



## Working Group Meeting Summary – 2024 Critical Areas Ordinance (CAO) Update

**Topic:** Fish & Wildlife Habitat Conservation Areas – July 20, 2023 @ 1pm-4pm via Zoom

**Meeting Purpose:** To engage in a comprehensive discussion of Fish & Wildlife Habitat Conservation Areas by reviewing and discussing the Best Available Science (BAS) summary, recommendations in the Consistency and Gap Analysis report (Chapter 3), and existing County code section KCC 19.300.

Working Group Members Present	Working Group Members Not Present
Watershed Consulting Firm	Puyallup Tribe
Dept. of Ecology	Skokomish Tribe
Dept. of Fish & Wildlife	Jamestown Tribe
Suquamish Tribe	Kitsap Alliance of Property Owners
Port Gamble S’Klallam Tribe	
Point No Point Treaty Council	
Squaxin Island Tribe	
Kitsap Environmental Coalition	
Kitsap Builders Association	
Futurewise	
DCD Staff	

**Meeting Materials:** [Working Group Guidelines and Schedule](#), [Gap Analysis Report](#), [Best Available Science \(BAS\) Summary Report](#), [KCC 19.300 – Fish and Wildlife Habitat Conservation Areas](#)

**Recommendation #1** – Make minor update to the definition of “priority species.”

KCC 19.150.475, which defines “priority species,” includes mention of “heron rookeries.” For consistency with current WDFW PHS terminology, updating “heron rookeries” to “nesting colonies” is recommended. (*Gap Analysis, pg. 16*)

**Discussion Summary:** The intent is to remove reference to “heron rookeries” in the definition of Priority Species for consistency with Fish and Wildlife terminology. This refers to nesting colonies instead of heron rookeries. Recommendation is to change the term heron rookeries to nesting colonies.

**Recommendation #2** – Consider the designation of fish and wildlife habitat conservation areas based on recent WDFW riparian management guidance.

As documented in the BAS Summary Report (DCG/Watershed 2023), WDFW has issued recent guidance (Rentz et al. 2020) for the protection of riparian areas. This guidance has implications for how the County designates fish and wildlife habitat conservation areas. This issue will be considered in more detail in a forthcoming memo reviewing the guidance in context of Kitsap County. (*Gap Analysis, pg. 16*)

*\*This is a summarization of the working group discussion, not a transcript and does not indicate formal County recommendations or updates.*



Discussion Summary: WDFW guidance recommends that a RMZ be a delineable regulatory critical area as a fish and wildlife habitat conservation area. Buffering of streams from adjacent impacts is a function of a RMZ but not the full function. Those areas provide many other functions that benefit not only the stream, but other terrestrial wildlife and things like water quality as well. RMZ guidance is based on all of the functions and not necessarily specific to wildlife. BAS does not indicate that there is any scientific basis for protecting non-fish bearing waters to lower standard than fish bearing waters when it comes to RMZ's. Kitsap County code does not allow a land division or plat to create lots that are encumbered lots that may require a subsequent variance or exception to environmental protections. Kitsap County should not support diminishing wild/protected areas just because housing demand is high. WDFW has gathered examples of implementation from other codes that can be shared, as well as tutorials on the Site Potential Tree Height (SPTH) mapping tool. Using SPTH guidelines has the potential to increase the number of variance and/or buffer reduction permit requests. The goal is not to increase the number of permit applications which may happen due to Kitsap's land supply being picked over and development getting increasingly complex. SPTH is based on the height of a 200-year-old tree and the conditions at a particular site. The RMZ is within that "zone of influence" where development would impact the stream. There is a tool available on WDFW webpage where you can determine the estimate of the SPTH at 200 years for a particular parcel and be able to use that to estimate that boundary. For too long the stream has been protected and the riparian buffer has simply been the buffer. As the BAS report indicated, the riparian area is effectively its own important unit that requires protection and needs to be protected as a critical area. The mapping tool is easy to use. There are concerns about buffer averaging and buffer reductions. Canopy coverage and time for mitigation to provide the same functions and values as the impact should be considered. The SPTH guidance does require a minimum 100-foot buffer for all streams which is a big change for the county's current 50-foot buffer for non-fish bearing streams.

#### **Future Considerations for Recommendation #1 & #2:**

- Does the guidance provide any direction on implementation? Can we get those examples?
- Are there recommendations on how to implement the RMZ as a critical area?
- Will there be buffers for the buffers or setbacks for the RMZ's?
- Who would provide the SPTH mapping tool tutorial?
- Does this result in a greater buffer width overall?
- Would this mean changes to table 19.300.315?
- Need maps of these areas to understand the increase/decrease/change to these areas.
- Increase in legal non-conforming lots?
- Increase in variance and buffer reduction applications? Strain on County resources?
- How will the mapping tool work when a parcel has multiple SPTH's?



**Recommendation #3** – Reference the Washington Department of Natural Resources Natural Heritage Program.

KCC 19.300.310.B.3.a, in identifying Class I Wildlife Habitat Conservation Areas, includes the following criterion:

*Habitats recognized by federal 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 (KCC 19.300.310.B.3.a.i).*

The Washington Department of Natural Resources Natural Heritage Program also provides lists and locations of high-quality ecosystems and rare plants. Accordingly, referencing this important resource in the above criterion is recommended. (*Gap Analysis, pg. 17*)

Discussion Summary: In the instances (which is often) that a Habitat Management Plan (HMP) and a wetland delineation report are needed for a project, the same biologist typically prepares both in a singular report. Both the County and Department of Ecology do not see this as a problem, however, there may be duplicative requirements. Additional detail may be needed in the special reports required for FWHCA and the wetland special reporting requirements could be referenced as a starting point.

**Recommendation #4** – Consider adding mitigation sequencing standards.

KCC 19.300.305 states that:

*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.*

This aim is consistent with WAC 365-196-830(4), which requires that if development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. However, KCC 19.300.315 lacks clarity on standards that ensure no net loss of critical area functions, particularly mitigation sequencing. Mitigation sequencing is a requirement of a Habitat Management Plan per KCC 19.700.720.

The regulations contained within KCC 19.300.315 do not reference mitigation sequencing. In comparison, the wetland regulations require and describe mitigation sequencing in KCC 19.200.230.A. Requiring and describing mitigation sequencing in KCC 19.300.315 is recommended. Further, explicitly stating that no net loss of functions and values should result from the application of mitigation sequencing is also recommended. (*Gap Analysis, pg. 17*)

Discussion Summary: The aim of this requirement is to be consistent with the WAC, which requires development regulations that allow harm to critical areas, must provide compensatory mitigation.



Currently the existing code section lacks clear identification of mitigation sequencing standards. The code should be explicit and comply with the WAC. Mitigation sequencing for the CAO should be located in the beginning of the code as “Intro/Approval Procedures” to apply to all critical areas. Department of Ecology has a checklist for avoidance and mitigation sequencing for developers to prove that they have done to avoid or minimize impacts. The county should review the checklist as a potential tool. Mitigation sequencing should be applied consistently. County project reviewers (i.e. current planners) should be provided training and on going support to ensure this is done at the permit level.

#### **Future Considerations for Recommendation #4:**

- Change term “mitigation sequencing” to “No Net Loss Sequencing”?
- Are we talking about decreasing riparian area or decreasing a buffer for the riparian area?
- Include mitigation sequencing in all other critical areas sections as well?

**Recommendation #5** – Consider approach to riparian protection based on recent WDFW riparian management guidance.

As documented in the BAS Summary Report (DCG/Watershed 2023), WDFW has issued recent guidance (Rentz et al. 2020) for the protection of riparian areas. This guidance has implications for how the County protects fish and wildlife habitat conservation areas. This issue will be considered in more detail in a forthcoming memo reviewing the guidance in context of Kitsap County. (*Gap Analysis, pg. 17*)

Discussion Summary: WDFW recommends protecting riparian ecosystems by establishing a site specific RMZ width for all streams in the county. This would utilize the SPTH mapping tool framework. WDFW’s position is that protecting that area with one site potential tree height (200 years growth) from the edge of the stream channel maintains full riparian and ecosystem function. In the case when SPTH is less than 100 feet, the recommendation is a minimum RMZ width of 100 feet to provide necessary pollution removal. Some of the options for the county to consider would be full integration of the SPTH mapping tool framework. This would eliminate a fixed buffer width based on stream classifications or the county could consider developing a hybrid approach which could use the SPTH framework but prescribe a fixed RMZ or buffer width based on certain criteria like site soil class. Clark County is using a hybrid approach with fixed buffer widths based on soil site classes. They have their own GIS map that’s based on the soil site classes that are present throughout the county. They retained stream typing classifications, so it’s more of a fixed buffer width scenario similar to what Kitsap County has now verses adopting the SPTH mapping tool framework outright. Most jurisdictions haven’t gone through the exercise of applying the RMZ guidance to their CAO. This is really the first round where folks are required to consider it. There’s really not a lot of examples to draw from or examples to look at in terms of how others have implemented it. Department of Ecology’s perspective has been that the buffer protects the functions of the wetland and that is not a critical area. Smaller buffers can protect water quality so there is a difference in perspective from wetland buffers verse RMZ’s. As a county, we’ve got wetland buffers and we’ve got stream riparian management zones. They provide very similar functions, but WDFW calls them critical areas and DOE calls them a buffer.



#### Future Considerations for Recommendation #5:

- Research City of Anacortes approach
- What has changed in BAS from 2017 to present date that changes the stream typing and 50-foot minimum buffer for non-fish bearing streams?
- What is the difference between buffers and RMZ's?
- Why does DOE and WDFW prioritize them differently?

#### Recommendation #6 – Update references to guidance documents.

In the context of habitat management plans, KCC 19.700.720.A states that “WDFW Priority Habitat and Species (PHS) Management Recommendations, dated May 1991, and all applicable volumes and revisions, or the National Bald Eagle Management Guidelines may serve as guidance for this report.”

Prior to the publication of species and habitat-specific management recommendations, WDFW published a consolidated *Management Recommendations for Washington's Priority Habitats and Species* (Roderick & Milner 1991). This reference is still applicable for those priority habitats and species which lack tailored management recommendations. However, species and habitat-specific management recommendations should be used to prepare habitat management plans where applicable. Such management recommendations currently include:

- *Management Recommendations for Washington's Priority Species, Volume I: Invertebrates* (Larsen et al. 1995)
- *Management Recommendations for Washington's Priority Species, Volume III: Amphibians and Reptiles* (Larsen 1997)
- *Management Recommendations for Washington's Priority Species, Volume IV: Birds* (Larsen et al. 2004)
- *Management Recommendations for Washington's Priority Species, Volume V: Mammals (Interim)* (WDFW 2010)
- *Management Recommendations for Washington's Priority Habitats and Species: Dungeness Crab* (Fisher & Velasquez 2008)
- *Management Recommendations for Washington's Priority Habitats and Species: Great Blue Heron* (Azzerad 2012)

Amending the wording in KCC 19.700.720.A to better reflect the wide range of priority habitats and species management recommendations available is recommended. Additionally, regarding the reference to “the National Bald Eagle Management Guidelines,” in 2016 WDFW recommended that the designation of sensitive status for bald eagles was no longer appropriate, and that the species be removed from Washington's list of endangered species, which subsequently occurred. While still afforded some federal protections, removing the reference to the National Bald Eagle Management Guidelines in this section is recommended. (*Gap Analysis, pg. 18*)



Discussion Summary: In context of the Habitat Management Plan (HMP) requirements, the more recent species and habitat specific management recommendations should be used. The County should remove the reference to the national bald eagle management guidelines due to the lack of applicability for the HMP.

**Future Considerations for Recommendation #6:**

- Update section 19.700 with new national bald eagle management guidelines to be consistent with 19.300.315.B.
- Add “or any updated version” to ensure consistency?

**Recommendation #7** – Consider incorporating additional habitat management plan (HMP) requirements.

For consistency with the guidance in WDFW’s *Riparian Ecosystems, Volume 2: Management Recommendations* (Rentz et al. 2020), incorporating the following additional HMP requirements in KCC 19.700.720, B-D, is recommended:

- Identification of all critical areas within and adjacent to the project site, including ecosystem functions that need to be protected.
- Measurable standards and expectations to monitor compliance and defined triggers for requiring more actions. Examples of measurable standards could include extent of vegetative cover, composition of riparian tree species and maximum invasive plant cover. Also, specification of the frequency of visits to monitor the site and who is responsible for preparing, reviewing, and submitting monitoring reports.
- If necessary, a cost estimate for monitoring (the code could require the project proponent to post a bond for this amount or more to allow for overages).

*(Gap Analysis, pg. 18)*

Discussion Summary: Expand the habitat management plan (HMP) requirements in accordance with WDFW guidance. Some of the suggestions based on that guidance were to identify all critical areas within and adjacent to the project site, including measurable standards and expectations to monitor compliance and define triggers for requiring more actions. Those could look like measurable standards, for monitoring or maximum invasive plant cover, etc. If necessary, the County could consider including a cost estimate for monitoring and potentially having the proponent posting a bond. The goal is to improve the County’s current monitoring program to ensure compliance and effectiveness of monitoring. The HMP needs to move to a much more standardized list of information that’s required to be presented to the county, for people to review and for the tribes to review. Downstream and offsite impacts need to be better addressed in HMP’s.

**Future Considerations for Recommendation #7:**



- How do we ensure that wetlands, streams, and buffers are noticeable to people and future landowners without it being a huge ugly sign or signs that can (and often are) removed? QR code?
- Would there be or could there be tax relief options for property owners?