater” or “no net loss”, it is important that the burden of proof be placed upon the applicant.

Although mention is made of wildlife corridors in both 19.200 and 19.300, we believe that the County rarely considers them at both large and small spatial scales. For example, where erosion can cause soil to flow from a development, silt fencing is often used to protect critical areas. However, the County must not authorize the use of silt fencing without techniques that allow crossing by small wildlife, including amphibians and reptiles. Silt fencing can harm wildlife in and moving in and out of critical areas.

The wildlife corridor width of 100 feet in 19.200.220.C.6.a.i lacks scientific support and is far too small. One hundred meters would be more appropriate for deer or amphibians. Wildlife corridor width should be analyzed with respect to disturbance distances (e.g. Hennings, 2017).

Recommendations.

Revise the definition for buffer 19.150.170:

“Buffer” includes riparian areas and means a well-vegetated area that is intended to protect the functions and values of critical areas. Buffers also provide their own ecological functions. Protecting functions and values of critical areas requires identifying, retaining, and protecting the ecological functions of buffers. These include, but are not limited to, wildlife habitat including use areas, connectivity, and food resources; erosion prevention; passive runoff and stormwater control via slowing, micro-detention, absorption, and infiltration; removal of sediment, nutrients, and toxics; improvement of water quality via biofiltration by fungal, bacterial, and plant communities in the upper soil horizons; maintenance of wetland hydrology and plant communities; increased residence time of

water in the subsurface, minimization of peak stream flows, reduction of stream temperatures, and maintenance of seasonal low flows; and groundwater infiltration, both deep and near-surface. Protecting functions and values includes the preservation of existing native and nonnative vegetation, except where a degraded buffer is enhanced or restored.”

Insert new §D.1 under 19.200.220.D:

“Buffers. Buffers shall remain undisturbed natural vegetation areas. Buffers shall be maintained along the perimeter of wetlands. Refuse, fill, yard-waste or other debris shall not be placed in buffers. No clearing, excavation, grading, filling, staging, storage, or other development activities shall occur in buffers. Degraded buffers may be enhanced to improve functional attributes according to a restoration plan.”

Revise 19.300.305.D to read:

“Avoid or minimize human and wildlife conflicts by identifying, preserving, and/or restoring wildlife corridors.”

“Delete existing text and insert the following for 19.300.315.A.1:

“Buffers. Buffers shall remain undisturbed natural vegetation areas. Buffers shall be maintained along the perimeter of streams and habitat areas. Refuse, fill, yard-waste or other debris shall not be placed in buffers. No clearing, excavation, grading, filling, staging, storage, or other development activities shall occur in buffers. Degraded buffers may be enhanced to improve functional attributes according to a restoration plan.”

In the introductory paragraph for 19.300.315.A.6, delete “Refuse shall not be placed in buffers.” due to redundancy with §A.1.

Do not use Type I or Type II process, but require Type III for any buffer decrease.

Amend 19.200.220.C.2.b, 19.200.220.3.c, 19.300.315.A.4.b.iv, & 19.300.315.A.4.c.iv by appending “The applicant shall demonstrate that no net loss of ecological functions will occur.” to the currently proposed text.

Amend 19.200.220.C.6 & 19.300.305 to require use of Best Management Practices that are not harmful to small animals.

Amend 19.200.220.C.6.a.i to require a 300-foot wide corridor.

Insert a definition for ‘wildlife corridor.’

5. BOUNDARY MARKING AND MEMORIALIZATION

For critical area or buffer boundaries to be honored in the future they must be memorialized for future owners and residents. Current code lacks such provisions and transgression of boundaries is not uncommon. It is too tempting and easy for a current owner to extend a garden or yard by importing fill. The current requirement allowing wood posts, even if treated,

is only a short-term solution. Without a legal recording of the boundary, knowledge of the boundary will disappear with transfer of ownership. Permanent protection of boundaries requires two items.

First, a boundary must be physically identified with non-degradable and locatable markers, as well as temporary signs or wood markers. A driven 1" pipe, as used by surveyors, would be suitable for locating a boundary line, as well as holding a relatively temporary wand with signage.

Second, the boundary line and buffer limitations must be memorialized with a Notice to Title or equivalent legal instrument, which a new owner would necessarily be informed of.

Several places in the code refer in different ways to notice to title, encumbrance, covenant etc. The code would be cleaner with a single definition of a legal encumbrance, and have subsequent code sections reference that definition.

We acknowledge that legal protection, per Ecology Consistency & Gap Analysis Recommendation #10, is a proposed requirement for compensatory mitigation with buffers 19.700.715.B.12.

6. SETBACKS

In the current Title 19 code, a minimum construction setback of 15' is required. Generally, 15' is an absolute minimum for practical site use and building maintenance. Less space guarantees transgression of a boundary by mowing, fill, and other activities in order to improve utility of the property.

The code 19.200.220.E currently allows "minor structural or impervious surface intrusions" with a determination of no adverse impact. However, in practice the department has allowed a continuous decrease in the setback and does so without any determination. This practice should be prohibited.

Recommendations.

Insert a definition for setback as follows:

"19.150.567. For the purposes of Title 19, "setback" is an area measured from a buffer boundary within which a structure or impervious surface is prohibited. The position of a structure shall be measured to the nearest wall or vertical element."

Revise 19.200.220.E.

"A structure or impervious surface setback of not less than fifteen feet is required from the edge of a wetland buffer, including exempt wetlands in 19.200.210.C. The fifteen-foot setback is considered a minimum for practical use and maintenance and may not be decreased."

Revise 19.300.315.A.7.

“A structure or impervious surface setback of not less than fifteen feet is required from the edge of a fish and wildlife habitat conservation area buffer. The fifteen-foot setback is considered a minimum for practical use and maintenance and may not be decreased. The setback shall be identified on a site plan.”

Revise 19.300.315A.2 by deletion of “...and building setbacks...” in ¶2.

7. SPECIALISTS AND REPORTS

There are multiple ecological functions of buffers. Evaluation of functions may require expertise in wetlands, streams, habitat, soil science, hydrology, hydrogeology, and/or stormwater.

Currently, the department appears to rely entirely on wetland reports and habitat management plans from wetland specialists and fish/wildlife biologists, respectively. However, their expertise may not extend to all the technical areas necessary for adequate evaluation of buffer functions. As a result, adverse impacts such as dewatering or erosion may be, and have been, incorrectly assessed or entirely overlooked.

In addition, the wetland mitigation report per 19.700.715.B.6.c & B.10.b requires assessments of the “water regime” that are within the scope of a professional hydrogeologist or professional engineer. The same issue exists for habitat management plans 19.700.720.C.2 when all ecological functions are assessed.

We have observed incorrect or inappropriate determinations by wetland specialists. For example, a claim of “no adverse impacts” when risk of wetland erosion is present. Or a claim that stormwater control is adequate when the specialist lacks such expertise. For a wetland specialist or wildlife biologist to make determinations outside their area of expertise and/or impinging on fields covered by professional licensing (e.g. geology, hydrology, or engineering) is likely illegal.

Recommendations.

Rewrite the requirements for authors in 19.700.715.A.2 & 19.700.720.C.6. Prohibit determinations outside of an author’s specific area of expertise. Require evaluations by soil scientist, professional geologist, professional hydrogeologist, or professional engineer as appropriate.

Text of 19.700.720.C.2 is unclear. Delete the first “and”. Revise first sentence to read “ecological quality, and functions and values.” “Ecological quality” requires definition. Second sentence, what does the indefinite “This” refer to?

Scope of 19.700.720.C mentions only vegetation. Add a requirement to evaluate all important ecological functions of buffers including hydrology and hydrogeology.

8. THIRD PARTY VERIFICATION

Evaluation by specialists of critical area functions and values and buffer functional attributes must be subject to reasonable verification on appeal. Allowing such verification is intended to

address inaccuracies or inadequacies of professional reports that have been observed in the past.

In addition, authenticity of reports should not be compromised by departmental editing of professional reports. Again, this recommendation is offered in response to an actual situation.

We recommend the following subsections be appended to 19.700.705:

F. Access for on-site investigations. A third-party may request access to a site for the purpose of conducting an investigation by a professional of their choosing. The third-party shall present a professionally sound reason for additional investigation. Should the owner or Applicant refuse access, the Review Authority (21.04.100) shall not rule against or devalue the third-party's professional opinions on the basis that the third-party did not conduct site investigations.

G. Integrity of reports. No special report shall be edited or amended by the department.

9. NO NET LOSS OF ECOLOGICAL FUNCTIONS, NO ADVERSE IMPACT, and MONITORING

The current CAO has two performance criteria for wetland buffer decreases: (1) *“provide as great or greater functions and values as...under the standard buffer”* (also referred to as *“equivalent functions and values”*) and (2) *“no adverse impact”* for buffer averaging. The proposed criterion is *“no net loss of ecological function”* (except this clause is currently used for FWHCAs).

The proposed code uses the single criterion of *“no net loss of ecological functions”* (except at 19.200.220.C.2.a).

We note that (1) *“no net loss”* and *“ecological functions”* are undefined in the code, (2) there are no criteria, methods, or metrics for rating or comparing impacts to ecological functions, and (3) there is no requirement that a report specify how a determination was made. We acknowledge this problem is not new, but also applied to earlier codes.

The lack of methodology regarding *“no net loss of ecological functions”* is a problem that hampers permitting, as both applicants and appellants lack the certainty of a defined standard.

We are aware of recent reports where the author simply states *“there are no adverse impacts”* or *“there is no net loss”* without detailing how the conclusion was arrived at. In other words, the department currently accepts mere ‘hand-waving’ as a substitute for technical analysis.

No adverse impact was deleted as a condition for buffer averaging. Averaging is essentially a 1:1 mitigation that assumes equivalent functionality between ‘takes’ and ‘gives.’ Where equivalency does not exist, the averaging technique fails. The *“no adverse impact”* clause is a useful guardrail against a failure to check for equivalency. Past department and wetland specialist practices have assumed equivalency and ignored analysis (by ‘hand-waving’), which substantiates the need for a stronger requirement.

Monitoring is addressed in 19.150.436, 19.200.230.F & 19.700, including insertion of a new definition and a requirement for annual reporting. However, monitoring without identification of all ecological functions for critical areas and buffers is incomplete. 19.700.715.B.11 focuses on vegetation only, despite §B.6.h & B.8.c.x calling for a description of functions.

Recommendations.

The lack of definitions, metrics, and methodology for “no net loss of ecological functions” is a serious problem and must be addressed.

19.200.220.C.2.a & 2.b provide two criteria of ‘great or greater’ and ‘no net loss’ to be met. Applying these clauses requires an understanding of the difference between the two criteria, which are not defined elsewhere. The two criteria approach may not be the department’s intent. Clarification is required.

Restore the requirement of “no adverse impact” to buffer averaging.

Monitoring requirements must identify and address all ecological functions, do so for both critical areas and buffers, and include collection of baseline data. Also, the County must provide for effective review of monitoring reports.

10. MINIMIZE IMPACTS TO WETLANDS

Add additional elements from Ecology’s Wetland Avoidance and Minimization Checklists to Table 19.200.220(F) per

<https://fortress.wa.gov/ecy/ezshare/sea/Wetlands/AvoidanceMinimizationchecklist.pdf>

Specifically, include the Ecology suggestions for low impact development techniques, construction techniques, and construction timing.

11. AMPHIBIANS & REPTILES

Small, isolated and/or temporary wetlands and wet locations are ecologically critical for amphibian populations and some reptiles (e.g. Pond turtles). The low habitat rating forced on small fish-free wetlands by the rating system discounts their importance for both groups. The exemption of any category III and IV wetlands lacks scientific support.

Amphibians and reptiles are important components of local ecosystems, cycling energy as both prey and predator, juvenile amphibian transport of aquatic micronutrients into terrestrial environments, enhancing of carbon sequestration by adult salamanders, contributing to the biodiversity that lends stability to ecosystem dynamics... Both groups are in catastrophic global decline for familiar local reasons.

Recommendations.

19.200.210.B.3 delete “...~~can often be replaced with mitigation.~~”

Delete 19.200.210.C in its entirety.

Insert new 19.300.310.B.3.a.iv “Most amphibians are migratory species while most local reptiles are more parochial. Both use wetland and upland habitats for food resources and/or reproductive purposes. Amphibians depend on fishless wetlands and wet areas of all sizes and durations, from temporary to permanent, to carry larval forms through metamorphosis followed by unimpeded migratory movement to wooded uplands for growth to maturity. Habitat management plans shall address impacts to amphibians and reptiles, including obstructive construction techniques (including stormwater management and timing of landscape modification).

12. SHARED-USE-PATHS & ROADS

A typical regional trail design is a shared-use-path (SUP). A shared-use-path is, by any measure, a road. SUPs require construction of a road bed and adherence to stormwater codes. They are vehicle capable and, indeed, the SUP at Port Gamble Forest Heritage Park was being designed for logging trucks. SUPs are significant construction projects that are much more similar to roads than trails. It is most appropriate that regional trails be placed in the *Road/Street Repair and Construction* sections.

Regional trails are specified as non-motorized *transportation* facilities. This identification supports and is consistent with placing regional trails in the *Road/Street Repair and Construction* sections.

Essentially, the current CAO makes destruction of critical areas, with no net loss, acceptable as long as advocates for non-motorized transportation believe that those plans are more important than the critical areas. This is the type of effort that Washington regulation and the CAO’s purpose is meant to prevent. The burden on non-motorized plans should be to avoid critical areas and buffers.

Recommendation.

Move 19.200.225.F.6 to new subsection 19.200.225.C.5.

Move 19.300.315.I.6 to new subsection 19.300.315.M.6.

13. FERTILIZERS and PESTICIDES

The current exemption for pesticide use is too broad. Pesticides should be a technique of last resort. Per EPA pesticides is the general term that includes herbicides, biocides, insecticides, etc.

In addition, the prohibition should apply equally to wetlands and their buffers. Wetlands are high use habitat areas for multiple species. Amphibians, who use wetlands for reproduction and growth, are particularly sensitive to pesticides.

Recommendations.

New section:

19.200.220.F. Fertilizers and Pesticides. No fertilizers may be used in wetlands or their buffers. Pesticides, which includes herbicides, cannot be used in wetlands or their buffers, except under the following three conditions. First, only those pesticides approved by the U.S. EPA or Washington Department of Ecology for use in wetland environments and applied by a licensed applicator in accordance with the safe application practices on the label can be used. Second, use of pesticides is only to be allowed against invasive species. Third, the pesticides can only be used when other control measures are not possible or other measures would cause more damage to habitat and animals than the pesticides.

Revision:

19.300.315.F. Fertilizers and Pesticides. No fertilizers may be used in fish and wildlife habitat conservation areas or their buffers. Pesticides, which includes herbicides, cannot be used in fish and wildlife habitat conservation areas or their buffers, except under the following three conditions. First, only those pesticides approved by the U.S. EPA or Washington Department of Ecology for use in fish and wildlife habitat conservation area environments and applied by a licensed applicator in accordance with the safe application practices on the label can be used. Second, use of pesticides is only to be allowed against invasive species. Third, the pesticides can only be used when other control measures are not possible or other measures would cause more damage to habitat and animals than the pesticides.

14. LOWER UGA BUFFER

We do not support the lower riparian buffer within Urban Growth Areas proposed in Table 19.300.315. We are not aware of any science that supports this blanket decrease. Staff offered a rationale that buffers in more developed areas, such as UGAs, are more likely to be degraded. That proposition has not been supported and should, in any case, be addressed on a case-by-case basis. If anything, retaining larger buffer widths is even more important for protection of critical areas near developed areas.

15. PROCEDURAL ITEMS

The proposed code refers to Type I and Type II processes as “administrative.” Per Title 21, a Type I is a ministerial process, whereas Type II is an administrative process. We understand a ministerial process allows no discretion in making a decision and that this distinction is important from an administrative law point-of-view. Correct where mis-stated.

19.100.145 states a “special use review” is an administrative process that may be appealed. However, the section fails to identify a decision process per Title 21 and fails to require public notification. This section should require public notification and identify the decision process.

END

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April 25, 2024

Kitsap County
ATTN: Scott Diener, Planning Manager
614 Division Street, MS-36
Port Orchard, WA 98366

Subject: WDFW Comments on the Kitsap County 2024 Draft Critical Area Ordinances

Dear Scott Diener,

On behalf of the Washington Department of Fish and Wildlife (WDFW), we offer our comments on the 2024 Draft Critical Area Ordinances (CAO) amendments, as part of the current periodic update under the Growth Management Act (GMA). WDFW is dedicated to preserving, protecting, and perpetuating the state’s fish, wildlife, and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities.

In recognition of our responsibilities, we submit the following comments for Kitsap County’s 2024 draft CAO update; acknowledging other comments may be offered in the future. We strive to maintain contact throughout this update process and look forward to continued engagement as the process moves toward completion.

Table 1. Recommended changes to proposed CAO language from WDFW. Policy language suggestions and their legal implications should be vetted by the jurisdiction receiving them.

Policy Number	Policy Language (with WDFW suggestions in red)	WDFW comment
19.100.105 B.11.	Prevent the cumulative impacts...	WDFW supports the new language proposed in this policy with the recommendation to revise the current code draft language from “consider” to “prevent.”
19.100.105 B. 13.	Encourage applicants to consider the potential impacts of climate change and sea level rise, particularly if development is near marine shorelines, adjacent flood hazard areas, or low-lying areas.	WDFW supports this new language proposed by Kitsap County.

19.100.125 A.	Emergency alterations or development	WDFW supports this updated language that expands clarification and recommendations for emergency activities. We appreciate that the RMZ-CAO checklist recommendation O was incorporated into this update.
19.100.125 C.	Normal and routine maintenance and operation of preexisting... livestock water ponds and artificial waterways , provided that such activities shall not involve conversion of any wetland, riparian or aquatic areas not currently being used for such activity.	WDFW recommends adding these types of waterbodies to this section to reduce uncertainty in this code's implementation.
19.100.155 D.	Mitigation Sequencing	WDFW supports this added language that clearly states that mitigation sequencing must be followed for all the critical areas in KC Chapter 19.
19.150.150	"Bank stabilization" means lake, stream, or shoreline modification including vegetation enhancement used for the purpose of retarding erosion, protecting channels, and retaining uplands.	Shorelines are referenced in KC 19.300.315 (K.) Bank stabilization. Please include a reference to streams and shorelines here within the definition of bank stabilization.
19.150.195	"Compensation" means replacement of project-induced critical area (e.g. wetland, riparian areas, aquatic areas, fish and wildlife habitat conservation areas, priority habitats, etc.) losses of acreage or functions.	WDFW requests that the critical areas listed in this definition include the additional areas in red.
19.150.265	"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland any critical area to heighten,...Enhancement activities could include but are not limited to , planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods in existing wetlands critical areas .	WDFW requests that the enhancement definition be revised. This definition should encompass any critical area instead of being limited to wetlands and the activities listed be expanded to any critical area instead of being limited to only wetlands.
19.150.411	"Hydraulic Project" means construction or other work	WAC 220-660-030 (78) should be cited directly for this definition.

	activities conducted in or near state waters that will “use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.”	
19.150.466	“Preservation”	WDFW requests that this definition be revised to encompass any critical area instead of being limited to wetlands.
19.150.470	“Priority habitat”	The habitat criteria listed in sections A-E of this policy are limited. WDFW advises Kitsap County to consider expanding this list to match the priority areas listed on page 9 of WDFW’s Priority Habitats and Species List .
19.150.525	“Reestablishment”	WDFW requests that this definition be revised to encompass any critical area instead of being limited to wetlands.
19.150.540	“Restoration”	WDFW requests that this definition be revised to encompass any critical area instead of being limited to wetlands.
19.150.630	“Utilities” means the facilities or structures that produce or carry services consumed by the public, such as electrical power, solar power, wind power , gas...	Wind power could be an alternative power source that is utilized in Kitsap County and should be included on this list.
Table 19.300.318	Fish and Wildlife Habitat Conservation Area Development Standards – Streams	We are encouraged to see the proposed increase in stream buffer widths for all stream types, which enable the county to protect and restore a higher level of riparian function than its CAO currently provides. However, the proposed buffers fall short of WDFW’s management recommendations that are based on the best available science. At a minimum, WDFW recommends the Np, Ns, and O typed streams within the proposed UGA alternative buffer increase to at least 100 feet. While this increase would still fall short of WDFW’s Volume 2: Management Recommendations for Site Potential Tree Height at age 200 (SPTH ₂₀₀ , where it exceeds 100 feet), it would align with our minimum recommendation necessary for 95% pollution removal target for most pollutants. At sites where SPTH ₂₀₀ exceeds 200 feet, other functions associated

		<p>with riparian areas (i.e., root strength, coarse wood debris inputs, shading, etc.) may be reduced by >50%.</p> <p>WDFW encourages Kitsap County to use SPTH₂₀₀ values indicated in the SPTH₂₀₀ GIS mapping tool for all stream buffers with deviations from this BAS detailed with a reasoned justification. As a possible alternative, we encourage Kitsap County to indicate that SPTH₂₀₀ could be used as an alternative buffer width in its development standards.</p>
19.300.315 A. 3.	...In these cases, any necessary buffer decreases will use the alternative buffer width as the starting, standard buffer width and no further buffer width decreases will be permitted...	We suggest adding this additional language to prevent multiple buffer width decreases from occurring at the same location.
19.300.315 A. 5.	Provision for Increasing Buffer.	WDFW encourages Kitsap County to indicate that SPTH ₂₀₀ is an appropriate target width for achieving full riparian function. The SPTH₂₀₀ GIS mapping tool should be used as the source for SPTH ₂₀₀ buffer widths.
19.300.315 A. 8. a.	The segment or immediately adjacent stream segments are not feasible for future restoration	The language in this sub-policy needs to be clarified to define how a watercourse would not be feasible for future restoration or daylighting of the stream. This language is currently vague and may limit future restoration work of a stream.
19.300.315 D.	Stream Crossings...All other state and local regulations regarding water crossing structures will apply, and the use of the Water Crossing Design Guidelines (WDFW, 2013) or as amended, is encouraged.	Consider Incorporating hydrologic climate impacts into the design of water crossing structures (i.e., climate smart culverts and bridges) for fish passage and habitat quality. Use the WDFW Designing climate-change resilient water crossing culverts webpage & the Culverts and Climate Change Web App as informational resources for incorporating climate resilience into new and redeveloped water crossing structures.
19.300.315 J. 5. a.	New utility corridors shall be aligned to avoid cutting significant trees.	We recommend changing this policy to align with the definition of significant trees that Kitsap County currently has defined.

19.300.315 J. 5. a. iii.	Placed deep enough under the culvert to allow for future culvert replacement and to avoid grade barriers.	Utilities can be placed under streams that do not have culverts. We suggest adding a new subsection here that states that new utility conduits will be placed well below the scour depth of the watercourse to prevent natural scouring of the stream bed from exposing the pipeline or cable per WAC 220-660-270 (4) (a).
19.300.315 K. 4	...Bank stabilization projects may also require a Kitsap County site development activity permit under Title 12 (Storm Water Drainage) and a hydraulic project approval (HPA) from WDFW.	The last sentence should be updated to an “and” instead of “or” since an HPA will be required for bank stabilization projects.
19.300.315 N. 1	Activities undertaken for the sole purpose of creating, restoring, or enhancing the natural functions of floodplains, streams, watercourses, fish and wildlife habitat, or riparian areas; provided that:	The current proposed word is development and WDFW suggests changing this to activities to cover a broader scope of projects.
19.700.720 A	Current WDFW Priority Habitats and Species (PHS) Management Recommendations, dated May 1991, or as amended...	Please remove the date of May 1991 listed here since it adds confusion on which guidance needs to be followed. WDFW PHS management recommendations need to be used as guidance for Habitat Management Plans.
19.700.720 B. 7.	Identification of any species of local important, priority species, priority habitats , or endangered, threatened, sensitive, or candidate species... A WDFW PHS database search that is no older than one year from the project submittal.	It is also important to document any potential priority habitats on HMP maps so any impacts to them can be avoided. The proposed policy update removed the criteria that a PHS database search no older than a year from the project submitted is needed. WDFW opposes this removed language since our database is routinely refreshed with new information.
19.700.720 C. 2.	An analysis of the existing species, habitats and ecological quality, functions and values....	In this sub-policy, please specify that the area adjacent to a project area and its buffer is within three hundred feet, similar to the distance for wetlands outlined in KC 19.700.710 B. 2. a.

19.700.720 C. 4.	In all cases, mitigation sequencing shall be demonstrated per Chapter 19.100.155 D.	WDFW supports this language being added to this section of the code.
19.700. 720 C. 4. a.	Mitigation sites must be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas.	WDFW supports this language being added to this section of the code. We would like to see this enhanced by also outlining how these sites will be protected. Adding a section similar to KC 19.700.715 B. 12 for wetland site protections to this section of the code would be benefit site protections.
19.700.720 C. 5. b.	An analysis based on site specific conditions and project features that greater protections than standard buffers, i.e. SPTH₂₀₀ , are necessary to preserve riparian functions and protected species.	Adding SPTH ₂₀₀ here to provide an example that could be used for protections greater than the standard buffers outlined in Table 19.300.318.
19.700.720 C. 6.	...For proposed single-family dwelling construction, the department may complete the plan...	Please ensure that a qualified fish or wildlife biologist within the department will be responsible for preparing a habitat management plan under this circumstance.
Appendix B	Kitsap County's GIS Database of Critical Areas Information.	Please update the GIS data from WDFW to state "Priority Habitats and Species Database " in the fish and wildlife habitat conservation areas.
Appendix B	Kitsap County's GIS Database of Critical Areas Information.	Please add the GIS data from the "Washington Natural Heritage Program" to the list of WA. Dept. of Natural Resources in the fish and wildlife habitat conservation areas.
Appendix B	Kitsap County's GIS Database of Critical Areas Information.	Please update the information source for the LiDAR mapping GIS data from Puget Sound LiDAR Consortium to WA. Dept. of Natural Resources LiDAR portal for the geological hazard areas.
Appendix E	Critical Area Decision Types	WDFW suggests combining the "streams and shorelines" and "wildlife conservation areas" into one group under the heading "Fish and Wildlife Conservation Areas." We also suggest adding an "X" under Type II for a Habitat Management Plan Approval.

Thank you for taking time to consider our recommendations for your CAO amendments to better reflect the best available science for fish and wildlife habitat and ecosystems. We value

the relationship we have with your jurisdiction and the opportunity to work collaboratively with you throughout this periodic update cycle. If you have any questions or need our technical assistance or resources at any time during this process, please don't hesitate to contact me at (564) 669-4755 or Jessica.Bryant@dfw.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jessica Bryant', with a long horizontal stroke extending to the right.

Jessica Bryant
Regional Land Use Planner – Region 6
1111 Washington St SE
Olympia, WA 98501

Cc: Gwen Lentes, Regional Habitat Program Manager (Gwendolen.Lentes@dfw.wa.gov)
Lindsay Wourms, Assistant RHPM (Lindsay.Wourms@dfw.wa.gov)
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THE SUQUAMISH TRIBE

NATURAL RESOURCES DEPARTMENT
PO Box 498 Suquamish, WA 98392-0498

26 April 2024

codeupdates@kitsap.gov

Department of Community Development
Planning and Environmental Programs
614 Division Street, MS-36
Port Orchard, WA 98366

SUBJECT: Draft Kitsap County Critical Areas Ordinance Update

The Natural Resource Department of Suquamish Indian Tribe of the Port Madison Reservation appreciates the opportunity to review the Draft Kitsap County's Critical Areas Ordinance Update. The area covered by the update lies entirely within the Suquamish Tribe's aboriginal homeland and includes treaty reserved fishing areas and hunting and gathering areas. The Tribe seeks protection of all treaty-reserved natural resources through avoidance of impacts to habitat and natural systems. The Tribe urges Kitsap County to avoid land use decisions that will impact natural resources within the Tribe's territory

Many of the proposed changes are influenced by the Best Available Science Summary Report Critical Areas Ordinance Update prepared for Kitsap County dated May 31, 2023 (*BAS Summary Report*). For example, there are proposed wider stream buffers which will increase the current insufficient protection to streams. There are also proposed changes to clarify language, match the wording with current practice, *etc.* Additionally, the proposed CAO contains extensive and welcome changes to the Habitat Management Plan Special Report requirements.

Despite these changes, the CAO as currently written, and even with the County's proposed amendments is insufficient to protect anadromous fish and their habitats, stream flows, groundwater, and wetlands and their environmental functions and values. The Tribe is unaware of how much of the detail in this comment letter, or previous comment letters about the Comprehensive Plan and CAO will be, or have been, communicated to the Planning Commission or the Board of Commissioners. As the County summarizes comments, the Tribe specifically requests those two bodies be informed that:

- (1) the CAO as proposed will not enable the County to meet its WAC 365-195-925 requirement for the "*Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish...*"; and
- (2) though Comprehensive Plan and CAO update process, though the County might weigh housing requirements versus environmental protection, the County should acknowledge that buffers less than called for by Best Available Science cannot be presumed to conserve, let alone enhance anadromous fisheries.

Considerable revision is required to ensure the Special Reports which are prepared (19.700.705) to "*provide environmental information and to present proposed strategies for maintaining, protecting and/or mitigating impacts to critical areas*" provide the information needed to ensure

(1) the County meets the policy goals stated in the CAO; and (2) “no net loss of ecological functions and values”. The information collected in Special Reports must be sufficient that decisions made by County are based upon a complete and accurate statement of the direct, indirect, and cumulative impacts and the effectiveness of the mitigation measures to ensure *No Net Loss* and the time period required for mitigation to achieve no net loss.. Currently, the Special Reports are incapable of that for many impacts.

Revision is also needed to meet WAC 365-195-925 requirement for:

3) Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species

Intent

The Tribes concerns on the proposed CAO are presented in two ways. First, this cover letter addressing major concerns, and second, detailed comments on the attached CAO. These detailed comments include responses to the County’s proposed amendments to the CAO as well as the Tribe’s proposed revisions to the CAO. These comments will focus extensively on buffers, stormwater, infiltration, and the CAO Special Reports.

The County should take advantage of the opportunity given through the current update cycle to fundamentally reassess the extent to which the CAO can (1) as stated in 19.100.105 “*identify and protect critical areas as 19 required by the Growth Management Act of 1990*”; (2) achieve Environmental Policy 2.2 - “*Give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries*”; and (3) in accordance with Environment Policy 2.3 - “*Provide development regulations that protect all functions and values of critical areas to ensure no net loss of ecological functions and values.*”

The intent of these comments is to address areas where the CAO must be improved to (1) protect the environment through increased accuracy of the description of impacts and how long it takes for mitigation to become effective; (2) and to meet the County’s legal requirements. Most of the commentary entered onto the attached files has been communicated to the County in prior communications about individual projects or is a logical follow through from those comments - these comments should not be a surprise to the County.

Buffers

Buffers – Best Available Science

To develop the proposed new buffers the County relied extensively on work contained in two recently published WDFW documents about riparian areas:

1. *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* (Volume 1) (Quinn et al. 2020)

2. *Riparian Ecosystems, Volume 2: Management Recommendations* (Volume 2) (Rentz et al. 2020)

Through this comment letter, Quinn *et al.* refers to *Riparian Science Synthesis* and Rentz *et al.* to *Riparian Management Recommendations*. These documents were used, in part, to prepare the County's *BAS Summary Report*. Furthermore, the *Riparian Science Synthesis* and the *Riparian Management Recommendations* were quoted in the "Technical Memorandum WDFW Riparian Management Guidance December 8, 2023" or "Technical Memorandum" prepared for Kitsap County Department of Community Development. The purpose of the "Technical Memorandum" was "to further address these two recommendations in the context of the most recent guidance from the Washington Department of Fish and Wildlife (WDFW)", one of which was "Consider the approach to riparian protection based on recent WDFW riparian management guidance." Additionally, the Technical Memorandum (pg. 2) regarding WDFW *Riparian Science Synthesis* document states (emphasis added), "Volume 1 is intended to be a source of **BAS** for understanding how riparian areas and surrounding watersheds affect ecological functions and aquatic habitats."

The CAO and the documents listed above document the need for improved protection. The County has partially responded by increasing buffers on Type F and N streams, as well as the including of Type O streams offer increased protection. The proposed new buffers increased are in response to the *Riparian Science Synthesis* document which states on page 271:

"The width of the riparian ecosystem is estimated by one 200-year site-potential tree height (SPTH) measured from the edge of the active channel or active floodplain. Protecting functions within at least one 200-year SPTH is a scientifically supported approach if the goal is to protect and maintain full function of the riparian ecosystem."

However, despite these increases, wording found on page 28 of the *Riparian Management Recommendations* document conveys important points about certainty (emphasis added) that must be considered when discussing the overall effectiveness of buffers:

"The scientific literature review (see Volume 1) informs WDFW's position that protecting the area within one SPTH₂₀₀ from the edge of a stream channel maintains full riparian ecosystem functions for all aquatic species, including salmon, and promotes healthy, intact riparian ecosystems. This recommendation provides the greatest level of certainty that land use activities do not impair functions and values of riparian ecosystems."

Buffers – what a 200 foot buffer achieves.

For Type F streams, the County is proposing a new buffer width of 200 feet, which in many cases approximates a Site Potential Tree Height. Page 12 of the "Technical Memorandum" addressing the extent to which a 200 foot stream buffer would include the riparian area recommended by "Riparian Science Synthesis" and "Riparian Management Recommendations" states "Based on an example of this GIS analysis shown in Appendix A, a 200' riparian protection area width would meet or exceed SPTH₂₀₀ values approximately 72% of the time for Type F waters." For Type N streams, the County is proposing 100 feet, which is a width estimated to remove 95% of most pollutants (*Technical Memorandum*, page 5).

However, another way to look at this is that the proposed 200 foot buffers leave out 28% of the areas recommended by the “*Riparian Science Synthesis*” and “*Riparian Management Recommendations*” documents. Even if the entire County was covered in forest, that would mean 28% of the length of Type F streams would have a regulatory buffer less than what Best Available Science indicates is needed to provide full function and values. Additionally, if one looks at Annex A (reproduced here as Figure 1), it is clear that stated 28% reduction include many built up or otherwise developed areas where the current buffer is often much less than a SPTH or 200 feet. Much of the County, due to the history of past development, lacks the necessary buffers to provide full functions and values. This issue is clearly recognized in the *Riparian Management Recommendations* document which states on page 4 (emphasis added):

*“Restoration of riparian ecosystems is critically important because legacy of environmental impacts resulting from the ways land use has affected riparian areas over the past 200 years. In other words, what **remains available for protection is not enough to provide the full functions and values Washington’s fish and wildlife need.**”*

Despite the above warning, the CAO and its supporting documents do not effectively consider the extensive development prior to the advent of the CAO; the history of legacy lots for which the County routinely allows critical area variances, administrative buffer reductions; and the buffer intrusion and averaging allowed for non-legacy lots. This means the proposed buffers in many places do not exist to the proposed width, and if they do are subject to reduction. The statement “*remains available for protection is not enough to provide the full functions and values Washington’s fish and wildlife need*” is key. If what remains is not enough to provided full functions and values, then any intrusion into what is left reduces the remaining functions and values. This is both a site specific impact and a cumulative impact. Indeed, by definition, any intrusion into a buffer, such as buffer variances and administrative buffer reductions are an impact.

“What remains available for protection is not enough to provide the full functions and values Washington’s fish and wildlife need” and the County’s proposed buffers are - at their maximum width prior to any intrusion or reductions that County routinely allows - less than what “*provides the greatest level of certainty that land use activities do not impair functions and values of riparian ecosystems.*”, It can only be concluded the proposed buffers and hence the CAO will not meet WAC 365-195-925 requirement for “*Conservation or protection measures necessary to preserve or enhance anadromous fisheries...*”.

Buffers - Administrative Buffer Reductions, Buffer Averaging and Variances. Variances ,

Though the CAO proposes to including wording to increase stream buffers, such as, “*the development proposal has known locations of endangered or threatened species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species*”, this does little for non-ESA listed salmon species. Additionally, the Tribe does not recall reviewing a HMP that calls for a buffer width above the standard size. However, the Tribe has seen many HMPs that without a quantitative analysis indicate a buffer can be reduced in size **without** a No Net Loss of function and values.

The current and proposed CAO generally allow the department to reduce the standard stream buffer width

- a. by up to twenty-five percent (to a width of no less than 30-feet for a single-family residence and 40-feet for all other uses) in a Type I decision; and
- b. between greater than twenty-five percent but less than or equal to fifty percent for single-family dwellings by a Type II decision

As there are many stream adjacent non-conforming lots in the rural areas of Kitsap County of insufficient size to allow for a 200 foot or even 100 foot buffer, the County's practice to allow variances or reductions means the percent of Type F stream channels that would have a SPTH buffer which stands at 72% in perfect conditions would be even further reduced by the anticipated buffer variances and reductions. The Planning Commission and the Board of Commissioners must be informed that though the CAO may call for 200 foot buffers on Type F streams, the current reality is that many stream reaches do not have such buffers and in the future in many places, the County will not require those buffers. The WDFW has stated that Best Available Science indicates Site Potential Tree Height Buffers are needed on both Type F and Type N streams to protect functions and values. As the CAO as proposed, generally only results in SPTH buffers on Type F streams, it cannot be said the CAO will enable the County to meet its WAC 365-195-925 requirement for the "*Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish...*".

It is also time for the County to look at how other regulations approach land use, reasonable use, and no net loss and bring those forward into CAO. For example, though written for shoreline variances, the "*Variance Permit Reviews Guidance for local governments June 2023*" (Permit Review Guidance) prepared by Department of Ecology Shorelands and Environmental Assistance Program provided insight into potential wording for the CAO.

Indeed, given the County's history allowing buffer reductions, the proposed wider buffers will in many situations not result in any buffer increase at all. After all, if a consultant writes a report that the buffer can be reduced from 150 feet to 110 feet, then they are more likely to write a wider buffer can be reduced to the same distance from the stream channel.

Special Consideration to fisheries and Impacts

Special consideration must go beyond the aspirational statements about preserving or enhancing anadromous fisheries, and include measurable methods to ensure preservation and enhancement. The County cannot act with a view that if an impact is not significant under SEPA, then there are no measurable effects that impact environmental functions and values to anadromous fish. SEPA (WAC 197-11-794) defines significant as follows:

(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

(3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact

In determining whether an impact's significance, SEPA WAC 197-11-330(3) reads in part (emphasis added) :

(3) In determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that:

(a) The same proposal may have a significant adverse impact in one location but not in another location;

*(b) **The absolute quantitative effects of a proposal are also important**, and may result in a significant adverse impact regardless of the nature of the existing environment;*

*(c) **Several marginal impacts when considered together may result in a significant adverse impact;***

SEPA does not define insignificant impacts, it is assumed to be an impact that is not significant. Though current County practice might not consider some impacts to be significant as defined by SEPA, that practice should change to acknowledge the latest Best Available Science.

As noted previously, the WDFW has produced two key documents about riparian areas: (1) the *Riparian Science Synthesis*” and (2) the *Riparian Management Recommendations*”. Though in the past, the County might have considered activities that occurred in the zone between the outmost part of the regulatory riparian or wetland buffer and the distance represented by a site potential tree height did not affect streams or wetlands, the most recent documents indicate activities within that zone affect stream and wetlands.

As the County is required to ensure "*special consideration has been given to conservation or protection measures necessary to preserve or enhance anadromous fisheries*" the CAO must include requirements for the quantification of impacts to the anadromous fish habitat function and values. Without such, the County cannot claim mitigation measures for the impacts, whether site specific or cumulative, of a proposed development protect anadromous fisheries.

In the absence of a qualitative study documenting a project's effects on functions and values, any land use activity within a SPTH of stream channel should be not be considered insignificant. For the County to consider effects insignificant, it should not be possible to meaningfully measure or detect a physical, biotic, and chemical changes in the critical area or buffer arising from the action. The WAC 365-195-925 requirement for special consideration be given to "*conservation or protection measures necessary to preserve or enhance anadromous fisheries*" implicitly mandates the County to consider any measurable effect that could affect anadromous fisheries be considered during the County's review process.

No Net Loss

WAC 365-196-830 Protection of Critical Areas has the following statement:

“(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or

a combination of regulatory and nonregulatory programs.

(a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.”

The term “No Net Loss” is not defined in the proposed CAO and only appears in the definition section in regard to the definition of a HMP: “*Habitat management plan*” means a report prepared by a professional wildlife biologist or fisheries biologist that discusses and evaluates fish and wildlife habitat functions and evaluates the measures necessary to maintain, enhance and improve habitat conservation on a proposed development site and to mitigate the proposed developments direct and indirect offsite impacts to ensure No Net Loss.”

The term “No Net Loss” is used four (4) times in the Growth Management Act: twice in regard to shorelines and twice in reference to critical area regulations. However, WAC 365-196-210 (Definitions of terms as used in this chapter) does not define “no net loss” in terms of the Growth Management Act. Again, though WAC Chapter 173-26 State Master Program Approval/Amendment Procedures and Master Program Guidelines uses the phrase numerous times, it does define what “no net loss” is. The intent of ‘No Net Loss’ can be understood from how the phrase is used in the WACs. Ecology’s “*Shoreline No Net Loss and Mitigation Guidance for local governments*” on page 10 states: “*Rectifying and replacing lost functions can take time, and there will often be lag time between when a mitigation plan is implemented and when all lost shoreline ecological functions return.*” That document includes a conceptual representation of No Net Loss (reproduced below as Fig 2).

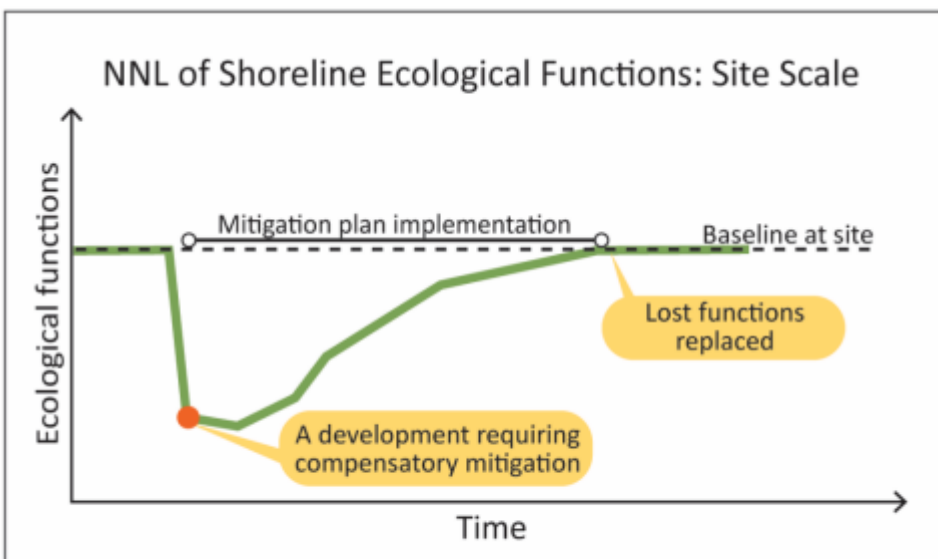


Figure 2. Conceptual representation of NNL.

Figure. 2 Figure 2 from Ecology’s “*Shoreline No Net Loss and Mitigation Guidance for local governments*”

Figure 2 indicates there can be a time lag between the impact and when the lost functions are replaced. This time lag is not currently accounted for by most mitigation plans, HMPs, No Net

Loss reports, etc. for impacts beyond fast growing ground cover and shrubs. The time lag between the loss of significant trees and when the mitigation trees provide the same function and values is not presented in these documents. Hence, there is no way that the County can judge the extent of loss and when the impacts will be mitigated.

The County should require all mitigation plans, HMPs, No Net Loss reports, etc. to have summary table that includes measurable environmental attributes and notes existing conditions, how long it will take for the mitigation to nature to similar conditions, and if the nature of the impact is such the mitigation cannot completely rectify the impact then the percent that remains unmitigated. The NMS “Puget Sound Nearshore Conservation Calculator” is one example of the system that reduced much of the subjectivity in impact assessment. The County must develop something similar to reduce subjectivity in the Special Reports prepared by consultants.

Reasonable Use and No Net Loss

It is also time for the County to look at how other regulations approach land use, reasonable use, and no net loss and bring those forward into CAO. For example, though written for shoreline variances, the “*Variance Permit Reviews Guidance for local governments June 2023*” (Permit Review Guidance) prepared by Department of Ecology Shorelands and Environmental Assistance Program provides insight into potential wording for the CAO. The specific comments attached to the proposed CAO go into greater detail on this issue.

Special Reports

One method the County uses to understand development impacts is the review of Special Reports. Kitsap County Code 19.700.705A states special reports “*provide environmental information and to present proposed strategies for maintaining, protecting and/or mitigating impacts to critical areas:*”

However, when one compares the information the CAO requires to be included in a Special Report to what the County is hoping to accomplish through the CAO, it is apparent the information the CAO requires the Special Report to collect is insufficient to document impacts or “*to present proposed strategies for maintaining, protecting and/or mitigating impacts to critical areas:*” The specific comments attached to the proposed CAO go into greater detail on this issue.

It appears the CAO does not define cumulative impacts and the only reference to cumulative impacts is the sentence “*Prevent cumulative adverse environmental impacts to water, wetlands, fish and wildlife habitats, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas.*” Furthermore, Special Reports for wetlands and fish and wildlife conservation areas are not required to quantify the time period for mitigation to reach the same structural complexity as the impacted vegetation. Therefore, there is no quantification of the temporal impact. The use of replacement ratios does not address the issue of temporal impact.

Furthermore, when information on significant adverse impacts essential to a reasoned choice among alternatives is not known or there are gaps in relevant information or scientific uncertainty concerning significant impacts, the Special Reports do not make it clear that such information is lacking or that substantial uncertainty exists as required by SEPA (WAC 197-11-080 Incomplete or unavailable information).

Monitoring of the effectiveness of the CAO

Environment Strategy 1.m of the proposed Comp Plan is to “*Establish and implement a monitoring and evaluation program to determine the effectiveness of restoration, enhancement, and recovery strategies for ESA-listed and other species of tribal significance.*” Additionally, WAC 197-11-238 SEPA/GMA integration monitoring states (emphasis added):

“Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment.”

The CAO could assist with providing the information needed to “*determine the effectiveness of restoration, enhancement, and recovery strategies for ESA-listed and other species of tribal significance*” and “*maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans*”. However, as currently written, it is not capable of doing so. First, the monitoring required of mitigation is far too short to determine if the mitigation is successful over the long-term. As a buffer variance, buffer averaging or reduction is a permanent impact to the buffer and the associated critical area, the County must ensure the proposed mitigation has the same longevity and that can only be achieved through a long-term monitoring and maintenance program.

Without an effective long-term program to monitor the rate and level of success of mitigation activities and comparing those to the documented impact, the County will not be able to tell if the No Net Loss goal is being met over any time frame. The County must implement a program to monitor and evaluate the effectiveness of the CAO and SMP, with close attention paid to the number of variances, buffer reductions, buffer averaging, etc. as well as the area (both project specific and by sub-basin) of intrusion into a critical area or its buffer. This monitoring must take into account discounted environmental functions and value years over the time it takes for the mitigation site to achieve the function and value of the impacts or altered buffer.

Conclusion

Environmental legislation and regulations are written based upon knowledge considered at the time as well as policy considerations. While some regulations required frequent updating and must be based upon Best Available Science, such as CAOs, some laws and other regulations are not required to be based upon Best Available Science and are often not updated to address those. As mentioned earlier, the purpose of these comments is to assist Kitsap County update its CAO and ensure compliance with state and federal requirements. The Tribe requests to meet with the County to discuss these comments and the County’s written analysis and summary of these comments.

Thank you for the opportunity to comment on the CAO update. The Tribe looks forward to working with the County to help the County better understand the Tribe’s concerns. If you have any questions, please contact me directly at 360-394-8449.

Chapter 19.100 INTRODUCTION AND APPROVAL PROCEDURES

Sections:

- [19.100.105 Statement of purpose.](#)
- [19.100.110 Applicability.](#)
- [19.100.115 Relationship to other county regulations.](#)
- [19.100.120 Review authority.](#)
- [19.100.125 Exemptions.](#)
- [19.100.130 Standards for existing development.](#)
- [19.100.135 Variances.](#)
- [19.100.140 Reasonable use exception.](#)
- [19.100.145 Special use review.](#)
- [19.100.150 Appeals.](#)
- [19.100.155 General application requirements.](#)
- [19.100.160 Inventory provisions.](#)
- [19.100.165 Enforcement.](#)
- [19.100.170 List of qualified consultants.](#)

19.100.105 Statement of purpose.

The purpose of the ordinance codified in this title is to identify and protect critical areas as required by the Growth Management Act of 1990 (Chapter 17, Laws of 1990). Critical areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, riparian management areas, and critical aquifer recharge areas, as defined in this title. This title supplements the development requirements contained in the various chapters of the Kitsap County zoning ordinance (Title 17) by providing for additional controls and measures to protect critical areas. This title is adopted under the authority of Chapters 36.70 and 36.70A RCW and the Kitsap County Code, as now or hereafter amended.

A. Goal Statement. It is the goal of Kitsap County that the beneficial functions and values of critical areas be preserved and restored, and potential dangers or public costs associated with the inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to or directly affecting such areas, for the benefit of present and future generations.

B. Policy Goals. To implement the purpose and goal stated above, it is the intent of this title to accomplish the following:

1. Conserve, ~~and protect~~ and restore the environmental factors that add to the quality of life within the federal, state and county regulations that protect critical areas for the benefit of current and future residents of Kitsap County and the state of Washington.

Commented [RM1]: This will match the recommendations found in Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

Commented [RM2]: This would match the County's new proposed line 19.300.350 "E. Retain and restore riparian buffers to the maximum extent practicable to preserve functions and values over time".

Commented [RM3]: This would match the County's new proposed line 19.300.350 "E. Retain and restore riparian buffers to the maximum extent practicable to preserve functions and values over time".

- 1 2. Protect the public against avoidable losses from maintenance and replacement
- 2 of public facilities, property damage, costs of publicly subsidizing mitigation of
- 3 avoidable impacts, and costs for public emergency rescue and relief operations.

- 4 3. Identify critical areas and their environmental functions and values.

- 5 4. Protect critical areas and their functions and values by regulating use and
- 6 management within these areas and adjacent lands while allowing for reasonable
- 7 use and protection of property rights as provided for in state and federal law.

- 8 5. Preserve the habitat, water quality, and water quantity functions and values of
- 9 wetlands.

- 10 6. Protect water quality by controlling erosion and carefully siting uses and
- 11 activities that can detrimentally affect stream flows or aquatic habitat quality.

- 12 7. Guide development proposals to the most environmentally suitable and stable
- 13 portion of a development site.

- 14 8. Avoid potential damage due to geological hazards or flooding.

- 15 9. Preserve natural flood control and storm water storage.

- 16 10. Maintain groundwater recharge and prevent the contamination of groundwater
- 17 and reduction of groundwater inflow into streams.

- 18 ~~11. Prevent cumulative adverse environmental impacts to water, wetlands, fish and~~
- 19 ~~wildlife habitats, frequently flooded areas, geologically hazardous areas, and aquifer~~
- 20 ~~recharge areas. Consider the cumulative impacts of the proposed action on~~
- 21 ~~watershed processes to facilitate the goal of no net loss of critical areas. Such~~
- 22 ~~impacts shall include those to wildlife, habitat, and migration corridors; water quality~~
- 23 ~~and quantity; and other geologic or processes that relate to critical area condition or~~
- 24 ~~functions and values.~~

- 25 12. Whenever mitigation is required, pursue as a preferred option, restoration and
- 26 enhancement of previously impacted critical areas and their buffers.

- 27 ~~13. Encourage applicants to consider the potential impacts of climate change and~~
- 28 ~~sea level rise, particularly if development is near marine shorelines, adjacent flood~~
- 29 ~~hazard areas, or low-lying areas.~~

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 4, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.100.110 Applicability.

Commented [RM4]: This proposed addition is consistent with the current CAO wording of "19.600.506B Recognize the relationship between surface and groundwater resources;" and "19.600.506D Balance competing needs for water supply while preserving essential natural functions and processes, especially for maintaining critical fish and wildlife habitat conservation areas."

Commented [RM5]: The original wording is to "prevent cumulative adverse environmental impacts" while the proposed wording is to "consider the cumulative impacts ..." Consider requires one to contemplate, give thought, reflect upon something, but it does not require an action. Without an action to prevent impacts to water, wetlands, fish and wildlife habitats, etc., degradation will continue. Prevent requires an action.

The County should describe the scientific rationale behind the proposal to switch from "prevent" to "consider".

Additionally, riparian areas should be added to this statement.

Commented [RM6]: The wording "facilitate the goal of no net loss of critical areas" is aspirational and does not mean no net loss of critical areas will occur. Additionally, buffers are excluded from this NNL goal and impacts to the buffers will affect the critical area.

Additionally, making something easier or possible does not mean it will occur. As noted in the Tribe's comments on the DEIS for the Comprehensive Plans, "No Net Loss" reports, the reports that describes the environmental impacts of a proposal and if the mitigation, will **over time**, prevent a net loss of habitat functions and values look at the impacts to the critical area and its CAO regulatory defined buffer, not the required buffers width as described in BAS. Furthermore, there is no consistency in buffer widths between the SMP and the CAO for streams that are ecologically similar, but vary slightly in size.

Commented [RM7]: Consideration of migration corridors is good.

Commented [RM8]: As will be described elsewhere the special report for water quantity cannot be relied upon to protect critical area condition or functions and values.

Commented [RM9]: There should be a follow up sentence that the County will consider the potential impacts of climate change during its review process.

1 A. Kitsap County shall not grant any permit, license or other development approval for any
2 development proposal regulated by this title, except for those in compliance with the provisions
3 of this title. This includes permits, licenses or other development approval to alter the
4 conditions of any land, water or vegetation, or to construct or alter any structure or
5 improvement. Failure to comply with the provisions of this title shall be considered a violation
6 and subject to enforcement procedures as provided for in this title.

7 B. This title applies to all uses and activities within areas or adjacent to areas designated as
8 regulated critical areas unless identified as exempt in Section [19.100.125](#). The following permits
9 and approvals shall be subject to and coordinate with the requirements of this title: site
10 development activity permit, site plan approval, subdivision or short subdivision, building
11 permit, performance-based development, shoreline substantial development, variance,
12 conditional use permit, certain forest practice permits (Class IV general, Class III conversion
13 option harvest plans), other permits leading to the development or alteration of land, and
14 rezones if not combined with another development permit.

15 C. Nonproject actions including, but not limited to, rezones, annexations, and the adoption of
16 plans and programs, shall be subject to critical area review.

17 D. This title is an overlay to the zoning ordinance. Activities regulated by the zoning ordinance
18 are also subject to critical areas requirements but do not require an additional county permit.
19 Under limited circumstances, additional state or federal permits may be required.

20 E. The development standards and other requirements of this title shall be applied to uses
21 and activities for any permit review or approval process otherwise required by county
22 ordinances.

23 F. Uses and activities in critical areas or their buffers for which no permit or approval is
24 required by any other county ordinance remain subject to the development standards and
25 other requirements of this title. While this title does not require a review or approval process
26 for such uses and activities, they remain subject to the title.

27 G. For the purpose of this title, the area of review is defined as the critical area and its largest
28 potential buffer or setback, unless otherwise described in Chapter 19.700. This defines the area
29 of review only. Refer to Chapters [19.200](#) through [19.600](#) for specific development standards.

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 5, 2005: Ord. 217 (1998) § 3 (part), 1998)

31 | **19.100.115 Relationship to other county regulations.**

32 When any provision of any other chapter of the Kitsap County Code conflicts with this title, that
33 which provides the most protection to the critical area, as determined by the department, in
34 consultation with the WDFW and affected tribes shall apply.

Commented [RM10]: Various sections of the CAO extend the area of review beyond the buffer.

1 Applications for permits and approvals are subject to the provisions of this title as well as to
2 other provisions of state and county law, which include, but are not limited to the following:

- 3 A. Title [2](#), Government;
- 4 B. Title [9](#), Health, Welfare and Sanitation;
- 5 C. Title [12](#), Storm Water Drainage;
- 6 D. Title [14](#), Buildings and Construction;
- 7 E. Title [15](#), Flood Hazard Areas;
- 8 F. Title [16](#), Land Division and Development;
- 9 G. Title [17](#), Zoning;
- 10 H. Title [18](#), Environment;
- 11 I. Title [21](#), Land Use and Development Procedures;
- 12 J. Title [22](#), Shoreline Master Program;
- 13 K. Chapter [36.70A](#) RCW, Growth Management Act;
- 14 L. Chapter [90.58](#) RCW, Shoreline Management Act;
- 15 M. Chapter [43.21C](#) RCW, State Environmental Policy Act.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 6, 2005: Ord. 217 (1998) § 3 (part), 1998)

17 | **19.100.120 Review authority.**

18 A. In evaluating a request for a development proposal regulated by this title, it shall be the
19 responsibility of the department to determine the following:

- 20 1. The nature and type of critical area and the adequacy of any special reports
21 required in applicable sections of this title;
- 22 2. Whether the development proposal is consistent with this title, by granting,
23 denying or conditioning projects;

1 3. Whether proposed alterations to critical areas are appropriate under the
2 standards contained in this title, or whether it is necessary for the applicant to seek a
3 variance or other exception; and

4 4. Whether the protection mechanisms and the mitigation, and monitoring,
5 maintenance and contingency plans and bonding measures proposed by the
6 applicant are sufficient to protect the environment, public health, safety and welfare
7 consistent with the goals, purposes and objectives of this title, and if not, condition
8 the permit or approval accordingly.

Commented [RM11]: This is to bring in other plans typically provided by the applicant and review by the County

9 B. The department shall have the administrative authority to reduce buffers and building
10 setbacks as outlined in specific critical area sections of this title.

Commented [RM12]: As communicated many times, the Tribe does not agree with administrative buffer or setback reductions.

11 C. Where projects have been approved with conditions to protect critical areas under previous
12 protection policies in effect prior to the ordinance codified in this title, those conditions will not
13 be grandfathered or vested if apply until the property has been sold or transferred. If the
14 property is sold or transferred prior to project implementation, at which time the conditions
15 under previous protection policies will no longer apply. Nevertheless, this title shall apply to all
16 new applications where the department determines, in consultation with the WDFW and
17 affected tribes, based on review of current information that the prior conditions will result in a
18 detrimental impact to a critical area.

19 D. Time Limitations.

20 1. Expiration of Approval.

21 a. Approvals granted under this title shall be valid for the same time period as
22 the underlying permit (e.g., preliminary plat, site development, building permit).
23 If the underlying permit does not contain a specified expiration date, then
24 approvals granted under this title shall be in writing and shall be valid for a
25 period of three years from the date of issue, unless a longer period is specified
26 by the department.

27 b. The approval shall be considered null and void upon expiration, unless a
28 time extension is requested and granted as set forth in subsection (D)(2) of this
29 section.

30 2. Time Extensions.

31 a. The applicant or owner(s) may request in writing a one-year extension of
32 the original approval.

33 b. Knowledge of the expiration date and initiation of a request for a time
34 extension is the responsibility of the applicant or owner(s).

1 c. A written request for a time extension shall be filed with the department at
2 least thirty days prior to the expiration of the approval.

3 d. Upon filing of a written request for a time extension, a copy shall be sent to
4 each party of record together with governmental departments or agencies that
5 were involved in the original approval process and affected tribes. By letter, the
6 department shall request written comments be delivered to the department
7 within fifteen days of the date of the letter.

8 e. Prior to the granting of a time extension, the department may require a new
9 application(s), updated study(ies), and fee(s) if:

10 i. The original intent of the approval is altered or enlarged by the renewal;

11 ii. The circumstances, including changes in Best Available Science,
12 relevant to the review and issuance of the original approval have changed
13 substantially; or

14 iii. The applicant failed to abide by the terms of the original approval.

15 iv. other projects or site conditions have affected the area.

16 f. The department has the authority to grant or deny any requests for time
17 extensions based upon demonstration by the applicant of good cause for the
18 delay. Time extensions shall be granted in writing and documented in the file.

19 g. If approved, the one-year time extension shall be calculated from the date
20 of granting said approval.

21 E. The department or applicant may request, at the applicant's expense, third party review as
22 described in Section [21.04.140](#).

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 8, 2005: Ord. 217 (1998) § 3 (part), 1998)

24 **19.100.125 Exemptions.**

25 The following activities are exempt from the requirements of this title:

26 A. ~~Emergencies that threaten the public health, safety and welfare. An "emergency" is an~~
27 ~~unanticipated and immediate threat to public health, safety, or the environment that~~
28 ~~requires action within a time too short to allow compliance with this title. Emergency~~
29 ~~alterations or developments provided that:~~

30 1. ~~Emergency construction does not include development of new permanent~~
31 ~~structures where none previously existed. Where new protective structures~~

1 are deemed by the Director to be appropriate means to address the
2 emergency situation, upon abatement of the emergency situation the new
3 structure shall be removed or any permit which would have been required,
4 absent an emergency, shall be obtained;

5 2. The emergency action shall have the least possible impacts to the critical
6 area and its buffer as is reasonably judged in real time while still adequately
7 addressing the emergency situation;

8 3. The person or authorized representative of the agency undertaking such
9 action shall notify the department within ten (10) working days following
10 commencement of the emergency alteration or development. Within thirty
11 (30) days, the department shall determine in consultation with the WDFW
12 and affected tribes if the action taken was within the scope of the
13 emergency actions allowed in this Subsection. If the department determines
14 that the action taken, or any part of the action, was beyond the scope of an
15 allowed emergency action, then the enforcement provisions of KCC
16 19.100.165 shall apply; and

17 4. After the emergency, the person or authorized representative of the agency
18 undertaking the action shall conduct necessary restoration and/or
19 mitigation for any impacts to the critical area and buffers resulting from the
20 emergency action in accordance with an approved critical areas report and
21 mitigation plan. The person or authorized representative of the agency
22 undertaking the action shall apply for review, and the alteration, critical
23 areas report, and mitigation plan shall be reviewed by the department and
24 affected tribes in accordance with the review procedures contained herein.

25 B. Preexisting and ongoing agricultural activities on lands containing critical areas, as defined
26 in Section [19.150.285](#).

27 C. Normal and routine maintenance and operation of preexisting retention/detention
28 facilities, biofilters and other storm water management facilities, irrigation and drainage
29 ditches, farm ponds, fish ponds, manure lagoons, and livestock water ponds, provided that
30 such activities shall not involve conversion of any wetland not currently being used for such
31 activity.

32 D. Structural alterations to buildings, otherwise allowed under the Kitsap County Code and
33 that do not alter the structural footprint or introduce new adverse impacts to an adjacent
34 critical area.

35 E. Normal and routine maintenance or repair of existing utility structures within a right-of-way
36 or within existing utility corridor or easements, including the cutting, removal and/or mowing of
37 vegetation above the ground so long as in accordance with best management practices.

1 F. Forest practices conducted pursuant to Chapter 76.09 RCW, except Class IV (general
2 conversions) and conversion option harvest plans (COHP).

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 7, 2005: Ord. 217 (1998) § 3 (part), 1998)

4 **19.100.130 Standards for existing development.**

5 A. Existing Nonconforming Structures.

6 1. "Existing nonconforming development" means a development that was lawfully
7 constructed, approved or established prior to the effective date of the ordinance
8 codified in this title, but does not conform to present regulations or standards of this
9 title.

10 2. Structures in existence on the effective date of the ordinance codified in this title
11 that do not meet the setback or buffer requirements of this title may be remodeled
12 or reconstructed provided that the new construction or related activity does not
13 further intrude into the critical area or its associated buffers.

14 3. ~~New construction or related activity connected with an existing single family
15 dwelling shall not be considered further intruding into an associated buffer so long
16 as the footprint of the structure lying within the critical area or its buffer is not
17 increased by more than twenty percent and no portion of the new structure is
18 located closer to the critical area than the existing structure; and provided further,
19 that reconstruction or remodeling meets the requirements of Title 15 (Flood Hazard
20 Areas) and shall only be allowed if it does not create or continue a circumstance
21 where personal or property damage is likely due to the nature of the critical area.
22 New construction or related activity connected with an existing single-family dwelling
23 may be considered exempt from additional critical area permitting, provided no such
24 exemption has been previously granted and all the following criteria are met:~~

- 25 a) No portion of the new structure or addition is located closer to the critical
26 area or buffer than the existing structure;
27 b) Any side(s) of the existing structure within the critical area or buffer may not
28 expand laterally by more than 20% of the existing side in length;
29 c) Expansion is not feasible to the side opposite the critical area or buffer;
30 d) Reconstruction or remodeling meets the requirements of Title 15 (Flood
31 Hazard Areas) and does not create or continue a circumstance where
32 personal or property damage is likely due to the nature of the critical area;
33 e) The expansion does not result in the loss of significant trees; and
34 f) A Habitat Management Plan or Wetland Report that meets the requirements
35 contained within Chapter 19.700 (Special Reports) is provided to support and
36 mitigate for the expanded footprint.

Commented [RM13]: This is ambiguous, the applicant should be required to demonstrate why it is not feasible to expand opposite the buffer or critical. The personal desires of the applicant are irrelevant in considerations of feasible.

Additionally, the "Permit Review Guidance" reads: "When an applicant proposes to expand a nonconforming residential structure in a manner inconsistent with the SMP, they should present evidence to demonstrate that relief is necessary to address a condition that either precludes or significantly interferes with continued residential use without the proposed expansion." This is analogous to adding a new structure or addition within the critical area or buffer.

1 4. Nonconforming structures which are damaged or destroyed by fire, explosion, or
2 other casualty, may be restored or replaced if the application is made for the
3 necessary permits within one year of the date of the damage or destruction
4 occurred, and the reconstruction is completed within two years of permit issuance or
5 the conclusion of any appeal on the permit. If a home is demolished, the date used
6 to determine when the damage or destruction occurred will be the date of final
7 inspection approval of the demolition permit. The reconstruction or restoration shall
8 not serve to expand, enlarge or increase the nonconformity except as allowed
9 through the provisions of this section.

10 B. Danger Tree Removal in a Critical Area or Buffer. Where a threat to human life or
11 permanent structure is demonstrated, the department may allow removal of danger ~~or hazard~~
12 trees subject to the following criteria:

13 1. ~~The method of tree removal shall be the minimum necessary and not adversely~~
14 ~~affected riparian ecosystem to the maximum extent practicable is the minimum necessary~~
15 ~~to balance protection of the critical area and its buffer with protection of life and~~
16 ~~property;~~ and

17 2. Damage to remaining trees and vegetation in the riparian protection area shall be
18 avoided and minimized to the maximum extent practicable; and

19 3. (2) The critical area or its buffer shall be replanted as determined by the department
20 and the property owner. The department shall coordinate review with the property
21 owner and Washington State Department of Fish and Wildlife and affected tribes as
22 determined necessary to assure habitat protection.

23 The department ~~may shall~~ require the applicant to consult with a ~~professional forester or a~~
24 certified arborist through a risk assessment report, or by the department through a danger tree
25 site evaluation permit, prior to tree removal. Danger tree abatement can sometimes be
26 achieved by felling the tree or topping the tree. Unless the Department determines otherwise,
27 Habitat needs ~~may will~~ require leaving the fallen tree or snag in the riparian corridor or
28 maintaining a high stump of a minimum of 15 feet for wildlife habitat.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 9, 2005: Ord. 217 (1998) § 3 (part), 1998)

30 **19.100.135 Variances.**

31 A. A variance in the application of the regulations or standards of this title to a particular piece
32 of property may be granted by Kitsap County, when it can be shown that the application meets
33 all of the following criteria:

34 1. Because of special circumstances applicable to the subject property, including
35 size, shape, or topography, the strict application of this title is found to deprive the
36 subject property of rights and privileges enjoyed by other properties in the vicinity;

Commented [RM14]: The County should specify a hierarchy of hazard abatement methods as without much debate could ensue as to the minimum necessary. A potential hierarch could include limbing, stubbing, with falling as the last option. Additionally, the remove part of a stubbed or fallen tree shall remain in the critical area or its buffer to provide habitat value and the stubbing should occur as high as possible to maximize future value as a wildlife tree.

1 provided, however, the fact that those surrounding properties have been developed
2 under regulations in force prior to the adoption of this ordinance shall not be the
3 sole basis for the granting of a variance.

4 2. The special circumstances referred to in subsection (A)(1) of this section are not
5 the result of the actions of the current or previous owner.

6 3. The granting of the variance will not result in substantial detrimental impacts to
7 the critical area, public welfare or injurious to the property or improvements in the
8 vicinity and area in which the property is situated or contrary to the goals, policies
9 and purpose of this title.

10 4. The granting of the variance is the minimum necessary to accommodate the
11 permitted use.

12 5. No other practicable or reasonable alternative exists. (See Definitions,
13 Chapter [19.150.](#))

14 6. A mitigation plan that meets the requirements of Chapter 19.700 (where
15 required) and is based upon Best Available Science has been submitted and is
16 approved for the proposed use of the critical area.

17 7. If the property for which the variance is being sought is one of multiple adjoining
18 properties the applicant or an entity controlled by the applicant purchased since this
19 Title came into effect, the department review shall consider if by merging one or
20 more of the adjoining properties will reduce or prevent the need for the variance.

21 B. Kitsap County shall conduct a public hearing on all variance applications pursuant to the
22 review process and notice requirements established in Title [21](#) (Land Use and Development
23 Procedures), as now or hereafter amended.

24 C. Except when application of this title would deny all reasonable use of the property
25 (Section [19.100.140](#)), an applicant who seeks an exception from the standards and
26 requirements of this title shall pursue relief by means of a variance as provided for in this title.

27 D. Requests for variances shall include the application requirements of
28 Section [19.100.155](#) (General application requirements), or [19.200.215](#) (Wetland review
29 procedures), whichever is applicable.

30 E. The department shall review administrative buffer reductions based on the criteria and
31 standards referenced in this chapter as well as the most recent Best Available Science.

32 F. The department may grant variances for public utilities to the substantive or procedural
33 requirements of this title when:

Commented [RM15]: Potential buyers need to exercise more diligence in purchasing property. The Tribe does not support vesting, particularly following sale of a property.

The Permit Review Guidance notes, "When an applicant purchases a property with the knowledge that a variance will be necessary to develop, they may be creating their own hardship" The same should apply to request for buffer variances.o

Commented [RM16]: This is to partially address the issue that mitigation plans and No Net Loss Reports are based upon regulatory buffers established by the County and do not consider environmental impacts occurring in or to the areas beyond the regulatory buffer. For example, if the SPTH at a location is 200 feet and the County buffer for a stream is 100 feet, then a consultant would only consider impacts within the 100 foot buffer. However, as noted by BAS the zone of influence is that of the SPTH or 100 feet, whichever is greater. The County must account for the cumulative loss of environmental function due to regulatory buffers being less than that required by BAS.

Commented [RM17]: This is a bit of reversing the premise that parcels are not to be created that would later require a variance to be developed.

It also somewhat follows from the definition (19.150.515) of reasonable use which includes the phrase "... where there can be no beneficial use of the property...". An example would be a person who has purchased two adjacent properties and is seeking a variance or RUE for both to build residences each which requires a septic field. Siting of septic systems and the setbacks from them often drive the layout of the proposal and can lead for calls for variances or RUE. A reasonable use of one of the properties would be to site the septic field for the residence/building on the other property to reduce intrusion into the critical areas. 19.150.515 "Reasonable use" is a legal concept articulated by federal and state courts in regulatory taking cases. Generally, reasonable use applies to a property that is deprived of all reasonable use when the owner can realize no reasonable return on the property or make any productive use of the property. Reasonable return does not mean a reduction in value of the land, or a lack of a profit on the purchase and sale of the property, but rather, where there can be no beneficial use of the property; and which is attributable to the implementation of the critical areas ordinance.

Commented [RM18]: This is linked to the issue of regulatory buffer width versus what is needed to prevent some loss of function.

1. Application of this title to the utility's activities would be inconsistent with the Comprehensive Plan and the utility's public service obligations;
2. The proposed utility activity does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and
3. Any alterations permitted to these critical areas shall be the minimum necessary to reasonably accommodate the proposed utility activity and mitigate when feasible.
4. Affected Tribes concur with the requested variance.

G. Where variances to dimensional standards in Chapter [17.420](#) might result in eliminating or reducing the need for a critical area variance, those variances shall be considered and exhausted prior to consideration of a critical area variance.

(Ord. 617 (2022) § 5, 2022; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 10, 2005; Ord. 217 (1998) § 3 (part), 1998)

19.100.140 Reasonable use exception.

If the application of this title would deny all reasonable use of the property, the applicant may apply for a reasonable use exception pursuant to this section:

A. The applicant shall apply to the department, and the department shall prepare a recommendation to the hearing examiner. If the property for which the reasonable use exception is being sought is one of multiple adjoining properties the applicant purchased since this Title came into effect, the department review shall consider if by merging one or more of the adjoining properties will allow reasonable development. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of the section. The property owner and/or applicant for a reasonable use exception has the burden of proving that the property is deprived of all reasonable uses. The examiner shall review the application and shall conduct a public hearing pursuant to the provisions of Title [21](#) (Land Use and Development Procedures). The examiner shall make a final decision based on the following criteria:

1. The application of this title would deny all reasonable use of the property;
2. There is no other reasonable use which would result in less impact on the critical area;
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this title and the public interest, and does not conflict with the Endangered Species Act or other relevant state or federal laws; and

1 4. Any alterations permitted to the critical area shall be the minimum necessary to
2 allow for reasonable use of the property.

3 B. Any authorized alterations of a critical area under this section shall be subject to conditions
4 established by the examiner including, but not limited to, mitigation under an approved
5 mitigation plan [that meets the requirements of Chapter 19.700 \(Special Reports\)](#).

6 (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 11, 2005; Ord. 217 (1998) § 3 (part), 1998)

7 | **19.100.145 Special use review.**

8 Special use review is an administrative process unless the underlying permit requires a public
9 hearing. Special use review may be requested for revisions to existing permits, or when review
10 by external authorities would be necessary to assure the department applies reasonable
11 conditions to minimize, rectify, or compensate for impacts to the critical area or buffer. Those
12 external authorities include, but are not limited to federal agencies, state agencies, tribes,
13 public utilities, and Kitsap public health.

14 The department is authorized to take action on permits as required by this title. Development
15 identified as a special use review may be approved, approved with conditions, or denied
16 according to the procedures and criteria outlined in this section.

17 A. The department may approve a permit after review of the application and any required
18 special reports submitted in accordance with this title. The department shall determine
19 whether the use or activity cannot be avoided because no reasonable or practicable alternative
20 exists, the proposed use is consistent with the spirit and intent of this title and it will not cause
21 [project specific or cumulative direct or indirect](#) adverse impacts to the critical area or the buffer
22 which cannot be mitigated. In taking action to approve a special use review, the department
23 may attach reasonable conditions.

Commented [RM19]: To often cumulative effects are overlooked

24 B. The department shall deny a special use review request when it finds that the proposed
25 use or activity is inconsistent with this title and/or will cause adverse impacts to the critical area
26 or the buffer, which cannot be adequately mitigated and/or avoided.

27 C. Special use review determinations are appealable to the hearing examiner pursuant to
28 Section [19.100.150](#) (Appeals).

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

30 | **19.100.150 Appeals.**

31 A. Appealable Actions. The following decisions or actions required by this title may be
32 appealed:

- 1 1. Any decision to approve, condition or deny a development proposal, or any
- 2 disagreement on conclusions, methodology, rating systems, etc. between the
- 3 department and such person or firm which prepares special reports pursuant to
- 4 Chapter 19.700 may be appealed by the applicant or affected party to the Kitsap
- 5 County hearing examiner.
- 6 2. Any decision to approve, condition or deny a variance application by the
- 7 department may be appealed by the applicant or affected party to the Kitsap County
- 8 hearing examiner.
- 9 3. Any decision to require, or not require a special report pursuant to this title may
- 10 be appealed by the applicant or affected party to the Kitsap County hearing
- 11 examiner.

12 B. Appeal Process. The appeals process will be pursuant to procedures in Chapter 21.04, or as

13 amended hereafter.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 12, 2005: Ord. 217 (1998) § 3 (part), 1998. Formerly 19.100.145)

15 | **19.100.155 General application requirements.**

16 A. All applicants for new development are encouraged to meet with the department prior to

17 submitting an application subject to Title 17. Fees for a staff consultation may be applied

18 towards the application fee for the same project. The purpose of this meeting is to discuss

19 Kitsap County's zoning and applicable critical area requirements, to review any conceptual site

20 plans prepared by the applicant and to identify potential impacts and mitigation measures.

21 Such conference shall be for the convenience of the applicant, and any recommendations shall

22 not be binding on the applicant or the county.

23 B. The applicant must comply with the standards and requirements of this title as well as

24 standards relating to Title 12 (Storm Water Drainage) set forth by the department, as now or

25 hereafter amended, including the need for additional mitigation requirements. To expedite

26 the permit review process, the department shall be the lead agency on all work related to

27 critical areas. Development may be prohibited in a proposed development site based on

28 criteria set forth in this title; the applicant should first determine whether this is the case before

29 applying for permits from the department.

30 C. Application for development proposals, reasonable use exception or variances regulated by

31 this title or for review of special reports shall be made with the department by the property

32 owner, lessee, contract purchaser, other person entitled to possession of the property, or by an

33 authorized agent as listed in Chapter 19.700 (Special Reports).

34 D. Mitigation Sequencing. An applicant for a development proposal or alteration shall apply

35 the following sequential measures, which appear in order of priority, to avoid impacts to critical

Commented [RM20]: Both the Ecology and County stormwater manuals admit the need for additional mitigation, but this is not considered by consultants.

For example, the County stormwater manual contains this statement “*compliance with this manual should not be construed as mitigating all probable and significant stormwater impacts to aquatic biota in streams and wetlands; additional mitigation may be required.*”

And the following wording is found in the Ecology Manual: “*The BMPs listed in this section are likely insufficient by themselves to prevent significant hydrologic disruptions and impacts to streams and their natural resources.*”

Nothing in the Special Reports for Fish and Wildlife Conservation Areas requires that identification of other stormwater impacts not addressed by the manuals and the needed additional mitigation.

For example, the State and County stormwater manuals do not consider the potential impact of development and stormwater management increasing the duration of stream flows with velocities that adversely impact aquatic life in the absence of flow events that could cause channel erosion. Additionally, these manual do not address cumulative impacts of projects that are exempt from the flow duration controls, resulting in cumulative impact upon stream flows. For example, page 52 of the 2019 Department of Ecology Stormwater Management Manual for Western Washington (SWMWW) (emphasis added) states:

“The engineered stormwater conveyance, treatment, and detention systems advocated by this and other stormwater manuals can reduce the impacts from development to water quality and hydrology. However, they cannot replicate the natural hydrologic functions of the natural watershed that existed before development, nor can they remove enough pollutants to replicate the water quality of pre-development conditions. **Ecology understands that despite the application of appropriate practices and technologies identified in this manual, some degradation of urban and suburban receiving waters will continue, and some beneficial uses will continue to be impaired or lost due to new development**”

Page 122 contains the following statement. **The BMPs listed in this section are likely insufficient by themselves to prevent significant hydrologic disruptions and impacts to streams and their natural resources.** Therefore, local governments should look for opportunities to change their local development codes to minimize impervious surfaces and retain native vegetation in all development situations. **Most importantly, to maintain the beneficial uses of our lowland freshwater systems will require land use planning that targets retention of a majority of a creek's watershed in its natural condition, and retains most of the benefits of headwater areas, , connected wetlands,**

The County Stormwater manual contains the following statement (emphasis added):

1 areas and critical area buffers. Lower priority measures shall be applied only when higher
2 priority measures are determined to be infeasible or inapplicable:

- 3 1. Avoiding the impact by not taking a certain action;
- 4 2. Minimizing the impact by:
 - 5 a. Limiting the degree or magnitude of the action with appropriate technology; or
 - 6 b. Taking affirmative steps, such as project redesign, relocation or timing;
- 7 3. Rectifying the impact to critical areas by repairing, rehabilitating or restoring the
8 affected environment;
- 9 4. Reducing or eliminating the impact over time by preservation and maintenance
10 operations during the life of the action;
- 11 5. Compensating for the adverse impact by replacing, enhancing, or providing substitute
12 resources or environments; and
- 13 6. Monitoring the impact, hazard or success of required mitigation and taking remedial
14 action.

Commented [RM21]: There is often considerable loss of function due to this and the time line for the compensation to be effective is not specified in reports.

16 ~~E.D.~~ A filing fee in an amount established under Chapter [21.10](#) shall be paid to the
17 department at the time an application for a permit relating to a critical area or a special report
18 review is filed.

19 ~~E.E.~~ Applications for any development proposal subject to this title shall be reviewed by the
20 department for completeness and consistency or inconsistency with this title.

21 ~~G.F.~~ At every stage of the application process, the burden of demonstrating that any
22 proposed development is consistent with this title is upon the applicant.

23 ~~H.G.~~ All applications for development subject to this title shall include a site plan drawn to
24 scale identifying locations of critical areas, critical area buffers, location of proposed structures
25 and activities, including clearing and grading and general topographic information as required
26 by the department. If the department determines that additional critical areas are found on the
27 subject property, the applicant shall amend the site plan to identify the location of the critical
28 area. When it is determined that regulated activities subject to the provisions of the State
29 Environmental Policy Act (SEPA) as implemented by Title [18](#) (Environment) are likely to cause a
30 significant, adverse environmental impact to the critical areas identified in this title that cannot
31 be adequately mitigated through compliance with this title, environmental assessment and
32 mitigation measures may be imposed consistent with the procedures established in
33 Title [18](#) (Environment).

34 ~~I.H.~~ Prior to taking action on a zone reclassification or a Comprehensive Plan amendment, the
35 proponent shall complete an environmental review to confirm the nature and extent of any
36 critical areas on or adjacent to the property; determine if the subsequent development
37 proposal would be consistent with this title; and determine whether mitigation or other
38 measures would be necessary if the proposal were approved. Such review shall occur prior to
39 any SEPA threshold determination. Findings of such review may be used to condition or

1 mitigate the impact through the SEPA threshold determination or to deny the proposal if the
2 impacts are significant and cannot be mitigated.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 14, 2005: Ord. 217 (1998) § 3 (part), 1998)

4 | **19.100.160 Inventory provisions.**

5 The approximate location and extent of mapped critical areas within Kitsap County are shown
6 on the maps adopted as part of this title, and incorporated herein by this reference. These
7 maps shall be used only as a general guide for the assistance of the department and the public;
8 the type, extent and boundaries may be determined in the field by a qualified specialist or staff
9 person according to the requirements of this title. In the event of a conflict between a critical
10 area location shown on the county's maps and that of an on-site determination, the on-site
11 determination if approved by the Department and affected Tribes will apply. Consultants
12 preparing Special Reports will geolocate the boundaries of critical areas and buffers and will
13 include a KMZ or shapefile of the critical areas and buffers with the report

Commented [RM22]: The Tribe has reviewed reports stating a stream is Type N where the supporting information is tenuous or not in compliance with the WACs.

14 Kitsap County will review map inventory information of all critical areas as it becomes available
15 and add it to the online GIS layer. Mapping will include critical areas that are identified through
16 site specific analysis by local, state and federal agencies, the Kitsap conservation district, tribal
17 governments, citizen groups and other sources.

18 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 15, 2005: Ord. 217 (1998) § 3 (part), 1998)

19 | **19.100.165 Enforcement.**

20 A. Authorization. The director is authorized to enforce this title, and to designate county
21 employees as authorized representatives of the department to investigate suspected violations
22 of this title, and to issue orders to correct violations and notices of infraction.

23 B. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this
24 title, or when the director or his/her designee has reasonable cause to believe that a condition
25 exists on property that is contrary to or in violation of this title, an authorized official may
26 investigate and in doing so may enter upon land when consent has been given or as otherwise
27 allowed by law.

28 C. Stop Work Orders. Whenever any work or activity is being done contrary to the provisions
29 of this title the director or his/her designee may order the work stopped by notice in writing,
30 served on any persons engaged in the doing or causing such work to be done, or by posting the
31 property, and any such persons shall forthwith stop such work or activity until authorized by
32 the director or his/her designee to proceed.

33 D. Penalties. The violation of any provision of this title shall constitute a Class I civil infraction.
34 Each violation shall constitute a separate infraction for each and every day or portion thereof

1 during which the violation is committed, continued, or permitted. Infractions shall be processed
2 in accordance with the provisions of Chapter [2.116](#), as now or hereafter amended.

3 E. Imminent and Substantial Dangers. Notwithstanding any provisions of these regulations,
4 the director or his/her designee may take immediate action to prevent an imminent and
5 substantial danger to the public health, welfare, safety or the environment by the violation of
6 any provision of this title.

7 F. Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy,
8 the director or his/her designee may seek legal or equitable relief to enjoin any acts or practices
9 or abate any conditions, which constitute or will constitute a violation of the provisions of this
10 title.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 16, 2005: Ord. 217 (1998) § 3 (part), 1998)

12 | **19.100.170 List of qualified consultants.**

13 As a resource to applicants, the department will maintain a list of arborists, habitat biologists,
14 hydrogeologists, geological engineers, geologists, land surveyors, and wetlands scientists who,
15 at the time of listing, are licensed in the state of Washington and meet the minimum
16 qualifications of Kitsap County Code to prepare certain documents required by this title. The list
17 will contain those consultants who have responded to Kitsap County's call to be listed. Kitsap
18 County makes no representation or guarantee as to the quality of services performed by those
19 listed, and reserves the right to discontinue the list at any time.

20 (Ord. 617 (2022) § 35, 2022)

21

Chapter 19.150
DEFINITIONS

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6 | **19.150.050 Generally.**

7 As used in this title, the following terms have the meanings given in this chapter.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

9 | **19.150.100 Adjacent.**

10 "Adjacent," for the purposes of this title, means within an area containing the critical area in
11 question for the development proposal and its largest potential buffer or setback or one Site
12 Potential Tree Height (SPTH), whichever is greater. This adjacent area is for review purposes
13 only. For drainage analysis adjacent is path the stormwater will take until it reaches a
14 waterbody not subject to flow duration controls.

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

16 | **19.150.105 Agricultural activities.**

17 "Agricultural activities" means the normal actions associated with the production of crops such
18 as plowing, cultivating, minor drainage, and harvesting; and/or raising or keeping of livestock,
19 including operation and maintenance, and repair of farm and stock ponds, drainage ditches,
20 irrigation systems, and normal operation, maintenance, and repair of existing serviceable
21 agricultural structures, facilities, or improved areas. The term "agricultural activities" as used
22 within this title does not include the practice of aquaculture. Forest practices regulated under
23 Chapter [76.09](#) RCW and Title [222](#) WAC are not included in this definition.

24 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

25 | **19.150.110 Alteration.**

26 "Alteration" means a human-induced action that changes the existing condition directly or
27 indirectly in the present or future, of a critical area or its buffer. Alterations include but are not
28 limited to: grading; grubbing; dredging; channelizing; cutting, clearing, relocating or removing
29 vegetation, except noxious weeds identified by the Washington State Department of Agriculture
30 or the Kitsap County Cooperative Extension; applying herbicides or pesticides or any hazardous
31 or toxic substance; discharging pollutants; discharging stormwater to a stream channel; altering
32 the amount or timing of stream flow; grazing domestic animals; modifying for surface water
33 management purposes; or any other human activity that changes the existing vegetation,
34 hydrology, hydraulics, wildlife or wildlife habitat.

Commented [RM2]: To bring into partial compliance with BAS

Commented [RM3]: This is to deal with the issue that offsite impacts from changes in the quality or quantity of water can travel a considerable distance downstream.

Commented [RM4]: Indirect alterations are often overlooked in reports

Commented [RM5]: Hydrology and hydraulics are different and both must be considered.

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

2 | **19.150.115 Anadromous fish.**

3 “Anadromous fish” means fish whose life cycle includes time spent in both fresh and salt water.

4 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

5 | **19.150.120 Applicant.**

6 “Applicant” means the person, party, firm, corporation or legal entity, or agent thereof that
7 proposes a development of property in Kitsap County.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

9 | **19.150.125 Aquifer.**

10 “Aquifer” means a saturated body of rock, sand, gravel or other geologic material that is
11 capable of storing, transmitting and yielding water to a well.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.130)

13 | **19.150.130 Aquifer recharge.**

14 “Aquifer recharge” means the process by which water is added to an aquifer. It may occur
15 naturally by the percolation (infiltration) of surface water, precipitation, or snowmelt from the
16 ground surface to a depth where the earth materials are saturated with water. The aquifer
17 recharge can be augmented by “artificial” means through the addition of surface water (e.g.,
18 land application of wastewater or storm water) or by the injection of water into the
19 underground environment (e.g., drainfields and drywells).

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.135)

21 | **19.150.135 Aquifer recharge area.**

22 “Aquifer recharge area” means those areas overlying aquifer(s) where natural or artificial
23 sources of water can move downward to an aquifer(s).

24 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.140)

25 | **19.150.140 Aquifer vulnerability.**

26 “Aquifer vulnerability” means the combined effect of hydrogeological susceptibility to
27 contamination and the contamination loading potential as indicated by the type of activities
28 occurring on a project area.

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.145)

2 | **19.150.145 Aquitard.**

3 "Aquitard" means an underground geologic layer that has low permeability.

4 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.147)

5 | **19.150.146 Bankfull width.**

6 The "bankfull channel" is defined as the stage when water just begins to overflow into the
7 active floodplain.

Commented [RM6]: Note, OHWM can differ from the bankfull width which is defined later in this document

8 | **19.150.150 Bank stabilization.**

9 "Bank stabilization" means lake and stream modification including vegetation enhancement,
10 used for the purpose of retarding erosion, protecting channels, and retaining uplands.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

12 | **19.150.155 Best available science.**

13 "Best available science" means scientifically valid information in accordance with WAC [365-195-](#)
14 [900](#), as now or hereafter amended, that is used to develop and implement critical areas policies
15 or regulations.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

17 | **19.150.160 Best management practices (BMPs).**

18 "Best management practices" or "BMPs" means conservation practices (physical, structural
19 and/or managerial) or systems of practices and management measures typical of a particular
20 industry or use that:

21 A. Control soil loss and reduce water quality degradation caused by nutrients, pathogens,
22 bacteria, toxic substances, pesticides, oil and grease, and sediment;

23 B. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and
24 to the chemical, physical, and biological characteristics of critical areas.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

26 | **19.150.165 Bog.**

1 “Bog” means a low-nutrient, acidic wetland with organic soils and characteristic bog plants, as
2 described in Washington State Wetland Rating System for Western Washington: 2014 Update
3 (Washington State Department of Ecology Publication No. 14-06-29, Olympia, WA October
4 2014).

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

6 | **19.150.170 Buffer.**

7 “Buffer” means an area that is intended to protect the functions and values of critical areas.
8 Protecting these functions and values includes the preservation of existing native and
9 nonnative vegetation where it exists, unless otherwise required to be replaced with native
10 vegetation through mitigation or voluntarily enhanced or restored.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

12 | **19.150.175 Buffer, standard.**

13 “Standard buffer” means the buffer width established by each chapter of this title before any
14 buffer ~~adjustments~~ ~~modifications~~ are applied.

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.172)

16 | **19.150.180 Candidate species (state listed).**

17 “Candidate species (state listed)” means species under review by the Department of Fish and
18 Wildlife (WDFW) for possible listing as endangered, threatened or sensitive. A species will be
19 considered for state-candidate designation if sufficient scientific evidence suggests that its
20 status may meet criteria defined for endangered, threatened, or sensitive in WAC [220-610-](#)
21 [110](#) as now or hereafter amended. Currently listed state-threatened or state-sensitive species
22 may also be designated as a state-candidate species if their status is in question. State-
23 candidate species will be managed by the Department of Fish and Wildlife, as needed, to
24 ensure the long-term survival of populations in Washington. They are listed in WDFW, Policy
25 5301, or as amended.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.175)

27 | **19.150.185 Channel migration zone (CMZ).**

28 “Channel migration zone” or “CMZ,” as defined by WAC [173-26-020\(7\)](#), as now or hereafter
29 amended, means the area along a river or stream within which the channel(s) can be
30 reasonably predicted to migrate over time as a result of natural and normally occurring
31 hydrological and related processes when considered with the characteristics of the river or
32 stream and its surroundings.

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.180)

2 | **19.150.190 Clearing.**

3 "Clearing" means the destruction, disturbance or removal of vegetation by physical, mechanical,
4 chemical or other means.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.185)

6 | **19.150.195 Compensation.**

7 "Compensation" means replacement of project-induced critical area (e.g., wetland) losses of
8 acreage or functions.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.190)

10 | **19.150.200 Creation.**

11 "Creation" means the manipulation of the physical, chemical, or biological characteristics
12 present to develop a wetland on an upland or deepwater site, where a wetland did not
13 previously exist. Activities typically involve excavation of upland soils to elevations that will
14 produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant
15 species.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.195)

17 | **19.150.205 Conversion option harvest plan (COHP).**

18 As it relates to forest practices, a "COHP" means a plan for landowners who want to harvest
19 their land but wish to maintain the option for conversion pursuant to WAC [222-20-050](#).
20 "Conversion" to a use other than commercial timber operation shall mean a bona fide
21 conversion to an active use which is incompatible with timber growing.

22 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.200)

23 | **19.150.210 Critical aquifer recharge areas.**

24 "Critical aquifer recharge areas" means those areas with a critical recharging effect on aquifers
25 used for potable water, or which provide groundwater recharge to surface waters, including
26 areas where an aquifer that is a source of drinking water is vulnerable to contamination that
27 would affect the potability of the water, or is susceptible to reduced recharge.

28 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

29 | **19.150.215 Critical areas.**

Commented [RM7]: This acknowledges the inter-relationship of surface and sub-surface waters.

1 "Critical areas" means those areas and ecosystems identified as: (A) wetlands; (B) areas with a
2 critical recharging effect on aquifers; (C) fish and wildlife habitat conservation areas;
3 (D) geologically hazardous areas; and (E) frequently flooded areas, and (g) riparian
4 management areas.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

6 | **19.150.220 Critical area protection easement.**

7 "Critical area protection easement" means an agreement conveyed through a notice to title, or
8 shown on the face of a plat or site plan, for the purpose of perpetual or long-term conservation.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

10 | **19.150.225 Critical facilities.**

11 "Critical facilities" means those facilities necessary to protect the public health, safety and
12 welfare, including but not limited to schools, hospitals, police stations, fire departments and
13 other emergency response facilities, and nursing homes. Critical facilities also include sites of
14 hazardous material storage or production.

15 19.150.227 Cumulative Effects

16 "Cumulative effects" are the impact on the environment resulting from the incremental impact
17 of the action when added to other past, present, and reasonably foreseeable future actions.

18 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

19 | **19.150.230 Danger trees.**

20 "Danger trees" means any tree of any height, dead or alive, that presents a hazard to the public,
21 public utility, or permanent structure because of rot; root, stem or limb damage; lean; or any
22 other observable condition created by natural process or manmade activity determined by a
23 professional forester or certified arborist, or by the department through a danger tree site
24 evaluation permit.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

26 | **19.150.235 Debris.**

27 See "Refuse."

28 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

29 | **19.150.240 Department.**

1 "Department" means the Kitsap County department of community development.

2 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

3 | **19.150.245 Detention facilities.**

4 "Detention facilities" means storm water facilities, including all the appurtenances associated
5 with their designed functions, maintenance and security that are designed to store runoff while
6 gradually releasing it at a predetermined controlled rate.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

8 | **19.150.250 Development proposal site.**

9 "Development proposal site" means the legal boundaries of the parcel or parcels of land on
10 which an applicant has applied for authority from Kitsap County to carry out a development
11 proposal.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

13 | **19.150.255 Director.**

14 "Director" means the director of the Kitsap County department of community development or a
15 duly authorized designee in the department.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005)

17 | **19.150.256 Emergency.**

18 An "emergency" is an unanticipated and immediate threat to public health, safety, or the
19 environment that requires action within a time too short to allow immediate compliance with
20 this title.

21 | **19.150.260 Endangered species (state listed).**

22 "Endangered species" means a species native to the state of Washington that is seriously
23 threatened with extinction throughout all or a significant portion of its range within the state.
24 Endangered species are legally designated in WAC [220-610-010](#), as now or hereafter amended.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.265)

26 | **19.150.265 Enhancement.**

27 "Enhancement" means the manipulation of the physical, chemical, or biological characteristics
28 of a wetland to heighten, intensify, or improve specific wetland function(s). Enhancement is

Commented [RM8]: The phrase "immediate compliance" with this title might be misleading. The applicant must still comply with the Title as outline in 19.100.125 Exemptions.

1 undertaken for specified purposes such as water quality improvement, flood water retention,
2 or wildlife habitat. Enhancement results in the gain of selected wetland function(s) but may also
3 lead to a decline in other wetland function(s). Enhancement does not result in a gain in wetland
4 area. Enhancement activities could include planting vegetation, controlling non-native or
5 invasive species, and modifying site elevations to alter hydroperiods in existing wetlands.

6 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.270)

7 | **19.150.270 Erosion.**

8 "Erosion" means the process whereby the land surface is worn away by the action of water,
9 wind, ice or other geologic agents, including processes such as gravitational creep or events
10 such as landslides caused by natural or manmade impacts.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.275)

12 | **19.150.275 Erosion hazard areas.**

13 "Erosion hazard areas" are those areas containing soils which, according to the U.S. Department
14 of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience
15 significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel
16 migration zones. This designation pertains to water erosion and not wind erosion. These areas
17 may not be highly erodible until or unless the soil is disturbed by activities such as clearing or
18 grading.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.280)

20 | **19.150.276 Establishment**

21 "Establishment" means the manipulation of the physical, chemical, or biological characteristics
22 of a site to develop a wetland on an upland where a wetland did not previously exist at an
23 upland site. Establishment results in a gain in wetland area and functions. An example activity
24 could involve excavation of upland soils to elevations that will produce a wetland hydroperiod
25 and hydric soils by intercepting groundwater, and in turn supports the growth of hydrophytic
26 plant species.

27 | **19.150.280 Excavation.**

28 "Excavation" means the mechanical removal of earth material.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.285)

30 | **19.150.285 Existing and ongoing agriculture.**

Commented [RM9]: As written, this definition is restricted to wetlands. What definition would be used if a stream is constructed in former uplands?

Additionally, the existing definition of 19.150.265 Enhancement found earlier 19.150.525 Reestablishment and 19.150.535 Rehabilitation found later are also restricted to wetlands.

1 “Existing and ongoing agriculture” means agricultural uses and activities on lands defined in
2 RCW [84.34.020\(2\)](#) or defined as agricultural activities in this title when undertaken pursuant to
3 agricultural best management practices to minimize impacts to critical areas. Enrollment in a
4 federally recognized conservation program or the Kitsap County open space taxation program
5 as farm and agricultural conservation land (Chapter [18.12](#)) within the past five years will not
6 defeat an activity’s status as “existing and ongoing” agriculture.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.290)

8 | **19.150.290 Exotic.**

9 “Exotic” means any species of plant or animal that is not indigenous (native) to an area.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.295)

11 | **19.150.295 Extraordinary hardship.**

12 “Extraordinary hardship” means where the strict application of this title and/or other programs
13 adopted to implement this title by the regulatory authority would prevent all reasonable use of
14 the parcel.

15 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.300)

16 | **19.150.300 Farm pond.**

17 “Farm pond” means an open-water habitat of less than five acres and not contiguous with a
18 stream, river, lake or marine water created from a nonwetland site in connection with
19 agricultural activities.

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.305)

21 | **19.150.305 Fen.**

22 “Fen” means a wetland similar to a bog, dominated by organic soils, low nutrients, and low pH,
23 but receives some water from the surrounding landscape or groundwater, as described in
24 Washington State Wetland Rating System for Western Washington: 2014 Update (Washington
25 State Department of Ecology Publication No. 14-06-029, Olympia, WA October 2014).

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.315)

27 | **19.150.310 Filling or fill.**

28 “Filling” or “fill” means a deposit of earth or other natural or manmade material placed by
29 artificial means, including, but not limited to, soil materials, debris, or dredged sediments.

1 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.320)

2 | **19.150.315 Fish and wildlife habitat conservation areas.**

3 “Fish and wildlife habitat conservation areas” are those areas that serve a critical role in
4 sustaining needed habitats and species for the functional integrity of the ecosystem, and which,
5 if altered, may reduce the likelihood that the species will persist over the long term. These areas
6 may include, but are not limited to, rare or vulnerable ecological systems, communities, and
7 habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and
8 movement corridors; and areas with high relative population density or species richness. See
9 below “Priority habitat” and “Priority species” for further detail. The county may also designate
10 locally important habitats and species. “Fish and wildlife habitat conservation areas” do not
11 include such artificial features or constructs as irrigation delivery systems, irrigation
12 infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are
13 maintained by a port district or an irrigation district or company, or other entirely artificial
14 watercourses, except where they exist in a natural watercourse that has been altered by
15 humans or they are used by fish or used to convey streams naturally occurring prior to
16 construction .

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.325)

18 | **19.150.320 Fisheries biologist.**

19 “Fisheries biologist” means a person with experience and training in fisheries within the past
20 ten years who is able to submit substantially correct reports on fish population surveys, stream
21 surveys and other related data analyses of fisheries resources. “Substantially correct” is
22 interpreted to mean that technical or scientific errors, if any, will be minor and do not delay or
23 affect the site plan review process. Qualifications of a fisheries biologist include:

- 24 A. Certification by the American Fisheries Society; or
- 25 B. A Bachelor of Science degree in fisheries or the biological sciences from an accredited
26 institution and two years of professional fisheries experience; or
- 27 C. Five or more years professional experience as a practicing fisheries biologist with a
28 minimum three years professional field experience.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.330)

30 | **19.150.325 Floodplain.**

31 “Floodplain” means the floodway and associated special flood hazard areas having the potential
32 to flood once every one hundred years, or having a one percent chance of being equaled or
33 exceeded in any given year. The regulatory flood hazard areas, floodplains and floodways are
34 depicted on the Federal Emergency Management Agency (FEMA) flood insurance rate maps

1 (FIRM) for Kitsap County. This is a regulatory designation, not an environmental designation.
2 Areas that flood at different frequencies still have environmental functions and values.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.335)

4 | **19.150.330 Floodway.**

5 "Floodway" means the channel of a river or other watercourse and the adjacent land areas that
6 must be reserved in order to discharge the base flood without cumulatively increasing the
7 water surface elevation more than one foot.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.340)

9 | **19.150.335 Forest practices.**

10 "Forest practices" means, as defined in WAC [222-16-010](#), as now or hereafter amended, any
11 activity conducted on or directly pertaining to forest land that is related to growing, harvesting,
12 or processing timber, or removing forest biomass, including but not limited to:

- 13 A. Activities in and over typed water;
- 14 B. Road and trail construction;
- 15 C. Harvesting, final and intermediate;
- 16 D. Precommercial thinning;
- 17 E. Reforestation;
- 18 F. Fertilization;
- 19 G. Prevention and suppression of diseases and insects;
- 20 H. Salvage of trees; and
- 21 I. Brush control.

22 "Forest practices" shall not include: forest species seed orchard operations and intensive forest
23 nursery operations; or preparatory work such as tree marking, surveying and road flagging; or
24 removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery,
25 mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result
26 in damage to forest soils, timber or public resources.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.350)

1 | **19.150.340 Frequently flooded areas.**

2 "Frequently flooded areas" are lands in the floodplain subject to at least a one percent or
3 greater chance of flooding in any given year, or within areas subject to flooding due to high
4 groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas,
5 wetlands, and areas where high groundwater forms ponds on the ground surface. Generally,
6 floodplains are designated by FEMA on flood insurance rate and boundary maps. This is a
7 regulatory designation, not an environmental designation. Areas that flood at different
8 frequencies still have environmental functions and values.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.355)

10 | **19.150.341 Functionally and effectively disconnected.**

11 "Functionally and effectively disconnected" means that the road or other significant
12 development blocks the protective measures provided by a buffer.

13 | **19.150.345 Functions and values.**

14 "Functions and values" are generally those natural processes and benefits performed or
15 provided by critical areas that are required to be protected by the GMA or other federal, state,
16 and local laws, regulations, and ordinances. These include, but are not limited to, improving
17 and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and
18 aquatic food chains, reducing flooding and erosive flows, water attenuation, historical or
19 archaeological importance, educational opportunities, and recreation.

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

21 | **19.150.350 Geologic assessment.**

22 A "geologic assessment" is an umbrella term used for the evaluation completed by a geologist
23 or geotechnical engineer to meet the requirements of Chapter [19.400](#). The geologic assessment
24 may be in the form of a letter, as described in Section [19.400.440](#), a geological report, or
25 geotechnical report (Section [19.150.370](#)).

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

27 | **19.150.355 Geologically hazardous areas.**

28 "Geologically hazardous areas" means areas that, because of their susceptibility to erosion,
29 sliding, earthquake, debris flows, or other geological events or the runoff from such events, are
30 not suited to siting commercial, residential or industrial development consistent with public
31 health or safety concerns.

32 (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.360)

Commented [RM10]: This definition is taken from an Ecology guidance document written for wetlands (See notes 1 and 2). It will not appear to streams and other critical areas. The County should clarify if that is the intent. Additionally, this ignores non-protective input functions provided by buffers such as the provision of wood, shade, detrital input, etc. that can, in many cases, pass through the significant development. to streams and wetland occur on the other side of a road and can pass over the road, trail, etc. Though the proposed definition might follow that used by Ecology, the literal use of this definition will result in long term impacts to wood and detrital input and litter fall into streams and wetlands as the potential exists for any vegetation on the landward side of a road to be considered disconnected and thus not considered in the buffer. The same applies to shading. There are many areas where roads follow streams and wetlands. Any report that states a buffer is functional disconnected should look at each buffer function, such as wood recruitment, shading, detrital input etc. and document why those functions can not reach the critical areas. For example, a road between a stream and trees is much different situation than if a building was between stream and trees.

Notes:

- 1.. Page 24. Publication 22-06-014 Wetlands Guidance for CAO Updates. *"In some cases, regulatory buffers include areas that are functionally disconnected from the wetland. This means that existing, legally established development blocks the protective measures that a buffer provides and increasing the buffer on the far side of the development would add no protective benefit. A local CAO should anticipate these situations and provide clear direction on how to address them. The most effective provisions provide specific criteria to reduce uncertainty about how to determine whether a given area is functionally disconnected."*
2. Page A-11. Publication 22-06-014 Wetlands Guidance for CAO Updates *"Functionally Disconnected Buffer Area. Buffers may exclude areas that are functionally and effectively disconnected from the wetland by an existing public or private road or legally established development, as determined by the [Administrator]. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer."*

1 | **19.150.360 Geologist.**

2 "Geologist" means a person who is licensed in the state of Washington and meets all experience
3 and training requirements in accordance with Chapter [308-15](#) WAC, as now or hereafter
4 amended.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.365)

6 | **19.150.365 Geotechnical engineer.**

7 "Geotechnical engineer" means a practicing geotechnical/civil engineer licensed as a
8 professional civil engineer with the state of Washington, with professional training and
9 experience in geotechnical engineering, including at least four years' professional experience in
10 evaluating geologically hazardous areas.

11 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.370)

12 | **19.150.370 Geotechnical report and geological report.**

13 "Geotechnical report" and "geological report" mean a study of potential site development
14 impacts related to retention of natural vegetation, soil characteristics, geology, drainage,
15 groundwater recharge and discharge, and engineering recommendations related to slope and
16 structural stability. The geotechnical report shall be prepared by or in conjunction with a
17 licensed geotechnical engineer meeting the minimum qualifications as defined by this title.
18 Geological reports may contain the above information with the exception of engineering
19 recommendations, and may be prepared by a geologist (see Chapter [19.700](#), Special Reports,
20 for minimum qualifications).

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.375)

22 | **19.150.375 Grading (construction).**

23 "Grading" means any excavating, filling, grubbing, recontouring or mechanical removal of earth
24 materials on the surface layer or any combination thereof.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.380)

26 | **19.150.380 Grubbing.**

27 "Grubbing" means the removal of vegetative matter from underground, such as sod, stumps,
28 roots, buried logs, or other debris, and includes the incidental removal of topsoil to a depth not
29 exceeding twelve inches.

30 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.390)

1 | **19.150.385 Groundwater.**

2 "Groundwater" means water that exists beneath the land surface or beneath the bed of any
3 stream, lake or reservoir, or other body of surface water, regardless of the geological formation
4 or structure in which such water stands or flows, percolates or otherwise moves.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.395)

6 | **19.150.390 Habitat management plan.**

7 "Habitat management plan" means a report prepared by a professional wildlife biologist or
8 fisheries biologist that discusses and evaluates ~~critical~~ fish and wildlife habitat functions and
9 evaluates the measures necessary to maintain, enhance and improve habitat conservation on a
10 proposed development site and to mitigate the proposed developments direct and indirect
11 offsite impacts to ensure No Net Loss.

Commented [RM11]: Critical fish and wildlife habitat is not defined in this document and if there is an implicit reference to ESA critical habitat, then the HMP can ignore many species.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.400)

13 | **19.150.395 Habitats of local importance.**

14 "Habitats of local importance" are designated fish and wildlife habitat conservation areas that
15 are found to be locally important by the county.

16 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.405)

17 | **19.150.400 Hearing examiner.**

18 "Hearing examiner" means a person appointed to hear or review certain land use decisions
19 pursuant to RCW [36.70.970](#) and Chapter [2.10](#).

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.415)

21 | **19.150.411 Hydraulic Project.**

22 "Hydraulic Project" means construction or other work activities conducted in or near state
23 waters that will "use, divert, obstruct, or change the natural flow or bed of any of the salt or
24 fresh waters of the state."

25 | **19.150.405 Hydric soils.**

26 "Hydric soils" means soils which are wet long enough to periodically produce anaerobic
27 conditions, thereby influencing the growth of hydrophytic plants.

28 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.420)

1 | **19.150.410 Hydrogeologist.**

2 "Hydrogeologist" means a person who is qualified to engage in the practice of hydrogeology,
3 has met the qualifications in hydrogeology established under Chapter [18.220](#) RCW, and has
4 been issued a license in hydrogeology by the Washington State Geologist Licensing Board.

5 | **19.150.412 Impacts**

6 "Impacts" are the effects or consequences of actions and may be: (i) Direct; (ii) Indirect; or (iii)
7 Cumulative.

Commented [RM12]: From WAC 197-11-752

Commented [RM13]: From WAC 197-11-792

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.425)

9 | **19.150.415 Infiltration rate.**

10 "Infiltration rate" means a general description of how quickly or slowly water travels through a
11 particular soil type.

12 | **19.150.417 Insignificant effects.**

13
14 "Insignificant effects" relate to the size of the impact and should never reach the scale where it is possible
15 to meaningfully measure or detect a physical, biotic, and chemical changes in the critical area or buffer
16 arising from the action.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.430)

18 | **19.150.420 Landslide hazard areas.**

19 "Landslide hazard areas" means areas at risk of mass movement or the runout of mass
20 movement due to a combination of geologic, topographic, and hydrologic factors.

21 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.435)

22 | **19.150.425 Liquefaction.**

23 "Liquefaction" means a process in which a water-saturated soil, upon shaking, suddenly loses
24 strength and behaves as a fluid.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.440)

26 | **19.150.430 Low impact activities.**

27 "Low impact activities" means activities that do not require a development permit and/or not
28 expected to do not result in any alteration of hydrology or adversely impact the environment.

Commented [RM14]: The original definition is a stretch in regard to alterations or impacts. Often activities thought to be effective turned out after implementation and analysis not to be as effective as thought

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.450)

1 | **19.150.435 Mitigation.**

2 "Mitigation" means avoiding, minimizing or compensating for adverse critical area impacts.
3 Mitigation includes the following specific categories:

- 4 A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- 5 B. Minimizing impacts by limiting the degree or magnitude of the action and its
6 implementation, by using appropriate technology, or by taking affirmative steps to avoid or
7 reduce impacts;
- 8 C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- 9 D. Reducing or eliminating the impact over time by preservation and maintenance operations
10 during the life of the action;
- 11 E. Compensating for the impact by replacing, enhancing, or providing substitute resources or
12 environments: and/or
- 13 F. Monitoring the impact and taking appropriate corrective measures.

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.455)

15 | **19.150.436 Monitoring.**

16 "Monitoring" means evaluating the impacts of development proposals over time on the
17 biological, hydrological, and geological elements of critical area ecosystem functions and
18 processes, and/or assessing the effectiveness of required mitigation measures through the
19 collection and analysis of data by various methods for the purpose of understanding and
20 documenting changes in natural ecosystems and features compared to baseline or pre-project
21 conditions and/or reference sites. An important objective of monitoring mitigation projects is to
22 verify the impact of the project on the environment predicted in submitted/approved mitigation
23 plans. Monitoring also includes gathering baseline data.

24 | **19.150.440 Native vegetation.**

25 "Native vegetation" means vegetation indigenous to the Puget Sound coastal lowlands.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.470)

27 | **19.150.445 Normal maintenance.**

28 "Normal maintenance" means those usual acts to prevent a decline, lapse or cessation from a
29 lawfully established condition. Normal maintenance includes removing debris from and cutting

Commented [RM15]: The County also needs to establish a monitoring program for of its development regulations and the cumulative impacts of permit decisions and conditions.

WAC 197-11-238 SEPA/GMA integration monitoring states the following. "Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment. If a monitoring process is developed, it should be established at the time information on existing conditions is developed. Annual or periodic reports summarizing the data and documenting trends are encouraged."

1 or manual removal of vegetation in crossing and bridge areas. Normal maintenance does not
2 include:

3 A. Use of fertilizer or pesticide application in wetlands, fish and wildlife habitat conservation
4 areas, or their buffers;

5 B. Redigging ditches in wetlands or their buffers to expand the depth and width beyond the
6 original ditch dimensions;

7 C. Redigging existing drainage ditches in order to drain wetlands on lands not classified as
8 existing and ongoing agriculture under Section [19.100.125](#) (Exemptions).

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.480)

10 | **19.150.450 Ordinary high water mark.**

11 “Ordinary high water mark” means that mark that will be found by examining the bed and
12 banks and ascertaining where the presence and action of waters are so common and usual,
13 and so long continued in all ordinary years, as to mark upon the soil a character distinct from
14 that of the abutting upland, in respect to vegetation as that condition existing on June 1, 1971,
15 as it may naturally change thereafter, or as it may change thereafter in accordance with permits
16 issued by a local government or the department: provided, that in any area where the ordinary
17 high water mark cannot be found, the ordinary high water mark adjoining salt water shall be
18 the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall
19 be the line of mean high water.

20 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.490)

21 | **19.150.455 Out-of-kind compensation.**

22 “Out-of-kind compensation” means to replace a critical area (e.g., wetland) with a substitute
23 critical area (e.g., wetland) whose characteristics do not closely approximate those destroyed or
24 degraded by an activity. It does not refer to replacement out-of-category such as replacement
25 of wetland loss with new stream segments.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.495)

27 | **19.150.460 Permeability.**

28 “Permeability” means the capacity of an aquifer or confining bed to transmit water.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.505)

30 | **19.150.465 Practicable alternative.**

1 “Practicable alternative” means an alternative that is available and capable of being carried out
2 after taking into consideration cost, existing technology, and logistics in light of overall project
3 purposes, and having less impacts to critical areas. A practicable alternative may include an
4 area not owned by the applicant for onsite and affected offsite which an easement has been
5 obtained in order to fulfill the basic purpose of the proposed activity or contribution of
6 materials, such as wood, to a stream habitat improvement project or program.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.520)

8 | **19.150.466 Preservation.**

9 “Preservation” means the removal of a threat to, or preventing the decline of, wetlands by an
10 action in or near those wetlands. This term includes activities commonly associated with the
11 protection and maintenance of wetlands through the implementation of appropriate legal and
12 physical mechanisms such as recording conservation easements and providing structural
13 protection like fences and signs. Preservation does not result in a gain of aquatic resource area
14 or functions but may result in a gain in functions over the long term.

Commented [RM16]: This definition only applies to wetlands, and not fish and wildlife habitat conservation areas. Is that the intent?

15 | **19.150.470 Priority habitat.**

16 “Priority habitat” means a habitat type with unique or significant value to many species and may
17 be described by a unique vegetation type or dominant plant species, by a successional stage, or
18 specific habitat features of key value to fish and wildlife. Priority habitats are established by the
19 Washington State Department of Fish and Wildlife within their priority habitats and species
20 database. An area identified and mapped as priority habitat has one or more of the following
21 attributes:

- 22 A. Comparatively high fish and wildlife density or species diversity;
- 23 B. Important fish and wildlife breeding habitat, seasonal ranges, or movement corridors;
- 24 C. Limited availability;
- 25 D. High vulnerability to habitat alteration; or
- 26 E. Unique or dependent species.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.525)

28 | **19.150.475 Priority species.**

29 “Priority species” means species requiring protective measures and/or management actions to
30 ensure their persistence at genetically viable population levels. Priority species include state-
31 listed or state-proposed endangered, threatened or sensitive species and candidate and
32 monitored species. Priority species may also include vulnerable aggregations (heron rookeries,

1 seabird concentrations, shellfish beds, etc.), or species of recreational, commercial and/or tribal
2 importance, and are established by the Washington State Department of Fish and Wildlife
3 within their Priority habitats and species database.

4 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.530)

5 | **19.150.480 Public facilities.**

6 “Public facilities” means facilities which are owned, operated or maintained by a public agency.

7 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.535)

8 | **19.150.485 Public project of significant importance.**

9 “Public project of significant importance” means a project funded by a public agency,
10 department or jurisdiction that is found to be in the best interests of the citizens of Kitsap
11 County and is so declared by the Kitsap County board of commissioners in a resolution.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.540)

13 | **19.150.490 Public right-of-way.**

14 “Public right-of-way” means any road, alley, street, avenue, arterial, bridge, highway, or other
15 publicly owned ground or place used or reserved for the free passage of vehicular and/or
16 pedestrian traffic or other services, including utilities.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.545)

18 | **19.150.495 Public utility.**

19 “Public utility” means a business or service, either governmental or having appropriate approval
20 from the state, which is engaged in regularly supplying the public with some commodity or
21 service which is of public consequence and need, such as electricity, gas, sewer and/or
22 wastewater, water, transportation or communications.

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.550)

24 | **19.150.500 Ravine.**

25 “Ravine” means a V-shaped landform, generally having little to no floodplain and normally
26 containing steep slopes, which is deeper than ten vertical feet as measured from the centerline
27 of the ravine to the top of the slope. Ravines are typically created by the wearing action of
28 streams.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.555)

1 | **19.150.505 Reasonable.**

2 | “Reasonable” means not excessive or extreme; fair.

3 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.559)

4 | **19.150.510 Reasonable alternative.**

5 | “Reasonable alternative” means an activity that could feasibly attain or approximate a
6 | proposal’s objectives, but at a lower environmental cost or decreased level of environmental
7 | degradation.

8 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.560)

9 | **19.150.515 Reasonable use.**

10 | “Reasonable use” is a legal concept articulated by federal and state courts in regulatory taking
11 | cases. Generally, reasonable use applies to a property that is deprived of all reasonable use
12 | when the owner can realize no reasonable return on the property or make any productive use
13 | of the property. Reasonable return does not mean a reduction in value of the land, or a lack of
14 | a profit on the purchase and sale of the property, but rather, where there can be no beneficial
15 | use of the property; and which is attributable to the implementation of the critical areas
16 | ordinance.

17 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.565)

18 | **19.150.520 Reasonable use exception.**

19 | “Reasonable use exception” means an exception to the standards of this title that allows for the
20 | use of a property that cannot otherwise conform to the requirements set forth in this title,
21 | including the variance criteria. (See Section [19.100.140](#) for reasonable use exception
22 | procedures.)

23 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.570)

24 | **19.150.525 Reestablishment.**

25 | “Reestablishment” means the manipulation of the physical, chemical or biological
26 | characteristics of a site with the goal of returning natural or historical functions to a former
27 | wetland. Activities could include removing fill material, plugging ditches, or breaking drain tiles.

28 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.572)

29 | **19.150.530 Refuse.**

1 “Refuse” means material placed in a critical area or its buffer without permission from any legal
2 authority. Refuse includes, but is not limited to, stumps, wood and other organic debris, as well
3 as tires, automobiles, construction and household refuse. This does not include large woody
4 debris used with an approved enhancement plan.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.575)

6 | **19.150.535 Rehabilitation.**

7 “Rehabilitation” means the manipulation of the physical, chemical or biological characteristics of
8 a site with the goal of repairing natural or historical functions and processes of a degraded
9 wetland. Activities could involve breaching a dike to reconnect wetlands to a floodplain,
10 restoring tidal influence to a wetland, or breaking drain tiles and plugging drainage ditches.
11 Rehabilitation results in a gain in wetland function but does not result in a gain in wetland
12 acres.

13 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.582)

14 | **19.150.540 Restoration.**

15 “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a
16 site with the goal of returning natural or historic functions to a former or degraded wetland. For
17 the purpose of tracking net gains in wetland acres, restoration is divided into re-establishment
18 and rehabilitation.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.585)

20 | **19.150.545 Retention facilities.**

21 “Retention facilities” means drainage facilities designed to store runoff for gradual release by
22 evaporation, plant transpiration, or infiltration into the soil. Retention facilities shall include all
23 such drainage facilities designed so that none or only a portion of the runoff entering the
24 facility will be eventually discharged as surface water. Retention facilities shall include all
25 appurtenances associated with their designed function, maintenance and security.

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.590)

27 | **19.150.550 Riparian area.**

28 “Riparian area” means a vegetated ecosystem along a water body through which energy,
29 materials, and water pass. Riparian areas characteristically have a high water table and are
30 subject to periodic flooding and influence from the adjacent water body. These systems
31 encompass wetlands, uplands, or some combination of these two landforms. They will not in all
32 cases have all the characteristics necessary for them to be also classified as wetlands. Areas

1 within one Site Potential Stream Height of the OHWM or CMZ of a stream, whichever is wider,
2 are considered riparian areas.

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.595)

4 | **19.150.555 Salmonid.**

5 "Salmonid" means a member of the fish family salmonidae. This family includes Chinook, coho,
6 chum, sockeye and pink salmon; rainbow, steelhead, cutthroat, brook, bull trout and brown
7 trout; and Dolly Varden char, kokanee, and whitefish.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.600)

9 | **19.150.560 Seismic hazard areas.**

10 "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake-
11 induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or
12 tsunamis.

13 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

14 | **19.150.565 Sensitive species (state listed).**

15 "Sensitive species" means a wildlife species, native to the state of Washington, that is vulnerable
16 or declining and is likely to become endangered or threatened in a significant portion of its
17 range within the state without cooperative management or the removal of threats. Sensitive
18 species are legally designated in WAC-220-200-100 as now or hereafter amended.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.605)

20 | **19.150.570 Shorelines.**

21 "Shorelines," as defined by Chapter [90.58](#) RCW, are regulated under Title [22](#), Shoreline Master
22 Program. Those portions of streams where the mean annual flow is twenty cubic feet per
23 second or less, lakes less than twenty acres in size, and wetlands associated with either, are
24 regulated under this title.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.610)

26 | **19.150.571 Significant development.**

27 "Significant development" means existing public or private roads, railroads, and other legally
28 established private developments such as homes or commercial structures; driveways are not
29 significant development.

Commented [RM17]: Please see comments to functionally disconnected. Many significant developments are "porous" to the transfer of buffer functions to the critical area and though an analysis of just how disconnected the buffer is will be required by the proposed County wording, the definitions are focused on wetland hydrology, which is not applicable to stream buffers

1 | **19.150.575 Significant tree.**

2 | “Significant tree” means any ~~healthy tree~~ that is at least eight inches in diameter at breast
3 | height (forty-eight inches). A tree growing with multiple stems shall be considered significant if
4 | at least one of the stems, as measured at a point six inches from where the stems digress from
5 | the main trunk, is at least four inches in diameter. Any tree that is planted to fulfill
6 | requirements of this title shall be considered significant, regardless of size or species.

7 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

8 | **19.150.580 Single-family dwelling.**

9 | “Single-family dwelling” (attached or detached) means a building or structure that is designed
10 | for occupancy by not more than one family and including accessory structures and
11 | improvements.

12 | **19.150581 Site Potential Tree Height**

13 | “Site potential tree height” (SPTH) of an area is defined as “The average maximum height of the
14 | tallest dominant trees (200 years or major) for a given age and site class.

15 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.615)

16 | **19.150.585 Special flood hazard areas.**

17 | “Special flood hazard area” means an area subject to a base or one-hundred-year flood; areas
18 | of special flood hazard are shown on a flood hazard boundary map or flood insurance rate map
19 | as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, or V.

20 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.620)

21 | **19.150.590 Species of concern.**

22 | “Species of concern” means those species that have been classified as endangered, threatened,
23 | sensitive, candidate, or monitored by the Washington State Department of Fish and Wildlife.

24 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.625)

25 | **19.150.595 State Environmental Policy Act or SEPA.**

26 | “State Environmental Policy Act” or “SEPA” means the state environmental law
27 | (Chapter [43.21C](#) RCW) and rules (Chapter [197-11](#) WAC) as implemented by
28 | Title [18](#) (Environment).

29 | (Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.630)

Commented [RM18]: Dead or dying trees provide important ecological functions as acknowledged elsewhere. Dead or dying trees should also be considered significant.

1 | **19.150.600 Streams.**

2 “Streams” mean those areas in Kitsap County where the surface water flows are sufficient to
3 produce a defined channel or bed. A defined channel or bed is an area which demonstrates
4 clear evidence of the passage of water and includes but is not limited to bedrock channels,
5 gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not
6 contain water year-round. This definition is not meant to include irrigation ditches, canals,
7 storm or surface water runoff devices or other artificial watercourses unless they are used by
8 fish or used to convey streams naturally occurring prior to construction.

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.635)

10 | **19.150.605 Swale.**

11 “Swale” means a shallow drainage conveyance with relatively gentle side slopes, generally with
12 flow depths less than one foot.

13 | **19.150.608 Temporary Impact.**

14 “Temporary Impact” means any impact to a Critical Area or its buffer or to a riparian area or
15 their functions and values which will not be completely mitigated by the time a project is
16 completed, or in the case of where project construction is broken into phases (such as phases
17 of a subdivision) when the applicable phase is completed.

18 | **19.150.608 Thermal refugia**

19 “Thermal refugia” means areas of discrete cold-water patches in rivers and streams equal to or
20 more than 4°F cooler than the ambient stream temperature. Such refugia can be provided by
21 the input of a cooler tributary, an influx of cold groundwater, or hyporheic flow (a place in the
22 streambed where groundwater and surface water mix)

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.640)

24 | **19.150.610 Threatened species (state listed).**

25 “Threatened species” means a species, native to the state of Washington that is likely to become
26 endangered in the foreseeable future throughout a significant portion of its range within the
27 state without cooperative management or the removal of threats. Threatened species are
28 legally designated in WAC [220-200-100](#), as now or hereafter amended.

29 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.645)

30 | **19.150.615 Toe of slope.**

Commented [RM19]: During the rising limb of a stream during a storm event, stream rearing fish such as juvenile salmon often move into channels that are can be dry except during storm events and are classified by some as irrigation ditches, surface water runoff devices, etc. Large numbers of juvenile coho have been sampled in the roadside drainages or other areas that would be dry except during storm events and very few in the main channel. They move out of the main channel and utilize the lower velocity areas created by the backwater off the main channels and return to the main channel as flow drops in the channels. Thus, such watercourses are used by fish and must be considered Type F. However, there are typically treated in HMPs as non-regulated streams. To address this, that reach of watercourse subject to backwater from a Type F stream during or following a storm event should be considered Type F.

Commented [RM20]: The wording “convey streams naturally occurring prior to construction” has generated discussion in the field. Some have argued that unless the artificial watercourse (such as a deepened and widened channel) follows the path of the stream that had occurred naturally, it is not a naturally occurring stream. To resolve this, the wording should make it clear regardless of the present path of the stream channel compared to that prior to construction, if a stream channel conveyed water from A to B prior to construction and does so now, then regardless of the location it is a stream, not an artificial watercourse.

Commented [RM21]: HMPs and NNL reports often refer to temporary impacts, but provide no timeline for the duration.

1 “Toe of slope” means a distinct topographic break in a slope. Where no distinct break exists, this
2 point shall be the lowermost limits of the landslide hazard area as defined and classified in
3 Chapter [19.400](#).

4 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.650)

5 | **19.150.620 Top of slope.**

6 “Top of slope” means a distinct topographic break in a slope. Where no distinct break in a slope
7 exists, this point shall be the uppermost limit of the geologically hazardous area as defined and
8 classified in Chapter [19.400](#).

9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.655)

10 | **19.150.625 Use or activity.**

11 “Use or activity” means any development proposal that includes or directly affects a critical area
12 or its buffer, or occurs within the area of review or offsite, as described in
13 Section [19.100.110](#)(G), and is not otherwise exempt under Section [19.100.125](#).

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017)

15 | **19.150.630 Utilities.**

16 “Utilities” means facilities or structures that produce or carry services consumed by the public,
17 such as electrical power, [solar power](#), gas, sewage, water, communications, oil, or publicly
18 maintained storm water facilities.

19 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.665)

20 | **19.150.635 Utility corridor.**

21 “Utility corridor” means areas set aside for or containing above- or below-ground utilities. A
22 utility corridor is usually contained within and is a portion of any right-of-way or easement.

23 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.670)

24 | **19.150.640 Wellhead protection area.**

25 “Wellhead protection area” means the surface and subsurface area surrounding a well or
26 wellfield that supplies a public water system.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.671)

28 | **19.150.645 Wetland delineation.**

1 “Wetland delineation” means the identification of wetlands and their boundaries pursuant to
2 this title, which shall be done in accordance with the approved federal wetlands delineation
3 manual and applicable regional supplements.

4 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.674)

5 | **19.150.650 Wetland determination.**

6 “Wetland determination” means an on-site determination as to whether a wetland exists on a
7 specific parcel, completed by either a wetland specialist or the department.

8 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.675)

9 | **19.150.655 Wetland edge.**

10 “Wetland edge” means the line delineating the outer edge of a wetland established in
11 Section [19.200.210](#).

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.680)

13 | **19.150.660 Wetlands.**

14 “Wetlands” means those areas that are inundated or saturated by surface or groundwater at a
15 frequency and duration sufficient to support, and that under normal circumstances do support,
16 a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands
17 generally include, but are not limited to, swamps, marshes, estuaries, bogs, and ponds less than
18 twenty acres, including their submerged aquatic beds and similar areas. Wetlands do not
19 include those artificial wetlands intentionally created from nonwetland sites, including, but not
20 limited to, irrigation and drainage ditches, grass-lined swales, canals, storm water facilities,
21 wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands
22 created after July 1, 1990, that were unintentionally created as a result of the construction of a
23 road, street, or highway. However, wetlands may include those legally established artificial
24 wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

25 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.685)

26 | **19.150.665 Wetlands, mosaic.**

27 “Wetlands, mosaic” or “mosaic wetlands” means an area with a concentration of multiple small
28 wetlands, in which each patch of wetland is less than one acre; on average, patches are less
29 than one hundred feet from each other; and areas delineated as vegetated wetland are more
30 than fifty percent of the total area of the entire mosaic, including uplands and open water.

31 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.695)

1 | **19.150.670 Wetlands of regional significance.**

2 "Wetlands of regional significance" means those wetlands determined by the department, or
3 otherwise determined, to have characteristics of exceptional resource value which should be
4 afforded the highest levels of protection.

5 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.700)

6 | **19.150.675 Wetlands of statewide significance.**

7 "Wetlands of statewide significance" means those wetlands recommended by the Washington
8 State Department of Ecology (DOE) and determined by the department to have characteristics
9 of exceptional resource value which should be afforded the highest levels of protection.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.705)

11 | **19.150.680 Wetlands report.**

12 "Wetlands report" means a wetland delineation report or wetland mitigation plan consistent
13 with applicable provisions of Chapters [19.200](#) (Wetlands) and [19.700](#) (Special Reports).

14 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.710)

15 | **19.150.685 Wetlands specialist.**

16 "Wetlands specialist" means a person with experience and training in wetland issues who is
17 able to submit substantially correct reports on wetland delineations, classifications, functional
18 assessments and mitigation plans. Substantially correct is interpreted to mean that errors, if
19 any, will be minor and do not delay or affect the site plan review process. Qualifications of a
20 wetlands specialist include:

21 A. Certification as a professional wetland scientist (PWS) or wetland professional in training
22 (WPIT) through the Society of Wetland Scientists;

23 B. A Bachelor of Science degree in the biological sciences from an accredited institution and
24 two years of professional field experience; or

25 C. Five or more years professional experience as a practicing wetlands biologist with a
26 minimum three years professional experience delineating wetlands.

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.715)

28 | **19.150.690 Wildlife biologist.**

1 "Wildlife biologist" means a person with experience and training within the last ten years in the
2 principles of wildlife management and with practical knowledge in the habits, distribution and
3 environmental management of wildlife. Qualifications include:

4 A. Certification as professional wildlife biologist through the Wildlife Society; or

5 B. Bachelor of Science or Bachelor of Arts degree in wildlife management, wildlife biology,
6 ecology, zoology, or a related field from an accredited institution and two years of professional
7 field experience; or

8 C. Five or more years of experience as a practicing wildlife biologist with a minimum of three
9 years of practical field experience.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 17 (part), 2005. Formerly 19.150.720)

11

Chapter 19.300

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Commented [RM1]: The County's proposed changes improve the protection of FHWC over the existing CAO, but additional changes are required to comply with the intent of special consideration towards anadromous fish.

Sections:

[19.300.305 Purpose.](#)

[19.300.310 Fish and wildlife habitat conservation area categories.](#)

[19.300.315 Development standards.](#)

19.300.305 Purpose.

This chapter applies to all uses within or adjacent to fish and wildlife habitat conservation areas, defined in Section [19.150.315](#) except those identified as exempt in Section [19.100.125](#). The intent of this chapter is to identify fish and wildlife habitat conservation areas and establish habitat protection procedures and mitigation measures designed to achieve no net loss of critical area functions and values and to maintain viable fish and wildlife populations and and increase habitat for depressed populations habitat over the long term. Further, it is also the intent of this chapter to:

Commented [RM2]: Ties into the County proposed paragraph E.

A. Preserve natural flood control, storm water storage, and drainage or stream flow patterns and hydroperiod, and natural channel conditions and processes;

B. Prevent turbidity and pollution, control siltation, protect nutrient reserves, and maintain water flows and quality for anadromous and resident fish, marine shellfish and forage fish;

C. Encourage nonregulatory methods of habitat retention whenever practical, through mechanisms such as education and the open space tax program; and

D. Avoid or minimize human and wildlife conflicts through planning and implementation of wildlife corridors where feasible.

E. Retain and restore riparian buffers to the maximum extent practicable to preserve functions and values and increase functions and values over time.

19.300.310 Fish and wildlife habitat conservation area categories.

Commented [RM3]: The terms "Fish and Wildlife Conservation Areas" and "Critical Fish and Wildlife Conservation Areas Habitat" are used. If there is a difference between the two, that needs to be clarified, particularly as critical is used in regard to ESA designate critical habitat.

A. General. Fish and wildlife habitat conservation areas are typically identified by known locations of specific species (such as a nest or den) or by habitat areas or both and may occur on both public and private lands.

1 B. Classification and Designation. The following categories shall be used in classifying and
 2 designating fish and wildlife habitat conservation areas:

3 1. Streams. All streams which meet the criteria for Type F, Np or Ns waters as set forth in
 4 WAC [222-16-030](#) of the Washington Department of Natural Resources (DNR) Water Typing
 5 System, as now or hereafter amended, and Table 19.300.310 (see also Chapter [19.800](#),
 6 Appendix B). Type S waters are regulated through the shoreline master program (Title [22](#)).
 7 The DNR stream maps should not be the only source for identifying regulated areas or
 8 establishing buffers. Other modeled or field-verified stream type maps should also be
 9 used, and stream conditions, identification of flow alterations, and location of fish
 10 passage barriers shall be identified through a site-specific field visit. Field verification of all
 11 intermittent or non-fish-bearing streams should occur during the wet-season months of
 12 October to March if feasible, or as determined by the department. If a Special Report
 13 downgrades a stream type of a mapped stream, the Special Report shall include the
 14 reason for the downgrade including providing the stream survey information collected in
 15 accordance with Board Manual. If the Special Report describes streams that are not
 16 mapped, the stream type assigned in the Special Report shall include the reason for
 17 assigning that type and included the stream survey information collected in accordance
 18 with the Board Manual. Affected Tribes will be invited to participate in the field
 19 verifications and can request stream typing visit to confirm previous field verifications.
 20 Where the applicant has provided a map of a stream or a typing, the department may
 21 verify the stream location and type at the cost of the applicant.

Commented [RM4]: Many stream type reports provide no information if the information was collected in accordance with the WACs. WAC 222-16-030 Water typing system states: "(f) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps (see board manual section 23)."

Table 19.300.310
 DNR Water Typing System

Water Type	
Current DNR Water Typing	Previous DNR Water Typing
Type S	Type 1
Type F	Type 2 and 3
Type Np	Type 4
Type Ns	Type 5

22

23 2. Lakes Less Than Twenty Acres in Surface Area. Those lakes which meet the criteria for
 24 Type F, Np, and Ns waters as set forth in WAC [222-16-030](#), as now or hereafter amended.
 25 This includes lakes and ponds less than twenty acres in surface area and their submerged
 26 aquatic beds, and lakes and ponds planted with game fish by a governmental or tribal
 27 authority.

3. Type O (“Other”). There exist isolated streams in the County that have no surface connection to Type S, F, or N waters, are non-fish-bearing, but infiltrate entirely and are critical to downstream flows and overall watershed health. In addition to the DNR stream types above, a Type O stream classification shall be included as Fish and Wildlife Habitat Conservation Areas when verified on-site by a qualified habitat biologist.

43. Wildlife Habitat Conservation Areas.

a. Class I Wildlife Habitat Conservation Areas.

i. Habitats recognized by federal, tribal, or state agencies for federal and/or state-listed endangered, threatened and sensitive species documented in maps or databases available to Kitsap County, including but not limited to the database on priority habitats and species provided by the Washington Department of Fish and Wildlife and the Washington Department of Natural Resources Natural Heritage Program;

ii. Areas targeted for preservation or restoration by the federal, tribal, state and/or local government which provide fish and wildlife habitat benefits, including but not limited to important waterfowl areas identified by the U.S. Fish and Wildlife Service and WDFW wildlife areas; or

iii. Areas that contain habitats and species of local importance have not been identified at this time, and may be identified at a later date through a public process when information necessitating such identification is made known.

iv. Areas identified by federal, tribal, state and/or local government that provide fish and wildlife habitat benefits.

v. Areas within one (1) SPTH of a stream or its CMZ

b. Class II Wildlife Habitat Conservation Areas. Habitats for state-listed candidate and monitored species documented in maps or databases available to Kitsap County and which, if altered, may reduce the likelihood that the species will maintain a viable population and reproduce over the long term.

Commented [RM5]: This is a welcome addition as this streams are ecological important. However, additional information as needed as to what constitutes a Type O stream. Even given the guidance for what is presumed a Type F stream in the absence of document fish presence, some consultants routinely classify Type F streams as Np or Ns. The problem of misclassification can be even more pronounced here.

Additionally, the wording “non-fish-bearing, but infiltrate entirely and are critical to downstream flows and overall watershed health” can be interpreted several ways depending upon how one reads this sentence. Is the phrase “and are critical to downstream flows and overall watershed health” to be read that a stream that entirely infiltrates before it connects with a Type S, F, or N waters is only a Type “O” if it is “critical to downstream flows and overall watershed health”. Or is the wording more of a whereas about the importance of these streams. The same concern applies to the wording “critical to downstream flows”. This needs to be clarified.

Given the wording here, based upon some HMP reviewed by the Tribe, a consultant could simply say the stream is not a Type “O” it is not critical to downstream flows or overall watershed health without any quantitative data to support that statement.

19.300.315 Development standards.

Activities within a designated fish and wildlife habitat conservation area and with its buffer are subject to the regulatory provisions of this chapter and shall comply with the performance standards outlined in this chapter as well as the mitigation sequencing requirements contained within Section 19.100.155.D.

- 1 A. Buffers and Building Setbacks.
- 2 1. Buffers. Buffers shall remain undisturbed natural vegetation areas except where the
- 3 buffer can be enhanced to improve its functional attributes. Buffers shall be maintained
- 4 along the perimeter of fish and wildlife habitat conservation areas, as listed in Table
- 5 19.300.315. Refuse, fill, yard-waste or other debris shall not be placed in buffers.

Table 19.300.315
Fish and Wildlife Habitat Conservation Area Development Standards

Streams				
Water Type	Buffer Width	UGA Alternative Buffer Width*	Minimum Building Setback	Other Development Standards
S As defined and regulated in Title 22 (SMP)	See Title 22 (SMP)	NA	See Title 22 (SMP)	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologic Hazardous Areas). Where such features occur on streams, the more restrictive buffer or building setback shall apply.
F	200 150 feet	150 feet	15 feet beyond buffer	
Np	100 50 feet	75 feet	15 feet beyond buffer	
Ns	100 50 feet	75 feet	15 feet beyond buffer	
O	100 feet	75 feet	15 feet beyond buffer	
Lakes less than 20 acres	100 feet		15 feet beyond buffer	<u>Where lakes have associated wetlands, a wetland delineation and rating may be required in accordance with KCC 19.200. The greater of buffers shall apply.</u>
Wildlife Habitat Conservation Areas				

Commented [RM6]: The recent BAS report to the County for wetlands states "Reducing buffer area in circumstances where buffers are already degraded will result in a high-risk approach to protecting wetland function", and the same applies to streams. The County should explain the scientific rationale why streams in the UGA do not need the same buffers as those outside the UGA.

Class I		Buffer widths and setbacks will be determined through a mandatory habitat management plan (HMP). In the case of bald eagles, a HMP will not be required, but additional state and federal permits and/or timing considerations for construction may be required to ensure compliance with all federal laws, including the federal Bald and Golden Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat.
Class II		Site-specific conditions will determine the need for the preparation of a HMP.

1 ** See 19.300.315(A)(3) for criteria.*

2 2. Buffer Measurement. Distances shall be measured from the ordinary high water mark
 3 (OHM) or from the top of the bank where the OHM cannot be identified. Buffer widths
 4 shall be measured from the edge of the Channel Migration Zone, where applicable. The
 5 buffer width shall be increased to include streamside wetlands, which provide overflow
 6 storage for storm waters, feed water back to the stream during low flows or provide
 7 shelter and food for fish. In braided channels, the ordinary high water mark or top of
 8 bank shall include the entire stream feature.

9 Buffers shall be retained in their natural condition. It is acceptable, however, to enhance
 10 the buffer by planting indigenous vegetation, suitable for that site, or by removal of
 11 invasive species, if prior approval is obtained by the department as approved by the
 12 department. Alteration of buffer areas and building setbacks may be allowed for
 13 development authorized by Section 19.100.140 (Reasonable use exception), 19.100.125
 14 (Exemptions), 19.100.130 (Standards for existing development) or 19.100.135 (Variances).
 15 The buffer width shall be increased to include streamside wetlands, which provide
 16 overflow storage for storm waters, feed water back to the stream during low flows or
 17 provide shelter and food for fish. In braided channels, the ordinary high water mark or
 18 top of bank shall include the entire stream feature.

19 3. UGA Alternative Buffer Widths. In limited circumstances as described in this subsection,
 20 the alternative buffer widths in Table 19.300.315(A) may be used as the starting, standard
 21 buffer width for the proposed development without first having to undergo a formal
 22 buffer reduction process as described in subsection 19.300.315(A)(4) below. In these
 23 cases, any necessary buffer decreases will use the alternative buffer width as the starting,
 24 standard buffer width. The use of UGA Alternative Buffer Widths will not be allowed
 25 without a Habitat Management Plan from a qualified habitat biologist proving that all of
 26 the conditions in this subsection are met.

27 a. For multi-family, restoration or redevelopment within Urban Growth Areas,
 28 the Alternative Buffer Widths may be utilized when:

- 29 i. The existing buffer has function-limited vegetation or
 30 predominantly invasive vegetation;
- 31 ii. The proposal provides a HMP which demonstrates greater
 32 riparian function will be provided than currently exists;

Commented [RM7]: The recent BAS report to the County for wetlands states "Reducing buffer area in circumstances where buffers are already degraded will result in a high-risk approach to protecting wetland function", and the same applies to streams. The County should explain the scientific rationale why streams in the UGA do not need the same buffers as those outside the UGA.

Scientific rationale is different from a policy decision to reduce the buffers.

Commented [RM8]: This is a continuation of the thought processes used by the County for buffer averaging and administrative reduction that have impacted buffers throughout the County. Some may call it being rewarded for bad conditions.

- iii. The proposal will not significantly increase the threat of erosion, flooding, slope stability or other hazards on the site or on adjacent properties; and
- iv. The current buffer conditions are not the result of a willful code violation.

b. For use of the Alternative Buffer Widths, restoration projects are those actions that manipulate the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions. Restoration requires more than vegetative buffer enhancement and can include, but is not limited to, daylighting of a piped stream, re-meandering of a channelized stream, or re-establishment of a habitat corridor through removal of existing barriers. The Director shall determine, in consultation with affected agencies and tribes as necessary, whether a restoration project will qualify for the Alternative Buffer Width.

c. For use of the Alternative Buffer widths, redevelopment projects are limited to changes in uses or replacement of structures that:

- i. Result in no increases in impervious surface within the Alternative Buffer width;
- ii. Result in no new structures closer to the critical area than existing structures; and
- iii. Meet the Flood Hazard Area development standards in Title 15 KCC.

43. Provisions for Decreasing Buffer.

a. Consistent with this section, the department may reduce the standard buffer width by up to twenty-five percent in a Type I decision under Chapter 21.04. Reductions of greater than twenty-five percent but less than or equal to fifty percent for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800, Appendix F). Buffer reductions for single-family residences greater than fifty percent, and reductions greater than twenty-five percent for all other uses shall be pursuant to a Type III variance under Section 19.100.135, as appropriate. In all cases, mitigation sequencing shall be demonstrated per Chapter 19.100.155.D. When applicable, the order of sequence for buffer reductions shall be as follows:

- i. Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement;
- ii. Type I administrative critical area buffer reduction;
- ii. Type II administrative critical area buffer reduction;

Commented [RM9]: Though no new structures might be closer than existing structures, this wording does not preclude lateral expansion, an expansion that would impact the buffer.

Commented [RM10]: Many projects occurring on properties with critical areas do not maintain the buffers identified to protect functions due to variances, buffer reductions, fill permits or reasonable use exceptions. The Tribe recommends developing and implementing a rigorous monitoring plan that tracks, maps, and evaluates the effectiveness or impacts of all permitted CAO deviations. Having consultants included KMZ or shapefiles with the Special Reports will aid this.

As noted in the "WDFW Riparian Management Guidance Technical Memo – Prepared by DCG/Watershed Dated December 8, 2023" included in the environmental information prepared for the CAO update, at the distance from a stream increases, there is a typically a reduction in shade, litter fall, and root recruitment provided to the stream channel. However, the curves shown in Figure 1 are derived from the 30 year old FEMAT report. The Technical Memo and the BAS behind it relies greatly upon " (Volume 1) (Quinn et al. 2020). Quinn et al. includes Figure 1 and describe the figure as follows: "FEMAT's (1993) curves are conceptual models describing how four key riparian ecosystem functions change with distance from the stream channel". Since the preparation of this curve, a considerable body of additional literature on function versus distance from the stream channel has been published. That additional information suggests some of the conceptual curves shown in FEMAT graph are less linear than presented. Beyond reliance upon replacement ratios, which are not based upon a quantitative analysis of function vs distance, the CAO does not require a quantitative analysis of whether that portion of the averaged buffer more distant from the critical area provides the same function and values as the impact part close to the critical area.

Commented [RM11]: The Tribe does not agree with administrative buffer averaging. See later comments about averaging.

1 iii. Type III quasi-judicial critical area variance.

2 b. When proposing buffer averaging, the following shall be met:

3 i. The applicant submits a habitat management plan (HMP) that meets
4 the requirements as described in Chapter 19.700 (Special Reports),
5 including demonstration of mitigation sequencing as described in
6 19.100.155.D and that such averaging can clearly provide as great or
7 greater functions and values as would be provided under the standard
8 buffer, and that the decrease in buffer width is minimized by limiting the
9 degree or magnitude of the regulated activity.

10 ii. The HMP is reviewed and DCD, in consultation ~~as necessary~~ with the
11 Washington State Department of Fish and Wildlife and affected tribes,
12 determines that the averaging is the minimum necessary for the
13 permitted use;

14 iii. The minimum buffer width at any point will not be less than 75% of
15 the standard buffer width;

16 iv. The conditions are sufficient to assure no net loss of ecological
17 functions of the fish and wildlife habitat conservation area after a period
18 of five years of mitigation/enhancement activities. The department shall
19 track the location of such mitigation and enhancement areas to reduce
20 the potential for site specific or cumulative significant impacts to such
21 areas as ecological functions are maturing.; and

22 v. The area added to the buffer as part of averaging shall connect to
23 existing habitat corridors whenever feasible.

24 c. When proposing a Type I or II administrative buffer reduction the following
25 shall be met:

26 i. The applicant demonstrates that the criteria in Section 19.100.135 (A)
27 are met and buffer averaging under Section 19.300.315(A)(5)(b) is not
28 feasible;

29 ii. The applicant submits a habitat management plan (HMP) that meets
30 the requirements as described in Chapter 19.700 (Special Reports),
31 including demonstration of avoidance and minimization (mitigation
32 sequencing);

33 iii. The HMP is reviewed and DCD, in consultation as necessary with the
34 Washington State Department of Fish and Wildlife and affected tribes.

Commented [RM12]: As noted in the “WDFW Riparian Management Guidance Technical Memo – Prepared by DCG/Watershed Dated December 8, 2023” included in the environmental information prepared for the CAO update, at the distance from a stream increases, there is a typically a reduction in shade, litter fall, and root recruitment provided to the stream channel. However, the curves shown in Figure 1 are derived from the 30 year old FEMAT report. The Technical Memo and the BAS behind it relies greatly upon “ (Volume 1) (Quinn et al. 2020). Quinn et al. includes Figure 1 and describe the figure as follows: “FEMAT’s (1993) curves are conceptual models describing how four key riparian ecosystem functions change with distance from the stream channel”. Since the preparation of this curve, a considerable body of additional literature on function versus distance from the stream channel has been published. That additional information suggests some of the conceptual curves shown in FEMAT graph are less linear than presented. Beyond reliance upon replacement ratios, which are not based upon a quantitative analysis of function vs distance, the CAO does not require a quantitative analysis of whether that portion of the averaged buffer more distant from the critical area provides the same function and values as the impact part close to the critical area.

1 determines that a reduction is the minimum necessary for the permitted
2 use; and

3 iv. The conditions are sufficient to assure no net loss of ecological
4 functions of the affected fish and wildlife habitat conservation area.

5 d. Protection of significant trees. In all cases of buffer reduction or averaging,
6 significant trees within the standard buffer shall be identified as part of the
7 Habitat Management Plan. Any such tree that has a drip line extending beyond
8 the reduced buffer edge shall follow the tree protection requirements below:

9 i. A tree protection area shall be designed to protect each tree or tree
10 stand during site development and construction. Tree protection areas
11 may vary widely in shape, but must extend a minimum of five feet
12 beyond the existing tree canopy area along the outer edge of the dripline
13 of the tree(s), unless otherwise approved by the department;

14 ii. Tree protection areas shall be added and clearly labeled on all
15 applicable site development and construction drawings submitted to the
16 department;

17 iii. Temporary construction fencing at least thirty inches tall shall be
18 erected around the perimeter of the tree protection areas prior to the
19 initiation of any clearing or grading. The fencing shall be posted with
20 signage clearly identifying the tree protection area. The fencing shall
21 remain in place through site development and construction;

22 iv. No clearing, grading, filling or other development activities shall occur
23 within the tree protection area, except where approved in advance by the
24 department and shown on the approved plans for the proposal;

25 v. No vehicles, construction materials, fuel, or other materials shall be
26 placed in tree protection areas. Movement of any vehicles within tree
27 protection areas shall be prohibited;

28 vi. No nails, rope, cable, signs, or fencing shall be attached to any tree
29 proposed for retention in the tree protection area; and

30 vii. The department may approve the use of alternate tree protection
31 techniques if an equal or greater level of protection will be provided.

32 e. Functionally Disconnected Buffer Area. Buffer areas that are functionally
33 disconnected from a fish and wildlife habitat conservation area by significant
34 development may be excluded from buffer requirements as provided herein.

1 Significant development for purposes of this subsection means existing public or
2 private roads, railroads, and other legally established private developments such
3 as homes or commercial structures; driveways are not significant development.
4 The Director shall determine if a buffer area is functionally disconnected and
5 whether the disconnect affects all or a portion of the buffer. Where only a
6 portion of the buffer area is affected, the buffer exclusion shall be limited in
7 scope to that affected area.

8 To establish that a buffer is functionally disconnected, the applicant must
9 provide a Habitat Management Plan, meeting the requirements of chapter
10 19.700 (Special Reports), confirming the existence of a distinct break in
11 connectivity of the buffer, that there are no other hydraulic connections across
12 the significant development (e.g., culvert), and that the disconnect blocks the
13 protective measures provided by the buffer. Where a buffer area has been
14 determined to be functionally disconnected, whether in whole or in part, that
15 area may be excluded from the buffer with the following conditions:

16 i. All other applicable provisions of this chapter shall be met, including
17 demonstration of no net loss of applicable functions; and

18 ii. All Significant Trees within the fish and wildlife habitat conservation
19 buffer shall be identified and retained.

20
21 a.—The department may grant an administrative reduction to buffer widths when
22 the following are met:

23 i.—The applicant demonstrates that buffer widths cannot be met, according to
24 the variance criteria in Section 19.100.135;

25 ii.—The applicant submits a habitat management plan (HMP) that meets the
26 requirements as described in Chapter 19.700 (Special Reports);

27 iii.—The HMP is reviewed and consultation with the Washington State
28 Department of Fish and Wildlife determines that a reduction is the minimum
29 necessary for the permitted use; and

30 iv.—The conditions are sufficient to assure no net loss of ecological functions of
31 the affected fish and wildlife habitat conservation area.

32 b.—The department may reduce the buffer width by up to twenty-five percent
33 in a Type I decision under Chapter 21.04. Reductions of greater than twenty-five
34 percent but less than fifty percent for single-family dwellings will be a Type II
35 decision and require notification (see Chapter 19.800, Appendix F). Buffer

Commented [RM13]: See comments to 19.150.341 re this issue.

Commented [RM14]: This can result in the areas be converted into what would look like a treed park.

1 reductions for single-family residences greater than fifty percent, and
2 reductions greater than twenty-five percent for all other uses shall be pursuant
3 to a variance under Section 19.100.135. When applicable, the order of sequence
4 for buffer reductions shall be as follows:

5 i.—Use of buffer averaging, maintaining one hundred percent of the buffer area
6 under the standard buffer requirement;

7 ii.—Reduction of the overall buffer area by no more than twenty-five percent of
8 the area required under the standard buffer requirement;

9 iii.—Enhancement of existing degraded buffer area and replanting of the
10 disturbed buffer area;

11 iv.—Use of alternative on-site wastewater systems in order to minimize site
12 clearing;

13 v.—Infiltration of storm water where soils permit; and

14 vi.—Retention of native vegetation on other portions of the site in order to
15 offset habitat loss from buffer reduction.

16 **54.** Provision for Increasing Buffer. The department ~~may~~ shall increase the buffer
17 width ~~whenever a development proposal has known locations of endangered or~~
18 ~~threatened species for which a habitat management plan indicates a larger buffer is~~
19 ~~necessary to protect habitat values for such species, or when the buffer is located within~~
20 ~~a landslide or erosion hazard area, beyond the standard buffer width when greater~~
21 ~~protection is necessary based on specific site conditions and project features, to~~
22 ~~preserve riparian functions and values and protected species. A determination that a~~
23 ~~larger protection area is needed shall be based on the following factors:~~

24 a. The development proposal has known locations of endangered or threatened
25 species for which a habitat management plan indicates a larger buffer is
26 necessary to protect habitat values for such species; or

27 **b5.** Buffers for Streams in Ravines. For streams in ravines with ravine sides ten
28 feet or greater in height, the buffer width shall be the minimum buffer required
29 for the stream type, or a buffer width that extends twenty-five feet beyond the
30 top of the slope, whichever is greater. Building setbacks for geologically
31 hazardous areas may still apply (Chapter 19.400), if determined necessary.

32 **c. 6.** Channel Migration Zones. In areas where channel migration zones can be
33 identified the buffer distance shall be measured from the edge of the channel
34 migration zone.). Building setbacks for geologically hazardous areas may also
35 apply (Chapter 19.400), if determined necessary.

Commented [RM15]: The County should explain the scientific rationale restricting increases in buffer widths to ESA listed species? Non-ESA listed salmonid species have the same habitat as ESA listed species.

1 d. potential runoff zones from mass wasting.

2 ~~6.7. Protection of Buffers. Buffer areas shall be protected as required by the~~
3 ~~department. The buffer shall be identified on a site plan and on site as required by the~~
4 ~~department and this chapter. The buffer shall be identified on a site plan and on site as~~
5 ~~required by the department and this chapter. Refuse shall not be placed in buffers.~~

6 a. Fish and wildlife habitat conservation area buffers shall be temporarily
7 fenced or otherwise suitably marked, as required by the department, between
8 the area where the construction activity occurs and the buffer. Fences shall be
9 made of a durable protective barrier and shall be highly visible. Silt fences and
10 plastic construction fences may be used to prevent encroachment on fish and
11 wildlife habitat conservation areas or their buffers by construction. Temporary
12 fencing shall be removed after the site work has been completed and the site is
13 fully stabilized per county approval.

14 b. The department may shall require that permanent signs and/or fencing be
15 placed on the common boundary between a fish and wildlife habitat
16 conservation area buffer and the adjacent land of the project site. Such signs will
17 identify the fish and wildlife habitat conservation area buffer. The department
18 may approve an alternate method of fish and wildlife habitat conservation area
19 and buffer identification, if it provides adequate protection to the fish and
20 wildlife habitat conservation area and buffer.

21 7.8. Building or Impervious Surface Setback Lines. A building or impervious surface
22 setback line of fifteen feet, or as determined by a HMP, is required from the edge of any
23 fish and wildlife habitat conservation area buffer. Minor structural or impervious surface
24 intrusions into the areas of the setback may be permitted if the department determines
25 that such intrusions will not adversely impact the fish and wildlife habitat conservation
26 area. The setback shall be identified on a site plan.

27 8. Protection of Riparian Areas . Riparian areas shall be protected as required by the
28 department. The riparian area shall be identified on a site plan and on site as required by
29 the department and this chapter and shall not be used as active recreational open space,
30 passive open space, or recreational open space or if designated as "permanent open
31 space" be used for forestry, passive recreational or access use.

32 9. Open Space tracts do not include roads that access development. The area calculation
33 of the roads that cross through the open space tract are to be included in the developed
34 percentage of the site, not the open space percentage.

35 8. Piped watercourses streams. It is recognized that within the urban environment, many
36 historical streams have been substantially modified to accommodate development.
37 Development along an underground piped watercourse may only require a 15-foot

1 setback on either side (unless otherwise required or otherwise recorded), of the
2 centerline of the piped watercourse when demonstrated that:

3 a. The segment or immediately adjacent stream segments are not feasible for
4 future restoration;

5 b. The piped stream is currently of adequate size to accommodate flow capacity
6 within the watershed; and

7 c. Riparian functions are still enhanced to the greatest extent possible (rain
8 gardens, native vegetation enhancement, etc.).

9 B. Class I Wildlife Habitat Conservation Areas Development Standards. All development
10 permits within known Class I wildlife habitat conservation areas or discharges stormwater via
11 surface connection to a stream which is Type F or becomes Type F, or within one SPTH of such
12 areas will require the submittal and approval of a habitat management plan (HMP) as specified
13 in Chapter 19.700 (Special Reports). In the case of bald eagles, a HMP will not be required, but
14 additional state and federal permits and/or timing considerations for construction may be
15 required to ensure compliance with all federal laws, including the Federal Bald and Golden
16 Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat. In the case of
17 listed fish species, a HMP shall be required only if a buffer reduction is proposed under the
18 provisions of Section 19.300.315(A). The HMP shall consider measures to retain and protect the
19 wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious
20 surfaces, erosion control stream flows, water temperature, thermal refugia, changes in duration
21 of stream flows, date seasonal streams on or downstream of the site begin and cease (1) to
22 have intermittent flow and (2) have temporally continuous flow and the potential impact of
23 reduced groundwater recharge on these and retention of natural vegetation.

24 C. Class II Wildlife Habitat Conservation Area Development Standards. All development
25 permits within known Class II wildlife conservation areas that discharges stormwater via
26 surface connection to a stream which is Type F or becomes Type F will require the submittal of
27 a habitat management plan and otherwise may require the submittal of a habitat management
28 plan (HMP), as determined during the SEPA/critical areas review on the project. The HMP shall
29 consider measures to retain and protect the wildlife habitat and shall consider effects of land
30 use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of natural
31 vegetation.

32 D. Stream Crossings. Any private or public road expansion or construction proposed to cross
33 streams classified within this title, shall comply with the following minimum development
34 standards. All other state and local regulations regarding water crossing structures will apply,
35 and the use of the Water Crossing Design Guidelines (WDFW, 2013) or as amended, is
36 encouraged.

Commented [RM16]: There does not appear to be a mechanism for how this is determined.

Commented [RM17]: This wording overlooks the potential for increased flows due climate change.

Commented [RM18]: If the stream is piped, then there is no exchange of water, nutrient, and other materials between the stream and the non-stream area. Based on the definition of riparian, how will riparian functions be enhanced?

Commented [RM19]: For Type N streams, the proposed buffers are substantially less than those called for BAS. As the habitat value of Type F streams is linked to I inputs from Type N streams, and positive inputs will be reduced due to small buffers than required to maintain riparian function, the impact of a proposal along a Type F stream should be conducted regardless of the presence of ESA listed fish species. As pointed out earlier, there is not scientific rational for a position that a non- ESA listed salmon population differs from that of an ESA listed population.

Commented [RM20]: This is to ensure the downstream impacts noted in various stormwater manuals that require additional mitigation are considered.

1 1. Crossings shall not occur in salmonid streams unless no other feasible crossing site
2 exists. For new development proposals, if existing crossings are determined to adversely
3 impact salmon spawning, holding, overwintering, thermal refugia or passage areas, new
4 or upgraded crossings shall be relocated as determined by the Washington State
5 Department of Fish and Wildlife (WDFW) and no closer than 50 feet from an area used by
6 adults to hold for spawning.

7 2. Bridges or bottomless culverts shall be required for all Type F streams that have
8 salmonid habitat. Other alternatives may be allowed upon submittal of a habitat
9 management plan that demonstrates that other alternatives would not result in project
10 specific or cumulative significant impacts to the fish and wildlife conservation area, AND
11 shall only be allowed in areas where site conditions preclude a bridge or bottomless
12 culvert as determined appropriate through the Washington State Department of Fish and
13 Wildlife (WDFW) hydraulic project approval (HPA) process. ~~The plan must demonstrate~~
14 that salmon habitat will be replaced on a 1:1 ratio.

15 3. Bridge piers or abutments shall not be placed in either the floodway or between the
16 ordinary high water marks unless no other feasible alternative placement exists or to
17 provide mid-span footings for the purpose of increased floodplain connectivity.

18 4. Crossings shall not diminish flood carrying capacity.

19 5. Crossings shall serve multiple properties whenever possible.

20 6. Where there is no reasonable alternative to providing a culvert, the culvert shall be
21 the minimum length necessary to accommodate the permitted activity.

22 7. If the project will use an existing road crossing that does not meet WDFW- stream
23 simulation guidelines for fish passage, the crossing will be upgraded to meet those
24 guidelines.

25 8. Stream crossing shall be designed to deter the access of people and domestic pets to
26 the stream channel.

27 E. Stream Relocations. Stream relocations shall not be permitted unless for the purpose of
28 flood protection and/or fisheries restoration and only when consistent with the WDFW
29 hydraulic project approval (HPA) process and the following minimum performance standards:

30 1. The channel, bank and buffer areas shall be replanted and maintained with native
31 vegetation that replicates a natural, undisturbed riparian condition, ~~when required by a~~
32 habitat management plan; and

33 2. For those shorelands and waters designated as frequently flooded areas pursuant to
34 Chapter 19.500, a professional engineer licensed in the state of Washington shall provide

1 information demonstrating that the equivalent base flood storage volume and function
2 will be maintained.

3 3. Relocated stream channels shall be designed to meet or exceed the functions and
4 values including but not limited to spawning, rearing, hold, high flow refugia, wood
5 volume and piece count, overhead cover of the stream to be relocated.

6 F. Pesticides, Fertilizers and Herbicides. No pesticides, herbicides or fertilizers may be used in
7 fish and wildlife habitat conservation areas or their buffers, except those approved by the U.S.
8 EPA or Washington Department of Ecology for use in fish and wildlife habitat conservation area
9 environments and applied by a licensed applicator in accordance with the safe application
10 practices on the label.

11 G. Land Divisions and Land Use Permits. All proposed divisions of land and land uses
12 (subdivisions, short subdivisions, short plats, long and large lot plats, performance-based
13 developments, conditional use permits, site plan reviews, binding site plans) that include fish
14 and wildlife habitat conservation areas shall comply with the following procedures and
15 development standards:

16 1. The open water area of lakes, streams, and tidal lands shall not be used in calculating
17 minimum lot area.

18 2. Land division approvals shall be conditioned so that all required buffers are dedicated
19 as permanent open space tracts, or as an easement or covenant encumbering the buffer.
20 Such dedication, easement or covenant shall be recorded together with the land division
21 and represented on the final plat, short plat or binding site plan, and title.

22 3. In order to avoid the creation of nonconforming lots, each new lot shall contain at
23 least one building site that meets the requirements of this title, including buffer
24 requirements for habitat conservation areas. This site shall also have access and a sewage
25 disposal system location that are suitable for development and does not adversely impact
26 the fish and wildlife conservation area.

27 4. After preliminary approval and prior to final land division approval, the department
28 ~~may shall~~ require that the common boundary between a required buffer and the
29 adjacent lands be identified using geolocated permanent signs. In lieu of signs, alternative
30 methods of buffer identification may be approved when such methods are determined by
31 the department to provide adequate protection to the buffer.

32 5. In order to implement the goals and policies of this title; to accommodate innovation,
33 creativity, and design flexibility; and to achieve a level of environmental protection that
34 would not be possible by typical lot-by-lot development, the use of the performance-
35 based development process is strongly encouraged for projects within designated fish
36 and wildlife habitat conservation areas.

1 H. Agricultural Restrictions. In all development proposals that would introduce or expand
2 agricultural activities, a net loss of functions and values to the critical area shall be avoided by at
3 least one of the following methods:

- 4 1. Locate fencing no closer than the outer buffer edge; or
- 5 2. Implement a farm resource conservation and management plan agreed upon by the
6 conservation district and the applicant to protect and enhance the fish and wildlife habitat
7 conservation area.

8 I. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related
9 facilities, such as benches, interpretive centers, and viewing platforms, may be allowed in fish
10 and wildlife habitat conservation areas or their buffers pursuant to the following standards:

- 11 1. Trails and related facilities shall, to the extent feasible, be placed on existing road
12 grades, utility corridors, or other such previously disturbed areas.
- 13 2. Trails and related facilities shall be planned to minimize removal of trees (current and
14 future (such as danger trees)), shrubs, snags and important wildlife habitat.
- 15 3. Viewing platforms, interpretive centers, benches, and picnic areas, and access to
16 them, shall be designed and located to minimize disturbance of wildlife habitat and/or
17 critical characteristics of the affected conservation area. Platforms shall be limited to one
18 hundred square feet in size, unless demonstrated through a habitat management plan
19 that a larger structure will not result in a net loss of habitat and critical functions.
- 20 4. Trails and related facilities shall generally be located outside required buffers. Where
21 trails are permitted within buffers they shall be located in the outer twenty-five percent of
22 the buffer, except where stream crossings or for direct access to viewing areas have been
23 approved by the department provided such stream crossing and viewing areas shall not
24 be located within 50 feet of salmonid spawning or holding areas and shall be designed to
25 minimize the potential for domestic pets to enter the stream channel. Where trails and
26 related facilities are proposed within a buffer, mitigation sequencing and an alternatives
27 analysis shall be documented in a habitat management plan and get concurrence from
28 affected Tribes and WDFW/DOE.
- 29 5. Trails shall generally be limited to pedestrian use unless other more intensive uses,
30 such as bike or horse trails have been specifically allowed and mitigation has been
31 provided. Trail width shall not exceed five feet unless there is demonstrated need, subject
32 to review and approval by the department. Trails shall be constructed with pervious
33 materials except where determined infeasible.
- 34 6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap
35 County Non-Motorized Facility Plan (and associated recognized community trails) and as

1 amended, and provided design considerations are made to minimize impacts to critical
2 areas and buffers shall not be subject to the platform, trail width, or trail material
3 limitations above. Such trails and facilities shall be approved through special use review
4 (Section [19.100.145](#)), unless any underlying permit requires a public hearing.

5 J. Utilities. Placement of utilities within designated fish and wildlife habitat conservation areas
6 and buffers may be allowed pursuant to the following standards:

7 1. The normal and routine utility maintenance or repair authorized in
8 Section [19.100.125](#) shall be allowed within designated fish and wildlife habitat
9 conservation areas, subject to best management practices.

10 2. Construction of utilities may be permitted in fish and wildlife habitat conservation
11 areas or their buffers, only when no practicable or reasonable alternative location is
12 available. Utility construction shall adhere to the development standards set forth in
13 subsections (J)(5) and (6) of this section. As required, special reports (Chapter [19.700](#)) shall
14 be reviewed and approved by the department.

15 3. Construction of sewer lines or on-site sewage systems may be permitted in fish and
16 wildlife habitat conservation areas or their buffers only when: (a) the applicant
17 demonstrates that the location is necessary to meet state or local health code
18 requirements; (b) there are no other practicable alternatives available, and
19 (c) construction meets the requirement of this chapter. Joint use of the sewer utility
20 corridor by other utilities may be allowed.

21 4. New utility corridors shall not be allowed in Class I or II fish and wildlife habitat
22 conservation areas (Section [19.300.310](#)(B) and (C)) except in those circumstances where
23 an approved HMP indicates that the utility corridor will not will not either through project
24 specific or cumulative impacts significantly impact the conservation area.

25 5. Utility corridor construction and maintenance shall protect the environment of fish
26 and wildlife habitat conservation areas and their buffers by utilizing the following
27 methods:

28 a. New utility corridors shall be aligned to avoid cutting trees greater than twelve
29 inches in diameter at breast height (four and one-half feet) measured on the uphill
30 side, unless no reasonable alternative location is available.

31 b. In order of preference, new utility corridors shall be located:

32 i. On an existing road;

33 ii. On an existing bridge;

1 iii. Placed deep enough under the culvert to allow for future culvert
2 replacement and to avoid grade barriers.

3 c. New utility corridors shall be revegetated with appropriate native vegetation at
4 not less than preconstruction vegetation densities or greater, immediately upon
5 completion of construction, or as soon thereafter as possible due to seasonal
6 growing constraints. The utility entity shall ensure that such vegetation survives.

7 d. Any additional corridor access for maintenance shall be provided at specific
8 points rather than by parallel roads, unless no reasonable alternative is available. If
9 parallel roads are necessary, they shall be the minimum width necessary for access,
10 but no greater than fifteen feet; and shall be contiguous to the location of the utility
11 corridor on the side away from the conservation area. Mitigation will be required for
12 any additional access through restoration of vegetation in disturbed areas.

13 6. Utility corridor maintenance shall include the following measures to protect the
14 environment of fish and wildlife habitat conservation areas:

15 a. Utility towers shall be painted with brush, pad or roller and shall not be
16 sandblasted or spray painted, unless appropriate containment measures are used.
17 Lead-based paints shall not be used.

18 b. No pesticides, herbicides or fertilizers may be used in fish and wildlife habitat
19 conservation areas or their buffers except those approved by the U.S. Environmental
20 Protection Agency (EPA) and Washington Department of Ecology. Where approved,
21 they must be applied by a licensed applicator in accordance with the safe application
22 practices on the label.

23 k. **Bank Stabilization.** A stream channel and bank, or shoreline, may be stabilized when
24 documented naturally occurring earth movement presents an imminent threat to existing
25 primary structures (defined as requiring a building permit pursuant to Chapter [14.04](#), the Kitsap
26 County Building and Fire Code), to public improvements, to unique natural resources, to public
27 health, safety or welfare, to the only feasible access to property, or, in the case of streams,
28 when such stabilization results in the maintenance of fish and wildlife habitat, flood control for
29 the protection of primary structures and appurtenances, or improved water quality.

30 1. Channel, bank and shoreline stabilization may also be subject to the standards of
31 Titles [15](#) (Flood Hazard Areas) and [22](#) (Shoreline Master Program). Documentation of
32 earth movement and/or stability shall be provided through Section [19.700.725](#) (special
33 reports), geological and geotechnical report requirements. All new or rebuilt bulkheads
34 should be at or behind the OHW mark, which differs from MHHW. New structures
35 proposed in nearshore and littoral areas must be designed and located in a manner that
36 eliminates the need for future bank armoring. Proposed new activities that include new

Commented [RM21]: Some of this references marine shorelines so the County must ensure the wording here is consistent with the SMP.

1 bulkhead or bank armoring will require a certified engineer's report that clearly defines
2 the need for armoring before the activity can be authorized.

3 2. Where bank stabilization is determined to be necessary due to a demonstrated risk
4 supported by a report prepared by qualified professional, soft-shore protective
5 techniques shall be evaluated and may will be required over other types of bank
6 protection unless a geotechnical analysis indicates soft shore protection techniques are
7 unable to provide the required protection. Techniques include, but are not limited to,
8 gravel berms, vegetation plantings, and placement of large, woody debris (logs and
9 stumps), or recommended techniques in accordance with an approved critical area
10 assessment and the guidelines of the Washington State Integrated Streambank Protection
11 Guidelines (2003, or as amended). Special consideration shall be given to protecting the
12 functions of channel migration zones. As applicable, the reports must meet the
13 requirements of WAC 220-660-370 Shoreline stabilization in saltwater areas, WAC 220-11-
14 223 Freshwater lake bulkheads, and WAC 220-110-050 Bank Protection

15 3. Bulkheads and retaining walls may only be utilized as an engineering solution where it
16 can be demonstrated through a geotechnical report (see Section 19.700.725) that an
17 existing residential structure cannot be safely maintained without such measures, and
18 that the resulting retaining wall is the minimum length necessary to provide a stable
19 building area for the subject structure. A variance pursuant to Section 19.100.135 must be
20 obtained in all other cases. Mitigation will be required for loss of function, such as wood
21 recruitment, shading, detrital input, etc.

22 4. The department may require that bank stabilization be designed by a professional
23 engineer licensed in the state of Washington with demonstrated expertise in hydraulic
24 actions of rivers and streams, in coordination with a fisheries biologist with experience in
25 stream restoration. Bank stabilization projects may also require a Kitsap County site
26 development activity permit under Title 12 (Storm Water Drainage) or a hydraulic project
27 approval (HPA) from WDFW.

28 ~~L. Fencing and Signs. Prior to approval or issuance of permits for land divisions and new~~
29 ~~development, the department may require that the common boundary between a required~~
30 ~~buffer and the adjacent lands be identified using fencing or permanent signs. In lieu of fencing~~
31 ~~or signs, alternative methods of buffer identification may be approved when such methods are~~
32 ~~determined by the department to provide adequate protection to the buffer.~~

33 ~~L.M.~~ Forest Practice, Class IV General and Conversion Option Harvest Plans (COHPs). All timber
34 harvesting and associated development activity, such as construction of roads, shall comply
35 with the provisions of this title, and with Titles 12 (Storm Water Drainage) and 22 (Shoreline
36 Master Plan), including the maintenance of buffers, where required.

37 ~~M.N.~~ Road/Street Repair and Construction. When no other reasonable or practicable
38 alternative exists, road or street expansion or construction is allowed in fish and wildlife habitat
39 conservation areas or their buffers, subject to the following minimum development standards:

Commented [RM22]: As a source of large wood and sediment to streams and marine nearshore areas, many of the County's geologically hazardous areas perform critical ecological functions. Numerous habitat features found in stream and marine shoreline environments are formed and maintained, in part, through the addition of large wood and sediment delivered from naturally occurring landslides. When humans alter this natural disturbance regime, either by increasing or decreasing the frequency and/or magnitude of such events, it can have long term negative effects on aquatic habitats and the fish and wildlife that utilize them. Protection of the habitat forming functions of geologically hazardous areas should be called out in the purpose section of this chapter. The individual site investigations called for in the development standards of this section should include consideration of the ecological effects, particularly on aquatic environments, of any recommended protection mechanism. Such investigations should be scientifically-based, rely on BAS, and be prepared by an appropriately qualified professional (e.g. coastal geologist, hydrogeomorphologist)

- 1 1. The road or street shall serve multiple properties whenever possible;
- 2 2. Public and private roads should provide for other purposes, such as utility corridor
- 3 crossings, pedestrian or bicycle easements, viewing points, etc.;
- 4 3. The road or street construction is the minimum necessary, as required by the
- 5 department, and shall comply with the department's guidelines to provide public safety
- 6 and mitigated storm water impacts;
- 7 4. Construction time limits shall be determined in consultation with WDFW in order to
- 8 ensure habitat protection; and
- 9 5. Mitigation shall be performed in accordance with specific project mitigation
- 10 requirements.

11 N. Enhancement Activities. The following development activities shall be exempt from the

12 habitat assessment report and mitigation requirements of this section:

13 1. Development undertaken for the sole purpose of creating, restoring, or enhancing the

14 natural functions of floodplains, streams, watercourses, fish and wildlife habitat, or

15 riparian areas; provided, that:

16 a. The project complies with all other applicable federal, state, and local permit

17 requirements and regulations; and

18 b. The development activities do not include the placement of fill or the creation of

19 additional impervious surface areas.

20 2. Enhancement projects sponsored by Kitsap County, a federally recognized Tribe,

21 Washington Department of Fish and Wildlife, Kitsap County Conservation District, U.S.

22 Natural Resources Conservation Service, U.S. Fish and Wildlife Service, Washington

23 Department of Natural Resources, or other public agency approved by the Director which

24 are consistent with the County Comprehensive Plan, County floodplain management

25 plans, water quality plans, and other plans adopted by the Kitsap County Board of

26 Commissioners.

27

Commented [RM23]: While the thought process behind this wording is understandable, the need for a report increases as one moves from creating to restoring to enhancing as there become more tradeoffs between existing functions and values and what is being proposed..

Chapter 19.600 CRITICAL AQUIFER RECHARGE AREAS

Sections:

- [19.600.605 Purpose.](#)
- [19.600.610 Critical aquifer recharge area categories.](#)
- [19.600.615 Development standards.](#)
- [19.600.620 Activities with potential threat to groundwater quality.](#)

19.600.605 Purpose.

Potable water is an essential life-sustaining element for people and many other species. The majority of Kitsap County drinking water comes from groundwater supplies in aquifers. Critical aquifer recharge areas are very important to ensure the quality and quantity of shallow and deepwater aquifers. Once groundwater is contaminated, it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems. In addition, without replenishment, the amount of water for potable use can be diminished or even depleted. The intent of this chapter is thus to identify and classify aquifer recharge areas in accordance with RCW [36.70A.170](#) and address land use activities that pose a potential to directly or indirectly contaminate or otherwise threaten aquifer water quality and quantity. Additionally, this chapter recognizes that the protection of areas that are not able to provide potable water might be essential to preserve or enhance anadromous fisheries. This chapter does not affect any right to use or appropriate water as allowed under state or federal law. In addition, these requirements do not apply to those activities that have potential contaminant sources below threshold amounts as set forth in applicable statutes of the Revised Code of Washington or local regulations.

It is the policy of Kitsap County to accomplish the following:

- A. Identify, preserve and protect aquifer recharge areas that are susceptible to contamination by preventing degradation of the quality and, if needed, the quantity of potable groundwater;
- B. Recognize the relationship between surface and groundwater resources;
- C. Give priority to potable water resource areas per WAC [365-190-100](#) in the planning and regulation of land uses that may directly or indirectly contaminate or degrade groundwater; and
- D. Balance competing needs for water supply while preserving essential natural functions and processes, especially for maintaining critical fish and wildlife habitat conservation areas.

Commented [RM1]: CAO wording does not consider impacts to water infiltration in areas that are **not** considered CARAs. This is to the detriment of stream flows.

Commented [RM2]: The County has a responsibility in maintaining groundwater resources, including but not limited to streamflows. The County must add language regarding minimum flows.

Additionally, it is the County's and the property owners' risk to develop a property reliant on a permit exempt well as their water right may be curtailed as necessary to protect more senior rights from injury, including treaty reserved rights to instream flows necessary to support healthy salmon populations.

A paragraph should be added to describe the linkages between GMA and water planning. Under GMA and state water laws, water system plans cannot encourage development that is inconsistent with zoning nor allow municipal water rights holders...

Commented [RM3]: The definition of critical aquifer recharge areas and this wording here results in a narrow focus on potable water and does not give adequate consideration to groundwater that for a variety of reasons is not, or could not be used, for potable purposes or does not reach aquifers. However, that water contributes to stream base flows, inputs of cool water etc.

Commented [RM4]: The County, in regards to anadromous fish, is directed by legislation (WAC 365-195-925) that "Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature," Yet, there is nothing in this section of the CAO or the associated report that mandates the impact of development...

Commented [RM5]: The Tribe does not recall seeing a development proposal altered due to a CARA, the balance is tilted towards development and away from preserving natural functions and processes.

Commented [RM6]: Sometimes "critical" is placed before "fish and wildlife conservation areas". Is the intent of the code changed if the word "critical" is missing.

Additionally, this line is one of the few in these section that explicitly links aquifer use to stream flows. However, the Special Report, as currently...

E. Ensure development does not reduce natural stream flows or impact thermal refugia.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 34 (part), 2005)

19.600.610 Critical aquifer recharge area categories.

As defined at Section [19.150.210](#), “critical aquifer recharge areas” means those land areas that contain hydrogeologic conditions that facilitate aquifer recharge and/or transmit contaminants to an underlying aquifer. Critical aquifer recharge areas under this title may be established based on general criteria, specifically designated due to special circumstances, or based on scientific studies and mapping efforts. Factors considered in the identification of critical aquifer recharge areas include depth to water table, presence of highly permeable soils (specifically Group A hydrologic soils), presence of flat terrain, and the presence of more permeable surficial geology.

A. Category I Critical Aquifer Recharge Areas. Category I critical aquifer recharge areas are those areas where the potential for certain land use activities to adversely affect groundwater is high. Category I critical aquifer recharge areas include:

1. Areas inside the five-year time of travel zone for Group A water system wells, calculated in accordance with the Washington State Wellhead Protection Program.
2. Areas inside the ten-year time of travel zones in wellhead protection areas when the well draws its water from an aquifer that is at or above sea level and is overlain by permeable soils without any underlying protective impermeable layer.
3. Areas identified as significant recharge areas due to special circumstances or identified in accordance with WAC [365-190-100](#)(4) as aquifer areas of significant potable water supply with susceptibility to groundwater contamination, including but not limited to the following:
 - a. Hansville Significant Recharge Area. The Hansville aquifer is a significant potable water supply that is highly susceptible to the introduction of pollutants. Additional information regarding this aquifer is available from the Kitsap public utility district.
 - b. Seabeck Significant Recharge Area. The Seabeck aquifer is a significant potable water supply that is being developed for use in central and north Kitsap County. Additional information regarding this aquifer is available from the Kitsap public utility district.
 - c. Island Lake Significant Recharge Area. The Island Lake aquifer is a significant potable water supply for the Silverdale area. Additional information regarding this aquifer is available from the Silverdale water district.

Commented [RM7]: The definition of critical aquifer recharge areas is focused on potable water and does not give adequate consideration to groundwater that for a variety of reasons is not, or could not be used, for potable purposes. However, that water contributes to stream base flows, inputs of cool water etc.

The County requires an additional definition for areas that do not meet the critical aquifer recharge area definition, but a important to the recharge of groundwater and/or convey water to streams and wetlands. Without such a definition, the County is not adopting policies or development regulations to demonstrates it "has given "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries?

d. Gorst Significant Recharge Area. Aquifers in the Gorst basin are highly susceptible to the introduction of pollutants and provide significant potable water supplies for the city of Bremerton.

e. Poulsbo Significant Recharge Area. The Poulsbo aquifer is highly susceptible to the introduction of pollutants and provides a significant potable water supply for the Kitsap public utility district and city of Poulsbo.

4. The department may add, reclassify or remove Category I critical aquifer recharge areas based on additional information about areas of significant potable water supply with susceptibility to groundwater contamination or supply reduction, or based on changes to sole source aquifers or wellhead protection areas as identified in wellhead protection programs.

B. Category II Critical Aquifer Recharge Areas. Category II critical aquifer recharge areas are areas that provide recharge effects to aquifers that are current or potentially will become potable water supplies and are vulnerable to contamination based on the type of land use activity. The general location of these areas is available on the Kitsap County geographic information system. Category II critical aquifer recharge areas include:

1. Highly permeable soils (Group A hydrologic soils). The general location and characteristics of Group A hydrologic soils in Kitsap County are given in the Soil Survey of Kitsap County by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). The soil survey information is available on the Kitsap County geographic information system (GIS).
2. Areas above shallow aquifers or surface areas that are separated from the underlying aquifers by an impermeable layer that provides adequate protection from contamination to the aquifer(s) below. The general location of shallow aquifers in Kitsap County is based upon the professional judgment of licensed hydrogeologists with knowledge of the area. The location of shallow aquifers is available on the Kitsap County geographic information system (GIS).
3. Areas above the Vashon aquifer. Surface areas above the Vashon aquifer that are not separated from the underlying aquifers by a poorly permeable layer that provides adequate protection to preclude the proposed land use from contaminating the Vashon aquifer below. Vashon aquifers in Kitsap County are typically mapped as "Qva" (Vashon advance aquifer) or "Qvr" (Vashon recessional aquifer) on geologic maps. Best available information concerning the location of Vashon aquifers is available on the Kitsap County geographic information system (GIS).
4. Areas with high concentration of potable water supply wells.
5. The department may add, reclassify or remove Category II critical aquifer recharge areas based on additional information about areas of potential potable water supply with susceptibility to groundwater contamination or supply reduction, or based on changes to

Commented [RM8]: As previously noted, CARA are focused on potable water supplies and overlook stream flows.

sole source aquifers or wellhead protection areas as identified in wellhead protection programs.

C. Mapping. Kitsap County, in coordination with water purveyors and other agencies, will produce maps indicating the location of critical aquifer recharge areas and their defining characteristics.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 34 (part), 2005)

19.600.615 Development standards.

A. Category I Critical Aquifer Recharge Areas.

1. Land uses identified in Table 19.600.620 are prohibited in Category I critical aquifer recharge areas, unless a waiver is granted by the department.

Commented [RM9]: The wording here emphasizes that the CAO in regard to CARAs is predominately concerned with water quality and not impacts to the quantity of water available for streams or wetlands.

2. Requests for waivers for activities listed in Table 19.600.620 shall include a hydrogeological report (see Chapter 19.700, Special Reports) that includes a detailed risk-benefit analysis that considers credible worst-case scenarios. The hydrogeological report shall evaluate potential impacts of a proposed land use or activity on both groundwater and surface water quality and quantity. The waiver will be evaluated and treated as a special use review (Section 19.100.145) and be reviewed by the department, Kitsap public health, affected tribes, and the affected water purveyors.

Commented [RM10]: Despite the previous wording in this section that it is County policy to "recognize the relationship between surface and groundwater resources" the hydrogeological reports do not quantify project induced losses in onsite infiltration and therefore are unable to evaluate the potential impacts on potential reductions in groundwater recharge or follow on impacts to stream base flows or the input of water below stream ambient temperature during the warmer months.

B. Category II Critical Aquifer Recharge Areas.

1. Land uses identified in Table 19.600.620 that are proposed in a Category II aquifer recharge area may be required to submit a hydrogeological report (see Chapter 19.700, Special Reports), as determined in subsection (B)(2) of this section. The scope of the report shall be based on site-specific conditions.

Commented [RM11]: The wording here emphasizes that the CAO in regard to CARAs is predominately concerned with water quality and not impacts to the quantity of water available for streams or wetlands.

2. The need for a hydrogeological report will be determined by the department, the health district and the affected water purveyor when the proposed land use or activity may impact groundwater and surface water quality and quantity. Based on the results of the report, controls, mitigation, and/or other requirements will be established as a condition of approval.

Commented [RM12]: Again the focus here is on water quality and how quality might affect quantity. Yet nothing requires the County to ensure there is an analysis of potential impacts to stream flow.

C. Notification and Review.

1. Affected water purveyors, tribes and Kitsap public health will be notified and invited to comment during the preliminary phases of the county's review of any development application in a critical aquifer recharge area. The purveyor may recommend appropriate mitigation to reduce potential impacts and the department will consider these recommendations to develop appropriate permit conditions.

2. The department will also notify Kitsap public health and affected water purveyors through the environmental review process when those development activities listed in Table 19.600.620 are proposed outside the areas designated critical aquifer recharge areas.

D. Storm Water. Storm water best management practices shall be accomplished in accordance with Title [12](#).

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 34 (part), 2005)

19.600.620 Activities with potential threat to groundwater quality.

Table 19.600.620
Activities with Potential Threat to Groundwater Quality

A.	Above- and Below-Ground Storage Tanks
1.	Hazardous and industrial waste treatment
2.	Hazardous and industrial waste storage
3.	Hazardous material storage
B.	Animal Feedlots
C.	Commercial Operations
1.	Gas stations/service stations/truck terminals
2.	Petroleum distributors/storage
3.	Auto body repair shops/rust proofers
4.	Auto chemical supply stores/retailers
5.	Truck, automobile, and combustion engine repair shops
6.	Dry cleaners
7.	Photo processors
8.	Auto washes (if not on a sewer system with a treatment plant)
9.	Laundromats (if not on a sewer system with a treatment plant)
10.	Beauty salons (if not on a sewer system with a treatment plant)
11.	Research or chemical testing laboratories, which handle significant quantities of hazardous materials
12.	Food processors/meat packers/slaughterhouses
13.	Airport maintenance/fueling operation areas

Commented [RM13]: Similar to this table that list activities with potential threat to groundwater quality, the County needs to list activities that are potential threat to stream flows. One example would be a development where the post-development discharge from the site exceed the pre-development discharge - water is leaving the site that would have otherwise infiltrated.

	14.	Junk and salvage yards
	15.	Storing or processing manure, feed, or other agricultural byproducts by commercially permitted businesses
	16.	Large-scale storage or use of pesticides, insecticides, herbicides, or fertilizer by commercial or agricultural operations
	17.	Golf courses
	18.	Cemeteries
D.	Deep Injection Wells	
	1.	Wastewater disposal wells (wells that, after treatment, inject water back into the aquifer)
	2.	Oil and gas activity disposal wells
	3.	Mineral extraction disposal wells
E.	Deicing Salts Storage Piles	
F.	Industrial Operations	
	1.	Furniture strippers/painters/finishers
	2.	Concrete/asphalt/tar/coal companies
	3.	Industrial manufacturers: chemicals, pesticides/herbicides, paper, leather products, textiles, rubber, plastic/fiberglass, silicone/glass, pharmaceuticals, electrical equipment
	4.	Metal platers/heat treaters/smelters/annealers/descalers
	5.	Wood preserves
	6.	Chemical reclamation facilities
	7.	Boat refinishers
	8.	Hydrocarbon extraction
G.	Land Application	
	1.	Wastewater application (spray irrigation)
	2.	Wastewater byproduct (sludge) application
	3.	Petroleum refining waste application
	4.	Hazardous waste applications
H.	Landfills	
	1.	Industrial hazardous and nonhazardous landfill
	2.	Municipal sanitary landfill
I.	Material Transfer Operations	
	1.	Hazardous and industrial waste transfers
	2.	Hazardous material transfers

Commented [RM14]: Non-commercially permitted operations, such as a large hobby farm, can store or generate large amounts. If not covered elsewhere in code, suggest that wording also include non-commercially permitted operations that generate more than a specified amount of manure

Commented [RM15]: If not covered elsewhere in code, a definition in terms of weight/volume stored and the application rate weight/volume per unit area would make things more predictable and enforceable.

Commented [RM16]: Any site that stores or uses PFAS should be on the list.

J.	Materials Stockpiles
K.	Mining and Mine Drainage
L.	On-Site Septic Systems (Large On-Site Septic System or LOSS Category, <u>and any onsite septic system on a property where soil conditions are such that all or part of the stormwater can be infiltrated.</u>)
M.	Pipelines
	1. Hazardous and industrial waste transfer
	2. Hazardous material transfer
N.	Radioactive Disposal Sites and Processing of Radioactive Wastes
O.	Sand and Gravel Mining Operations

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 35, 2005)

Chapter 19.700 SPECIAL REPORTS

Sections:

- [19.700.705 Special reports.](#)
- [19.700.710 Wetland delineation report.](#)
- [19.700.715 Wetland mitigation report.](#)
- [19.700.720 Habitat management plan \(HMP\).](#)
- [19.700.725 Geological assessments.](#)
- [19.700.730 Hydrogeological report.](#)

19.700.705 Special reports.

A. Purpose. The following special reports may be required to provide environmental information and to present proposed strategies for maintaining, protecting and/or mitigating direct, indirect, and cumulative impacts to critical areas and their buffers.

1. Wetland delineation report (Section [19.700.710](#)).
2. Wetland mitigation plan (Section [19.700.715](#)).
3. Habitat management plan (Section [19.700.720](#)).
4. Geotechnical report/geological report (Section [19.700.725](#)).
5. Hydrogeological report (Section [19.700.730](#)).

B. When Required. Special reports when required by this title shall be submitted by the applicant for approval by the department and concurrence by the WDFW and affected tribes when required by this title. The Department shall include in its public notices the reason why a specific Special Report is not required for a project, those not required, the reason(s) why.

C. Responsibility for Completion. The applicant shall pay for or reimburse the county for the costs incurred in the preparation of special reports or tests, and for the costs incurred by the county to engage technical consultants or staff for review and interpretation of data and findings submitted by or on behalf of the applicant. The applicant shall pay permit fees or technical assistance fees as required by Title [21](#), as now or hereafter amended. In such circumstances where a conflict in the findings of a special report and the findings of the county in review of the special report exists, the applicant or affected party may appeal such decisions of the county pursuant to the procedures in Section [19.100.150](#) (Appeals) and Chapter [21.04](#). The applicant is also responsible to ensure corrections to one report are carried through to

Commented [RM1]: Special Reports for wetlands, fish and wildlife conservation areas, Habitat Management Plans, No Net Loss reports are not required to determine and quantify the time period for mitigation to reach the same structural complexity as the impacted vegetation. Therefore, there is no quantification of the scale and duration of the length of the impact. The use of replacement ratios does not address the issue of temporal impact. Special Reports must address this oversight.

Commented [RM2]: Though buffers are mentioned later, it is important that buffers be included here as the function and value of some critical areas are dependent upon the buffer.

Commented [RM3]: There is an observed issue with the issued Public Notices issued. Often in the permit portal there is a reference to certain documents or reports not being required, but the rationale is typically lacking. That rationale should be explained.

1 other reports that use or rely upon that information, including other reports such as the
2 drainage report.

3 D. Qualifications of Professionals. Any special report required herein shall be prepared and
4 signed by the professionals identified below and in Chapter 19.150, and shall include his or her
5 resume, or other list of qualifications, to aid the department in assessing these qualifications.

6 E. Timeframe. All special reports shall be considered valid for a period of 5-years from the date
7 of the report. the field work was conducted unless otherwise indicated by the author for a
8 greater or lesser timeframe. Reports may be required to be supplemented with an addendum
9 letter or report should a complete application be received more than 5 years from the date of
10 the original fieldwork report, if the report is not addressing the specific proposal, or if the
11 criteria for assessing the critical area has been updated after the date on the report (wetland
12 rating system, or changes to Best Available Science for example).

13 F. Consultants preparing Special Reports will geolocate the boundaries of property lines; critical
14 areas and buffers (including field flag numbers); buildings; roads; stormwater facilities; parking
15 lots; utilities; location of test holes; proposed clearing areas; proposed and actual septic fields;
16 proposed buffer reductions; proposed buffer enhancements; location of critical area
17 delineation stakes; breaks in stream type; significant trees; habitat trees and will: (1) include the
18 preceding on the site plan; and (2) as applicable to the nature of the report include a KMZ or
19 shapefile of these features with the report.

20 G. All Special Reports will consider direct, indirect, and cumulative impacts as well as impacts
21 that may arise later in time and the word impact as used throughout 19.700 will mean "direct,
22 indirect, and cumulative impacts as well as impacts that may arise later in time".

23 H. Upon receipt of a Special Report, the County shall conduct an internal review for previously
24 submitted Special Reports for adjacent properties or properties included with the area of
25 analysis of the received Special Report

26 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

27 | 19.700.710 Wetland delineation report.

28 A. Wetland delineation reports shall be valid for a period of five years from the date of the
29 report unless a longer or shorter period is specified by the department. An extension of an
30 original report may be granted upon submittal of a written request to the department prior to
31 expiration. Prior to granting an extension, the department may require updated studies if, in its
32 judgment, the original intent of the application is altered, enlarged or if circumstances relevant
33 to the review and issuance of the original permit have changed substantially, or if the applicant
34 failed to abide by the terms of the original approval. Time extensions shall be granted in writing
35 and documented in the file.

Commented [RM4]: A review of many projects indicates that information in one report is not being used to update important information available in other reports. Perhaps, this is an artifact of the County not updating reports on the publicly accessible permit web portal, but that needs to be verified.

Additionally, the failure of the County to update the Permit Portal with revised documents effectively hinders the Tribe's ability to provide timely input.

Commented [RM5]: Replaces 19.700.710a below with some revision

Commented [RM6]: As currently written, a report dated April 2024 based on field work conducted in 2022 would be valid to April 2029.

Commented [RM7]: The wording "a greater or" should be stricken. Conditions can change considerably. For example, a downstream culvert that was a barrier to the migration of fish could be replaced and fish move upstream into streams that met the Type Np or Ns definition at the time of the survey, but now are Type F, resulting in buffers.

Commented [RM8]: Without including indirect and cumulative impacts as well as those that arise later in time, a Special Report could not justify a No Net Loss statement.

- 1 B. A wetland delineation report shall include, but not be limited to, the following:
- 2 1. Vicinity map;
- 3 2. When available:
- 4 a. A copy of a National Wetland Inventory Map (U.S. Fish and Wildlife Service)
- 5 and/or a Kitsap County wetland inventory map identifying the wetlands on or within
- 6 ~~three hundred two hundred fifty~~ feet of the site;
- 7 b. A copy of any known previous delineations or investigations and including a list
- 8 of all data sources searched (including but not limited to NWI maps, DNR hydrolayer,
- 9 etc.);
- 10 c. A copy of forms used to delineate the wetland area (1987 Wetland Delineation
- 11 Manual, Western Mountains, Valleys, and Coast Regional Supplement);
- 12 3. A site map setting forth all of the following:
- 13 a. Surveyed wetland boundaries based upon a delineation by a wetlands specialist,
- 14 (including geolocated soil test pits and field flag numbers);;
- 15 b. Site boundary property lines and roads;
- 16 c. Internal property lines, rights-of-way, easements, etc.;
- 17 d. Existing physical features of the site including buildings, fences, and other
- 18 structures, roads, parking lots, utilities, water bodies (streams by Type, ditches,
- 19 drainages, ponds), etc.;
- 20 e. Contours at the smallest readily available intervals, preferably at two-foot
- 21 intervals;
- 22 f. Hydrologic mapping showing patterns of surface water movement and known
- 23 subsurface water movement into, through, and out of the site area including tracing
- 24 the flow of water downstream until it meets a water body that Ecology exempts from
- 25 the flow-control standard;
- 26 g. Location of all test holes and vegetation sample sites, numbered to correspond
- 27 with flagging in the field and field data sheets;
- 28 h. The most recent, dated air photo with overlays displaying the site boundaries
- 29 and wetland delineation;

Commented [RM9]: WAC 365-195-925 states (emphasis added) *“Special consideration should be given to habitat protection measures based on the best available science relevant to **stream flows, water quality** and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species”*

Many reports look only a short distance downstream. The protection of stream flows and water quality require tracing the flow of water downstream.

1 i. Narrative describing or a map showing the location of 303(d) listed waters
2 between one-quarter upstream of the project site and marine waters.

3 4. Location information (legal description, parcel number and address);

4 5. Discussion of wetland boundary. The delineation report shall delineate the entire
5 wetland boundary. If the wetland extends outside the site, the delineation report shall
6 discuss methods for delineation beyond the site if physical access was not granted.
7 Remote mapping methods may be used, but this should be noted in the report;

8 6. General site conditions within one-quarter mile of the subject wetland(s), including
9 topography, acreage, and surface areas of all wetlands identified in the Kitsap County
10 wetland inventory map and water bodies, including ditches and streams by Type; and for
11 water bodies, including ditches, drainages, and streams, through which water leaving the
12 site will travel, describe the stream type by distance downstream until marine waters are
13 reached.;

14 7. Hydrological analysis, including topography, of existing surface and known significant
15 subsurface flows into and out of the subject wetland(s), tracing the flow of water
16 downstream until it meets a water body Ecology exempts from the flow-control standard,
17 the date seasonal streams on or downstream of the site begin and cease (1) to have
18 intermittent flow and (2) have temporally continuous flow and location of the wetland
19 within the watershed;

20 8. Analysis of the functional values of existing wetland(s) and its buffer, including
21 vegetative, fauna, habitat, water quality, and hydrologic conditions;

Commented [RM10]: Adding buffer here and later, makes this wording consistent with wording later found in the existing CAO under description of plant communities

22 9. A summary of proposed activity and potential impacts to the wetland(s) and its buffer;

23 10. Recommended wetland category using the Washington State Wetlands Rating
24 System categories (see Chapter 19.800, Appendix A), including rationale for the
25 recommendation and a copy of the completed Wetland Rating Summary Form with
26 associated figures;

27 11. Recommended buffer boundaries, including rationale for boundary locations;

28 12. Site plan of proposed activity, including location of all parcels, tracts, easements,
29 roads, structures, and other modifications to the existing site. The location of all wetlands
30 and buffers shall be identified on the site plan.

31 C. Administrative Wetland Boundary and Ranking Evaluation.

32 1. If resources allow, the department may delineate and evaluate wetland areas for any
33 proposed single-family dwelling project listed in Chapter 19.200 (Wetlands), unless the

1 applicant wishes to employ a qualified wetland biologist at the applicant's expense, or a
2 wetland delineation report is required by the department. Fees may be collected for this
3 determination and evaluation, as specified in Title [21](#).

4 2. The wetland boundary shall be field-staked prior to department review and this line
5 shall be depicted on the building site plan application.

6 3. The wetland boundary and buffer shall be identified on all grading, building site, utility
7 or other development plans submitted on the project. Wetland delineation stakes shall
8 remain in place for the duration of the application process and not removed until project
9 completion/final inspection when wetland buffer signs have been reviewed and installed.

10 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

11 | **19.700.715 Wetland mitigation report.**

12 A. Compensatory mitigation shall be required for activities that result in the loss of wetland
13 acreage or functions, in accordance with Section [19.200.230](#) (Wetland mitigation requirements).

14 1. A compensatory mitigation plan shall be completed. The applicant shall submit a
15 detailed mitigation plan for compensatory mitigation to the department.

16 2. The detailed mitigation plan shall be prepared, signed, and dated by the wetland
17 specialist to indicate that the plan is in accordance with specifications as determined by
18 the wetland specialist. A signed original mitigation plan shall be submitted to the
19 department.

20 3. Approval of the detailed mitigation plan shall be signified by a notarized
21 memorandum of agreement, signed by the applicant and department director or
22 designee. The agreement shall refer to all requirements for the mitigation project.

23 4. The mitigation project shall be completed according to a schedule agreed upon
24 between the department and the applicant.

25 5. Wetland mitigation shall occur according to the approved wetland mitigation plan and
26 shall be consistent with provisions of this chapter and title.

27 6. The wetland specialist shall be on site during construction and plant installation
28 phases of all mitigation projects.

29 7. Upon completion of construction for the wetland mitigation project, the wetland
30 specialist shall submit an as-built report to the department for review and approval.

1 B. As required by Section [19.200.230](#) (Wetland mitigation requirements), a mitigation report
2 shall be prepared and shall contain the following:

3 1. Cover/Title Page.

4 a. Project name.

5 b. Reference numbers to other permit applications (local, state and/or federal).

6 c. Date of publication.

7 d. Who it was prepared for/contact information.

8 e. Who it was prepared by/contact information.

9 2. Table of contents, including a list of figures and tables.

10 3. Responsible Parties. Provide the names, titles, addresses, phone numbers, and
11 information regarding the professional experience (if applicable) for those involved in the
12 development and mitigation projects. Provide the name of the company or agency, as
13 well as the individuals involved.

14 a. Applicant(s).

15 b. Applicant's representative/agent.

16 c. Preparer(s) of the wetland delineation report.

17 d. Preparer(s) of the mitigation report, mitigation construction plans and
18 specifications.

19 e. Parties responsible for monitoring, long-term maintenance, and contingency
20 plans. If this is unknown at the time the mitigation report is submitted, provide this
21 information with the monitoring reports.

22 4. Executive summary that summarizes the project, its potential wetland-related
23 impacts, and the proposed mitigation. The executive summary shall include the following
24 information:

25 a. Applicant name/address/phone.

26 b. Agent/consultant.

27 c. Description of land use proposal and location.

- 1 d. Description of the measures taken to avoid and minimize the impacts to the
2 wetland and other aquatic resources.
- 3 e. Description of unavoidable wetland impacts and the proposed compensatory
4 mitigation measures:
 - 5 i. Size (acres);
 - 6 ii. Cowardin wetland classification;
 - 7 iii. Hydrogeomorphic (HGM) classification;
 - 8 iv. Wetland rating;
 - 9 v. Wetland functions;
 - 10 vi. Compensation ratios used.
- 11 f. Description of mitigation area.
- 12 g. Explanation of other unavoidable impacts to other aquatic resources and listing
13 of assumptions and caveats in cited references or manuals.
- 14 h. Other relevant details, including but not limited to:
 - 15 i. Goals and objectives.
 - 16 ii. Proposed improvements to the functions and environmental processes of
17 the larger watershed.
 - 18 iii. Proposed buffers for the compensatory mitigation site (minimum and
19 maximum width and total area).
- 20 5. Project Description.
 - 21 a. Type of development (existing and proposed land uses).
 - 22 b. Development project size.
 - 23 c. Implementation schedule (start date and duration).
 - 24 d. Project Location and Maps.
 - 25 i. Section, township, range.

- 1 ii. Water resource inventory area (WRIA).
- 2 iii. Watershed and subwatershed.
- 3 iv. Vicinity map.
- 4 e. Description of the Development Site.
- 5 i. Historic and current land uses, zoning designations, and structures on
6 development site and adjacent properties (if known).
- 7 ii. A local area map (zoning, land use, wetlands, other aquatic resources, one-
8 hundred-year floodplain).
- 9 iii. Existing wetlands on or adjacent to the development site. Attach
10 delineation report.
- 11 iv. Other aquatic resources on the site or adjacent properties, noting
12 hydrologic connections. Describe any flooding that affects the development site
13 and/or downstream areas until the flow reaches an areas where the DOE no
14 longer requires flow control duration and the location of the development
15 within the floodplain, where applicable.
- 16 v. Known historic or cultural resources on the development site.
- 17 6. Ecological Assessment of Impact.
- 18 a. Description of the impacts and extent of disturbance to wetlands and buffers
19 (including acreage). This includes temporary, indirect, ~~and direct~~, and cumulative
20 impacts.
- 21 b. Description of the site in context of other wetlands/water bodies.
- 22 c. Description of the Water Regime.
- 23 i. Describe the source of water to the wetland being affected by the
24 development project. For multiple sources, estimate the percentage of each.
- 25 ii. Describe the hydrologic regime of the wetland being affected through
26 qualitative estimates of duration and frequency of inundation/saturation.
- 27 iii. Map of the surface and groundwater flowing into the impacted areas with
28 the directions of water flow indicated and the estimated base, mean, and peak
29 flows noted.

Commented [RM11]: Global Comment, rather than repeat the wording in this section, as applicable it applies to the following sections.
7. Mitigation Approach.
8. Proposed Mitigation Site
9. Preliminary Site Plan
10. Final Site Plan/Design

Commented [RM12]: Unless there is greater consideration of flows and potential changes, then the special consideration given to anadromous fisheries is aspirational rather than mandatory.

WAC 365-195-925 states (emphasis added) "*Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species*"

- 1 d. Description of the Soils.
- 2 i. Description of the soil characteristics of the wetland being affected including
3 soil type and classification, and a description of texture, color, structure,
4 permeability, and organic content.
- 5 ii. Soil survey map (indicate the source of the map).
- 6 iii. Map showing soil sampling locations (typically the location of the soil pits
7 used for delineation).
- 8 e. Description of the Plant Communities.
- 9 i. Qualitative descriptions of the different Cowardin (1979) classes at the
10 wetland being affected (including subclass and water regime modifiers). If a
11 forested class is present, also estimate the average age of the canopy species.
- 12 ii. Estimate the relative abundance of dominant and subdominant plants
13 within each Cowardin class (use information collected during routine
14 delineation unless more detailed data are available).
- 15 iii. List of the wetland indicator status of dominant and subdominant species
16 (obligate – OBL, facultative – FAC, facultative wet – FACW).
- 17 iv. Description of the prevalence and distribution of nonnative and/or invasive
18 species, if any are present at the wetland being affected.
- 19 v. General description of upland plant communities within three hundred
20 thirty feet (one hundred meters) of the wetland being affected, if any.
- 21 vi. List of rare plants and plant communities that are known to occur on the
22 development project site or adjacent properties. If any of these species are
23 observed on the site, include descriptions of the occurrence and any potential
24 impacts to them.
- 25 f. Description of any fauna using the site. If a biological assessment was prepared
26 for the project, the report may simply be referenced in this mitigation report.
- 27 i. Description of any animals (including amphibians) using the wetland being
28 affected or its buffer. Especially note evidence of past or present beaver use. In
29 most cases, a list of species likely to use the habitats on the site is sufficient,
30 with brief descriptions of the existing habitats.

1 ii. Include a description of endangered, threatened, sensitive, and candidate
2 animal species that are known to occur in the general areas (distance depends
3 on species) of the development site, as well as observations of such species.
4 Also, include those listed as priority species or species of concern by the
5 Washington Department of Fish and Wildlife.

6 g. Landscape Position and Geomorphology.

7 i. Class of the wetland being affected by the development project. Use the
8 hydrogeomorphic classification (class and subclass) to describe its position in
9 the watershed.

10 ii. Qualitative description of the functions performed by the wetland affected
11 relative to the position in the watershed. This ~~may~~ will include its role in
12 attenuating flooding, as a corridor for wildlife between different regions of the
13 watershed, as part of a regional flyway, moderating downstream temperatures,
14 contributing to base flows, maintaining stream flows, or in improving water
15 quality locally and regionally.

Commented [RM13]: The proposed wording changes brings the CAO closer to paying special attention to anadromous fish.

16 h. Description of Functions Provided.

17 i. Description of the functions provided by the wetland being affected and to
18 what level they are performed. The method used to assess functions varies
19 depending on the scale of the impact (size/type), the complexity of the wetland,
20 etc. The same method must be used for assessing the impact site and the
21 mitigation site, as well as for monitoring.

22 ii. Qualitative or quantitative description of the characteristics that enable the
23 wetland being affected to perform specific functions, depending on the method
24 used.

25 iii. Description of the sampling and assessment methods used.

26 iv. Documentation of the training of professionals assessing the functions.

27 v. List of the references consulted.

28 i. Wetland Category Rating and Buffer Requirements.

29 i. The category of the wetland being affected using the Washington State
30 rating system for Western Washington, as revised.

31 ii. Copies of the original data sheets used to rate the wetland.

1 iii. Size (width) of the undeveloped upland buffer within three hundred feet
2 (one hundred meters) of the wetland being affected by the development
3 project.

4 iv. Qualitative description of the dominant vegetation in the buffer and the
5 physical structure of the plants in it (e.g., deciduous forest, coniferous forest,
6 and prevalence of snags and downed woody debris).

7 v. Maps of the buffer areas and the vegetation types, including basal area and
8 canopy coverage within incremental 50 foot bands from the edge of the
9 wetland.

10 j. Information on Water Quality, Where Applicable.

11 i. Description of any known or observable water quality problems at the
12 development site and downstream until marine waters are reached and
13 whether they will continue after the development project is completed. Basic
14 water quality parameters that should be considered include dissolved oxygen
15 (DO), pH and alkalinity, temperature, turbidity/suspended solids/sediment
16 accretion, nutrients, fecal coliform, and heavy metals.

17 ii. Assessment of whether the development project is expected to worsen or
18 improve existing water quality conditions.

19 7. Mitigation Approach.

20 a. Mitigation Sequencing Followed.

21 i. Descriptions of the specific steps taken to avoid and minimize impacts to the
22 maximum extent practicable. Larger projects may need to include an
23 alternatives analysis in an appendix.

24 ii. Description of the specific steps to minimize wetland impacts to the site or
25 reduce impacts over time (timing of project, redesign of project, orientation
26 and/or location). Where applicable, note how proposed stormwater treatment
27 facilities may reduce water quality impacts.

28 iii. Discussion of wetland rectification strategies. Where applicable note how
29 temporary impacts, occurring during implementation of the development
30 project, could be rectified through restoration and maintenance activities, and
31 the time frame for those impacts to be rectified (i.e. temporal loss of functions
32 of values).

Commented [RM14]: This will assist if buffer averaging or enhancement of the outer part of the buffer is considered for impacts closer to the wetland. This will help determine if there has been a net loss through buffer averaging based upon observed physical measurements of the vegetation type rather than area measurements.

Commented [RM15]: This is important to understand temporal loss of function and values as well as a better understanding the time period of which the Special Report is claiming No Net Loss is being achieved. The longer the time period required to achieved No Net Loss due to a project's, the greater the likelihood that No Net Loss will not be achieved in a given area.

- 1 iv. Notation of the size and type of compensation being proposed. Include a
2 description of the mitigation ratios and a quantitative analysis why they are
3 adequate to compensate for the lost or degraded area and functions. A full
4 description of the compensatory mitigation should be provided as described in
5 the following sections.
- 6 b. Goals and Objectives. Identify the goal or goals of the compensatory mitigation
7 project.
- 8 c. Mitigation Strategy. Describe in general terms the strategies (actions) that will be
9 used to achieve the goals.
- 10 8. Proposed Mitigation Site.
- 11 a. Site Description (Location, Size, Maps).
- 12 i. Ownership;
- 13 ii. Total area of mitigation site (acres);
- 14 iii. Current/past land use. Include, also, a description of the constraints at the
15 mitigation site that could affect the success of the mitigation project, and
16 strategies used to address each constraint.
- 17 b. Site Selection Rationale. Discuss how the site fits with the environmental needs
18 in the watershed. If watershed or regional planning efforts exist for the area, explain
19 how the selection of the compensation site is consistent with those plans.
- 20 c. Existing/Baseline Ecological Conditions of the Mitigation Site.
- 21 i. Summary of Historic and Current On-Site and Nearby Land Uses.
- 22 (a) Historic land uses and structures on the mitigation site and adjacent
23 properties, if known;
- 24 (b) Current land uses and structures on the mitigation site;
- 25 (c) Current land uses and zoning designations of adjacent properties;
- 26 (d) A local area map showing land uses and zoning designations.
- 27 ii. Description of Any Known Cultural Resources on the Site. If a separate
28 report on cultural/historic resources was prepared, it may be referenced in the
29 mitigation report.

- 1 (a) List of structures listed or eligible for historic registers;
- 2 (b) Brief description of resources having archaeological or cultural
3 significance.
- 4 iii. Description of the Site in Context of Other Wetlands. Any existing wetland
5 boundaries shall be summarized here, but may reference the delineation
6 report.
- 7 (a) A topographic base map (scale one inch equals four hundred feet or
8 smaller) outlining the boundaries of the wetlands that are under state,
9 federal, or local jurisdiction;
- 10 (b) Name of the delineation manual and method used. Include the date
11 field work was performed, field data sheets documenting the data
12 collected on the three criteria (hydrology, vegetation, soils);
- 13 (c) Provide the total area of wetlands on the mitigation site, identifying
14 the area (acres) of individual wetlands.
- 15 iv. Description of Other Aquatic Resources on the Mitigation Site and Adjacent
16 Properties.
- 17 (a) Description of the other aquatic resources (e.g., streams, lakes, tidal
18 waters) on the mitigation site and adjacent properties, noting hydrologic
19 connections among them and with existing wetlands.
- 20 (b) Include and/or reference a map showing the approximate location of
21 all aquatic resources.
- 22 (c) Description of any flooding that affects the mitigation site and location
23 of the development within the floodplain, where applicable, indicating on a
24 map whether the project is located within the mapped one-hundred-year
25 floodplain).
- 26 v. Description of the Water Regime.
- 27 (a) Description of the source of water to the mitigation site. If several
28 sources are present, estimate the percentage contribution from each.
- 29 (b) Description of the existing water regimes at the mitigation site (i.e.,
30 rough, qualitative estimate of duration and frequency of inundation and/or
31 saturation).

1 (c) Map of the surface and groundwater flowing into the mitigation area
2 with the directions of water flow indicated.

3 vi. Description of the Soils.

4 (a) Description of the soil characteristics of the mitigation site including
5 soil type and classification, and a description of texture, color, structure,
6 permeability, and organic content. Use soil surveys confirmed by
7 representative soil samples;

8 (b) Soil survey map (indicate source);

9 (c) Map showing soil sampling locations (typically the location of the soil
10 pits used for delineation).

11 vii. Description of the Plant Communities.

12 (a) Qualitative descriptions of the different Cowardin (1979) classes at the
13 mitigation site (include subclass and water regime modifiers). If a forested
14 class is present, also estimate the average age of the canopy species;

15 (b) Estimate the relative abundance of dominant and subdominant plants
16 within each Cowardin class (use information collected during routine
17 delineation unless more detailed data are available);

18 (c) List of the wetland indicatory status of dominant and subdominant
19 species (obligate – OBL, facultative – FAC, facultative wet – FACW);

20 (d) Description of the prevalence and distribution of nonnative and/or
21 invasive species, if any are present;

22 (e) General description of upland plant communities within three
23 hundred thirty feet (one hundred meters) of the mitigation site, if any;

24 (f) List of rare plants and plant communities that are known to occur on
25 the mitigation site or adjacent properties. If any of these species are
26 observed on the site, include descriptions of the occurrence and any
27 potential impacts to them.

28 viii. Description of Any Fauna Using the Site. If a biological assessment was
29 prepared for the project, the report may simply be referenced in this mitigation
30 plan.

1 (a) Description of any animals (including amphibians) using the wetland
2 being affected or its buffers. Especially note evidence of past or present
3 beaver use. In most cases, a list of species likely to use the habitats on the
4 site is sufficient, with brief descriptions of the existing habitats.

5 (b) Include a description of endangered, threatened, sensitive, and
6 candidate animal species that are known to occur in the general areas
7 (distance depends on species) of the development site, as well as
8 observations of such species. Also, include those listed as priority species
9 or species of concern by the Washington Department of Fish and Wildlife.

10 ix. Landscape Position and Geomorphology.

11 (a) Class of any existing wetlands on the mitigation site. Use
12 hydrogeomorphic classification (class and subclass) to describe the
13 position in the watershed;

14 (b) Qualitative description of the functions performed by the mitigation
15 site relative to the position in the watershed. This may include its role in
16 attenuating flooding, as a corridor for wildlife between different regions of
17 the watershed, as part of a regional flyway, or in improving water quality
18 regionally.

19 x. Description of Functions Provided.

20 (a) Description of the functions provided by the wetland being affected
21 and to what level they are performed. The method used to assess
22 functions varies depending on the scale of the impact (size/type), the
23 complexity of the wetland, etc. The same method must be used for
24 assessing the impact site and the mitigation site, as well as for monitoring;

25 (b) Qualitative or quantitative description of the characteristics that
26 enable the wetland being affected to perform specific functions, depending
27 on the method used;

28 (c) Description of the sampling and assessment methods used;

29 (d) Documentation of the training of professionals assessing the
30 functions; and

31 (e) List of the references consulted.

32 xi. Wetland Rating of Any Existing Wetlands, Buffer Requirements.

- 1 (a) The category of the wetland being affected using the Washington State
2 rating system for Western Washington, as revised;
- 3 (b) Copies of the original data sheets used to rate the wetland;
- 4 (c) Size (width) of the undeveloped upland buffer within three hundred
5 thirty feet (one hundred meters) of the mitigation site. Note how much of
6 the existing buffers extend off-site;
- 7 (d) Qualitative description of the dominant vegetation in the buffer and
8 the physical structure of the plants in it (e.g., deciduous forest, coniferous
9 forest, and prevalence of snags and downed woody debris); and
- 10 (e) Maps of the buffer areas and the vegetation types.
- 11 xii. Information on Water Quality, Where Applicable.
- 12 (a) Description of any known or observable water quality problems at the
13 mitigation site and whether they will continue after the mitigation project is
14 completed. Basic water quality parameters that should be considered
15 include dissolved oxygen (DO), pH and alkalinity, temperature,
16 turbidity/suspended solids/sediment accretion, nutrients, fecal coliform,
17 and heavy metals.
- 18 (b) Assessment of whether the mitigation project is expected to worsen
19 or improve existing water quality conditions.
- 20 d. Site constraints.
- 21 9. Preliminary Site Plan.
- 22 a. A qualitative description of the water regime and of how adequate hydrology will
23 be provided to support a wetland over the long term.
- 24 b. Discussion of how project was designed to provide the proposed functions,
25 including description of the hydrologic data that will support the proposal. Provide a
26 rationale for each proposed function and describe the design features that will
27 contribute to providing the function.
- 28 c. Schematic Drawings.
- 29 i. Change in topography;
- 30 ii. Hydrologic (water control) structures;

- 1 iii. Soils;
- 2 iv. Vegetation distributions;
- 3 v. Habitat attributes (structures) and their location;
- 4 vi. Existing and proposed buffers.
- 5 d. Section drawings showing relationship of topography to water regime and
- 6 vegetation.
- 7 10. Final Site Plan/Design.
- 8 a. Site Survey and Topography.
- 9 i. Site surveys are needed when the mitigation project includes changes to
- 10 ground elevations. If no changes to grade are proposed, then a simpler map of
- 11 the site will be sufficient showing property and wetland boundaries, landmarks,
- 12 scale, site features, and other existing conditions;
- 13 ii. Orientation and scale (north arrow; typically scales are one inch equals
- 14 twenty-five or fifty feet);
- 15 iii. Existing and proposed elevation contours. Contours at one-foot intervals
- 16 are typically sufficient for most mitigation reports. Contours at six-inch intervals
- 17 may be desirable in certain cases where the seasonal fluctuation of water levels
- 18 is low or in specific areas on the mitigation site where it is critical to have a high
- 19 level of accuracy;
- 20 iv. Spot elevations for low points, high points and structures (culverts,
- 21 hydraulic controls, utilities, and roads);
- 22 v. Property boundaries;
- 23 vi. On-site wetland boundaries (including all wetlands existing and after
- 24 mitigation);
- 25 vii. Survey benchmarks;
- 26 viii. Location and elevation of soil borings or test pits and water level sampling
- 27 devices;
- 28 ix. Location of soils to be stockpiled, if any;

- 1 x. Description of methods of erosion control and bank stabilization, if
2 applicable;
- 3 xi. Buffer areas proposed for the mitigation site and their boundaries.
- 4 b. Water regime including:
- 5 i. Description of the proposed frequency and duration of flooding, inundation,
6 or soil saturation;
- 7 ii. Description of the proposed groundwater and surface water sources and
8 characteristics;
- 9 iii. Description of the elevation of the water table and dates when measured
10 (note if table is perched);
- 11 iv. Engineering drawings of any proposed water control structures.
- 12 c. Soil Amendments.
- 13 i. Soil Logs from an On-Site Evaluation. Depending on proposed depth of
14 grading, soil information may come from hand-dug shallow pits or from deeper
15 samples that are typically obtained with small drilling rigs. At a minimum, the
16 shallow soil profile should be described even if no changes in site elevations are
17 proposed.
- 18 ii. Description of how the soil characteristics will be affected by the mitigation
19 activities.
- 20 d. Landscape Plans. For most projects, planting plans should be prepared by a
21 landscape architect with assistance from a wetland or plant ecologist. In some cases
22 where very simple planting plans are proposed for small areas, the level of expertise
23 provided by a landscape architect may not be needed. The list below includes the
24 minimum information needed for planting plans.
- 25 i. Section drawing of proposed plant distribution, density and spacing, in
26 relation to topography and water levels. The projected average water level
27 during winter wet season, early growing season, and late summer dry season
28 should be displayed;
- 29 ii. List of plant materials (common and Latin names, sizes, sources, quantity,
30 etc.);
- 31 iii. Location of existing or proposed upland buffers;

- 1 iv. Description of the methods that will be used to control invasive and exotic
2 plants if they exist in the vicinity;
- 3 v. A plan for irrigating the plants until they are established, including method,
4 frequency, and amount of water;
- 5 vi. Erosion control;
- 6 vii. Map of the location of habitat structures or habitat features;
- 7 viii. Location of upland buffers;
- 8 ix. Description of the soil amendments, including use and sources of mulch.
- 9 e. Construction specifications.

10 11. Monitoring Plan. A monitoring plan describes the methods used to collect and
11 analyze data needed to show that performance standards are being met. They are also
12 used to track environmental changes at mitigation sites throughout the monitoring
13 period. Monitoring plans will vary depending on mitigation objectives and performance
14 standards, but all must be designed to assess the quantitative or qualitative performance
15 standards. The methods used for monitoring specific variables generally need to be the
16 same as those used in establishing baseline data at the wetland affected by the
17 development project. Monitoring plans will typically include the elements described
18 below.

- 19 a. Variables to be measured (plant survival, canopy cover, plant diversity, water
20 levels and duration or inundation/saturation);
- 21 b. Sampling methods for each variable;
- 22 c. A map of the sampling locations for each variable or a description of the
23 methods that will be used to determine sampling locations for each monitoring
24 event. Permanent sampling locations may be the best choice for some variables, but
25 for others, such as percent cover of vegetation, sampling locations may be varied
26 through random selection or other methods for each monitoring event. The map
27 should include clearly identifiable markers on the ground to act as reference points
28 for orientation. These may include roads, benchmarks, and permanent structures;
- 29 d. Laboratory methods to be used, if applicable;
- 30 e. Provide a timetable for reporting monitoring results to the agencies. It is
31 preferred to tie the specific dates to the start of construction.

1 12. Site Protection. The mitigation area and any associated buffer shall be protected by
2 a legal mechanism such as a critical area tract or a conservation easement. The
3 department may approve another legal and administrative mechanism if it is determined
4 to be adequate to protect the site. The following shall be required to demonstrate
5 compliance and ensure adequate protection of the wetland functions and values:

- 6 a. Physical site protection of the remaining wetland boundaries and buffer.
- 7 b. Proof of establishment of a covenant or other approved legal mechanism for the
8 remaining wetlands and buffers on the development project site (if any) and a legal
9 site protection mechanism for the compensatory mitigation areas. Legal protection
10 (deed restriction, conservation easement). Provide copies.

11 ~~c.—Buffers.~~

12 13. Maintenance and Contingency Plans. The need for activities such as inspecting
13 irrigation systems, replacing plants, weeding, preventing or managing herbivory,
14 removing trash, and controlling erosion (and the funding to conduct them) should be
15 anticipated based on the site characteristics, level of public access to the mitigation site,
16 and typical uses of adjacent areas. Frequency of the activities may change through the
17 monitoring period, so maintenance plans should be written with room for flexibility.
18 Contingency plans contain corrective measures that will be taken if monitoring indicates
19 that performance standards are not being met.

20 a. Maintenance schedule for each activity. Include a description of and reason for
21 each maintenance activity planned.

22 b. Contingency Plan.

23 i. Description of initiating procedures. If a performance standard is not met
24 within the time specified in the mitigation plan the permittee will be required to
25 complete the activities in the following list:

- 26 (a) An analysis of the causes of failure;
- 27 (b) Description of the proposed corrective actions;
- 28 (c) Time frame for implementing these actions.

29 ii. Description of a Contingency Fund. A contingency fund should be
30 established for use if any corrective actions are necessary. The description
31 should include what funds will be available for planning, implementing and
32 monitoring any contingency procedures that may be required to achieve the

1 mitigation goals. Generally, the fund amount should equal twenty percent of the
2 total cost of mitigation associated with the project.

3 iii. Responsible parties.

4 14. Implementation Schedule.

5 a. Construction sequence and time schedule for project start, grading, water
6 diversions, plantings, completion, etc. The applicant must work with the department
7 to develop an agreed construction schedule for the mitigation project. Delays in
8 implementing the construction of the mitigation site may result in an increase in the
9 mitigation required and enforcement actions.

10 b. Completion. Acknowledgment that the wetland specialist will submit an as-built
11 report to the department for review and acceptance.

12 15. Permit Conditions. Any compensation project prepared pursuant to this section and
13 approved by the department shall become part of the application for the permit. The
14 department will require an additional growing season year for approval of the mitigation
15 plan unless the applicant requests an inspection for final monitoring year during the final
16 monitoring year assessment.

17 16. Performance Bonds and Demonstration of Competence. A demonstration of
18 financial resources, administrative, supervisory, and technical competence and scientific
19 expertise of sufficient standing to successfully execute the compensation project shall be
20 provided. A compensation project manager shall be named, and the qualifications of each
21 team member involved in preparing the mitigation plan and implementing and
22 supervising the project shall be provided, including educational background and areas of
23 expertise, training and experience with comparable projects. A performance bond,
24 assignment of savings, or other like security will be required by the department in an
25 amount necessary to provide for future site monitoring and possible corrective action
26 required for compensatory mitigation projects. Typically, this amount is one and one-half
27 times the estimated cost of mitigation. Once the project is completed and a maintenance
28 bond is established, the performance bond will be released. The maintenance bond, as
29 determined by the wetland specialist, will be released upon success of the project, as
30 determined by the metrics in the mitigation plan, and no earlier than five years and up to
31 ten years after completion of the mitigation project unless mitigation success is
32 demonstrated through two consecutive monitoring reports. If the approved mitigation is
33 not completed or fails to meet its success standards, the property owner must agree to a
34 property access release form, with forfeiture of funds after the specified monitoring
35 period.

1 17. Waiver. The department may waive portions of a wetland mitigation report if there is
2 adequate information available on the site to determine its impacts and appropriate
3 measures.

4 (Ord. 617 (2022) § 36, 2022; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 36 (part), 2005)

5 | **19.700.720 Habitat management plan (HMP).**

Commented [RM16]: The wording by the County represents a considerable improvement over current wording, but additional changes are required.

Additionally, the HMP must be closely link with any studies that look at subsurface water so that on and off-site impacts to base flow and thermal refugia are considered.

6 A. A HMP is a site investigation report to evaluate the potential presence or absence of a
7 regulated fish or wildlife species or habitat affecting a subject property and proposed
8 development. This report shall identify how development impacts to fish and wildlife habitat
9 from a proposed project will be mitigated. WDFW Priority Habitat and Species (PHS)
10 Management Recommendations, dated May 1991, ~~or as amended~~, and ~~any~~ applicable species
11 and/or habitat-specific management regulations approved by WDFW ~~all applicable volumes and~~
12 ~~revisions, or the National Bald Eagle Management Guidelines~~ may serve as guidance for this
13 report. The HMP shall contain sufficient information that the County can meet its goals to
14 “Give special consideration to conservation or protection measures necessary to preserve or
15 enhance anadromous fisheries.” and “ensure no net loss of ecological functions and values”

16 B. The HMP shall contain a map prepared at an easily readable scale, showing:

- 17 1. The location of the proposed development site;
- 18 2. The relationship of the site to surrounding topographic, water, and cultural features;
- 19 3. Proposed building locations and arrangements;

20 4. Site boundary property lines and roads;

21 5. Internal property lines, rights-of-way, easements, etc.;

22 6. Existing physical features of the site including buildings, fences, and other structures,
23 roads, parking lots, utilities, water bodies, etc.;

24 7. Map of all streams by Type.

25 7. Hydrologic mapping showing patterns of surface water movement, including base
26 and mean annual flows, and known subsurface water movement into, through, and out
27 of the site area tracing the flow of water downstream until it meets a water body that
28 Ecology exempts from the flow-control standard;

29 9. The most recent, dated air photo with overlays displaying the site boundaries and
30 streams;

Commented [RM17]: Much of this wording is taken from the current CAO wetland section

1 4. All fish and wildlife habitat conservation areas, inclusive of any standard or proposed
2 buffer widths and building setbacks;

3 5. The locations of any significant trees, per 19.200 and 19.300;

4 6.4. A legend that includes a complete legal description, acreage of the parcel, scale,
5 north arrow, and date of map revision; and

6 7.5. Identification of any species of local importance, priority species, or endangered,
7 threatened, sensitive, or candidate species (including maps from SalmonScape) that have
8 a primary association with habitat on or adjacent to the project area, and assessment of
9 potential project impacts to the use of the site by the species. A WDFW PHS database
10 search that is no older than one year from the project submittal.

11 8. Site potential tree height (SPTH)

12 C. The habitat management plan shall also contain a report which describes:

13 1. The nature and intensity of the proposed development;

14 2. An analysis of the existing species, habitats, and ecological quality, functions and
15 values. This includes but is not limited to a detailed description of vegetation on
16 and adjacent to the project area and its associated buffer (including prevalence of snags
17 and downed woody debris and basal area and canopy coverage within incremental 50
18 foot bands from the edge of the stream.), and a discussion of any federal, state, or local
19 special management recommendations, including Washington Department of Fish and
20 Wildlife habitat management recommendations, that have been developed for species or
21 habitats located on or adjacent to the project area; for projects involving work in stream a
22 habitat survey from 100 feet upstream to and downstream of the work area, including the
23 stream survey method used; dates seasonal streams on or downstream of the site begin
24 and cease (1) to have intermittent flow and (2) have temporally continuous flow; estimate
25 of base flows; the effect of the proposed development, activity or land use change upon
26 the wildlife species and habitat identified for protection; and

27 A stream habitat report, if applicable, including field notes of stream bankfull widths,
28 gradients, natural barriers including geolocation coordinates, as well as the show the
29 calculation of bankfull width. If type O streams are present, an estimate of the flow in
30 each segment should be included.

31 Description of any known or observable water quality problems at the development site
32 or downstream until marine waters are reached and whether they will continue after the
33 development project is completed. Basic water quality parameters that should be
34 considered include dissolved oxygen (DO), pH and alkalinity, temperature.

turbidity/suspended solids/sediment accretion, nutrients, fecal coliform, and heavy metals.

Commented [RM18]: Most of this is taken from the wetland section of the current CAO

3. An analysis of the effect of the proposed development, activity or land use change upon the existing species, habitats, and ecological functions and values, the timing and duration of flows in seasonal streams, wildlife species and habitat identified for protection; assessment of whether the development project is expected to worsen or improve existing water quality conditions and

Commented [RM19]: Taken from wetland section of current CAO

4. A discussion, supported by quantitative analysis, on how the applicant proposes to avoid, minimize and mitigate any adverse impacts to fish and wildlife habitats created by the proposed development. (See Sections 19.700.710 and 19.700.715, wetland report/wetland mitigation plan requirements.) In all cases, mitigation sequencing shall be demonstrated per Chapter 19.100.155.D. When compensatory mitigation is necessary, a mitigation plan shall be provided that ensures no net loss of ecological functions and must meet the following requirements:

a. Mitigation sites must be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas;

b. The mitigation of aquatic habitat shall be located within the same aquatic ecosystem as the area disturbed; and

Commented [RM20]: What is meant by "same aquatic ecosystem" should be clarified. For example, does it mean with the same stream reach or the same stream?i

c. The mitigation plan shall include standards for ongoing management practices that will protect habitat after the project site has been developed, including consistency with 19.300.315(A)(7).

5. When necessary per this Title, the HMP shall also include:

a. A quantitative analysis of how the remaining buffer will be enhanced to meet full buffer function. Any functions that are diminished or lost will be required to be mitigated with in-kind enhancements to the greatest extent feasible. Out of kind mitigation will be considered on a case-by-case basis.

b. A quantitative analysis based on site specific conditions and project features that greater protection than standard buffers are necessary to preserve riparian functions and protected species.

c. Discussion of identified significant trees to be retained per 19.300.315(A)(4)(d).

d. Discussion of additional mitigation measures required due to the self-described limitations of stormwater manuals.

1 ~~D.—Examples of mitigation measures to be included in the HMP report, include, but are not~~
2 ~~limited to:~~

3 ~~1.—Establishment of Buffer Zones. When applicable, the order of sequence for buffer~~
4 ~~reductions shall be as follows:~~

5 ~~a.—Reduction of building setback;~~

6 ~~b.—Use of buffer averaging maintaining one hundred percent of the buffer area~~
7 ~~under the standard buffer requirement;~~

8 ~~c.—Reduction of the overall buffer area by no more than twenty-five percent of the~~
9 ~~area required under the standard buffer requirement;~~

10 ~~d.—Enhancement of existing degraded buffer area and replanting of the disturbed~~
11 ~~buffer area;~~

12 ~~e.—The use of alternative on-site wastewater systems in order to minimize site~~
13 ~~clearing;~~

14 ~~f.—Infiltration of storm water where soils permit; and~~

15 ~~g.—Retention of existing native vegetation on other portions of the site in order to~~
16 ~~offset habitat loss from buffer reduction;~~

17 ~~2.—Preservation of native plants and trees that are essential to maintaining habitat~~
18 ~~function, including connection to existing wildlife corridors;~~

19 ~~3.—Limitation of access to habitat areas;~~

20 ~~4.—Seasonal restriction of construction activities; and~~

21 ~~5.—Establishing phased development requirements and/or a timetable for periodic~~
22 ~~review of the plan.~~

23 6.E. A HMP shall be prepared by a fish or wildlife biologist, as defined at
24 Sections [19.150.320](#) and [19.150.690](#). For proposed single-family dwelling construction, the
25 department may complete the plan. Fees may be collected for this plan as specified in
26 Title [21](#).

27 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

28 | **19.700.725 Geological assessments.**

1 Whenever development is proposed in a potentially geologically hazardous area or shoreline
2 setback as defined in Chapters [19.300](#) and [19.400](#), or when the department determines that
3 additional soils and slope analysis is appropriate on a particular site, the applicant is required to
4 submit a geological assessment. This assessment may be in the form of a letter, a geological
5 report, or geotechnical report, as determined in Chapter [19.400](#). These assessments evaluate
6 the surface and subsurface soil conditions on the site.

7 A. Qualifications.

8 1. Geotechnical reports shall be prepared by a geotechnical engineer (defined at
9 Section [19.150.365](#)).

10 2. Geological reports or letters may be prepared by a licensed geologist
11 (Section [19.150.360](#)) or geotechnical engineer (Section [19.150.365](#)).

12 B. General Provisions. Report recommendations for earthwork, clearing or siting structures in
13 geologically hazardous areas shall be based on existing site conditions rather than measures
14 that have not yet been successfully approved, designed, or constructed (e.g., slope
15 recontouring, slope retaining walls, vegetation improvements, bulkheads, etc.). Shoreline
16 bulkheads and retaining walls may only be utilized as an engineering solution where it can be
17 demonstrated that:

18 1. An existing residential structure or other permitted existing public or private
19 structures or public facilities such as roads or highways cannot be safely maintained
20 without such measures;

21 2. Other nonstructural methods of beach stabilization have been considered and
22 determined infeasible; and

23 3. The resulting stabilization structure is the minimum necessary to provide stability for
24 the existing structure and appurtenances.

25 Minor repair activities on existing permitted structures (i.e., those that do not involve design
26 modifications, changes in structure location, and/or demolition or abandonment of failed
27 structure and replacement with new structure) are not subject to the following project
28 submittal standards.

29 C. Geological Report Submittal Standards. A geological report is required for site development
30 proposals that involve development activity or the installation of structures within a geologically
31 hazardous area or shoreline setback, or as otherwise required pursuant to
32 Chapters [19.300](#) and [19.400](#), but do not involve or require engineering design
33 recommendations. The following minimum information is required:

- 1 1. Site information regarding the Kitsap County shoreline environment designation and
2 critical areas designations that affect site features;
- 3 2. Description of surface and subsurface conditions, including ground materials,
4 vegetation, surface drainage, groundwater, and a preliminary geologic hazard assessment
5 which includes the locations of structures and the identification of the slope and/or
6 coastal processes occurring at the site and factors that contribute to them;
- 7 3. Review of available site information, literature, and mapping;
- 8 4. Detailed description of slope and other topographic features; ~~and~~
- 9 5. A site plan depicting top or toe of slope and any required buffers and/or setbacks;
10 and
- 11 6.5. Conceptual siting of structures and general recommendations, which include
12 methods and practices that avoid and/or reduce slope and shore impacts. Minimum
13 recommendations should include upland and slope drainage control, groundwater
14 control, site vegetation management, and erosion control.

15 D. Geotechnical Report Submittal Standards. A geotechnical report is required when the
16 department or a geological report determines that a site development proposal requires
17 additional site information such as engineering design recommendations, slope stability
18 analysis, subsurface exploration and testing, coastal process analyses, or construction
19 recommendations. Depending on the level of activity proposed, the report will either be a more
20 limited geotechnical slope evaluation report or a full geotechnical design investigation report as
21 described below.

- 22 1. Geotechnical Slope Evaluation Report. A geotechnical slope evaluation report is
23 required when slope stability analyses are confined to addressing only existing surface
24 and/or drainage conditions, including the relationship of natural and constructed slope
25 features to proposed changes in environmental conditions such as drainage, vegetation
26 removal and slope geometry. The following minimum information is required:
 - 27 a. All the information required under subsection (C) of this section (geological
28 report);
 - 29 b. Subsurface data, exploration logs, and testing data, when required by the
30 geotechnical engineer;
 - 31 c. Estimated (or surveyed) site plan with ground surface profiles and typical cross-
32 sections;

1 d. Relative location of ordinary high water (OHW) on the surface profile and cross-
2 sections, which includes mean higher high water (MHHW) for the site location, where
3 applicable;

4 e. Soil strength parameters;

5 f. Stability analysis of existing site;

6 g. Analysis of the relationship of vegetation and slope stability; and

7 h. Conceptual site development plans and cross-sections.

8 2. Geotechnical Design Investigation Report. A geotechnical design investigation report
9 is required for site development activities that propose design and construction measures
10 at the slope crest, face and/or toe. If a designed structure does not impact slope stability
11 or coastal processes, the report will not be required to perform all items listed under this
12 section, as long as each item is addressed and the report details why a particular item
13 does not apply. The report shall include all items considered necessary by the engineer to
14 fully address the engineering design requirements of the site. The following minimum
15 information is required:

16 a. All the information required under subsection (D)(1) of this section (Geotechnical
17 Slope Evaluation Report);

18 b. Geotechnical requirements and measures to reduce risks;

19 c. Geotechnical criteria used for any designs including all critical dimensions, lateral
20 earth pressures, soil bearing pressures, location and limits of structures on or near
21 the slope, maximum constructed slope angles, minimum soil reinforcement
22 embedment, soil compaction requirements, and structure heights;

23 d. Temporary construction slope stability recommendations and analysis of
24 proposed final site stability measures;

25 e. Required construction specifications and construction monitoring procedures;

26 f. Revegetation and surface and groundwater management requirements;

27 g. Evaluation of erosion potential, recommendations for erosion avoidance and any
28 proposed mitigation measures;

29 h. Detailed tabulation of all basic geotechnical engineering test results pertinent to
30 design and construction, and when required for clarification, detailed examples of
31 tests conducted for the project; and

- 1 i. Information outlined in the geotechnical design investigation report site
2 evaluation checklist (see subsection (F) of this section).
- 3 E. Additional Requirements for Sites in Geologically Hazardous Areas. When a project site is
4 located within a landslide-prone geologically hazardous area, as classified in
5 Section [19.400.415](#), the following additional project submittal requirements shall apply:
- 6 1. Erosion Control Information. An evaluation of the erosion potential on the site during
7 and after construction is required. The evaluation shall include recommendations for
8 mitigation, including retention of vegetative buffers and a revegetation program. The
9 geotechnical engineer shall provide a statement identifying buffer areas at the top or toe
10 of a slope based on geotechnical site constraints and the impacts of proposed
11 construction methods on the erosion potential of the slope.
- 12 2. Seismic Information. The geotechnical engineer shall submit a statement that the
13 design criteria consider the one-in-one-hundred-year seismic event (an earthquake
14 ground motion that has a forty percent probability of exceedance in fifty years).
15 Calculations of soil bearing capacity, general soil stability, and wall lateral earth pressures
16 shall be adjusted to reflect a one-in-one-hundred-year seismic event and the structural
17 plans for the project shall be reviewed by the geotechnical engineer for consistency with
18 these design criteria.
- 19 Analysis for the one-in-one-hundred-year seismic event shall be based on a near-
20 crustal event having an assumed magnitude of 6.5 and occurring directly below the
21 site. Based on regional studies performed by others, the department will allow the
22 use of the following minimum general values of horizontal peak ground
23 accelerations for this event:
- 24 $a = 0.2g$ for fill, alluvial soils
- 25 $a = 0.17g$ for till, firm glaciated soils
- 26 $a = 0.15g$ for rock.
- 27 The appropriateness of the above accelerations shall be confirmed by the
28 geotechnical engineer based on the actual site characteristics. Reduction in the
29 above values may be considered when supported by the appropriate analytical
30 evidence. Slope stability, lateral pressures, and liquefaction of the site shall be
31 assessed by using subsurface soil, rock and groundwater conditions, as well as the
32 seismic parameters discussed above.
- 33 3. Recommendations on Relative Site Stability. The geotechnical engineer shall make
34 recommendations as to which portions of the site are the least prone to instability and

1 the preferred location of the structure. The limits of any area proposed for grading activity
2 shall be identified.

3 4. Construction Season Limitation. In general, no excavation will be permitted in
4 landslide-prone geologically hazardous areas during the typically wet winter months.
5 When excavation is proposed, including the maintenance of open temporary slopes,
6 between October 1st and April 30th, technical analysis shall be provided to ensure that no
7 environmental harm, threat to adjacent properties, or safety issues would result. In
8 addition, recommendations for temporary erosion control and shoring/mitigating
9 measures shall be provided. The technical analysis shall consist of plans showing
10 mitigation techniques and a technical memorandum from the geotechnical engineer.

11 5. Revisions to Geotechnical Report. Further recommendations shall be provided by the
12 geotechnical engineer should there be additions or exceptions to the original
13 recommendations based on the plans, site conditions, or other supporting data. If the
14 geotechnical engineer who revises the plans and specifications is not the same engineer
15 who prepared the geotechnical report, the new engineer shall, in a letter to the
16 department, express his or her agreement or disagreement with the recommendations in
17 the geotechnical report and state whether the plans and specifications conform to his or
18 her recommendations.

19 6. Plan and Specification Review. The geotechnical engineer shall submit a statement
20 that, in his or her judgment, the plans and specifications (if prepared by others) conform
21 to the recommendations in the geotechnical report and that all portions of the site which
22 are disturbed or impacted by the proposed development have appropriate measures or
23 specifications that permit construction to occur while addressing slope stability so that
24 the work does not create additional risk. The statement shall also indicate whether or not
25 a relative gain in slope stability will be achieved after construction is complete.

26 7. Construction Inspection. A final inspection report shall be provided by the
27 geotechnical engineer stating that construction has or has not implemented the design
28 recommendations of the geotechnical report, and evaluating any deviation from the
29 design recommendations.

30 F. Geotechnical Design Investigation Report – Site Evaluation Checklist. The following are
31 general report guidelines for geotechnical design investigation reports. The following guidelines
32 are not intended to be all-inclusive. It is the responsibility of the geotechnical engineer to
33 address all factors which in their opinion are relevant to the site. The checklist information shall
34 be included as part of the geotechnical design investigation report. All items listed below must
35 be addressed in the report. Information shall be provided for those items which are not
36 relevant to a given site to demonstrate why the items are not applicable.

37 1. Project information:

- 1 a. Site owner name;
 - 2 b. Project proponent name;
 - 3 c. Shoreline environment designation (where applicable); and
 - 4 d. Critical areas ordinance (CAO) designations affecting site features.
- 5 2. Project description:
- 6 a. Description of proposed structures, site improvements, and adverse impact
 - 7 avoidance and reduction methods.
 - 8 b. Location and total area of the construction zone.
- 9 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 36 (part), 2005)

10 | 19.700.730 Hydrogeological report.

11 The report shall address the impact the proposed land use will have on both the quality and
12 quantity of the water transmitted to the aquifer or groundwater, and the impact of these
13 change on surface water flows, quality, timing, and temperature (particularly for cold water
14 inputs or thermal refugia). If the Hydrogeological report is cannot quantitatively document that
15 any impacts to groundwater recharge, base flow, thermal refugia etc. are insignificant, but is
16 unable to determine what the impacts are, the report shall make it clear that such information
17 is lacking or that substantial uncertainty exists as to the impacts to groundwater recharge..

Commented [RM21]: Unless this is down, there is no special consideration for anadromous fish.

18
19 A. The report shall be submitted to the department and shall address, at a minimum, the
20 following criteria:

- 21 1. Surficial soil type and geologic setting;
- 22 2. Location and identification of wells within one thousand feet of the site;
- 23 3. Location and identification of surface water bodies and springs within one thousand
24 feet of the site or hydraulically connected, whichever is greater, with recharge potential;
- 25 4. Description of underlying aquifers and aquitards, including water level, gradients and
26 flow direction;
- 27 5. Available surface water and groundwater quality data;

Commented [RM22]: Subparagraph 3 limits the discussion to "surface water bodies and springs within one thousand feet of the site with recharge potential". Groundwater can travel much farther than 1,000 feet to reach streams or wetlands.

- 1 6. Effects of the proposed development on water quality;
- 2 7. Sampling schedules required to assure water quality;
- 3 8. Cross reference the storm drainage report to determine potential reductions in the
- 4 annual volume of water infiltration onsite due to the proposed development.
- 5 8. Discussion of the effects of the proposed development on the groundwater resource:
- 6 a. _____ within the sub-basin, including whether the streams/wetland/springs through
- 7 looking at the continuity of wells with surface waters
- 8 b. _____ and the potential impact of reduced groundwater recharge on the date seasonal
- 9 streams on or downstream of the site begin and cease (1) to have intermittent flow and
- 10 (2) have temporally continuous flow ;
- 11 9. Recommendations on appropriate BMPs (best management practices) or mitigation
- 12 to assure no ~~significant~~ degradation of groundwater quality or quantity;
- 13 10. Other information as required by Kitsap public health; and
- 14 11. The report shall also address the types of pesticides, herbicides and fertilizers that
- 15 can safely be used for the care of landscaping proposed by the applicant.
- 16
- 17 B. The hydrogeologic report shall be prepared by a professional geologist/hydrologist or by a
- 18 soil scientist with a strong background in geology (see Section [19.150.410](#)).
- 19 C. Applications for development or operations with underground storage of petroleum
- 20 products will be processed using the appropriate procedure as specified in existing Kitsap
- 21 County ordinances.
- 22 D. Analysis for a specific parcel(s), using the criteria outlined below, will be employed to
- 23 confirm if the soils present require a recharge area designation. Data collection will include, at a
- 24 minimum, six soil logs to a depth of ten feet (or to a depth four feet below the lowest proposed
- 25 excavation point whichever is greater) for each acre in the parcel(s) being evaluated. At least
- 26 one well, two hundred feet or greater in depth with an adequate drilling report, must be
- 27 available within one mile. The associated data shall be analyzed and included in the
- 28 hydrogeologic report to determine the presence of highly permeable soils with the recharge
- 29 area designation.
- 30 For development proposals within aquifer recharge areas of concern, the hydrogeological
- 31 report may be based on a quarter-quarter section basis where the number of wells within a

Commented [RM23]: The storm drainage reports calculate pre and post-development runoff from the site. Increases in post-development runoff over the water year are an indication of decreased infiltration.

Commented [RM24]: The "Discussion of the effects of the proposed development on the groundwater resource" is limited to potential water quality impacts and potential mitigation measures, and sometimes a qualitative discussion of reduce infiltration. There is no requirement for a discussion of what the follow on effects on the proposed development upon stream base flow, increased seasonality of seasonal streams, temperatures, etc. might be.

DRAFT: March 8, 2024

1 half-mile radius is thirty-six or more. To facilitate computer analysis, the evaluation may be
2 done on a quarter-quarter section basis using the quarter-quarter section in which a parcel of
3 interest is located and all the surrounding quarter-quarter sections, in place of the half-mile
4 circle.

5

Chapter 19.200 WETLANDS

Sections:

- [19.200.205 Purpose and objectives.](#)
- [19.200.210 Wetland identification and functional rating.](#)
- [19.200.215 Wetland review procedures.](#)
- [19.200.220 Wetland buffer requirements.](#)
- [19.200.225 Additional development standards for certain uses.](#)
- [19.200.230 Wetland mitigation requirements.](#)
- [19.200.235 Incentives for wetland mitigation.](#)

19.200.205 Purpose and objectives.

This chapter applies to all uses within or adjacent to areas designated as wetlands, as defined in Section [19.150.660](#), except those identified as exempt in Section [19.100.125](#). The intent of this chapter is to:

- A. Achieve no net loss and increase the quality, function and values of wetland acreage within Kitsap County by maintaining and enhancing, when required, the biological and physical functions and values of wetlands with respect to water quality maintenance (*including downstream stream temperature*), stormwater and floodwater storage and conveyance, fish and wildlife habitat, *movement of small animals and amphibian species*, primary productivity, recreation, and education;
- B. Protect the public's health, safety and welfare, while preventing public expenditures that could arise from improper wetland uses and activities;
- C. Plan wetland uses and activities in a manner that allows property owners to benefit from wetland property ownership wherever allowable under the conditions of this title;
- D. Prevent turbidity and pollution of wetlands and fish or shellfish bearing waters; and
- E. Maintain the wildlife habitat.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 18, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.200.210 Wetland identification and functional rating.

A. General.

- 1. All wetland delineations shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement. All areas within the

Commented [RM1]: Adding this will then require some analysis as the tradeoffs involved between exempting the wetland from buffer requirements and maintaining some connectivity between the wetland areas. This proposed wording would address the issue and small animals as noted on page 35 of Hruby 2012

"Also, very small wetlands may not provide good habitat for some of the larger wildlife species such as otter or beaver, but they are known to provide critical habitat for many smaller species."

and

"Thus, very small wetlands may be less important for large wildlife but more important for smaller wildlife."

Depending upon the organisms involved corridors can range from contiguous to an path that contains suitable habitat for key functions among other habitat that does not contain that key habitat but allows for successful movement among the patches.

county meeting the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this title.

~~2. Identification of hydric soils per National Resources Conservation Service (NRCS) soils survey mapping are also considered potential wetlands and subject to review and request for wetland determination and delineation.~~

~~2.3. All wetlands shall be categorized. Kitsap County uses using the most recent Washington Department of Ecology Washington State Wetland Rating System for Western Washington, revised 2014 or as hereafter amended, to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Wetlands shall be generally categorized as provided in this section, designated as follows. (See Chapter 19.800, Appendix A, for more detailed description.)~~

B. Wetlands.

1. Category I Wetlands. Category I wetlands include, but are not limited to, wetlands that represent rare or unique wetland types, those that are more sensitive to disturbance than most wetlands, those that are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or those that provide a high level of function. ~~Category I wetlands score twenty-three points or more out of twenty-seven on the wetlands ratings system.~~

2. Category II Wetlands. Category II wetlands are those wetlands that are more difficult to replace and provide high levels of some functions. ~~Category II wetlands score between twenty and twenty-two points out of twenty-seven on the wetlands ratings system.~~

3. Category III Wetlands. Category III wetlands are those wetlands with a moderate level of function and can often be adequately replaced with mitigation. ~~Category III wetlands score between sixteen and nineteen points on the wetlands ratings system.~~

4. Category IV Wetlands. Category IV wetlands have the lowest level of function and are often heavily disturbed. ~~Category IV wetlands score less than sixteen points out of twenty-seven on the wetlands ratings system.~~

C. Exemptions for Small Wetlands. Category III wetlands that are less than one thousand square feet and Category IV wetlands that are less than four thousand square feet are exempt from the buffer provisions in this chapter when the following are met:

1. They are isolated wetlands and not part of a wetland mosaic;
2. They are not associated with riparian areas or their buffers;

Commented [RM2]: The rating system, as noted later in these comments, does not deal well with small wetlands. As a result, the functions and values of headwater wetlands, which are often small are overlooked. These headwater wetlands need special protections to protect the wetlands and downstream water quality and quantity.

Commented [RM3]: The Tribe does not believe that there is any scientific justification for effectively exempting isolated category III wetlands less than 1,000 square feet, or isolated category IV wetlands less than 4,000 square feet. When the County provides a summary of how BAS was incorporated into the CAO, scientific justification for this effective exemption should be provided. The County is required to identify the potential risks to wetland functions and values if it implements provisions that are inconsistent with the recommendations of BAS. Although the values and functions provided by small isolated wetlands may seem marginal when considered individually, cumulatively, and especially at the regional and watershed scale, these wetlands provide significant ecological, hydrological, and water quality functions. If the County retains this effective exemption, it must consider the resulting potential cumulative effects. For example, has the County attempted to quantify the total acreage of such wetlands either at the watershed or countywide scale? Without such quantification, it will be impossible to understand the magnitude of potential cumulative effects and risks to values and functions that this exemption creates. Such cumulative effects would be inconsistent with Policy Goal 11: "Prevent cumulative adverse environmental impacts to water, wetlands, fish and wild life habitats, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas" (section 19.100.105).

The value of small wetlands is discussed in Hruby (2012) which notes on page 34:

"The same is true for the hydrologic functions. A small wetland that stores 3 ft of water during a flooding event is more effective, on a per acre basis, than a large wetland that stores only 1 ft"

And on page 35:

"Also, very small wetlands may not provide good habitat for some of the larger wildlife species such as otter or beaver, but they are known to provide critical habitat for many smaller species."

and

"Thus, very small wetlands may be less important for large wildlife but more important for smaller wildlife."

Commented [RM4]: This wording is misleading as these wetlands are not exempt from DOE regulatory authority or review.

3. They are not associated with shorelines of the state or their associated buffers;

4. They do not contain a Class I fish and wildlife habitat conservation area, identified by the Washington Department of Fish and Wildlife;

5. They do not contain federally listed species or their critical habitat; ~~and~~

~~6. They do not score 6 or more points for habitat function based on the Washington State Wetland Rating System for Western Washington;~~

~~7.6.~~ A wetland report is prepared that identifies the specific wetland function affected or at risk, and provides mitigation to replace the affected or lost wetland function, on a per function basis; ~~and~~

~~8. The fifteen-foot building and impervious surface setback in 19.200.220.F also applies to exempt wetlands.~~

(Ord. 598 (2021) § 5, 2021; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 376 (2007) § 4, 2007; Ord. 351 (2005) § 19, 2005)

19.200.215 Wetland review procedures.

A. Application Requirements. Except as otherwise provided herein, all applications for development within a wetland or its largest potential buffer width shall include the following special reports at the time of application. This shall not prohibit the department from requesting reports or other information.

1. Wetland delineation report (Section [19.700.710](#)).

2. Wetland mitigation report (Section [19.700.715](#)).

B. Delineation of Wetland Boundaries.

~~1. Wetland delineations shall use the most recent edition of the federal wetland delineation manual and applicable regional supplement consistent with wetland delineation resources listed by the Washington State Department of Ecology.~~

~~2.4.~~ The applicant shall be responsible for hiring a qualified wetlands specialist to determine the wetland boundaries by means of a wetland delineation. This specialist shall stake or flag the wetland boundary. When required by the department, the applicant shall hire a professional land surveyor licensed by the state of Washington to survey the wetland boundary line. The wetland boundary and wetland buffer established by this chapter shall be identified on all grading, landscaping, site, on-site septic system designs, utility or other development plans submitted in support of the project.

Commented [RM5]: This rating system does not function well for amphibian uses of wetland patches as they moved across the landscape and also underestimates the value of small wetlands to amphibians as noted in Hruby, T. (2014). Washington State Wetland Rating System for Western Washington: 2014 Update. (Publication #14-06-029). Olympia, WA: Washington Department of Ecology.

Pg. 27. Also, very small wetlands may not provide good habitat for some of the larger wildlife species such as otter or beaver, but they are known to provide critical habitat for many smaller species. For example, amphibians were found using and breeding in wetlands as small as 270 ft2 in the Palouse region of northern Idaho (Monello and Wright 1999).

Thus, very small wetlands may be less important for large wildlife but more important for smaller wildlife. Since the methods were judged to be accurate for wetlands as small as a 1/10 of an acre, the review team and the Department of Ecology staff decided not to develop additional questions for very small wetlands less than 1/10 ac in size. Very small wetlands can be rated with the understanding that the results are not as robust as in larger wetlands.

Pg. 97. At least ¼ ac of thin-stemmed persistent plants or woody branches that are in areas that are permanently or seasonally inundated. These plants provide egg-laying structures for amphibians. A ¼ ac of such plants provide optimal conditions for egg-laying (K. Richter, personal communications), and a unit will score a point only if this criterion is met. This does not mean that a wetland does not provide amphibian habitat in the absence of this; just that a wetland provides better habitat if these conditions are present.

Commented [RM6]: Just as the County specifies the appropriate time of the year for stream typing, the County should specify appropriate timing for wetland delineations - the delineation should occur in the growing season. During the appeal of #23-00913 (SEPA) and #23-02979 (ACUP 18-00731), hours of testimony was given by the opposing experts about what time of the year was suitable for a wetland delineation. This would have been avoided if the County directed a delineation season.

1 ~~3.2. If resources allow, t~~The department may perform a delineation of a wetland
2 boundary on parcels where no more than one single-family dwelling unit is allowed.

3 ~~4.3.~~ Where the applicant has provided a delineation of a wetland boundary, the
4 department may verify the wetland boundary at the cost of the applicant and may
5 require that a wetland specialist make adjustments to the boundary.

6 C. Wetland Review Process for Single-family Dwellings.

7 1. Expedited Approval. Applicants proposing a single-family dwelling may receive
8 expedited approval by the department if they choose to adopt the largest buffer
9 width from the appropriate wetland category. Expedited approval removes the
10 requirements of the wetland certification process for single-family dwellings
11 (subsection (C)(2) of this section); provided, that the wetland delineation and/or
12 wetland rating is not disputed. Administrative buffer reductions or variances will not
13 apply. Expedited approval is not the same as expedited review, which is sometimes
14 available for additional fees.

15 2. Wetland Certification Process for Single-Family Dwellings (No Encroachment into
16 a Wetland or Its Standard Buffer).

17 a. Prior to issuance of a building permit, site development permit, or on-site
18 sewage system permit, the applicant may submit a single-family wetland
19 certification form completed by a wetland specialist that certifies either:

20 i. No wetlands are present within ~~three hundred two hundred fifty~~ feet of
21 the project area; or

22 ii. Wetlands are present within ~~three hundred two hundred fifty~~ feet of
23 the project area, but all regulated activities associated with the dwelling
24 (e.g., landscaped areas, septic facilities, outbuildings, etc.) will occur outside
25 of the standard buffer of the identified wetland.

26 b. If wetland buffers extend onto the site, the wetland specialist shall place
27 geolocated permanent, clearly visible, wetland buffer signs at the edge of the
28 buffer. A wetland buffer sign affidavit, signed by the wetland specialist, shall be
29 submitted to the department as verification that the wetland buffer signs have
30 been placed on the subject site.

31 c. The wetland certification shall include a site plan provided by the wetland
32 specialist that includes wetland location, buffer, and structure setback. The
33 certification shall also include current wetland rating forms.

1 ~~d.c.~~ A survey will not be required with a single-family wetland certification
2 form.

3 ~~e.d.~~ The single-family certification form may be used only to authorize single-
4 family dwellings and associated home-site features such as driveways, gardens,
5 fences, wells, lawns, and on-site septic systems. It may not be used for new
6 agricultural activities, expansion of existing agricultural activities, forest practice
7 activities, commercial projects, land divisions, buffer width modifications, or
8 violations.

9 ~~f.e.~~ The single-family certification process will be monitored by the
10 department for accuracy, and enforcement actions will be initiated should
11 encroachment into a wetland or buffer occur.

12 ~~g.f.~~ The applicant/property owner assumes responsibility for any and all errors
13 of the single-family certification form, as well as responsibility for all associated
14 mitigation required by the department.

15 ~~h.g.~~ Single-family certification forms shall be filed with the Kitsap County
16 auditor's office.

17 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 20, 2005)

18 | **19.200.220 Wetland buffer requirements.**

19 A. Determining Standard Buffer Widths. The following buffer widths are based on three
20 factors: the wetland category, the intensity of the impacts, and the functions or special
21 characteristics of the wetland that need to be protected as established through the rating
22 system. These factors must be determined by a qualified wetland professional using the most
23 recent Washington State Wetland Rating System for Western Washington, revised 2014 or as
24 hereafter amended: 2014 Update (Ecology Publication No. 14-06-029, or as revised and
25 approved by the Washington State Department of Ecology). If a wetland meets more than one
26 of the characteristics listed in Tables 19.200.220(B) through (E), the greater of the buffers
27 recommended to protect the wetland is applied. Buffers shall be measured horizontally from a
28 perpendicular line established at the wetland edge based on the buffer width identified using
29 the tables below.

30

Commented [RM7]: These buffer widths assume the important critical functions are measured, but some such as temperature influence open streams, use of movement and rest areas for small mammal and amphibians are not.

Table 19.200.220(A)
Land Use Impact “Intensity” Based on Development Types

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
High	Commercial, urban, industrial, institutional, retail sales, residential subdivisions with more than 1 unit/acre, new agriculture (high-intensity processing such as dairies, nurseries and greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), new transportation corridors, high-intensity recreation (golf courses, ball fields), hobby farms
Moderate	Single-family residential lots, residential subdivisions with 1 unit/acre or less, moderate-intensity open space (parks), new agriculture (moderate-intensity such as orchards and hay fields), transportation enhancement projects
Low	Forestry, open space (low-intensity such as passive recreation and natural resources preservation, minor transportation improvements)

1

Table 19.200.220(B)
Width of Buffers for Category IV Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Score for all 3 basic functions is less than 16 points	Low – 25 feet Moderate – 40 feet High – 50 feet	None

2

Commented [RM8]: The Tribe does not support buffers less than 50'

Table 19.200.220(C)
Width of Buffers for Category III Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (6 – 7 points)*	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Score for habitat 3 – 5 points	Low – 40 feet Moderate – 60 feet High – 80 feet	None

3

*If wetland scores 8 – 9 habitat points, use Table 19.200.220(D) for Category II buffers.

Commented [RM9]: The Tribe does not support buffers less than 50'

1

Table 19.200.220(D)
Width of Buffers for Category II Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
High level of function for habitat (score 8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas
Moderate level of function for habitat (6 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff
Estuarine	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Interdunal	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Not meeting above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

2

TABLE 19.200.220(E)
Width of Buffers for Category I Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Wetlands of high conservation value	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries No septic systems within 300 feet of wetland Restore degraded parts of buffer
Bogs	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
Forested	Buffer width to be based on score for habitat functions or water quality functions	If forested wetland scores high for habitat (8 – 9 points), need to maintain connections to other habitat areas Restore degraded parts of buffer
Estuarine	Low – 100 feet Moderate – 150 feet High – 200 feet	None Surface discharges shall not be allowed.
Wetlands in coastal lagoons	Low – 100 feet Moderate – 150 feet High – 200 feet	None Surface discharges shall not be allowed.
High level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Interdunal wetland with high level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (6 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	None
Not meeting any of the above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

1 ~~B.—Modification of Buffer Widths. The following modifications to buffer widths may be~~
2 ~~considered provided the applicant first demonstrates that reductions or alterations to the~~
3 ~~required wetland buffer cannot be avoided, minimized or mitigated (in that order):~~

4 ~~1.—Buffer Averaging. Standard buffer widths may be modified by the department for~~
5 ~~a development proposal first by averaging buffer widths, but only where the~~
6 ~~applicant can demonstrate that such averaging can clearly provide as great or~~
7 ~~greater functions and values as would be provided under the standard buffer. The~~
8 ~~following standards shall apply to buffer averaging:~~

9 ~~a.—The decrease in buffer width is minimized by limiting the degree or~~
10 ~~magnitude of the regulated activity.~~

11 ~~b.—For wetlands and/or required buffers associated with documented habitat~~
12 ~~for endangered, threatened, or sensitive fish or wildlife species, a habitat~~
13 ~~assessment report has been submitted that demonstrates that the buffer~~
14 ~~modification will not result in an adverse impact to the species of study.~~

15 ~~c.—Width averaging will not adversely impact the wetland.~~

16 ~~d.—The total buffer area after averaging is no less than the total buffer area~~
17 ~~prior to averaging.~~

18 ~~e.—For Category III and IV wetlands with habitat scores less than five points for~~
19 ~~habitat function based on the Washington State Wetland Rating System for~~
20 ~~Western Washington: 2014 update, as amended, the minimum buffer width at~~
21 ~~any point will not be less than fifty percent of the widths established after the~~
22 ~~categorization is done and any buffer adjustments applied in accordance with~~
23 ~~this chapter.~~

24 ~~f.—For all other wetlands, the minimum buffer width at any point will not be~~
25 ~~less than seventy-five percent of the widths established after the categorization~~
26 ~~is done and any buffer adjustments applied in accordance with this chapter.~~

27 ~~g.—If significant trees are identified, such that their drip line extends beyond~~
28 ~~the reduced buffer edge, the following tree protection requirements must be~~
29 ~~followed:~~

30 ~~i.—A tree protection area shall be designed to protect each tree or tree~~
31 ~~stand during site development and construction. Tree protection areas~~
32 ~~may vary widely in shape, but must extend a minimum of five feet beyond~~
33 ~~the existing tree canopy area along the outer edge of the dripline of the~~
34 ~~tree(s), unless otherwise approved by the department.~~

1 ~~ii.—Tree protection areas shall be added and clearly labeled on all~~
2 ~~applicable site development and construction drawings submitted to the~~
3 ~~department.~~

4 ~~iii.—Temporary construction fencing at least thirty inches tall shall be~~
5 ~~erected around the perimeter of the tree protection areas prior to the~~
6 ~~initiation of any clearing or grading. The fencing shall be posted with~~
7 ~~signage clearly identifying the tree protection area. The fencing shall~~
8 ~~remain in place through site development and construction.~~

9 ~~iv.—No clearing, grading, filling or other development activities shall occur~~
10 ~~within the tree protection area, except where approved in advance by the~~
11 ~~department and shown on the approved plans for the proposal.~~

12 ~~v.—No vehicles, construction materials, fuel, or other materials shall be~~
13 ~~placed in tree protection areas. Movement of any vehicles within tree~~
14 ~~protection areas shall be prohibited.~~

15 ~~vi.—No nails, rope, cable, signs, or fencing shall be attached to any tree~~
16 ~~proposed for retention in the tree protection area.~~

17 ~~vii.—The department may approve the use of alternate tree protection~~
18 ~~techniques if an equal or greater level of protection will be provided.~~

19 ~~2.—Administrative Buffer Reductions. Standard buffer widths may be modified by~~
20 ~~the department for a development proposal by reducing buffers, but only where~~
21 ~~buffer averaging is not feasible and the applicant can demonstrate that such is the~~
22 ~~minimum necessary to accommodate the permitted use and that the reduction can~~
23 ~~clearly provide as great or greater functions and values as would be provided under~~
24 ~~the standard buffer requirement. This may be accomplished through enhancement~~
25 ~~of a degraded buffer. The following standards shall apply to buffer reductions:~~

26 ~~a.—The department may administratively reduce the buffer pursuant to the~~
27 ~~variance criteria listed in Section 19.100.135. Applicants may propose to utilize~~
28 ~~provisions contained in Section 19.200.230.~~

29 ~~b.—For proposed single-family dwellings, the department may administratively~~
30 ~~reduce a buffer by up to twenty-five percent of the area required under the~~
31 ~~standard buffer requirement, but not less than thirty feet.~~

32 ~~c.—For all other proposed uses, the department may administratively reduce~~
33 ~~the buffer by up to twenty-five percent of the area required under the standard~~
34 ~~buffer requirement, but not less than forty feet.~~

d.—To minimize impacts and provide equivalent functions and values as required by this section, applicants may propose:

i.—Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;

ii.—The use of alternative on-site wastewater systems in order to minimize site-clearing;

iii.—Infiltration of stormwater where soils permit; and

iv.—Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction;

v.—To utilize provisions contained in Section 19.200.230.

B. Increased or Enhanced Wetland Buffer Width.

1. The buffer widths in Tables 19.200.220(B) through (E) assume that the buffer is vegetated with a native plant community appropriate for the ecoregion.

In addition to the buffer widths based on the criteria in Tables 19.200.220(B) through (E), the department may increase buffer widths or require enhanced buffer vegetation on a case-by-case basis when necessary and in consultation with the Washington Department of Fish and Wildlife and affected Tribes(s) as applicable:

- a. To protect wetland functions and values to meet the 'no net loss' objective of this chapter;
- b. When the wetland or buffer area is located within a landslide or erosion hazard area; or
- c. When the standard buffer has minimum vegetation cover or is vegetated with non-native or invasive species that do not perform needed functions.

2. If any of the scenarios in subsection 1 apply, the buffer width may be increased to the next highest buffer width for the identified wetland category in the buffer tables in 19.200.220(A), unless a wetland report demonstrates an alternative buffer width meets the 'no net loss' objective.

For example, a Category III wetland with a moderate level of function for habitat, adjacent to a single-family residential use (moderate land use) would have a standard buffer of 110-feet. If determined a greater width is necessary, the increased buffer width would be 150-feet. If the land use intensity is already rated as high, then the next largest buffer width for the higher wetland category will apply.

Commented [RM10]: The Special Reports, which are used to determine if there will be no net loss, as currently worded are not capable of providing the information required to ascertain whether a net loss will occur or not. Additionally, the impacts are considered in the NNL reports are based upon the buffer widths specified in County Code and not the buffers recommended by BAS.

The buffers in the SMP of the CAO differ and this creates illogical outcomes when one is evaluating no net loss. For example, two similar proposals, adjacent to each other, but with one subject to the SMP and one not, would result in differing NNL reports as the SMP buffers are less than those described in the CAO and any activity outside the SMP buffer will not be considered an impact for the NNL report, while a HMP prepared for the activity not subject to the SMP will consider the activity an impact.

Additionally, Best Available Science as prepared by the WDFW considers the area extending one site potential tree height (SPTH) from a stream or its channel migration zone as contributing to stream or riparian habitat. In most cases, throughout Kitsap County, is around 200 feet.

- 3. When required, buffer enhancement is preferred to increasing the buffer width. Enhancement of the buffer through native planting or invasive species removal shall be demonstrated infeasible or ineffective prior to buffer width increases.

Commented [RM11]: What is the scientific rationale behind preferring buffer enhancement over increasing the buffer width? Why not both enhance the existing buffer and increase the width?

C. Provisions for Decreasing Buffer.

Commented [RM12]: Best Available might not support buffer averaging, particularly if the buffer is reduced to less than 100 feet, the minimum recommended pollutant removal buffer width.

- 1. Consistent with this section, the department may reduce the standard buffer width by up to twenty-five percent (to a width of no less than 30-feet for a single-family residence and 40-feet for all other uses) in a Type I decision under Chapter 21.04. Reductions greater than twenty-five percent but less than or equal to fifty percent for single-family dwellings will be a Type II decision and require notification (see chapter 19.800, Appendix F). Buffer reductions for single-family residences greater than fifty percent, and reductions greater than twenty-five percent for all other uses shall be pursuant to a variance under Section 19.100.135. In all cases, mitigation sequencing shall be demonstrated per Chapter 19.100.155.D. When applicable, the order of sequence for buffer reductions shall be as follows:

- a. Use of buffer averaging under KCC 19.200.220.C, maintaining one hundred percent of the buffer area under the standard buffer requirement;
- b. Type I administrative critical area buffer reduction;
- c. Type II administrative critical area buffer reduction;
- d. Type III quasi-judicial critical area variance.

Commented [RM13]: Buffer averaging allows for mitigation for impacts close to the critical area being protected in an area farther from the Critical Area. Reliance on a premise that if the "total buffer area after averaging is no less than the total buffer area prior to averaging" then impacts have been mitigated is not supported scientifically

- 2. When proposing buffer averaging, the following shall be met:

- a. The applicant submits a Wetland Mitigation Plan that meets the requirements as described in Chapter 19.700 (Special Reports), including demonstration of mitigation sequencing as described in 19.100.155.D and that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer, and that the decrease in buffer width is minimized by limiting the degree or magnitude of the regulated activity;
- b. The conditions are sufficient to assure 'no net loss' of ecological functions of the wetland;
- c. The total buffer area; and basal area and canopy coverage of significant trees after averaging is no less than the total buffer area and basal area and canopy coverage of significant trees prior to averaging;
- d. The minimum buffer width at any point will not be less than 75% of the standard buffer width for a Category I and II wetland, 50-feet for a Category III wetland, and 25-feet for a Category IV wetland, whichever is greater; and
- e. For Category III and IV wetlands with habitat scores five points or less for habitat function, the minimum buffer width at any point will not be less than 50% of the standard buffer width for the category of wetland.

Vegetated buffers can protect critical areas from external influences, but in addition to this protective function vegetation also provides inputs, such as wood, detrital material, etc. to streams and wetlands. As noted in the "WDFW Riparian Management Guidance Technical Memo – Prepared by DCG/Watershed Dated December 8, 2023" included in the environmental information prepared for the CAO update, at the distance from a stream increases, there is a typically a reduction in shade, litter fall, and root recruitment provided to the stream channel. However, the curves shown in Figure 1 are derived from the 30 year old FEMAT report. The Technical Memo and the BAS behind it relies greatly upon " (Volume 1) (Quinn et al. 2020). Quinn et al. includes Figure 1 and describe the figure as follows: "FEMAT's (1993) curves are conceptual models describing how four key riparian ecosystem functions change with distance from the stream channel".

Since the preparation of this curve, a considerable body of additional literature on function versus distance from the stream channel has been published. That additional information suggests some of the conceptual curves shown in FEMAT graph are less linear than presented. Beyond reliance upon replacement ratios, which are not based upon a quantitative analysis of function vs distance, the CAO does not require a quantitative analysis of whether that portion of the averaged buffer more distant from the critical area provides the same function and values as the impact part close to the critical area.

Commented [RM14]: This will partially address the issue of area based averaging.

- 1 3. When proposing a Type I or Type II administrative buffer reduction, the following shall
2 be met:
- 3 a. The applicant demonstrates that the criteria in Section 19.100.135.A are met,
4 and buffer averaging under KCC 19.200.220.C is not feasible;
 - 5 b. The applicant submits a wetland mitigation plan that meets the
6 requirements as described in Chapter 19.700 (Special Reports), including a
7 demonstration of mitigation sequencing as described in 19.100.155.D; and
 - 8 c. The conditions are sufficient to assure no net loss of ecological functions of
9 the affected wetland.
- 10
- 11 4. Protection of significant trees. In all cases of wetland buffer reduction or averaging,
12 significant trees within the buffer shall be identified as part of the Wetland Mitigation
13 Plan. Any such tree that has a drip line extending beyond the reduced buffer edge shall
14 follow the tree protection requirements below:
- 15
 - 16 a. A tree protection area shall be designed to protect each tree or tree stand
17 during site development and construction. Tree protection areas may vary
18 widely in shape, but must extend a minimum of five feet beyond the existing
19 tree canopy area along the outer edge of the dripline of the tree(s), unless
20 otherwise approved by the department;
 - 21 b. Tree protection areas shall be added and clearly labeled on all applicable site
22 development and construction drawings submitted to the department;
 - 23 c. Temporary construction fencing at least thirty inches tall shall be erected
24 around the perimeter of the tree protection areas prior to the initiation of
25 any clearing or grading. The fencing shall be posted with signage clearly
26 identifying the tree protection area. The fencing shall remain in place
27 through site development and construction;
 - 28 d. No clearing, grading, filling or other development activities shall occur within
29 the tree protection area, except where approved in advance by the
30 department and shown on the approved plans for the proposal;
 - 31 e. No vehicles, construction materials, fuel, or other materials shall be placed in
32 tree protection areas. Movement of any vehicles within tree protection areas
33 shall be prohibited;
 - 34 f. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed
35 for retention in the tree protection area; and
 - 36 g. The department may approve the use of alternate tree protection techniques
37 if an equal or greater level of protection will be provided.
- 38
- 39 5. Functionally Disconnected Buffer Area. Buffer areas that are functionally disconnected
40 from a wetland by significant development may be excluded from buffer requirements
41 as provided herein. Significant development for purposes of this subsection means
42 existing public or private roads, railroads, and other legally established private
43 developments such as homes or commercial structures; driveways are not significant
44 development. The Director shall consult with the WDFW, WDOE and affected tribes to
45 shall determine if a buffer area is functionally disconnected and whether the disconnect

Commented [RM15]: See comments to functionally disconnected buffer area in 19.150.341 Functionally and effectively disconnected

1 affects all or a portion of the buffer. Where only a portion of the buffer area is affected,
2 the buffer exclusion shall be limited in scope to that affected area.

3 To establish that a buffer is functionally disconnected, the applicant must provide a
4 Wetland Report, meeting the requirements of chapter 19.700 (Special Reports),
5 confirming the existence of a distinct break in connectivity of the buffer, that there are
6 no other hydraulic connections across the significant development (e.g., culvert), and
7 that the disconnect blocks the protective measures provided by the buffer. Where a
8 buffer area has been determined to be functionally disconnected, whether in whole or
9 in part, that area may be excluded from the buffer with the following conditions:

- 10 a. All other applicable provisions of this chapter shall be met, including
- 11 demonstration of no net loss of applicable functions; and
- 12 b. All Significant Trees within the wetland buffer shall be identified and
- 13 retained.

14
15 6. ~~e.~~ Alternatives to reducing standard buffer width. The buffer widths recommended for
16 proposed land uses with high-intensity impacts to wetlands can be administratively
17 reduced if the applicant can demonstrate that the functions and values of the enhanced
18 buffer will be equivalent of that which was reduced within a period of five years to those
19 recommended for moderate-intensity impacts under the following conditions:

20 a.i. For wetlands that score moderate or high for habitat (six five points or
21 more for habitat functions), the width of the buffer can be reduced if both of the
22 following criteria are provided met:

23 i. (A) ~~A corridor. The corridor must be~~ relatively undisturbed, ~~and~~
24 vegetated ~~corridor~~ at least one hundred feet wide, ~~is protected between~~
25 ~~the wetland and any other priority habitats as defined by the Washington~~
26 ~~Department of Fish and Wildlife. The corridor must be protected for the~~
27 ~~entire distance between the wetland and the priority habitat by some type~~
28 ~~of legal protection such as a conservation easement. It must be legally~~
29 ~~protected, such as through a conservation easement, and connect the~~
30 ~~wetland to any of the following:~~

31 (A) A legally protected, relatively undisturbed and vegetated area
32 (such as priority habitats as defined by the Washington
33 Department of Fish and Wildlife, compensatory mitigation sites,
34 wildlife areas/refuges, parks with management plans that identify
35 with identified areas designated as natural, natural forest, or
36 natural area preserve);

37 (B) An area that is the site of a Watershed Project identified within,
38 and fully consistent with, a Watershed Plan as defined by RCW
39 89.08.460;

Commented [RM16]: As mentioned earlier, this ignores other buffer functions.

Commented [RM17]: To partially address the issue of understanding the extent of temporal impacts.

(C) An area where development is prohibited according to the provisions of the shoreline master program; or

(D) An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with Washington Department of Fish and Wildlife.

ii.(B) Minimization Measures. Measures to minimize the impacts of different land uses on wetlands, ~~such as the examples~~ summarized in Table 19.200.220(F). Though not every measure is required, all applicable and practicable measures shall be implemented.

b. ii. For wetlands that score less than six five points for habitat, the buffer width can be reduced to that required for moderate land use impacts by applying measures to minimize the impacts of the proposed land uses, ~~such as the examples~~ summarized in Table 19.200.220(F). Though not every measure is required, all applicable and practicable measures shall be implemented.

Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Stormwater runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping • Commercial 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland <ul style="list-style-type: none"> • Apply integrated pest management • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns

Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Pets and human disturbance	• Residential areas	• Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract
Dust	• Tilled fields	• Use best management practices to control dust

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Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands

Examples of disturbance	Activities and uses that cause disturbances	Examples of measures to minimize impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Commercial/Industrial • Residential • Recreation (e.g., athletic fields) • Agricultural buildings 	<ul style="list-style-type: none"> • Direct lights away from wetland • Only use lighting where necessary for public safety and keep lights off when not needed • Use motion-activated lights • Use full cut-off filters to cover light bulbs and direct light only where needed • Limit use of blue-white colored lights in favor of red-amber hues • Use lower-intensity LED lighting • Dim light to the lowest acceptable intensity
Noise	<ul style="list-style-type: none"> • Commercial • Industrial • Recreation (e.g., athletic fields, bleachers, etc.) • Residential • Agriculture 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • Construct a fence to reduce noise impacts on adjacent wetland and buffer • Plant a strip of dense shrub vegetation adjacent to wetland buffer

<u>Toxic runoff</u>	<ul style="list-style-type: none"> • <u>Parking lots</u> • <u>Roads</u> • <u>Commercial/industrial</u> • <u>Residential areas</u> • <u>Application of pesticides</u> • <u>Landscaping</u> • <u>Agriculture</u> 	<ul style="list-style-type: none"> • <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u> • <u>Establish covenants limiting use of pesticides within 150 ft. of wetland</u> • <u>Apply integrated pest management (These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)</u>
<u>Stormwater runoff</u>	<ul style="list-style-type: none"> • <u>Parking lots</u> • <u>Roads</u> • <u>Residential areas</u> • <u>Commercial/industrial</u> • <u>Recreation</u> • <u>Landscaping/lawns</u> • <u>Other impermeable surfaces, compacted soil, etc.</u> 	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized or sheet flow from lawns that directly enters the buffer</u> • <u>Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Residential areas</u> • <u>Recreation</u> 	<ul style="list-style-type: none"> • <u>Use privacy fencing</u> • <u>Plant dense native vegetation to delineate buffer edge and to discourage disturbance</u> • <u>Place wetland and its buffer in a separate tract</u> • <u>Place signs around the wetland buffer every 50-200 ft., and for subdivisions place signs at the back of each residential lot</u> • <u>When platting new subdivisions, locate greenbelts, stormwater facilities, and other lower-intensity uses adjacent to wetland buffers</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Tilled fields</u> • <u>Roads</u> 	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>

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~~7.3. Variance. In cases where proposed development cannot meet the buffer averaging or the administrative buffer reduction criteria described in this section, a Type III quasi-judicial variance shall be required as described in Section 19.100.135. Applicants may propose to utilize provisions contained in Section 19.200.230.~~

1 ~~D.C. Fencing and Signs. Protection of Buffers. The buffer shall be identified on a site plan and~~
2 ~~on site as required by the department and this chapter. Refuse shall not be placed in buffers.~~

3 1. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as
4 required by the department, between the area where the construction activity occurs
5 and the buffer. Fences shall be made of a durable protective barrier and shall be
6 highly visible. Silt fences and plastic construction fences may be used to prevent
7 encroachment on wetlands or their buffers by construction, but such fences must
8 allow for the movement of amphibians and small animals. Temporary fencing shall
9 be removed after the site work has been completed and the site is fully stabilized per
10 county approval.

11 2. The department ~~may~~ shall require that geolocated permanent signs and/or
12 fencing be placed on the common boundary between a wetland buffer and the
13 adjacent land of the project site. Such signs will identify the wetland buffer. The
14 department may approve an alternate method of wetland and buffer identification, if
15 it provides adequate protection to the wetland and buffer.

16 ~~D. Protection of Buffers. The buffer shall be identified on a site plan and on site as required by~~
17 ~~the department and this chapter. Refuse shall not be placed in buffers.~~

18 E. Building or Impervious Surface Setback Lines. A building or impervious surface setback line
19 of fifteen feet is required from the edge of any wetland buffer, including exempt wetlands in
20 19.200.210.C. Minor structural or impervious surface intrusions into the areas of the setback
21 may be permitted if the department, in consultation with the WDFW and affected tribes
22 determines that such intrusions will not adversely impact the wetland. The setback shall be
23 identified on a site plan.

24 (Ord. 598 (2021) § 6, 2021; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 21, 2005)

25 **19.200.225 Additional development standards for certain uses.**

26 In addition to meeting the development standards of this chapter, those uses identified below
27 shall also comply with the standards of this section and other applicable state, federal and local
28 laws.

29 A. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber
30 harvesting and associated development activity, such as construction of roads, shall comply
31 with the provisions of this title, including the maintenance of buffers around wetlands.

32 B. Agricultural Restrictions. In all development proposals that would introduce or expand
33 agricultural activities, a net loss of functions and values to wetlands shall be avoided. Wetlands
34 shall be avoided by at least one of the following methods:

35 1. Locate fencing no closer than the outer buffer edge; or

1 2. Implement a farm resource conservation and management plan agreed upon by
2 the conservation district and the applicant to protect and enhance the functions and
3 values of the wetland.

4 C. Road/Street Repair and Construction. Any private or public road or street repair,
5 maintenance, expansion or construction may be allowed within a critical area or its buffer only
6 when all of the following are met:

7 1. No other reasonable or practicable alternative exists and the road or street
8 serves multiple properties whenever possible;

9 2. For publicly owned or maintained roads or streets, other purposes, such as utility
10 crossings, pedestrian or bicycle easements, viewing points, etc., shall be allowed
11 whenever possible;

12 3. The road or street repair and construction are the minimum necessary to
13 provide safe roads and streets; and

14 4. Mitigation shall be performed in accordance with specific project mitigation plan
15 requirements. Applicants may propose to utilize provisions contained in
16 Section [19.200.230](#).

17 D. Land Divisions and Land Use Permits. All proposed divisions of land and land uses
18 (including but not limited to the following: short plats, large lot subdivisions, performance-
19 based developments, conditional use permits, site plan reviews, binding site plans) which
20 include regulated wetlands, shall comply with the following procedures and development
21 standards:

22 1. The area of a wetland and its buffers may be included in the calculation of
23 minimum lot area for proposed lots, except for the area with permanent open water.

24 2. Land division approvals shall be conditioned to require that wetlands and
25 wetland buffers be dedicated as open space tracts, or an easement or covenant
26 encumbering the wetland and wetland buffer. Such dedication, easement or
27 covenant shall be recorded together with the land division and represented on the
28 final plat, short plat or binding site plan, and title.

29 3. In order to implement the goals and policies of this title, to accommodate
30 innovation, creativity, and design flexibility, and to achieve a level of environmental
31 protection that would not be possible by typical lot-by-lot development, the use of
32 the clustered development or similar innovative site planning is strongly encouraged
33 for projects with regulated wetlands on the site.

1 4. After preliminary approval and prior to final land division approval, the
2 department ~~may~~ shall require the common boundary between a regulated wetland
3 or associated buffer and the adjacent land be identified using permanent signs
4 and/or fencing. In lieu of signs and/or fencing, alternative methods of wetland and
5 buffer identification may be approved when such methods are determined by the
6 department to provide adequate long-term (greater than 25 year) protection to the
7 wetland and buffer.

8 E. Surface Water Management. Surface water discharges from stormwater facilities or
9 structures may be allowed in wetlands and their buffers when they are in accordance with
10 Title 12 (Stormwater Drainage) subject to the provisions of Section 19.100.145, Special use
11 review, and this subsection. The discharge shall neither significantly increase nor decrease the
12 rate of flow or hydroperiod, nor decrease the water quality of the wetland. Pretreatment of
13 surface water discharge through biofiltration or other best management practices (BMPs) shall
14 be required.

15 1.2. Projects in the vicinity of bog wetlands shall be subject to additional stormwater
16 requirements to avoid altering hydrologic inputs to these acidic wetlands that are
17 highly sensitive to disturbance. The following regulations apply to bog wetlands, in
18 addition to all other applicable requirements of this chapter:

19 a. Stormwater facilities must be placed outside the bog wetland buffer
20 whenever feasible;

21 b. Stormwater facilities inside a bog wetland buffer are limited to the outer
22 25 percent of the buffer and must not create a single-point discharge;

23 c. Stormwater inputs must not alter wetland hydrology or pH;

24 d. Any mitigation monitoring of a bog system must include review of
25 stormwater facilities and monitoring for pH and retention/health of bog plant
26 species.

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30 F. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related
31 facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland
32 buffers pursuant to the following standards:

33 1. Trails and related facilities shall, to the extent feasible, be placed on existing road
34 grades, utility corridors, or any other previously disturbed areas.

35 2. Trails and related facilities shall be planned to minimize removal of trees, soil
36 disturbance and existing hydrological characteristics, shrubs, snags and important
37 wildlife habitat.

1 3. Viewing platforms, interpretive centers, benches, picnic areas, and access to
2 them, shall be designed and located to minimize disturbance of wildlife habitat
3 and/or critical characteristics of the affected wetland. Platforms shall be limited to
4 one hundred square feet in size, unless demonstrated through a wetland mitigation
5 plan that a larger structure will not result in a net loss of wetland functions.

6 4. Trails and related facilities shall generally be located outside required buffers.
7 Where trails are permitted within buffers they shall be located in the outer twenty-
8 five percent of the buffer, except where wetland crossings or for direct access to
9 viewing areas have been approved by the department. Access to viewing areas shall
10 take the shortest route possible consistent with protecting the wetland buffer and
11 minimizing the need to remove trees.

12 5. Trails shall generally be limited to pedestrian use unless other more intensive
13 uses, such as bike or horse trails, have been specifically allowed and mitigation has
14 been provided. Trail width shall not exceed five feet unless there is a demonstrated
15 need, subject to review and approval by the department. Trails shall be constructed
16 with pervious materials except where determined infeasible.

17 6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap
18 County Non-Motorized Facility Plan (and associated recognized community trails),
19 and as amended, and provided design considerations are made to minimize impacts
20 to critical areas and buffers, shall not be subject to the platform, trail width, or trail
21 material limitations above. Such trails and facilities shall be approved through special
22 use review (Section [19.100.145](#)), unless any underlying permit requires a public
23 hearing.

24 G. Utilities. Placement of utilities within wetlands or their buffers may be allowed pursuant to
25 the following standards and any other required state and federal approvals:

26 1. The utility maintenance or repair, as identified in Section [19.100.125\(E\)](#), shall be
27 allowed in wetlands and wetland buffers so long as best management practices are
28 used.

29 2. Construction of new utilities outside the road right-of-way or existing utility
30 corridors may be permitted in wetlands or wetland buffers only when: (a) no
31 reasonable alternative location is available, (b) the new utility corridor meets the
32 requirements for installation, replacement of vegetation and maintenance outlined
33 below, and (c) as required in the filing and approval of applicable permits and special
34 reports (Chapter [19.700](#)) required by this title.

35 3. Construction of sewer lines or on-site sewage systems may be permitted in
36 wetland buffers only when: (a) the applicant demonstrates that the location is
37 necessary to meet state or local health code minimum design standards (not

1 requiring a variance for either horizontal setback or vertical separation), and (b) there
2 are no other practicable or reasonable alternatives available and (c) construction
3 meets the requirements of this section. Joint use of the sewer utility corridor by other
4 utilities may be allowed. Construction of separate septic systems in buffers for
5 attached or detached ADUs is not authorized.

6 4. New utility corridors shall not be allowed when the wetland or buffer has known
7 locations of federal- or state-listed endangered, threatened or sensitive species,
8 heron rookeries or nesting sites of raptors which are listed as state candidate or
9 state monitor, except in those circumstances where an approved habitat
10 management plan indicates that the utility corridor will not significantly impact the
11 wetland or wetland buffer.

12 5. New utility corridor construction and maintenance shall protect the wetland and
13 buffer environment by utilizing the following methods:

14 a. New utility corridors shall be aligned to avoid cutting trees greater than
15 twelve inches in diameter at breast height (four and one-half feet), measured on
16 the uphill side, unless no reasonable alternative location is available.

17 b. New utility corridors shall be revegetated with appropriate native vegetation
18 at not less than preconstruction densities or greater immediately upon
19 completion of construction, or as soon thereafter as possible if due to seasonal
20 growing constraints. The utility shall ensure that such vegetation survives.

21 c. Any additional utility corridor access for maintenance shall be provided at
22 specific points rather than by parallel roads, unless no reasonable alternative is
23 available. If parallel roads are necessary, they shall be the minimum width
24 necessary for access, but no greater than fifteen feet, and shall be contiguous to
25 the location of the utility corridor on the side away from the wetland. Mitigation
26 will be required for any additional access through restoration of vegetation in
27 disturbed areas.

28 d. Drilling for new utility corridors shall have entrance/exit portals located
29 completely outside of the wetland buffer boundary, and drilling shall not
30 interrupt the groundwater connection to the wetland or percolation of surface
31 water down through the soil column. Specific studies by a hydrologist are
32 necessary to determine whether the groundwater connection to the wetland or
33 percolation of surface water down through the soil column would be disturbed.

34 e. The department may require other additional mitigation measures.

35 6. Utility corridor maintenance shall include the following measures to protect the
36 wetland and buffer environment:

1 a. Painting of utility equipment, such as power towers, shall not be sprayed or
2 sandblasted, unless appropriate containment measures are used. Lead-based
3 paints shall not be used.

4 b. No pesticides, herbicides or fertilizers may be used in wetland areas or their
5 buffers except those approved by the U.S. Environmental Protection Agency
6 (EPA) and Washington Department of Ecology. Where approved, they must be
7 applied by a licensed applicator in accordance with the safe application
8 practices on the label.

9 H. Parks. Development of public park and recreation facilities may be permitted in wetlands
10 or their buffers subject to the provisions of Section [19.100.145](#), Special use review, and other
11 applicable chapters of the Kitsap County Code, and any state or federal approvals. For example,
12 enhancement of wetlands and development of trails may be allowed in wetlands and wetland
13 buffers subject to special use requirements and approval of a wetland mitigation plan. The
14 County will consider when applying for state or federal funding for park and recreational facilities or
15 features, whether accepting that funding will result in buffer or wetlands impacts larger than those
16 contemplated by the CAO.

17 (Ord. 598 (2021) § 7, 2021; Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 23, 2005; Ord. 217 (1998) § 3 (part), 1998)

18 | **19.200.230 Wetland mitigation requirements.**

19 A. Mitigation Sequencing. All impacts to wetlands or buffers shall be mitigated according to
20 this title as described in 19.100.155.D. in the following order:

21 ~~1.—Avoiding the impact altogether by not taking a certain action or parts of actions.~~

22 ~~2.—Minimizing impacts by limiting the degree or magnitude of the action and its
23 implementation by using appropriate technology or by taking affirmative steps to
24 reduce impacts.~~

25 ~~3.—Using one of the following mitigation types, listed in order of preference:~~

26 ~~a.—Rectifying the impact by reestablishing, rehabilitating, or restoring the
27 affected environment;~~

28 ~~b.—Compensating for the impact by replacing or providing substitute resources
29 or environments; or~~

30 ~~c.—Compensating for the impact by improving the environmental processes
31 that support wetland systems and functions.~~

32 ~~4.—Monitoring the impact and compensation and taking appropriate corrective
33 measures.~~

1 B. Mitigation Report. Where mitigation is required under the sequencing in subsection (A) of
 2 this section, a mitigation report shall be provided in accordance with Section [19.700.715](#).
 3 ~~Mitigation compliance is required per KCC 19.200.230.F. Acceptance of the mitigation report~~
 4 ~~shall be signified by a notarized memorandum of agreement signed by the applicant and~~
 5 ~~department director or designee. The agreement shall refer to all requirements for the~~
 6 ~~mitigation project.~~

7 ~~C. Native Species. Planting used in all mitigation actions shall be native species appropriate to~~
 8 ~~the ecoregion.~~

9 ~~D. Wetland Buffer Mitigation Ratio. Unless otherwise specified during the agency review~~
 10 ~~process, mitigation for impacts to wetland buffers caused by new or re-development activity~~
 11 ~~shall be at a minimum 1:1 ratio.~~

12 ~~E. C.~~ Wetland ~~Mitigation Replacement~~ Ratios.

13 1. The following ratios appearing below in Table 19.200.230 (Wetland Mitigation
 14 Replacement Ratios), as well as consideration of the factors listed in this section,
 15 shall be used to determine the appropriate amounts of restored, rehabilitated,
 16 created or enhanced wetland that will be required to replace impacted wetlands. The
 17 first number specifies the amount of wetland area to be restored, rehabilitated,
 18 created or enhanced, and the second number specifies the amount of wetland area
 19 lost.

Table 19.200.230
 Wetland Mitigation ~~Replacement~~ Ratios

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	Preservation^{1,2} 1:1 Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement¹ Only
All Category IV other (based on functions)	1.5:1	3:1	6:1 1:1 R/C and 2:1 E	6:1
All Category III other (based on functions)	2:1	4:1	8:1 1:1 R/C and 4:1 E	8:1
Category III and IV Interdunal wetlands	1.5:1	3:1 (limited circumstances)	6:1	Not considered an option

Table 19.200.230
Wetland Mitigation ~~Replacement~~ Ratios

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	Reestablishment or Creation (R/C) and Enhancement (E) Preservation ^{1,2} 1:1	Enhancement¹ Only
Category II estuarine	4:1 (re-establishment) Case-by-case	8:1 4:1 rehabilitation of an estuarine wetland	16:1 Case-by-case	Case-by-case
Category II Interdunal wetlands	2:1	4:1 (limited circumstances)	8:1	Not considered an option
Category II wetlands in coastal lagoons	3:1 (re-establishment only)	6:1	12:1	Not considered an option
All other Category II other (based on functions)	3:1	8:1	12:1 1:1 R/C and 8:1 E	12:1
Category I forested	6:1	12:1	24:1 1:1 R/C and 20:1	24:1
Category I other (based on functions)	4:1	8:1	16:1 1:1 R/C and 12:1 E	16:1
Category I Interdunal wetlands	4:1	8:1 (limited circumstances)	16:1	Not considered an option
Category I Wetlands of high conservation value	Consult with WA DNR and affected Tribes Not considered possible	Consult with WA DNR and affected Tribes Case-by-case	24:1 Case-by-case	Consult with WA DNR and affected Tribes Case-by-case
Category I coastal lagoon	4:1 Case-by-case	8:1 6:1 rehabilitation of a coastal lagoon	16:1 Case-by-case	Not considered an option Case-by-case
Bogs Category I bog	NA Case-by-case	NA 6:1 rehabilitation of a bog	24:1 Case-by-case	NA Case-by-case
Category I Estuarine	3:1 Case-by-case	6:1 rehabilitation of an estuarine wetland	12:1 Case-by-case	Case-by-case

Table 19.200.230
Wetland Mitigation ~~Replacement~~ Ratios

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	1:1 Preservation ^{1,2} Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement ¹ Only
¹ Ratios for rehabilitation, preservation, and enhancement may be reduced when combined with 1:1 replacement through re-establishment or creation. See Table 6B-2 in Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance –Version 2 (Ecology et al., 2021 or as revised). ² All proposed preservation sites need to meet the preservation criteria listed in KCC 19.200.230.E.3.c.				

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- 2 2. The above ratios are based on the assumption that the rehabilitation or
- 3 enhancement actions implemented represent the average degree of improvement
- 4 possible for the site. Accordingly, in the appropriate circumstances identified below,
- 5 the department may increase or decrease the ratios based on one or more of the
- 6 following:
- 7 a. Replacement ratios may be increased under the following circumstances:
- 8 i. Uncertainty exists as to the probable success of the proposed
- 9 restoration or creation;
- 10 ii. A significant period of time (more than five years) will elapse between
- 11 impact and establishment of targeted wetland functions and services at the
- 12 mitigation site;
- 13 iii. Proposed compensation will result in a lower category wetland or
- 14 reduced functions relative to the wetland being impacted; or
- 15 iv. The impact was an unauthorized impact.
- 16 b. Replacement ratios may be decreased under the following circumstances:
- 17 i. Documentation by a qualified wetland specialist demonstrates certainty
- 18 that the proposed compensation actions will be successful. For example,
- 19 demonstrated prior success with similar compensation actions as those
- 20 proposed, and/or extensive hydrologic data to support the proposed water
- 21 regime;

Commented [RM18]: To reduce the potential for argument that though the site did not result in the targeted outcome, replacement of something wetland functions or services did result.

1 ii. Documentation by a qualified wetland specialist demonstrates that the
2 proposed compensation actions will provide functions and values that are
3 significantly greater than the wetland being impacted; or

4 iii. The proposed mitigation actions are conducted five years in advance
5 of the impact and are shown to be successful of providing the targeted
6 wetland functions and services I.

Commented [RM19]: To add specificity to "in advance"

7 3. Methods of Compensatory Mitigation. Mitigation for wetland and buffer impacts
8 shall rely on the method listed below in order of preference. A lower-preference form of
9 mitigation shall be used only if the applicant's qualified wetland professional
10 demonstrates to the department's and affected tribes' satisfaction that all higher ranked
11 types of mitigation are not viable, consistent with the criteria in this section.

12 a. Restoration: The manipulation of the physical, chemical, or biological
13 characteristics of a site with the goal of returning natural/historic functions and
14 environmental processes to a former or degraded wetland. Restoration is
15 divided into two categories:

16 i. Re-establishment: The manipulation of the physical, chemical, or
17 biological characteristics of a site with the goal of returning
18 natural/historic functions and environmental processes to a former
19 wetland. Re-establishment results in rebuilding a former wetland and
20 results in a gain in wetland area and functions. Example activities could
21 include removing fill, plugging ditches, or breaking drain tiles to restore a
22 wetland hydroperiod, which in turn will lead to restoring wetland biotic
23 communities and environmental processes.

24 ii. Rehabilitation: The manipulation of the physical, chemical, or biological
25 characteristics of a site with the goal of repairing natural/historic
26 functions and environmental processes to a degraded wetland.
27 Rehabilitation results in a gain in wetland function but does not result in
28 a gain in wetland area. The area already meets wetland criteria, but
29 hydrological processes have been altered. Rehabilitation involves
30 restoring historic hydrologic processes. Example activities could involve
31 breaching a dike to reconnect wetlands to a floodplain or return tidal
32 influence to a wetland.

33 b. Establishment (Creation): The manipulation of the physical, chemical, or
34 biological characteristics of a site to develop a wetland on an upland where a
35 wetland did not previously exist at an upland site. Establishment results in a gain
36 in wetland area and functions. An example activity could involve excavation of
37 upland soils to elevations that will produce a wetland hydroperiod and hydric
38 soils by intercepting groundwater, and in turn supports the growth of
39 hydrophytic plant species.

1 i. If a site is not available for wetland restoration to compensate for
2 expected wetland and/or buffer impacts, the department may authorize
3 establishment of a wetland and buffer upon demonstration by the
4 applicant's qualified wetland professional that:

5 (A) The hydrology and soil conditions at the proposed mitigation
6 site are conducive for sustaining the proposed wetland and that
7 establishment of a wetland at the site will not likely cause
8 hydrologic problems elsewhere;

9 (B) Adjacent land uses and site conditions do not jeopardize the
10 viability of the proposed wetland and buffer (e.g., due to the
11 presence of invasive plants or noxious weeds, stormwater runoff,
12 noise, light, or other impacts);

13 (C) The proposed wetland and buffer will eventually be self-
14 sustaining with little or no long-term maintenance; and

15 (D) The proposed wetland would not be established at the cost of
16 another high-functioning habitat (i.e., ecologically important
17 uplands).

18 c. Preservation. The removal of a threat to, or preventing the decline of, wetlands
19 by an action in or near those wetlands. This term includes activities commonly
20 associated with the protection and maintenance of wetlands through the
21 implementation of appropriate legal and physical mechanisms such as recording
22 conservation easements and providing structural protection like fences and
23 signs. Preservation does not result in a gain of aquatic resource area but may
24 result in a gain in functions over the long term. When restoration and/or
25 establishment are not viable, preservation of a wetland and associated buffer
26 can be used only if:

27 i. The department determines that the proposed preservation is the
28 best mitigation option;

29 ii. The proposed preservation site is under threat of undesirable
30 ecological change due to permitted, planned, or likely actions that will not
31 be adequately mitigated under existing regulations;

32 iii. The area proposed for preservation is of high quality or critical for the
33 health and ecological sustainability of the watershed or sub-basin. Some
34 of the following features may be indicative of high-quality sites:

35 (A) Category I or II wetland rating pursuant to KCC 19.200.210.

1 (B) Rare or irreplaceable wetland type [e.g., mature forested
2 wetland, estuaries, etc.] or aquatic habitat that is rare or a limited
3 resource in the area.

4 (C) The presence of habitat for threatened or endangered species
5 (state, federal, or both).

6 (D) Provides biological and/or hydrological connectivity to other
7 habitats.

8 (E) Priority sites identified in an adopted watershed plan.

9 iv. Permanent preservation of the wetland and buffer shall be provided
10 through a legal mechanism such as a conservation easement or tract.

11 v. The department may approve another legal and administrative
12 mechanism in lieu of a conservation easement if it is determined to be
13 adequate to protect the site in perpetuity.

14 d. Enhancement. The manipulation of the physical, chemical, or biological
15 characteristics of a wetland to heighten, intensify, or improve specific wetland
16 function(s). Enhancement is undertaken for specified purposes such as water
17 quality improvement, flood water retention, or wildlife habitat. Enhancement
18 results in the gain of selected wetland function(s) but may also lead to a decline
19 in other wetland function(s). Enhancement does not result in a gain in wetland
20 area. Enhancement activities could include planting vegetation, controlling non-
21 native or invasive species, and modifying site elevations to alter hydroperiods in
22 existing wetlands. Applicants proposing to enhance wetlands and/or associated
23 buffers shall demonstrate how the proposed enhancement will increase the
24 wetland and/or buffer functions, how this increase in function will adequately
25 compensate for the impacts, and how existing wetland functions at the
26 mitigation site will be protected.

27 F. Mitigation Compliance

28 1. Unless otherwise specified, mitigation shall take place prior to final project
29 inspection to provide assurance that it will be completed and to mitigate for temporal
30 loss of wetland functions.

31 2. Mitigation requirements shall run with the parcel, and notice of such requirements
32 shall be recorded as a covenant. Mitigation as conditioned under project approval shall
33 be maintained in perpetuity, except where authorized through review of an alternative
34 mitigation plan.

1 3. In the event that a subsequent landowner applies for additional permits, the
2 electronic permit database will be queried for past mitigation and monitoring
3 requirements. If such mitigation is no longer in place or functioning, it shall be
4 reinstalled prior to permit issuance.

5 4. Mitigation enforcement shall occur under the authority of Chapter 19.100,
6 Introduction and Approval Procedures.

7 5. Monitoring shall be required for all wetland mitigation. Kitsap County shall require
8 monitoring reports on an annual basis for a minimum of five years and up to ten years,
9 or until the department determines that the mitigation project has achieved success.
10 The wetland mitigation plan shall provide specific criteria for monitoring the mitigation
11 project. Criteria shall be project-specific and use best available science to aid the
12 department in evaluating whether or not the project has achieved success (see Chapter
13 19.700 and Sections 19.700.710 and 19.700.715, Special Reports).

14 ~~G.D.~~ Alternative Mitigation Plans.

15 1. The department may approve alternative wetland mitigation plans identified in
16 this section that are based on best available science, such as priority restoration
17 plans that achieve restoration goals identified in Title 22, Appendix C, Shoreline
18 Restoration Plan. Alternative mitigation proposals must provide an equivalent or
19 better level of protection of wetland functions and values than would be provided by
20 the strict application of this chapter. Mitigation requirements may be determined
21 using the Credit-Debit Method described in Calculating Credits and Debits for
22 Compensatory Mitigation in Wetlands of Western Washington (Ecology Publication
23 #10-06-011), or as amended.

24 The department shall consider the following for approval of an alternative mitigation
25 proposal:

26 a. The proposal uses a watershed approach consistent with Selecting Wetland
27 Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology
28 Publication No. 09-06-32, Olympia, WA, December 2009), or as amended.

29 b. Creation or enhancement of a larger system of natural areas and open
30 space is preferable to the preservation of many individual habitat areas if this
31 does not result in impacting movement of amphibians and small animals
32 among the larger patches.

33 c. Other on-site mitigation, as described above, is not feasible due to site
34 constraints, such as parcel size, stream type, wetland category, or geologic
35 hazards.

Commented [RM20]: The potential for these individual habitat areas to to retain value as movement rest/stopovers areas for amphibians and small animals must be evaluated during the Special Report. Often the focus is on larger animals.

This comment also applies to off-site compensatory mitigation.

- 1 d. There is clear potential for success of the proposed mitigation at the
2 proposed mitigation site.
- 3 e. The plan contains clear and measurable standards for achieving compliance
4 with the specific provisions of the plan. A monitoring plan shall, at a minimum,
5 meet the provisions of the wetland mitigation plan (Chapter [19.700](#), Special
6 Reports).
- 7 2. Off-Site Compensatory Mitigation.
- 8 a. Considerations for determining whether off-site mitigation is preferable
9 include, but are not limited to:
- 10 i. On-site conditions do not favor successful establishment of the
11 required vegetation type, or lack the proper soil conditions, or hydrology,
12 or may be severely impaired by the effects of the adjacent development;
- 13 ii. On-site compensation would result in isolation from other natural
14 habitats;
- 15 iii. Off-site location is crucial to one or more species that is threatened,
16 endangered, or otherwise of concern, and the on-site location is not;
- 17 iv. Off-site location is crucial to larger ecosystem functions, such as
18 providing corridors between habitats, and the on-site location is not; and
- 19 v. Off-site compensation has a greater likelihood of success or will
20 provide greater functional benefits.
- 21 b. When determining whether off-site mitigation is preferable, the value of the
22 site-specific wetland functions at the project site, such as flood control, nutrient
23 retention, sediment filtering, and rare or unique habitats or species, shall be
24 fully considered.
- 25 c. When conditions do not favor on-site compensation, off-site compensatory
26 mitigation should be located as close to the impact site as possible, but at least
27 within the same watershed, while still replacing lost functions.
- 28 d. Off-site compensatory mitigation may include the use of a wetland
29 mitigation bank or an in-lieu fee program.
- 30 i. Mitigation Banking. Kitsap County encourages the creation of a public
31 or private mitigation banking system when feasible.

Commented [RM21]: An increased functional benefit in the offsite location does not mean the loss of benefits at the impacted site are mitigated to species that use the impacted site.

1 (A) The approval authority and affected tribes and the Department of
2 Ecology determines that it would provide appropriate compensation for
3 the proposed impacts;

4 (B) The impact site is located in the service area of the bank with
5 preference given to a mitigation bank site within the same watersheds
6 shown on the Department's Kitsap County Area 15 Watershed Map;

7 (C) The proposed use of credits is consistent with the terms and
8 conditions of the certified mitigation bank instrument; and

9 (D) Replacement ratios for projects using bank credits is consistent with
10 replacement ratios specified in the certified mitigation bank instrument.

11 ii. In-Lieu-Fee Mitigation. Credits from an approved in-lieu-fee program
12 may be used when all of the following apply:

13 (A) The approval authority determines in concurrence with affected tribes
14 and the Department of Ecology that it would provide environmentally
15 appropriated compensation for the proposed impacts.

16 (B) The proposed use of credits is consistent with the terms and
17 conditions of the approved in-lieu-fee program instrument.

18 (C) Projects using in-lieu-fee credits shall have debits associated with the
19 proposed impacts calculated by the applicant's qualified wetland
20 professional using the credit assessment method specified in the approved
21 instrument of the in-lieu-fee program.

22 (D) The impacts are located within the service area specified in the
23 approved in-lieu-fee instrument with preference given to a site within the same
24 subwatershed or watersheds shown on the Department's Kitsap County Area 15
25 Watershed Map..

26 3. Advance Mitigation. Mitigation for projects with preidentified impacts to wetlands may be
27 constructed in advance of the impacts if the mitigation is implemented according to federal,
28 state and local laws and guidance on advance mitigation, and state water quality regulations
29 consistent with Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation
30 (Ecology Publication No. 12-06-15).

31 ~~E.—Monitoring Requirements. Kitsap County shall require monitoring reports on an annual~~
32 ~~basis for a minimum of five years and up to ten years, or until the department determines that~~
33 ~~the mitigation project has achieved success. The wetland mitigation plan shall provide specific~~
34 ~~criteria for monitoring the mitigation project. Criteria shall be project-specific and use best~~

Commented [RM22]: The service area of many banks is geographically very large. To give an example, it is plausible under this wording that an applicant could seek to use a mitigation located in Hansville for an impact in Gorst Creek.
c

1 ~~available science to aid the department in evaluating whether or not the project has achieved~~
2 ~~success (see Chapter 19.700 and Sections 19.700.710 and 19.700.715, Special Reports).~~

3 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 25, 2005. Formerly 19.200.250)

4 | **19.200.235 Incentives for wetland mitigation.**

5 Kitsap County recognizes that property owners wish to gain economic benefits from their land.
6 The county encourages such mechanisms as the open space tax program (Chapter 18.12),
7 conservation easements and donations to land trusts, in order to provide taxation relief upon
8 compliance with the regulations in this title. Buffers dedicated as permanent open space tracts
9 may qualify for the open space taxation program and will be offered the opportunity to be
10 entered into this program. Kitsap County may offer to purchase these lands through the
11 conservation futures fund, as funding is available.

12 (Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 27, 2005 Ord. 217 (1998) § 3 (part), 1998. Formerly 19.200.260)

13

[Return to Comment Matrix](#)

Jan Wold
POB 1340
Poulsbo, WA
j.creek@hotmail.com
April 26, 2024

ATTN: Kitsap County
Critical Area Ordinance Review Comments
Department of Community Development
614 Division Street - MS36
Port Orchard, WA 98366
codeupdates@kitsap.gov
Cc: Christine Rolfes, County Commissioner
Kitsapcommissioners@kitsap.gov
Cc: Kitsap County Parks Department
parks@kitsap.gov

Re: Kitsap County Critical Area Ordinance (CAO) Review, Public
Comments

Dear Members of the CAO Review Team:

Introduction:

I am commenting on some portions of the draft Kitsap County CAO that is under review. Please consider my comments and add me to mailing lists regarding this review. My email is j.creek@hotmail.com. I have attended public meetings on this Kitsap CAO process on 5/17/2023 and on 2/6/2024. I shared my concerns about streams, especially those with fish, and wildlife corridors at both meetings.

My first main concern continues to be the loss of function of streams and in particular those with fish. We are losing the function of many of our

stream and in particular their salmon runs. My second main concern is wildlife conservation areas and corridors. I support increasing the size of all stream and wetland buffers in an attempt to slow this loss of stream function and to maintain the wildlife habitat and corridors.

I commented on the need for a way to designate wildlife habitat and especially wildlife corridors in the Kitsap CAO. The county needs to find a way to show the location of wildlife corridors, or at a minimum the Johnson Creek Wildlife Corridor in North Kitsap near Poulsbo. This allows everyone to be aware of this important location for wildlife. Even if the county adds no special regulations for this area, it would help to highlight this area where there is a potential to preserve such an important wildlife habitat corridor. It would also help highlight the potential for working with conservancies, the military and others to take action to preserve these areas and avoid further loss of the function. The military also has an interest in avoiding development around the edges of military bases.

The entire length of Kitsap County from Port Gamble on the north to the south boundary of the County near Belfair only has one shorter distance, well vegetated wildlife corridor, located in part on Johnson Creek, that connects east Puget Sound (through Liberty Bay) to Hood Canal. This also attaches to a part of the Johnson Creek wildlife corridor in the City of Poulsbo. Johnson Creek is a salmon stream.

Wildlife corridors and crossing bridges over highways are recognized as being effective at reducing collisions between wildlife and vehicles, preserving wildlife travel corridors, reducing fragmentation of habitats in human altered landscapes and reducing injuries to people. There are statistics showing vehicles claim around a million terrestrial animals per day in the US. Some examples of wildlife corridors are the Snoqualmie Pass wildlife bridge across I-90 and the Los Angeles wildlife crossing bridge being constructed over Highway 101 to enable wildlife to move between two wilderness areas at a cost of \$85,000,000.

If you have questions or need additional information please contact me. I do have additional information on Johnson Creek and some of the fisheries surveys.

Description of the Johnson Creek wildlife corridor from east Puget Sound at Liberty Bay near Poulsbo, through part of Johnson Creek, connecting to Hood Canal north of Bangor Naval Base:

The existing Poulsbo area Johnson Creek wildlife corridor extends from Liberty Bay on the east, through the Johnson Creek wildlife corridor, then on to include the heavily timbered 40-acre Viewside Water System property surrounding the Middle Fork of Johnson Creek, which supports a bald eagle's nest. The corridor continues with crossings below and above four-lane Highway 3, through culverts for each of the three forks of Johnson Creek and an overpass at Sherman Hill Road. It then continues through 205 acres of undeveloped Kitsap Parks parcels, through private parcels that are generally five acres or larger with mixed habitat, through the vast habitat on the north end of Naval Base Kitsap at Bangor and ending on the west on the shore of north Hood Canal (see aerial photo).

The tidelands and shores of Liberty Bay, Hood Canal and Puget Sound all serve as important connecting wildlife corridors. The next similar wildlife corridor between eastern Puget Sound and Hood Canal is about 20 miles south near Belfair. Between these two corridors much of Highway 3 is a barrier for wildlife. It is very important to maintain the function of these few existing wildlife corridors.

Johnson Creek originally had populations of Puget Sound steelhead, Puget Sound Chinook salmon, cutthroat trout, coho salmon and chum salmon. Both Puget Sound steelhead and Puget Sound Chinook salmon are threatened species. They and coho salmon have apparently not been seen in Johnson Creek during the past few years. It is important to preserve the function of the Middle Fork and the South Fork, both located in Kitsap County, in the hope the heavy impacts of development by the City of Poulsbo in the upper North Fork can begin to be rehabilitated for all of these species once again. About half of the North Fork of Johnson Creek is located in Kitsap County, not the City of Poulsbo.

The North Fork of Johnson Creek did have a large heronry until either a previous property owner or neighbors cut the nest trees down. One of the reasons for the success of the location of this heronry was its close proximity to both Hood Canal to the west and Liberty Bay and East Puget Sound to the east. The most intensive heron feeding occurs at lower tides. The low tide in Hood Canal occurs earlier than the low tide in Liberty

Bay. This allowed the herons to fish the low tides in Hood Canal and then fly the short three miles to Liberty Bay and catch the later low tides there. Although this heronry was sadly destroyed, there is still hope that another heronry might develop at another location in the habitat of this wildlife corridor.

Nominations of the Kitsap County Park Property Portion of the Johnson Creek Wildlife Corridor as a Heritage Park:

A portion of this Johnson Creek wildlife corridor that is a Kitsap County Park property was nominated as a Heritage Park in 2018. I do not know the status of these nominations. Two of these nominations which include a description of the wildlife habitat area are shown below.

Nomination of Johnson Creek Wildlife Preserve as a Kitsap Heritage Park by Jan Wold

Jan Wold
POB 1340, Poulsbo, WA 98370
June 20, 2018

I lived at the mouth of Johnson Creek alongside its estuary with Liberty Bay near Poulsbo for a number of years. Johnson Creek is a salmon stream. I still own five acres of undisturbed habitat along the North Fork of Johnson Creek. My education is in forestry and aquatic biology. I spent the seven years before retiring in charge of a one million acre National Forest.

I was involved in helping achieve the transfer of the 186 acre Rude Road Kitsap Park property from the Washington Department of Natural Resources (DNR) to Kitsap County and then to Kitsap Parks and Recreation. However, Molly Lee should be recognized for doing the most work of anyone to preserve this property.

I would like to nominate the Johnson Creek Wildlife Preserve property, also known as the Rude Road property, to become a Kitsap County Heritage Park. This Johnson Creek Wildlife Preserve property includes both the 186 acre and 19 acre adjoining Kitsap Park properties. It has some forested areas as well as areas harvested about eight years ago. It includes the Middle Fork of Johnson Creek and its headwaters. Johnson Creek is a salmon stream. There is also a long term active eagle's nest a short way east of this Kitsap park property's eastern boundary. Most of this property should be classified as Natural Area (NA).

I am one of the members/owners of the Viewside Domestic Water System which includes 30 pristine acres. There are presently 48 residences using the water system from a well located near the east edge of the 30 acres. This 30 acres is covered in older growth timber and riparian areas. The Middle Fork of Johnson Creek runs across this property from west to east. This 30 acres is under a Kitsap County Land Conservation Agreement signed in 1982. This 30 acres shares a corner with the eastern boundary of the 186 acre Kitsap Parks parcel.

This Kitsap park property is one fourth mile east of thousands of acres of pristine habitat on the Bangor Submarine Base. Habitats such as these are very valuable for wildlife. Corridors of habitat are even more valuable as they allow movement of wildlife from one area to another. In this case this strip of habitat along Johnson Creek including the Kitsap Park property is one of the shortest and most intact watershed and wildlife corridors in Kitsap County that connects Hood Canal to all of east Puget Sound through Liberty Bay.

State Highway 3 is a nearly impassable barrier to wildlife that runs almost the entire length of Kitsap County. This Johnson Creek drainage is one of the only places in our county that does allow some wildlife passage from east to west between Hood Canal and east Puget Sound.

Although a large under or over pass would be best for a wildlife corridor, the low traffic Sherman Hill overpass without on and off ramps does provide a passage way for larger wildlife at this time. This overpass is located one half mile south of the 186 acre Kitsap Park property. The Johnson Creek culvert under State Route 3 is located about 200 feet south of the 186 acre Kitsap Park property on the State Route 3 highway easement. Fish and wildlife are provided passage under this busy highway at that point.

There is another 40 acre block of habitat adjoining the south west boundary of the 186 acre Kitsap Park property. I believe it is set up as either a county forestry or conservation parcel. There are a number of other parcels that are excellent wildlife habitat in the Johnson Creek drainage and beyond that may also be available at some point for addition to the wildlife corridor.

I can't overemphasize the importance of this Johnson Creek wildlife corridor. This is an amazing opportunity to maintain a wildlife corridor, water quality and a salmon stream. It is one of the few or perhaps the only place remaining in Kitsap County where we have this wildlife corridor opportunity. We are so fortunate to already have a large portion of this wildlife corridor in Kitsap County ownership.

A Portion of the Molly Lee Nomination of Johnson Creek Wildlife Preserve for a Kitsap Heritage Park:

"I grew up on the north fork of Johnson Creek near Poulsbo. I have been involved with the transfer of this 186 acre property from the Washington Department of Natural Resources (DNR) to Kitsap County and then to Kitsap Parks and Recreation since 2006.

I am nominating the Johnson Creek Wildlife Preserve property or Rude Road property to become a Heritage Park. It includes the 186 acre DNR property and the attached 19 acre Kitsap park property. Refer to Kitsap County 2018 Parks, Recreation and Open Space Plan under partnership properties.

The name of this parcel should be the Johnson Creek Wildlife Preserve because it contains a high quality wildlife ecosystem and the headwaters of Johnson Creek. This acreage is a very large portion of intact wildlife and fish habitat with many more attributes including stormwater management, aquifer recharge and salmon habitat. It also provides potable water for the Viewside Water System. The estuary of this creek on Liberty Bay was a site where the Puget Sound Salish camped and gathered oysters. They called the estuary Badatoced.

I would propose putting the two adjacent county parcels in a Heritage Park with the majority of the property that sits west of Hwy. 3 under the landscape classification category of Natural Area (NA) as primarily "undeveloped natural areas, with environmentally sensitive areas preserved or enhanced" as listed on page 13 of the Kitsap County Parks and Recreation Open Space Plan. This category would "protect, restore and enhance inherent natural attributes" by letting "natural processes prevail" with "ecosystem restoration activities only". This category would

protect the headwaters and wetlands associated with the middle fork of Johnson Creek, a fish bearing stream.

The smaller portion of property that sits on the east side of Hwy. 3 is a pot of gold opportunity for a future passage for wildlife by way of a Hwy. 3 underpass. This east parcel is kitty corner to the Viewside Water System 30 acre conservation property. It also is in close proximity to the hundreds of acres of pristine habitat on the military base. These pieces of land are vital and valuable for wildlife to move through one of the shortest and most intact watershed corridors in Kitsap County from Hood Canal to Liberty Bay. This corridor then connects to all of east Puget Sound for wildlife passage....”

Statement of Suquamish Fishery Biologist Jon Oleyar on Johnson Creek, One of the most Intact and High Quality Habitats in North Kitsap:



FISHERIES DEPARTMENT

Phone: (360) 394-8437/8438

Fax: (360) 598-4666

www.suquamish.nsn.us

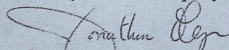
THE SUQUAMISH TRIBE

P.O. Box 498 Suquamish, Washington 98392

November 5, 2006

Johnson Creek Through The Eyes of a Surveyor

I have been surveying the Johnson Creek watershed along with 20-30 other East Kitsap streams for the Suquamish Tribe since 1998. During my work with the Tribe, I have become very intimate with many of the local streams I survey. Compared to many of the other streams I walk, in my opinion, the Johnson Creek watershed contains one of the most intact and high quality habitats left within the North Kitsap region. The stream is well-shaded and buffered from city and Highway noise. I have observed black bear, bear tracks, big cat tracks, river otter, red-tailed hawks, kingfishers, Great Blue Herons, skunks, opossums, coyote, and deer within the reach from the mouth of Johnson Creek to river mile 0.9 (just below Cedar Lane). Additionally, I have been told by long-time residents along the creek that mountain lion as well as bobcat have been seen to wander throughout the forested edges of Johnson Creek. Johnson Creek is home to fall chum and coho salmon as well as cutthroat and steelhead trout. All species are found throughout my survey index up to Cedar Lane. With few exceptions, Johnson Creek has seen at least 200 adult salmon return each fall to spawn since 1998 and appears to be maintaining a healthy population of both chum and coho. In recent years more wild coho have been observed in-stream, which is a testament to the high quality of the habitat. Both the mainstem and the middle fork have beautifully forested ravines made up of a mosaic of second growth tree species including cedar, Douglas Fir, Spruce, Alder, and Maple and large sword ferns. This forested area not only serves to keep the watershed hydrology protected and clean, but also serves as an extremely important wildlife corridor not usually found in a rapidly urbanizing geography.


Jonathan Oleyar

B.S. Wildlife Biology/Management (emphasis on aquatic ecosystems) with a Minor in Environmental Ethics - 1994 Humboldt State University/University of Montana

Field Biologist
Suquamish Tribe
Fisheries Dept.
P.O. Box 498
Suquamish, WA 98392

Kitsap Sun Articles on Johnson Creek and the Kitsap Park Properties:

June 15, 2008

POULSBO | JOHNSON CREEK

Can They Save Paradise ... AND Put Up a Parking Lot?

In this watershed, the desire to protect an increasingly fragile environment is colliding with a legal mandate to accommodate more homes and business in the near future.

By CHRISTOPHER DUNAGAN AND DEREK SHEPPARD
KITSAF SUN STAFF

Crossing Viking Way, Jon Oleyar traversed a slope above Johnson Creek, walked around a man-made pond and ducked under a series of overhanging branches.

Less than five minutes later, Oleyar, a biologist for the Suquamish Tribe, found himself enveloped in the quiet canyon of Johnson Creek. Here, lofty second-growth fir and cedar trees darkened the rippling stream and heightened a feeling of remoteness.

"You have some large woody debris here," said Oleyar, pointing to a tree that had fallen into the stream, forming a pool of water.

With summer approaching, salmon were nowhere to be seen. But in the fall, these pools provide critical resting places for healthy runs of chum and coho, he said.

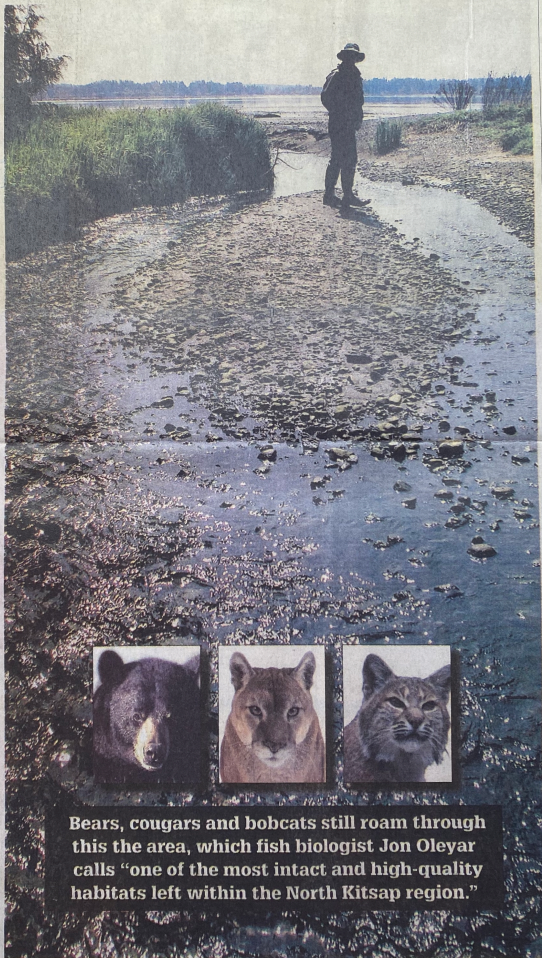
Oleyar's job for the Suquamish Tribe is to count and keep track of salmon. During salmon season, he regularly hikes East Kitsap's streams, and he knows them well.

"As we go on up," Oleyar said, climbing a slight incline, "you can see that there is nobody, just the birds and critters. Here the stream is free to move around as it needs to."

Bears, cougars and bobcats still roam through this the area, which Oleyar calls "one of the most intact and high-quality habitats left within the North Kitsap region."

It is quite amazing, he said, that such an ecologically valuable area can be found right next door to a growing city.

But as development expands outward from Poulsbo, the Johnson Creek watershed has become the next logical target for growth, according to city officials. Outward expansion in other directions is difficult, they say, and the north fork of Johnson Creek already lies within Poulsbo's urban growth area, having been added six years ago.



Bears, cougars and bobcats still roam through this the area, which fish biologist Jon Oleyar calls "one of the most intact and high-quality habitats left within the North Kitsap region."

Jon Oleyar, a biologist for the Suquamish Tribe, stands in Johnson Creek where it feeds into Liberty Bay in Poulsbo.

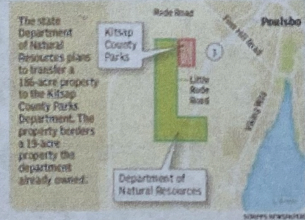
SEE CREEK | A8

186-acre West Poulsbo' property likely to be transferred to county parks



The state Department of Natural Resources plans to transfer a 186-acre timberland south of Finn Hill Road in Poulsbo to the Kitsap County Parks Department. Recently logged, the property may be replanted with an array of native plants and host a section of a regional trail.
Aug. 08, 2014

FUTURE POULSBO PARK



Map shows location of "West Poulsbo" property.



The state Department of Natural Resources plans to transfer a 186-acre timberland south of Finn Hill Road in Poulsbo to the Kitsap County Parks Department. Recently logged and frequently used for dumping and shooting, the property may be replanted with an array of native plants and host a section of a regional trail. Tristan Baurick/Kitsap Sun

By [Tristan Baurick](#) of the Kitsap Sun

POULSBO — A large timberland in the fast-growing outskirts of Poulsbo is on track to become a forested preserve with a regional trail running through it.

The state Department of Natural Resources wants to transfer a 186-acre property on the west side of Highway 3 to the Kitsap County Parks Department. The county is happy to take it, especially because the asking price is \$0.

“The county likes a really good deal, and this is one,” said Eric Baker, the county’s special projects manager. “We’re really interested in (preserving) open space, and land of this size doesn’t come up that often.”

Known as the “West Poulsbo” property, the long, L-shaped parcel is valued at about \$1 million. It sits along Little Rude Road, a gravel drive branching off Rude Road a few blocks west of Finn Hill Road. Much of the property was recently logged and is now overgrown with Scotch broom. It contains a few wetlands that serve as the headwaters of Johnson Creek, a salmon-bearing stream that Poulsbo leaders have long tried to preserve.

The county parks department already owns an undeveloped 19-acre parcel adjacent to the West Poulsbo property. Fusing them together would create a 205-acre parkland. That’s about the same size as the county’s South Kitsap Regional Park and Hansville Greenway.

DNR recently drafted a letter of intent laying out a process for transferring the West Poulsbo property. Use would be restricted to “fish and wildlife habitat, open space or recreation.” DNR officials expect to make the transfer sometime between the end of summer and spring of next year.

The property is on a list of properties DNR no longer wants to manage. It’s small compared to other DNR timberlands and it isn’t easy for logging trucks and big machinery to access.

“It’s also isolated from most other properties in DNR ownership, which makes it a little more difficult to manage for timber harvests,” said Pene Speaks, a DNR forest resources division manager. “There are also restrictions because of the wetlands and riparian zones. We think it would be a better candidate for open space rather than long-term timber management.”

DNR’s transfer proposal notes that “protection of this property would represent the single largest addition to the Johnson Creek watershed.” The creek’s water levels have dropped due to recent commercial development in the area, according to DNR. Large housing developments have taken shape nearby, and the big-box stores of Olhava Way are less than a mile to the north.

The property is managed under a trust that uses timber sale revenues for public school construction. If transferred, the state will match the property’s timber value and invest it in a public school fund. The land value, estimated at just under \$1 million, would also be matched to purchase another property — likely near other DNR properties on the Olympic Peninsula. This new property would be managed like the West Poulsbo property, generating school funding through timber sales.

DNR recently completed a similar deal with Jefferson County, setting aside 305 acres between Gibbs Lake Park and Beausite Lake Park.

Kitsap County Commissioner Rob Gelder foresees two uses for the West Poulsbo property: trails and forest protection.

“Here we have blank canvas,” he said. “What we can do is terra- or eco-forming of that area, and we’re starting from scratch.”

The county is planning construction of a regional bike and pedestrian trail that would run from Poulsbo to Mason and Pierce counties. “This property’s in a really good spot to help us create that north-south trail,” Gelder said.

The county’s new forest stewardship program could plant the area with an array of native trees and shrubs.

The parks department’s neighboring property — which nearby residents say was once a gravel pit — is thickly wooded. Last year, the department declared it surplus and tried to offer it to DNR. In a surprise move, DNR declined and offered up its much larger property.

Little Rude Road's dozen or so homeowners say the DNR property is drawing an increasing number of unwanted visitors down their narrow, winding lane. The property is used for trash dumping, shooting and drug use, residents say.

"There's been a lot of challenges with DNR managing the land, especially as a lot of population has come closer, with (development on) Olhava and with Walmart and number of new houses," said Clardon Gustafson, a Little Rude resident for more than 30 years.

Because Little Rude is not a public road, the county will need to work out a shared-use agreement with residents. DNR provided road repairs and other maintenance on a regular basis.



About Tristan Baurick

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[April 26, 2024](#)

Kitsap County Department of Community Development
614 Division Street MS-36
Port Orchard, Washington 98366

Dear Staff:

Subject: Comments on the Draft Kitsap County Critical Area Ordinance 2024
Sent via email: codeupdates@kitsap.gov

Thank you for the opportunity to comment on the Draft Kitsap County Critical Area Ordinance Update 2024. As stated in the Critical Areas Handbook, the protection of Critical Areas is essential to protecting the public's health and safety and is necessary to comply with Washington State law.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters across the state, including in Kitsap County.

Overall, Futurewise supports the update if it includes important fixes to address community concerns, regional policies, and state law. We have provided comments on the Draft 2024 Critical Areas Ordinance Update below.

Comments

Overview

- The Growth Management Act (CMA) mandates that “the land speaks first” and this principle must form the basis for all our land management decisions.

Shared Needs and Recovery Goals

- Kitsap County participated in the collaborative multi-jurisdictional planning process that led to the development of the many ecosystem protection, enhancement, and recovery goals presented in the Puget Sound Regional Council's (PSRC) Vision 2050. Achieving these shared goals includes significantly reducing greenhouse gas emissions, restoring Puget Sound health, and protecting a network of open space¹, requires that adaptive management decision-making is effectively incorporated into the planning processes that determine ecological outcomes.
- Current management approaches are failing to bring about the desired and legally required outcomes. Ecosystems are continuing to unravel, and entire fisheries have been lost, orcas are at risk of local extirpation from Puget Sound, and tribal communities are increasingly unable to obtain even the bare minimum of fish and other treaty-protected resources needed to sustain their traditions, cultures, and livelihoods.
- "Since non-indigenous settlement of Washington began in the 1800s, between 50 percent and 90 percent of riparian ecosystems have been lost or extensively modified while two subspecies (Hood Canal summer chum and Snake River fall Chinook) are moving towards recovery, most listed salmon

¹ Citation for environmental policies: Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 5-6 (Oct. 2020) last accessed on April 24, 2024, at: <https://www.psrc.org/planning-2050/vision-2050>

in Washington are below recovery goals. The lack of recovery is also evidenced in the ongoing decline of salmon fishing, which affects the long-term health of Washington’s tribes, Washington’s economy, and our shared cultural heritage. The lack of salmon is one of the primary reasons Southern Resident Killer Whales are at risk of extinction, in addition to other impacts such as vessel disturbance and pollutants”.²

- The economic and cultural impacts of these losses for all Washingtonians, now and into the future, are incalculable. Long-term ecosystem recovery and health are essential for fulfilling our obligations to affected Tribes under treaties that are the “supreme law of the land” according to federal law, to meet community needs, and to comply with the Growth Management Act requirement, in RCW 36.70A.060(2), that “[e]ach county and city shall adopt development regulations that protect critical areas ,...”

New Adaptive Management Strategies

- We need new approaches to achieve the environmental restoration goals outlined in Vision 2050 and we must take meaningful action immediately to prevent an escalation of the ecological catastrophe unfolding in Puget Sound by effectively incorporating adaptive management strategies.
- While using the “no net loss” review standard is a step in the right direction, adopting “net ecological gain” as a new management and planning standard would enable us to begin making the substantive strides necessary to reverse the widespread ecological damage threatening the survival of not only salmon and orcas but the human populations and cultures that have thrived and depended upon them for a millennium. The Growth Management Act’s environment goal, amended in 2023, now calls for counties, cities, and state agencies to both “[p]rotect and enhance the environment”³ RCW 36.70A.172 also authorizes the enhancement of anadromous fisheries. ⁴
- Futurewise supports proposed additions to Policy Goal 19.100.105 but suggests the new language should be in addition to, not instead of, the previously used language and that “no net loss” language be replaced with “net ecological gain”.
- Futurewise agrees with additions to the Exemptions rules under 19.100.125 A. 1 with retention of the original description of qualifying emergencies or a reference to the definition being used.

Cumulative Effects and Habitat Fragmentation

- Futurewise supports staff recommendations to consider watershed scale processes in decision making as described under the Statement of Purpose in 19.100.105.11 with the addition of language regarding the need to be aware of, consider, and plan for tribal cultural landscapes and with retention of the original language to “prevent cumulative adverse environmental impacts to water...” The protection of many fish and wildlife habitats requires consideration of watershed processes.
- The cumulative losses of smaller wetlands, streams, and other important landscape features, typically deemed lower priority, furthers the unacceptable declines of natural resources, which include treaty-protected fish and wildlife and associated habitats. The ongoing destruction of landscapes and the associated populations of fish, wildlife and plants is in violation of the Growth Management Act in RCW 36.70A.060(2), that “[e]ach county and city shall adopt development regulations that protect critical areas ,...”
- Habitats are increasingly disconnected and fragmented, disrupting the movements and other natural behaviors of many fragile Washington Department of Fish and Wildlife-identified Priority Species and reducing their likelihood of reproductive success and survival. Seemingly negligible or degraded patches of habitat can provide critical links for migrating fish and wildlife and the importance of these

² Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Pg 40, Habitat Program, Washington Department of Fish and Wildlife, Olympia.

³ RCW 36.70A.020(10).

⁴ *Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 429–30, 166 P.3d 1198, 1206 (2007), as corrected (Apr. 3, 2008).

spaces are often not recognized or adequately appreciated by those with decision-making power over their fate. The Growth Management Act requires open space corridors to include lands useful for recreation, wildlife habitat, trails, and connection of critical areas.⁵

- The current condition of degraded lands must not be used as a justification for allowing further impacts to Critical Areas and Critical Area buffers and adding to the cumulative damage underlying much of our ecosystem failures. Instead, we must continue to focus on the protection, recovery, and restoration of the interconnected and imperiled landscapes upon which we all depend⁶
- Buffers and Critical Areas intersected and fragmented by roads and other infrastructure must still be managed as critical areas both inside and outside the UGA.⁷ Habitat fragments can continue to provide some ecosystem functions and services like cooling shade from trees, pollinator and plant habitat, and stormwater water infiltration.
- Futurewise supports changes to the Standards for Existing Development 19.100.130. 3. E but should include “significant habitat” in addition to the “loss of significant trees”.
- Futurewise agrees with the inclusion of mitigation sequencing requirements and with the tribal representatives that have stated mitigation impacts should have universally applicable mitigation sequencing for all Critical Areas and that the Washington Department of Ecology’s Online Avoidance and Mitigation Tool website can serve as an example of how this might be accomplished.

Wetlands

- Wetlands play a critical ecological role, hence their inclusion in CAOs to protect and preserve these important habitats for all species. Futurewise supports strong wetland protections including within the urban growth areas (UGAs), to preserve the many vital functions and benefits wetlands provide including stormwater filtration, flood control, wildlife habitat, summer air cooling, plant and animal biodiversity, and cultural spaces and materials for people.
- The above wetland benefits and many more are key to developing true climate resiliency and must be protected, maintained, and increased where warranted, to ensure full ecological functioning and to maximize climate resiliency through temperature regulation, water infiltration, and flow regulation and the associated benefits.
- Continuing to allow exemptions for small wetlands degrades habitat features critical for wildlife like “rest points” and habitat connectivity including between wetlands. This degradation also contributes to the desertification of urban areas and reduces climate resiliency. The exemptions for small wetlands should be deleted.
- Futurewise recommends eliminating exemptions for small wetlands from the code in 19.200.210C Wetland identification and functional rating.
- Futurewise strongly objects to the inclusion of language to define “functionally disconnected buffers” that do not exist and should not be offered as a loophole for inappropriate development. All open land provides some level of ecosystem services and functions and supports more intact habitats.
- Futurewise does support the option to increase buffer widths or enhance buffer vegetation when warranted.
- Buffer widths should not be sacrificed long-term for short-term buffer enhancement as described in 19.200.220.C because buffer incursions are typically permanent, and enhancements can occur at any time including into the future and this approach precludes the shared goals for ecological recovery.
- The “no net loss” standard used to describe buffer widths is insufficient for achieving shared ecosystem recovery goals.

⁵ RCW 36.70A.160.

⁶ RCW 36.70A.060(2) “[e]ach county and city shall adopt development regulations that protect critical areas ,...”

⁷ *Pilchuck, et al. v. Snohomish County*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 9 of 33 last accessed on April 25, 2024, at: <https://eluh02022.my.site.com/casemanager/s/case-search>

- Futurewise supports the increased protections for bog wetlands in 19.200.220.E with the addition of language to include low-impact development or stormwater management requirements.

Riparian Management

- Consistent with the Best Available Science (BAS) and to protect fish and wildlife habitats as required under the Growth Management Act (GMA), CAO buffer width policies and regulations must incorporate the new State of Washington Department of Fish and Wildlife (WDFW) recommendations for riparian management areas that include designating all riparian areas as critical areas: specifically, Fish and Wildlife Habitat Conservation Areas.⁸
- Futurewise supports the inclusion of 19.300.305.E requiring the retention and restoration of riparian buffers and recommends using a “net ecological gain” standard.
- Fish and wildlife depend on connected corridors and buffers for migration to fulfill their need to locate food, mates, cover, and more. Intact Riparian Management Zones (RMZs) in urban areas function as those wildlife corridors that link habitat patches and can sometimes be more important in urban areas from a habitat standpoint because the often-adjacent uplands are even more degraded than the RMZs.
- Futurewise supports WDFW guidance to designate riparian ecosystems as Fish and Wildlife Habitat Conservation Areas, a type of critical area⁴, for the range of habitat and other functions they provide in addition to stream protection, and that riparian areas should be managed accordingly.
- The addition of a Type “O” stream classification under 19.300.310.B.3 as a Critical Area is appropriate.
- Futurewise strongly supports the increased Stream Buffer Widths in 19.300.315. A.1 based upon the BAS using the Site Potential Tree Height Mapping tool or 200’ for Type F streams, or whichever is greater, to ensure optimal ecosystem functions like the filtration of stormwater to reduce pollution, shade to cool water, and large wood recruitment.
- Buffer width within UGAs should not be narrower than required outside UGAs. The requirement to protect fish and wildlife habitat applies to all the streams of Washington and stream health must be managed and maintained according to the same BAS regardless of UGA boundaries. There are no “sacrificial” spaces or landscapes.
- Adopting the staff-recommended predictive model approach that would result in lesser protections 30% of the time is not consistent with BAS which must be used as the basis for critical areas regulations. Using this lesser standard will result in continuing declines in water quality, habitat, and more, contrary to the ecosystem recovery goals agreed upon in the Puget Sound Regional Council’s Vision 2050.
- Futurewise agrees with the Enhanced Buffer Width provisions of 19.200.220.
- Alternative buffer widths should not be permitted under new Development standards.

Fish and Wildlife Habitat Conservation Areas (FWHCA) 19.300

- Fish and Wildlife Habitat Conservation areas serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem. The Vision 2050 Resilience Policies for Protecting, Enhancing and Restoring the Natural Environment include enhancing urban tree canopy to support community resilience, urban heat mitigation, and stormwater management, all of which can be supported with strong protections for buffers as critical areas for FWHCA.
- The court of appeals has held that:

The GMA requires cities and counties to adopt regulations to protect environmentally critical areas, which include habitats of priority species and species of local importance. See RCW

⁸ Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

36.70A.060(2), .170(1)(d); WAC 365-190-130(2)(b). Local governments must review and update their critical area ordinances every eight years to ensure they continue to meet the GMA's standards. RCW 36.70A.130(5)(b).⁹

- Consistent with this holding, 19.300.3104.a.i must designate Priority Habitats and Species as Class I Wildlife Habitat Conservation Areas. These habitats and species are listed in the Priority Habitats and Species list.¹⁰ The current State of Washington Department of Fish and Wildlife management recommendations can be found at this website: <https://wdfw.wa.gov/species-habitats/at-risk/phs/recommendations>

Geologically Hazardous Areas

- Futurewise strongly supports the inclusion of runout calculations and alluvial fans for determining the outer extents of Critical Areas containing unstable slopes.
- Under 19.400.425.C, The CAO language should include the factors that demonstrate the potential that a hazard could occur.
- Futurewise proposed changing the language in 19.400.435.B from “a geologic assessment may be requested” to “a geologic assessment will be required” to make clear that a geologic assessment is a standard development permit application requirement.

Biodiversity and Climate Resiliency

- The PSRC Vision 2050 calls for the protection of our critical areas as climate resiliency tools and for critical areas to be updated based on climate impacts from sea level rise, flooding, wildfire hazards, urban heat, and other hazards.¹¹ Critical Areas regulations must be consistent with multicounty planning policies.¹² Futurewise recommends amending Proposed 19.100.105 13 and the critical areas regulations to require that new lots and new buildings be located outside the area of likely sea level rise where possible. These requirements will provide better protection for buildings and people and will also allow wetlands and marine vegetation to migrate as the sea level rises.
- Reduced biodiversity and disruptions to natural hydrology reduce our resiliency to the effects of climate change through flood control, infiltration, and more.
- Futurewise strongly supports the policy goal in 19.100.105 13 to consider the impacts of climate change and sea level rise on planning processes and decision-making but would include the words “and to plan for” after “consider”.
- We should focus on creating and enhancing climate refuges for plants and animals including for Priority Species and Habitats by considering and planning for the predicted need for plants and wildlife now and into the future.
- Plants and some wildlife will be forced to move inland in response to predicted sea level rise causing existing shoreline habitats to shrink and forcing wildlife to move inland as uplands are flooded.¹³ We must plan now to effectively address the coming need for more inland habitat.

⁹ *Whidbey Env't Action Network v. Growth Mgmt. Hearings Bd.*, 14 Wn. App. 2d 514, 522 – 23, 471 P.3d 960, 966 (2020). Since the court of appeals decided this case, the periodic updates have been changed to once every ten years.

¹⁰ State of Washington Department of Fish and Wildlife, Priority Habitats and Species (PHS) List Kitsap County tab.

¹¹ Puget Sound Regional Council, VISION 2050: A Plan for the Central Puget Sound Region p. 61 (Oct. 2020) last accessed on April 15, 2024, at: <https://www.psrc.org/planning-2050/vision-2050> and enclosed at the link on the last page of this letter with the filename: “vision-2050-plan.pdf.”

¹² *West Seattle Defense Fund v. City of Seattle*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Case No. 94-3-0016, Final Decision and Order (April 4, 1995), at *55; *Friends of Pierce County, et al. v. Pierce County*, Central Puget Sound Region Growth Management Hearings Board (CPSRGMHB) Case No. 12-3-0002c, Final Decision and Order (July 9, 2012), at 11 of 138.

¹³ Christopher Craft, Jonathan Clough, Jeff Ehman, Samantha Joye, Richard Park, Steve Pennings, Hongyu Guo, and Megan Machmuller, *Forecasting the effects of accelerated sea-level rise on tidal marsh ecosystem services* FRONT ECOL ENVIRON 2009; 7, doi:10.1890/070219 p. *6 last accessed on April 25, 2024, at: <https://www2.clark.wa.gov/files/dept/community-planning/shoreline-master-program/proposal-comments-received/futurewise-data-cd/craft-et-al-2009.pdf> *Frontiers in Ecology and the Environment* is peer reviewed.

- Support climate resiliency through biodiversity by designating and protecting rare plant categories and listings from the Department of Natural Resources, Natural Heritage Program in the critical area's policies and regulations. The *2021 Washington Vascular Plant Species of Conservation Concern* identifies rare plants in Kitsap County.¹⁴ These plants and ecosystems need to be designated as fish and wildlife habitats and conserved. This is necessary to protect fish and wildlife habitats as the Growth Management Act requires.¹⁵
- Canopy Trees provide significant climate resiliency benefits and must be protected and encouraged wherever possible.

Thank you for considering our comments. If you need further information please contact Susannah@Futurewise.org or Nicole@Futurewise.org

Sincerely,

Water Fish and Wildlife Program staff,

Susannah Spock, Program Manager
Nicole Harris, Program Coordinator

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¹⁴ Walter Fertig, *2021 Washington Vascular Plant Species of Conservation Concern* pp. 7 – 44 (Washington Natural Heritage Program, Natural Heritage Report 2021-04: Aug. 31, 2021) last accessed on April 25, 2024, at: https://www.dnr.wa.gov/publications/amp_nh_vascular_ets.pdf.

¹⁵ *Whidbey Environmental Action Network v. Island County*, Western Washington Region Growth Management Hearings Board (WWRGMHB) Case No. 14-2-0009, Final Decision and Order (June 24, 2015), at 21, 32 – 35 of 49 last accessed on Feb. 7, 2024, at: <https://eluh02022.my.site.com/casemanager/s/case/50082000001BDWk/detail>.