

APPENDIX A: PLANNING COMMISSION PROPOSED CODE REVISIONS to TITLE 19 KCC (CRITICAL AREAS ORDINANCE)

June 6, 2017

PLANNING COMMISSION FINDINGS OF FACT, TITLE 19 KCC

Background and Key

The table below contains the Planning Commission's proposed revisions to the draft Critical Areas Ordinance (Title 19 KCC), as deliberated on May 16 and 23, 2017.

Text in red indicates a revision to the draft as adopted by the Planning Commission. If red text is underlined only, it is recommended as new by the Planning Commission. If red text is **struck** only, it is current code recommended for deletion by Planning Commission. If red text is underlined and struck, this indicates a recommendation to delete text that was added in the public review draft. Text in **blue**, indicates staff recommendation following the Planning Commission deliberations. All other text in **black**, including underline/~~strikeout~~, indicates text as proposed in the public review draft, dated March 1, 2017.

In addition:

- A motion was passed to approve all other changes as proposed in the draft. Those do not appear in this table. A resolution (Appendix B) describes minority opposition to this motion
- A motion was passed to approve the updated Critical Areas map, as presented at the May 23, 2017 deliberations. This motion acknowledged the use of maps for informational purposes only and that they are subject to change.
- A motion was passed to support an implementation delay of 90 days from adoption.

Note: This matrix summarizes the changes from the public Draft as recommended by the Planning Commission, and does not replace the need to review the complete record. The public review Draft, public comments on record, initial staff responses, and the Planning Commission materials may all be found on the Kitsap County Critical Areas Ordinance webpage (https://spf.kitsapgov.com/dcd/Pages/Critical_Areas_Update.aspx).

	Issue / Code (Existing)	Current Code	Planning Commission Recommended Revision	Comment/Discussion and Staff Recommendation
1	100.105	<i>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). This title supplements the development requirements contained in the various chapters of the Kitsap County Zoning Ordinance (Title 17 of the Kitsap County Code) by providing for additional controls and measures to protect critical areas. This title is adopted under the authority of Chapter 36.70A RCW, Chapter 36.70 RCW and the Kitsap County Code, as now or hereafter amended.</i>	<i>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), <u>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.</u> This title supplements...</i>	To clarify what the CAO addresses. Staff concur.
2	100.105 (B) Policy Goals	<i>(4) Protect critical areas and their functions and values by regulating use and management within these areas and adjacent lands.</i>	<i>...within these areas and adjacent lands <u>while allowing for reasonable use and protection of property rights as provided for in state and federal law.</u></i>	To address public comment. Staff concur.
3	100.110(D)	<i>This title does not require any permit in addition to those otherwise required by county ordinances. This title is an overlay to the Zoning Ordinance; while it does not require any additional permits, activities regulated by the Zoning Ordinance area also subject to critical area requirements.</i>	<i>This title does not require any permit in addition to those otherwise required by county ordinances, <u>state or federal law.</u> This title is an overlay to the Zoning Ordinance; <u>while it does not require any additional permits,</u> activities regulated by the Zoning Ordinance are also subject to critical area requirements.</i>	Planning Commission recommends retaining current language, with the addition of “state or federal law”. Staff recommend as proposed in Draft: “This title <u>may require additional permits in addition to those otherwise required by county ordinances.</u>”... There are Critical area- specific permits which already exist; the staff-recommended change in the draft would reflect current practice.
4	100.120(C) Review Authority	<i>(C) Where projects have been approved with conditions to protect critical areas under previous protection policies in effect prior to the ordinance codified in this title, those conditions will apply. Nevertheless, this title shall apply in cases where the department determines, based on review of current information, that the prior conditions will result in a detrimental impact to a critical area.</i>		[A motion was made to remove lines 7 and 8 of the draft: “Nevertheless, this title shall apply in cases where the department determines, based on review of current information, that the prior conditions will result in a detrimental impact to a critical area.” Due to a lack of majority, the motion did not pass at 4 to 2].
5	100.125 Exemptions- (B)Agriculture	<i>Pre-existing and ongoing agricultural activities on lands containing critical areas. For the purpose of the title, “existing and ongoing” means that the activity has been conducted and/or maintained within the past five years.</i>	<i>Pre-existing and ongoing agricultural activities <u>as defined in 19.150.285 on lands containing critical areas.</u> For the purpose of the title, “existing and ongoing” means that the activity has been conducted and/or maintained within the past five years. <u>under a farm management plan or other best management practices not resulting in a net loss of critical area functions and values.</u></i>	To address public comment; Staff concur.
6	100.120(E)- NEW	N/A	<i><u>(E) The department may require, or the applicant may request, at the applicant’s expense, third party review as described in KCC 21.04.140.</u></i>	To remove similar language from 19.400 and add reference to existing language from Title 21,

				in 19.100.120(E), which would apply to any critical area. Staff concur.
7	100.130 Existing Nonconforming Structures (A)(4)	<i>Nonconforming structures which are damaged or destroyed by fire, explosion, or other casualty, may be restored or replaced if reconstruction is commenced within 24 months of such damage. The reconstruction or restoration shall not serve to expand, enlarge or increase the nonconformity except as allowed through the provisions of this section.</i>	<i>Nonconforming structures which are damaged or destroyed by fire, explosion, or other casualty, may be restored or replaced if reconstruction is commenced within 24 months of such damage. <u>provided 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.</u> The reconstruction or restoration shall not serve to expand, enlarge or increase the nonconformity except as allowed through the provisions of this section.</i>	To address public comment; For consistency with Titles 17 and 22 KCC. Title 22 provides a six month window to apply for permits in the shoreline jurisdiction, as opposed to one year in Title 17. Staff had recommended six months for application, Planning Commission has recommended one year. Staff concur with Planning Commission proposal.
8	100.130 Existing Nonconforming Structures (C)- Danger Tree Removal	<i>Danger Tree Removal. Where a threat to human life or property is demonstrated, the department may allow removal of danger or hazard tree.....The department may require the applicant to consult with a professional forester or a certified arborist prior to tree removal.</i>	<i>Danger Tree Removal <u>in a Critical Area or Buffer.</u> Where a threat to human life or property <u>habitable-structures</u> is demonstrated, the department may allow removal of danger or hazard tree.....The department may require the applicant to consult with a professional forester or a certified arborist <u>through a risk assessment report, or by the department through a danger tree site evaluation permit, prior to tree removal.</u></i>	To address public comment; Title to clarify this applies only to critical areas and buffers as there are different standards for danger trees in non-critical areas; Planning Commission recommends this apply to all “structures”; Staff recommends “permanent structure” replaces “property”/“habitable structure”. Draft changes were made to clarify current practice of risk assessment report/site evaluation permit.
9	100.155 Critical area and buffer notice to title.	<i>[As in 19.100.155]</i>	<i>Delete 19.100.155.</i>	To address public comment; this is a discretionary item. Critical areas may be added, as critical areas are addressed for permits, as parcel “flags” in the SmartGov permit database. Notice to Title would be retained for geologically hazardous areas, but addressed in that Chapter (19.400). Staff concur.
10	150.100 Adjacent	<i>“Adjacent” means an areas of review as defined by Section 19.100.110(G).</i>		[A motion was made to amend the definition to “Adjacent’ for the purposes of this Title, means and area <u>containing the critical area in question for the development proposal and its largest potential buffer or setback. This area is for review purposes only.</u>” Due to lack of majority, the motion did not pass at 3 to 3]. Staff concur with motion.
11	150.150 Bank Stabilization	<i>“Bank stabilization” means lake, stream and open water shoreline modification including vegetation enhancement.....</i>	<i>“Bank stabilization” means lake <u>and stream</u> and open water shoreline modification including vegetation enhancement.....</i>	To reflect changes in code, inadvertently left out of draft.
12	150.160 Best Management Practices	<i>“Best management practices” or “BMPs” means conservation practices (physical, structural and/or managerial) or systems of practices and management measures that:</i>	<i>“Best management practices” or “BMPs” means conservation practices (physical, structural and/or managerial) or systems of practices and management measures <u>typical of a particular industry or use</u> that:</i>	Draft changes reflected recommendations of Working Group; Planning Commission recommendation to reflect public comment of redundancy.

		<p>A. Control soil loss and reduce water quality degradation caused by nutrients, pathogens, bacteria, toxic substances, pesticides, oil and grease, and sediment; and</p> <p>B. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of critical areas.</p>	<p>A. Control soil loss and reduce water quality degradation caused by nutrients, pathogens, bacteria, toxic substances, pesticides, oil and grease, and sediment; and</p> <p>B. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of critical areas.</p> <p>C. Protect trees, vegetation, and soils designated to be retained and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and</p> <p>D. Provide standards for proper use of chemical herbicides within critical areas.</p>	Staff concur.
13	150.165 Bog	“Bogs” are a type of wetland typically composed of acidic, low nutrient soils and waters, high organic matter and that support plants specifically adapted to such conditions that are not commonly found elsewhere. Bogs may have an overstory of spruce or shore pine and may be associated with open water.	“Bogs” <u>means a low nutrient, acidic wetland with organic soils and characteristic bog plants, as described in Washington State Wetland Rating System for Western Washington: 2014 Update (Washington State Department of Ecology Publication #14-06-29, Olympia WA, October 2014).</u>	To reflect Dept. of Ecology guidance, consistent with Rating System. Staff concur.
14	150.170 Buffer	“Buffer” means a non-clearing native vegetation area which is intended to protect the functions and values of critical areas.	“Buffer” means a non-clearing native vegetation area which is intended to protect the functions and values of critical areas. <u>This includes preservation of existing native and non-native vegetation where it exists, unless otherwise required to be replaced with native vegetation through mitigation or voluntarily enhanced or restored.</u>	Draft changes to reflect that existing buffers may not be comprised of native vegetation, but are still protected, and may require enhancement; Planning Commission recommendation to clarify buffers may be voluntarily enhanced (planted, treated for noxious weeds, etc.). Staff concur.
15	150.230 Danger Trees	“Danger trees” means any tree of any height, dead or alive, that presents a hazard to the public because of rot, root stem or limb damage, lean or any other observable condition created by natural process or man-made activity consistent with WAC 296-54-505.	“Danger trees” means any tree of any height, dead or alive, that presents a n immediate hazard to the public, <u>public utility, or habitable structure</u> because of rot, root stem or limb damage, lean or any other observable condition created by natural process or man-made activity consistent with WAC 296-54-505, and are located a tree length and a half of said structure <u>as determined by a certified arborist, or by the department through a danger tree site evaluation permit.</u>	To address public comment; recommend application to all structures, not just habitable; use of consistent language (“certified” vs. “licensed” or “qualified”); Staff recommend consistency with wording in definition at 19.100.130(C).
16	150.260 Draining	[As in 19.150.260]	Delete 150.260 entirely.	To reflect comment; Is not used in this Title. Staff concur.
17	150.265 Endangered Species	...Endangered species are legally designated in WAC 232-12-014, as now or hereafter amended.	...Endangered species are legally designated in WAC <u>220-610-010</u> , as now or hereafter amended.	To reflect public comment; Current reference directs to this new WAC, but change will provide easier reference Staff concur.
18	150.290 Existing and Ongoing Agriculture	“Existing and ongoing agriculture” means those activities conducted within the last five years on lands defined in RCW 84.34.020(2) or defined as agricultural activities in this title. For example, the operation and maintenance of existing farm and stock ponds or drainage ditches; operation and maintenance of ditches, irrigation systems including laterals, canal, or irrigation drainage ditches; changes between agricultural activities, such as rotating crops or grasses used for grazing; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved	“Existing and ongoing agriculture” means those <u>agricultural uses and activities</u> (in existence as of Jan. 1, 2000) conducted within the last five years, on lands defined in RCW 84.34.020(2) or defined as agricultural activities in this title, For example, the operation and maintenance of existing farm and stock ponds or drainage ditches; operation and maintenance of ditches, irrigation systems including laterals, canal, or irrigation drainage ditches; changes between agricultural activities, such as rotating crops or grasses used for grazing; and normal maintenance, repair, or operation of existing serviceable structures,	To address public comment. Staff concur.

		areas, can be “existing and ongoing agriculture.” The alteration of the contour of wetlands or streams by leveling or filling other than that which results from normal cultivation, or draining of wetlands shall not be considered normal or necessary farming or ranching activities.	facilities, or improved areas, can be “existing and ongoing agriculture.” The alteration of the contour of wetlands or streams by leveling or filling other than that which results from normal cultivation, or draining of wetlands shall not be considered normal or necessary farming or ranching activities. <u>when undertaken pursuant to agricultural best management practices to minimize impacts to critical areas. Enrollment in a federally recognized conservation program or the Kitsap County Open Space Taxation Program as Farm and Agricultural Conservation Land (Chapter 18.12 KCC), within the past five years will not defeat an activity’s status as “existing and ongoing” agriculture.</u>	
19	150.315 Fen	“Fen” means a wetland with peat soils sixteen inches or more in depth, or any depth of organic soil over bedrock, and vegetation such as certain sedges, hardstem bulrush and cattails. Fens may have an overstory of spruce and may be associated with open water.	“Fen” means a wetland <u>similar to a bog, dominated by organic soils, low nutrients, and low pH, but receives some water from the surrounding landscape or groundwater, as described in Washington State Wetland Rating System for Western Washington: 2014 Update (Washington State Department of Ecology Publication #14-06029, Olympia, WA, October 2014).</u>	To reflect Dept. of Ecology guidance, consistent with Rating System. Staff concur.
20	150.325 Fish and wildlife habitat	“Fish and wildlife habitat” means those areas identified as being of critical importance to the maintenance of fish, wildlife, and plant species, including: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; commercial and recreational shellfish areas; kelp and eelgrass beds, forage fish spawning areas; naturally occurring ponds and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams or rivers planted with game fish by a government or tribal entity, or private organization; State natural areas preserves and natural resource conservation areas.	“Fish and wildlife habitat conservation areas” are those areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors: and areas with high relative population density or species richness. <u>See below “Priority habitats” and “Priority species” for further detail.</u> The County may also designate locally important habitats and species. “Fish and wildlife habitat conservation areas” do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company, <u>or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.</u>	To clarify that such areas are based, in part, on “Priority habitats” and “Priority species” as further defined in this Definitions chapter; Based on Ecology comment, to clarify that artificial watercourses (ditches) to not qualify as fish and wildlife habitat conservation areas unless they are the altered path for a natural watercourse (stream placed in ditch). Staff concur.
21	150.xxx (NEW- Added)- Geologic Assessment	N/A	“Geologic assessment” is an umbrella term used for the evaluation completed by a geologist or geotechnical engineer to meet the requirements of <u>Chapter 19.400</u> . The geologic assessment <u>may</u> be in the form of a Letter, as described in Section 19.400.440, a Geologic report, or Geotechnical report (19.150.380).	To correct Draft typos; Staff concur.
22	150.385 Grazed wet meadows	[As in 19.150.385]	Delete 19.150.385 entirely.	To reflect Dept. of Ecology and public comment; Staff concur.
23	150.410 Hazardous substance	[As in 19.150.410]	Delete 19.150.410 entirely.	Term is not used in code. Staff concur.
24	150.415 Hearing examiner	“Hearing examiner” means a person appointed to hear or review certain land use decisions pursuant to RCW 36.70.970.	“Hearing examiner” means a person appointed to hear or review certain land use decisions pursuant to RCW 36.70.970 <u>and Chapter 2.10 KCC.</u>	To address public comment and clarify local process. Staff concur.

25	150.440 Impervious Surface	N/A	“Impervious surface” means a surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or non vegetated surface area that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under pre-developed conditions. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.	Added to draft from Title 12; For consistency of not including definitions in other Titles of code, now recommend deleting. Staff concur.
26	150.455 Mitigation	“Mitigation” means avoiding, minimizing or compensating for adverse critical area impacts. Mitigation includes the following specific categories: A. Compensatory mitigation: replacing project-induced critical area losses or impacts, including, but not limited to, restoration, creation, or enhancement. B. Creation mitigation: mitigation performed to intentionally establish a critical area (e.g., wetland) at a site where it does not currently exist. C. Enhancement mitigation: mitigation performed to improve the condition of existing degraded critical areas (e.g., wetlands) so that the functions they provide are of a higher quality. D. Restoration mitigation: mitigation performed to reestablish a critical area (e.g., wetland), or its functional characteristics and processes, which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a critical area.	Delete current definition at 19.150.445; Replace with: “Mitigation” means: <u>A. Avoiding the impact altogether by not taking a certain action or parts of an action;</u> <u>B. 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;</u> <u>C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;</u> <u>D.Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;</u> <u>E.Compensating for the impact by replacing, enhancing, or providing substitute resources or environments: and/or</u> <u>F.Monitoring the impact and taking appropriate corrective measures.</u>	For consistency with state and federal rules, as reflected in WAC 197-11-768. Staff concur.
27	150.490 Ordinary High Water Mark	“Ordinary high water mark” means that mark that will be found by examining the bed and banks...or as it may change thereafter in accordance with permits issued by a local government or the department;. The definition is further guided by the additional criteria to clarify this mark in salt and fresh water environments, as contained in WAC 173-22-030 , as now or hereafter amended.	“Ordinary high water mark” means that mark that will be found by examining the bed and banks... or as it may change thereafter in accordance with permits issued by a local government or the department: <u>provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. The definition is further guided by the additional criteria to clarify this mark in salt and fresh water environments, as contained in WAC 173-22-030, as now or hereafter amended.</u>	From Ecology comment and for consistency with state law (RCW 90.58.030(2)(c)). Staff concur.
28	150.515 Pond	[As in 19.150.515]	Delete 19.150.515 entirely.	Ecology recommendation; Water bodies less than 20 acres are still waters of the state and may be subject to shoreline regulation as associated wetlands. Staff concur.

29	150.565 Reasonable use	<p><i>“Reasonable use” means 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.</i></p>	<p><i>“Reasonable use” is a legal concept articulated by federal and state courts in regulatory taking cases.</i></p>	<p>[There were motions to delete this definition entirely and to keep the current definition, but neither passed (3 to 3). Therefore the definition as proposed in the draft stands].</p> <p>Staff concur, as in draft.</p>
30	150.xxx Use or activity (Added)	N/A	Do not add definition in this location per Draft; Keep where added later in this Chapter.	This was inadvertently added in this location during drafting, but was not intended to be included.
31	150.610 Shorelines	<p><i>For the purposes of this title, “shorelines” means all of the water areas of the state, as defined by Chapter 90.58 RCW, including reservoirs, and their associated wetlands, together with the lands underlying them; except (a) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (b) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.</i></p>	<p><i>For the purposes of this title, “shorelines” means all of the water areas of the state...</i></p> <p><i>“Shorelines”, as defined by Chapter 90.58 RCW are regulated under Title 22 KCC, Shoreline Master Program. Those portions of streams where the mean annual flow is twenty cubic feet per second or less, lakes less than twenty acres in size, and wetlands associated with either, are regulated under this Title.</i></p>	This change was proposed in the Draft, but not properly underlined.
32	150.xxx (NEW-added)- Significant Tree	N/A	<p><i>“Significant tree” means any healthy tree that is at least six 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></p>	<p>Review of other jurisdictions and guidance indicated a wider range of diameters. Planning Commission recommends 8 inch (vs. 6 inch, in draft) for diameter at breast height, which is clarified as 48 inches.</p> <p>Staff concur.</p>
33	150.690 Wetlands, isolated	<p><i>“Wetlands, isolated” or “isolated wetlands” means wetlands that (a) are outside of and not contiguous to any one-hundred-year floodplain of a lake, river, or stream; and (b) have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water or other wetland within a one-hundred-foot radius.</i></p>	<p><i>“Wetland, isolated” or “isolated wetlands” means wetlands that (a) are outside of and not contiguous to any one hundred year floodplain of a lake, river, or stream; and (b) have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water or other wetland within a one hundred foot radius.</i> <i>a wetland that is hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important function and are protected by state law (RCW 90.48) whether or not they are protected by federal law.</i></p>	To address Ecology comments and guidance; Staff concur.
WETLANDS				

33	200.205(C)	Plan wetland uses and activities in a manner that allows property holders to benefit from wetland property ownership wherever allowable under the conditions of this chapter and the ordinance from which it derives;	Plan wetland uses and activities in a manner that allows property owners holders to benefit from wetland property ownership wherever allowable under the conditions of this <u>title</u> ;	To address public comment; Staff concur.
34	200.210(B)	(2) Category II Wetlands. Category II wetlands are those regulated wetlands that score between 51-69 points out of 100 on the wetlands ratings system.	(2) Category II Wetlands. Category II wetlands are those regulated wetlands that are more difficult to replace and provide high levels of some functions. <u>regulated wetlands that are more difficult to replace and provide high levels of some functions.</u> Category II wetlands score between 51-69 <u>20-22</u> points out of 100 <u>27</u> on the wetlands ratings system.	Remove “regulated”, as throughout draft. Staff concur.
35	200.210(B)	(3) Category III Wetlands. Category III wetlands are those regulated wetlands that score between 30-50 points on the wetlands rating systems. Activities affecting isolated, non-mosaic Category III wetlands that are less than 2,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.	(3) Category III Wetlands. Category III wetlands are those regulated wetlands with a moderate level of function and can often be adequately replaced with mitigation. <u>regulated wetlands with a moderate level of function and can often be adequately replaced with mitigation.</u> Category III wetlands score between 30-50 <u>16-19</u> points on the wetlands ratings system. Activities affecting isolated, non-mosaic Category III wetlands that are less than 1,000 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.	Move the deleted portion to a new sub-section regarding exemptions for small wetlands (below) in .210(C). Staff concur.
36	200.210(B)	(4) Category IV Wetlands. Category IV wetlands are those regulated wetlands that score less than 30 points out of 100 on the wetlands ratings system. Activities affecting isolated, non-mosaic Category IV wetlands that are less than 7,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.	(4) Category IV Wetlands. <u>Category IV wetlands have the lowest level of function and are often heavily disturbed.</u> Category IV wetlands that score less than 30 <u>16</u> points out of 100 <u>27</u> on the wetlands ratings system. Activities affecting isolated, non-mosaic Category IV wetlands that are less than 4,000 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.	Move the deleted portion to a new sub-section regarding exemptions for small wetlands (below) in .210(C). Staff concur.
37	200.210(C) Exemptions for small wetlands- NEW	[See staff recommended deletions for 200.210(B)(3) and (4) above for current code. Addressed in this proposed new section.]	<u>(C) Exemptions for small wetlands.</u> <u>Category III wetlands that are less than 2,500 square feet and Category IV wetlands that are less than 7,500 square feet, that do not contain federally listed species or their critical habitat are exempt from the buffer provisions in this Chapter when the following are met:</u> <u>(1) They are not associated with riparian areas or their buffers;</u> <u>(2) They are not associated with shorelines of the state or their associated buffers;</u> <u>(3) They do not score 5 or more points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update, or as amended; and</u> <u>(4) They do not contain a Class 1 Fish and Wildlife Habitat Conservation Area, identified by the Washington Department of Fish and Wildlife.</u>	To address public comment on the need to maintain current size of exempt small wetlands, site-specific flexibility, and consistency with KCC Title 12 (Stormwater); To address Ecology comment on need to provide conditions to these exemptions; retains current size thresholds. Staff concur.
38	200.215 (C)- Wetland Review Process for Single-Family Dwellings	(1).... Administrative buffer reductions or variance will not apply. (2) Wetland Certification Process for Single-family Dwellings (No Encroachment into a Regulated Wetland or its Standard Buffer). (a)(1) No regulated wetlands.... (b) If regulated wetland buffers extend onto the site....wetland buffer signs have been placed on the site.	(1) Administrative buffer reductions or variances <u>will not apply.</u> <u>Expedited approval is not the same as expedited review, which is sometimes available for additional fees.</u> (2) Wetland Certification Process for Single-family Dwellings (No Encroachment into a Wetland or its Standard Buffer).	The recommended change in (f) acknowledges a misinterpretation during drafting which had deleted the mitigation responsibility, but clarifies for future. Staff concur.

		<p>(c) A survey will not be required.</p> <p>(e)....should encroachment into a regulated wetland or buffer occur.</p> <p>(f) The applicant/property owner assumes responsibility for any and all errors of the single-family certification form and all associated mitigation imposed by the department.</p>	<p>(a)(1) No wetlands....</p> <p>(b) If wetland buffers extend onto the site....wetland buffer signs have been placed on the site.</p> <p>(c) A survey will not be required <u>with a single-family wetland certification form.</u></p> <p>(e)....should encroachment into a wetland or buffer occur.</p> <p>(f) The applicant/property owner assumes responsibility for any and all errors of the single-family certification form, <u>as well as responsibility for all associated mitigation required by the department.</u></p>	
39	200.220 Wetland Buffer Requirements- (C) Modification of Buffer Widths	<p>(C) Modification of Buffer Widths. Modification of buffer widths may be considered provided that mitigation sequencing is first demonstrated to first avoid, then minimize, and as a last resort, mitigate for unavoidable reductions or alterations to the required wetland buffers.</p> <p>(1) Buffer Decrease Sequencing. Demonstration of unavoidable modifications to wetlands shall be implemented through the following methods:</p>	<p>(B) Modification of Buffer Widths. The following modifications to buffer widths may be considered provided that mitigation sequencing is first demonstrated to first avoid, then minimize, and as a last resort, mitigate for unavoidable reductions or alterations to the required wetland buffers.</p> <p><u>the applicant first demonstrates, using all available means, that reductions or alterations to the required wetland buffer cannot be avoided, minimized or mitigated (in that order).</u></p> <p>(1) Buffer Decrease Sequencing. Demonstration of unavoidable modifications to wetlands shall be implemented through the following methods:</p>	To address comment. Staff concur.
40	200.220 Wetland Buffer Requirements- (C) Modification of Buffer Widths- (1)(a) Buffer Averaging	<p>(1)(a) 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.-The following standards shall apply to buffer averaging:</p>	<p>(1) Buffer Averaging. Standard buffer widths may be modified by the department for a development proposal <u>first</u> by averaging buffer widths, <u>but only where the applicant can demonstrate that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer.</u> The following standards shall apply to buffer averaging:</p>	To clarify that buffer averaging is the first buffer modification that is to be considered; Staff concur.
41	200.220 (C)(1)(a) Buffer Averaging	<p>(C)(1)(a)(5) The minimum buffer width will not be less than 25 percent of the widths established after the categorization is done and any buffer adjustments applied.</p> <p>(C)(1)(a)(6) If buffer width averaging is utilized and significant trees are identified, on the outer edge of the reduced buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:</p>	<p><u>(e) For Category III and IV wetlands with habitat scores less than 5 points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update, as amended, and the minimum buffer width at any point will not be less than 25 75-50 percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.</u></p>	To address public comment on need for flexibility on small wetlands and compatibility with stormwater rules. [An additional motion was made to amend this section as follows: “(e) For all wetlands, the minimum buffer width at any point will not be less than 50 percent of the widths established after the categorization is done and any buffer

			<p><u>(f) For all other wetlands, the minimum buffer width at any point will not be less than 75 percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.</u></p> <p><u>(g) If significant trees are identified, such that their drip line extends beyond the reduced buffer edge, the following tree protection requirements must be followed:...</u></p>	<p>adjustments applied in accordance with this chapter.</p> <p>(f) If significant trees are identified... “</p> <p>The motion did not pass due to lack of majority at 4 to 2. A subsequent motion passed 5 to 0, as presented.]</p> <p>Staff concur with motion as passed.</p>
42	200.220(C)(1)(b)- Administrative Buffer Reductions	<p>(C)(1)(b) Granting of a reduced buffer shall be the minimum necessary to accommodate the permitted use. In lieu of going through the formal variance process, an administrative reduction to the buffer widths may be granted subject to the following criteria:</p>	<p>(C)(1)(b) Granting of a reduced buffer shall be the minimum necessary to accommodate the permitted use. In lieu of going through the formal variance process, an administrative reduction to the buffer widths may be granted subject to the following criteria:</p> <p>(B)(2)(3)</p> <p><u>Standard buffer widths may be modified by the department for a development proposal by reducing buffers, but only where buffer averaging is not feasible and the applicant can demonstrate that such is the minimum necessary to accommodate the permitted use and the reduction can clearly provide as great or greater functions and values as would be provided under the standard buffer requirement. This may be accomplished through enhancement of a degraded buffer. The following standards shall apply to buffer reductions:</u></p>	<p>Clarifies the order by which buffer reductions are to occur (averaging first, unless not feasible); to address public comment regarding enhancement of a degraded buffer.</p> <p>Staff concur.</p>
43	200.220(C)(1)(b)-Administrative Buffer Reductions	<p>(1) For proposed single-family dwellings, the department may administratively reduce the buffer by up to 25 percent, pursuant to the variance criteria listed in Section 19.100.135. Where an administrative buffer reduction is granted, fencing or signage of the buffer edge shall be required. The order of sequence for such buffer reductions shall be as follows:</p> <ul style="list-style-type: none"> i. Use of buffer averaging maintaining 100 percent of the buffer area under the standard buffer requirement; ii. Reduction of the overall buffer area by no more than 25 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. The use of alternative on-site wastewater systems in order to minimize site clearing; v. Infiltration of stormwater where soils permit; and 	<p>(C)(1)(B)(2)</p> <p><u>(a) The department may administratively reduce the buffer pursuant to the variance criteria listed in Section 19.100.135.</u></p> <p><u>(b) For proposed single-family dwellings, the department may administratively reduce a buffer by up to 25 percent of the area required under the standard buffer requirement, but not less than thirty feet.</u></p> <p><u>(c) For all other proposed uses, the department may administratively reduce the buffer by up to 25 percent of the area required under the standard buffer requirement, but not less than forty feet.</u></p> <p><u>(d) To minimize impacts and provide equivalent functions and values as required by this section, applicants may propose:</u></p> <ul style="list-style-type: none"> <u>(1) ##- Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;</u> <u>(2) iv- The use of alternative on-site wastewater systems in order to minimize site clearing;</u> <u>(3) v- Infiltration of stormwater where soils permit; and</u> <u>(4) vi- Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.</u> 	<p>To address public comment. Retains 25%, and not less than 30' for SFR (30' is the minimum wetland buffer for that land use), but adds 25% or 40' for all other uses (40' is the minimum wetland buffer for high-intensity land uses).; (d) describes how one may “provide equivalent function and values”.</p> <p>Staff concur, but would recommend replacing “all other uses” with “all other moderate or high intensity land uses” and add “low intensity land uses” in addition to “single-family dwellings”. The minimum buffers are based on the lowest allowed for moderate (single-family dwelling) and high land uses, respectively.</p>

		<p>vi. Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.</p> <p>(2) The minimum buffer shall be no less than thirty feet, except as allowed under a formal variance or reasonable use approval.</p>	<p>(b) The minimum buffer shall be no less than 75 percent of the required width, except as allowed under a formal variance or reasonable use approval.</p>	
44	200.220(B)(2)(c)- NEW	N/A	<p>(c)(d) The buffer widths recommended for proposed land use with high-intensity impacts to wetlands can be reduced to those recommended for moderate-intensity impacts under the following conditions:...[as in draft]</p>	c) becomes new (d) Staff concur.
45	200.220(E)- Protection of Buffers	(E)Protection of Buffers. Buffer areas shall be protected as required by the department. The buffer shall be identified on a site plan and filed as an attachment to the notice to title as required by Section 19.100.150 (Critical Area and Buffer Notice to Title).	<p>(D)(E)Protection of Buffers. Buffer areas shall be protected as required by the department. The buffer shall be identified on a site plan and on site as required by the department and this Chapter. and filed as an attachment to the notice to title as required by Section 19.100.150 (Critical Area and Buffer Notice to Title). Refuse shall not be placed in buffers.</p>	To address public comment regarding Notice to Title. Staff concur.
46	200.220(F)	(F) Building or Impervious Surface Setback Lines. A building or impervious surface setback line of 15 feet is required from the edge of any wetland buffer. Minor structural or impervious surface intrusions into the areas of the setback may be permitted if the department determines that such intrusions will not adversely impact the wetland. The setback shall be identified on a site plan and filed as an attachment to the notice to title as required by Section 19.100.150 (Critical Area and Buffer Notice to Title).	<p>(F) (E) Building or Impervious Surface Setback Lines. A building or impervious surface setback line of 15 feet is required from the edge of any wetland buffer. Minor structural or impervious surface intrusions into the areas of the setback may be permitted if the department determines that such intrusions will not adversely impact the wetland. The setback shall be identified on a site plan. and filed as an attachment to the notice to title as required by Section 19.100.150 (Critical Area and Buffer Notice to Title).</p>	To address public comment regarding Notice to Title. Staff concur.
47	200.225(B) Agricultural Restrictions	(B) In all development proposals which would permit introduction of agricultural uses damage to Category I, II, III, and IV regulated wetlands shall be avoided. These restrictions shall not apply to those regulated wetlands defined as grazed wet meadows, regardless of their classification only where grazing has occurred within the last five years. Wetlands shall be avoided by one of the following methods: (1) Implementation of a farm conservation plan agreed upon by the conservation district and the applicant to protect and enhance the water quality of the wetland; and/or (2) Fencing located not closer than the outer buffer edge.	<p>(B) In all development proposals which that would permit introduction of or expand agricultural uses damage to Category I, II, III, and IV regulated wetlands shall be avoided. <u>activities, a net loss of functions and values to wetlands shall be avoided. These restrictions shall not apply to those wetlands defined as grazed wet meadows, regardless of their classification, only where grazing has occurred within the last five years.</u> Wetlands shall be avoided by <u>at least one of the following methods:</u></p> <p>(2)(1). Locate fencing located <u>no closer than the outer buffer edge; and/or</u></p> <p>(1)(2). Implementation <u>a farm resource conservation and management plan agreed upon by the conservation district and the applicant to protect and enhance the functions and values water quality of the wetland.</u></p>	To address comments regarding “grazed wet meadows”, which are not defined as a regulated type of wetland and is inconsistent with resource protection; existing uses are still allowed, but this is addressing new or expanded activities. The farm resource conservation and management plans must address more than water quality (SWAPAH- soil, water, air, plants, animals, humans). Staff concur.

48	200.225 (F) Trails and Trail-Related Facilities	<p><i>Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland buffers pursuant to the following guidelines:</i></p> <ol style="list-style-type: none"> 1. <i>Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.</i> 2. <i>Trails and related facilities shall be planned to minimize removal of trees, soil disturbance and existing hydrological characteristics, shrubs, snags and important wildlife habitat.</i> 3. <i>Viewing platforms and benches, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland.</i> 4. <i>Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer portion of the buffer and a minimum of 30 feet from the wetland edge, except where wetland crossings or viewing areas have been approved by the Department.</i> 5. <i>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 a demonstrated need, subject to review and approval by the department. Trails shall be constructed with pervious materials unless otherwise approved by the department.</i> 	<p><i>Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland buffers pursuant to the following standards:</i></p> <ol style="list-style-type: none"> (1)..... (2)..... (3) <i>Viewing platforms, interpretive centers, benches, picnic areas, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland. Platforms shall be limited to one hundred square feet in size, unless demonstrated through a wetland mitigation plan that a larger structure will not result in a net loss of wetland functions.</i> (4). <i>Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer 25% of the buffer, except where wetland crossings or for direct access to viewing areas have been approved by the Department.</i> 5. <i>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 a demonstrated need, such as for ADA compliance, subject to review and approval by the department. Trails shall be constructed with pervious materials (e.g., gravel, rock, bark) except where determined infeasible.</i> <i>6. Regional or public trails and trail-related facilities that have been publicly reviewed, with design considerations 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.</i> 	<p>To address public comment; Staff concur.</p>
49	200.225(F) Utilities in Wetlands or Wetland Buffers.	<p><i>Utilities in Wetlands or Wetland Buffers.</i></p> <ol style="list-style-type: none"> 1. <i>Utility development, authorized in Section 19.100.125(E), shall be allowed...</i> 	<p><i>Utilities in Wetlands or Wetland Buffers.</i> <i>Placement of utilities within wetlands or their buffers may be allowed pursuant to the following standards and any other required state and federal approvals:</i></p> <ol style="list-style-type: none"> 1. <i>The utility maintenance or repair,....</i> 	<p>To address Ecology comment that utility work in wetlands or in-water will require state and federal approval. Staff concur.</p>

50	200.225 (G) Parks	Development of public park and recreation facilities may be permitted subject to the provisions of Section 19.200.230, Special Use Review, below. For example, enhancement of wetlands and development of trails may be allowed in wetlands and wetland buffers subject to special use requirements and approval of a wetland mitigation plan.	Development of public park and recreation facilities may be permitted in wetlands or <u>their buffer</u> subject to the provisions of Section 19.100.145, Special Use Review, and other <u>applicable</u> chapters of the Kitsap County Code, and any state or federal approvals. For example, enhancement of wetlands and development of trails may be allowed in wetlands and wetland buffers subject to special use requirements and approval of a wetland mitigation plan.	To fix underline errors. Staff concur.
51	19.200.250(B)- Mitigation for Regulated Activities in Wetland Buffers	Mitigation for Regulated Activities in Wetland Buffers. A specific mitigation plan is required and the requirements are provided in Section 19.700.715. Approval of the mitigation plan shall be signified by a notarized memorandum of agreement signed by the applicant and department director or designee, and recorded with the Kitsap County Auditor. The agreement shall refer to all requirements for the mitigation project.	Mitigation for Regulated Activities in Wetland Buffers Report. A specific mitigation plan Where mitigation is required under the sequencing in subsection (A), a mitigation report shall be provided in accordance with Section 19.700.715. Approval Acceptance of the mitigation plan report shall be signified by a <u>notarized memorandum of agreement critical area Notice to Title</u> signed by the applicant and department director or designee. and recorded with the Kitsap County Auditor (Appendix E, 19.800). The <u>notice agreement</u> shall refer to all requirements for the mitigation project.	With removal of Notice to Title, recommend reverting back to original language. Staff concur.
52	200.250(D)(2)	(D)(2) The department may increase or decrease the ratios based on one or more of the following: (a).... (b)(1) Documentation by the applicant provides more certainty... (b)(2) Documentation by the applicant demonstrates that....	(C)(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 <u>based on one or more of the following:</u> (a).... (b)(1) Documentation by the applicant <u>by a qualified wetland specialist</u> demonstrates more certainty... (b)(2) Documentation by the applicant <u>a qualified wetland specialist</u> demonstrates that....	Typographical error, selection should have been underlined as new or were in the current code but left out of draft. Staff concur.
53	200.250(E)(1)- Off-Site Compensatory Mitigation	(E)(1) Off-Site Compensatory Mitigation. 1. Considerations for determining whether off-site mitigation is preferable include, but are not limited to:	(D) <u>Alternative Mitigation Plans.</u> (2) Off-Site Compensatory Mitigation. (a). Considerations for determining whether off-site mitigation is preferable include, but are not limited to:	Draft: (E)(1) moved to (2), as a component of "Alternative Mitigation Plans".; Staff Recommendation to correct underline error in draft (D)(2)(d). Staff concur.

		<p>a. On-site conditions do not favor successful establishment of the required vegetation type, or lack the proper soil conditions, or hydrology, <u>or may be severely impaired by the effects of the adjacent</u>;</p> <p>b. On-site compensation would result in an aquatic habitat that is isolated from other natural habitats or severely impaired by the effects of the adjacent development;</p> <p>c. Off-site location is crucial to one or more species that is threatened, endangered, or otherwise of concern, and the on-site location is not;</p> <p>d. Off-site location is crucial to larger ecosystem functions, such as providing corridors between habitats, and the on-site location is not; and</p> <p>e. Off-site compensation has a greater likelihood of success or will provide greater functional benefits.</p> <p>2. When determining whether off-site mitigation is preferable, the value of the site-specific wetland functions at the project site, such as flood control, nutrient retention, sediment filtering, and rare or unique habitats or species, should <u>shall</u> be fully considered.</p> <p>3. When conditions do not favor on-site compensation, off-site compensatory mitigation should be located as close to the impact site as possible, <u>but</u> at least within the same watershed, while still replacing lost functions.</p>	<p>i. On-site conditions do not favor successful establishment of the required vegetation type, or lack the proper soil conditions, or hydrology, <u>or may be severely impaired by the effects of the adjacent</u>;</p> <p>ii. On-site compensation would result in <u>isolation</u> from other natural habitats;</p> <p>iii. Off-site location is crucial to one or more species that is threatened, endangered, or otherwise of concern, and the on-site location is not;</p> <p>iv. Off-site location is crucial to larger ecosystem functions, such as providing corridors between habitats, and the on-site location is not; and</p> <p>v. Off-site compensation has a greater likelihood of success or will provide greater functional benefits.</p> <p>(b). When determining whether off-site mitigation is preferable, the value of the site-specific wetland functions at the project site, such as flood control, nutrient retention, sediment filtering, and rare or unique habitats or species, <u>shall</u> be fully considered.</p> <p>(c). When conditions do not favor on-site compensation, off-site compensatory mitigation should be located as close to the impact site as possible, <u>but</u> at least within the same watershed, while still replacing lost functions.</p> <p><u>(d) Off-site compensatory mitigation may include the use of a wetland mitigation bank or an in-lieu fee program.</u></p> <p>[See additions to 200.250(G) (d)(i) Mitigation Banking and (d)(ii) In-Lieu Fee Mitigation below.]</p>	
54	200.260 Incentives for wetland mitigation	...Buffers dedicated as permanent open space tracts will qualify for the open space taxation program and will be offered the opportunity to be entered into this program. Kitsap County may offer to purchase these lands through the Conservation Futures Fund.	...Buffers dedicated as permanent open space tracts <u>may</u> qualify for the open space taxation program and will be offered the opportunity to be entered into this program. Kitsap County may offer to purchase these lands through the Conservation Futures Fund, <u>as funding is available.</u>	To correct underline error in draft. Staff concur.
55	FISH AND WILDLIFE HABITAT CONSERVATION AREAS			

56	300.305 Purpose	<p><i>This chapter applies to all regulated uses included in this title, or uses within the largest potential buffer of areas designated as fish and wildlife habitat conservation areas, as categorized in Section 19.300.310, below. The purpose of this chapter is to identify regulated fish and wildlife habitat conservation areas and establish habitat protection procedures and mitigation measures that are designed to achieve no net loss and maintain viable populations and habitat over the long term of fish and wildlife species and habitats due to new development or regulated activities. It is further stated that the intent of this chapter is to:</i></p> <p>...</p> <p><i>(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; and</i></p> <p>....</p>	<p><i>This chapter applies to all regulated uses included in this title, or uses within the largest potential buffer areas designated as within or adjacent to fish and wildlife habitat conservation areas, as categorized in Section 19.300.310, below. <u>defined in 19.150.325, except those identified as exempt in 19.100.125.</u> The purpose <u>intent</u> of this chapter is to identify fish and wildlife habitat conservation areas and establish habitat protection procedures and mitigation measures designed to achieve <u>a no net loss of critical area functions and values and to maintain viable fish and wildlife populations and habitat</u> over the long term. <u>Further, it is also the intent of this chapter to:</u></i></p> <p>...</p> <p><i>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; and</i></p> <p><i><u>D. Avoid or minimize human and wildlife conflicts through planning and implementation of wildlife corridors where feasible.</u></i></p>	<p>To correct underline error in draft. Staff concur.</p>
57	300.310 (B)(3)- Wildlife Habitat Conservation Areas	<p><i>(a) Class I Wildlife Habitat Conservation Areas.</i></p> <p><i>(1) 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.</i></p> <p><i>(2) Areas targeted for preservation by the federal, state and/or local government which provide fish and wildlife habitat benefits, such as important waterfowl areas identified by the U.S. Fish and Wildlife Service; or</i></p> <p><i>(3) Areas that contain habitats and species of local importance.</i></p> <p><i>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 its citizens, and which, if</i></p>	<p><i>a) Class I Wildlife Habitat Conservation Areas.</i></p> <p><i>(1) 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, <u>including but not limited to the database on Priority Habitats and Species provided by the Washington Department of Fish and Wildlife.</u></i></p> <p><i>(2) Areas targeted for preservation by the federal, state and/or local government which provide fish and wildlife habitat benefits, <u>including but not limited to, important waterfowl areas identified by the U.S. Fish and Wildlife Service and WDFW Wildlife Areas;</u> or</i></p> <p><i>(3) Areas that contain habitats and species of local importance. <u>Such habitats and species shall be identified at a later date through a public process when information necessitating such identification is made known.</u></i></p>	<p>To clarify process by which such habitats and species are to be identified. Staff concur.</p>

		altered, may reduce the likelihood that the species will maintain and reproduce over the long term.	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 <u>a viable population</u> and reproduce over the long term.	
58	TABLE 19.300.315	[As in 19.300.315]	As in draft, plus: Wildlife Habitat Conservation Areas Class I: Buffer widths and setbacks will be determined through a mandatory Habitat Management Plan (HMP). <u>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 the federal Bald and Golden Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat.</u>	To clarify management process for Bald Eagles. Staff concur.
59	300.315(A)(4)- Provision for Decreasing Buffer	<p>(4) Provision for Decreasing Buffer. In lieu of going through the formal variance process, an administrative reduction to buffer widths, except for urban, conservancy and natural shorelines, may be granted subject to the requirements of this section. Where an applicant demonstrates, pursuant to the variance criteria that buffer widths cannot be met, a habitat management plan (HMP) will be required that shall meet the requirements as described in Chapter 19.700 (Special Reports). 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.</p> <p>The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Administrative buffer reductions may be allowed for rural, semi-rural shoreline environments and lakes less than 20 acres where a vacant parcel has a common property line with two or more lots which abut the ordinary high water line and which are developed with structures. In these cases, the standard buffer may be reduced to the greater of 50 feet or the average of the standard buffer and setbacks of the structures on the adjacent properties. All other reductions of greater than twenty-five percent</p>	<p>(1) (3) Provision for Decreasing Buffer. In lieu of going through the formal variance process, The department may grant, an administrative reduction to buffer widths, except for urban, conservancy and natural shorelines, may be granted subject to in accordance with the requirements of this subsection. Where an The applicant <u>must</u> demonstrates, pursuant to the variance criteria in 19.100.135, that buffer widths cannot be met, <u>and submit a habitat management plan (HMP) will be required that shall that meets</u> the requirements as described in Chapter 19.700 (Special Reports). <u>The department may decrease the buffer if Upon review of the HMP and after consultation with the Washington State Department of Fish and Wildlife, the department may grant a reduction if it determines a reduction is the minimum necessary for the permitted use and that the conditions are sufficient to assure no net loss of ecological functions of the affected fish and wildlife habitat conservation area.</u></p> <p>The department may reduce the buffer width by up to fifty <u>twenty-five</u> percent for a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Administrative buffer reductions may be allowed for rural, semi-rural shoreline environments and lakes less than 20 acres where a vacant parcel has a common property line with two or more lots which abut the ordinary high water line and which are developed with structures. In these cases, the standard buffer may be reduced to the</p>	To clarify the intent of Type II for SFR being between 25-50%, and greater than 50% is a variance; based on comments, also clarified that all other uses requesting a buffer reduction greater than 25% require a variance. Staff concur.

		for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800 , Appendix F). Granting of a reduced buffer shall be the minimum necessary for the permitted use. When applicable, the order of sequence for buffer reductions shall be as follows: ...	greater of 50 feet or the average of the standard buffer and setbacks of the structures on the adjacent properties. <u>in a Type I decision permit under chapter 21.04. All other</u> Reductions of greater than twenty-five percent <u>but less than fifty percent</u> for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800 , Appendix F). <u>Buffer reductions for single-family residences greater than fifty percent, and reductions greater than twenty-five percent for a</u> All other uses <u>reductions</u> shall be pursuant to a variance under 19.100.135. When applicable, the order of sequence for buffer reductions shall be as follows:	
60	300.315(A)(8)- Protection of buffers	(8) Protection of Buffers. Buffer areas shall be protected as required by the department. The buffer shall be identified on a site plan and filed as an attachment to the notice as required by 19.100.150 (Critical Area and Buffer Notice to Title).	(8) (7) Protection of Buffers. Buffer areas shall be protected as required by the department. The buffer shall be identified on a site plan and <u>filed as an attachment to the notice as required by 19.100.150 (Critical Area and Buffer Notice to Title)-and on site as required by the department and this Chapter.</u>	To reflect removal of Notice to Title and to be consistent with recommendation in Wetlands chapter. Staff concur.
61	300.315(A)(9)	(9) Building or Impervious Surface Setback Lines.The setback shall be identified on a site plan and filed as an attachment to the notice as required by 19.100.150(Critical Area and Buffer Notice to Title).	(9) (8) Building or Impervious Surface Setback Lines.The setback shall be identified on a site plan. <u>and filed as an attachment to the notice as required by 19.100.150(Critical Area and Buffer Notice to Title).</u>	To reflect removal of Notice to Title and to be consistent with recommendation in Wetlands chapter. Staff concur.
62	300.315 (B) Class I Wildlife Habitat Conservation Areas Development Standards	(B) Class I Wildlife Habitat Conservation Areas Development Standards. All sites with known Class I wildlife habitat conservation areas will require, for all development permits, the submittal and approval of a habitat management plan (HMP) as specified in Chapter 19.700 (Special Reports). In the case of bald eagles, an approved bald eagle management plan by the Washington State Department of Fish and Wildlife (WDFW), meeting the requirements and guidelines of the bald eagle protection rules (WAC 232-12-292), as now or hereafter amended, shall satisfy the requirements for a habitat management plan (HMP). In the case of listed fish species, a HMP shall be required if a buffer reduction is proposed under the provisions of Section 19.300.315(A) . An HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of natural vegetation.	(B) Class I Wildlife Habitat Conservation Areas Development Standards. All sites with <u>All development permits within known Class I wildlife habitat conservation areas will require, for all development permits, the submittal and approval of a habitat management plan (HMP) as specified in Chapter 19.700 (Special Reports). In the case of bald eagles, an approved bald eagle management plan by the Washington State Department of Fish and Wildlife (WDFW), meeting the requirements and guidelines of the bald eagle protection rules (WAC 232-12-292), as now or hereafter amended, shall satisfy the requirements for a habitat management plan (HMP). <u>the HMP shall comply 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 the federal Bald and Golden Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat. In the case of listed fish species, a HMP shall be required only if a buffer reduction is proposed under the provisions of Section 19.300.315(A). The HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of natural vegetation.</u></u>	To address communications with US Fish and Wildlife Service to clarify compliance needs and management for Bald Eagles. Staff concur.

63	300.315(H) Agricultural Restrictions	<i>(H) Agricultural Restrictions. In all development proposals that would permit introduction of agriculture to fish and wildlife habitat conservation areas, damage to the area shall be avoided by the installation of fencing located not closer than the outer buffer edge.</i>	<i>(H) Agricultural Restrictions. In all development proposals that would introduce <u>or expand</u> of agricultural to fish and wildlife habitat conservation areas, damage to the area activities, a net loss of functions and values to the critical area shall be avoided by the installation of fencing located not closer than the outer buffer edge. <u>at least one of the following methods:</u> 1. <u>Locate fencing no closer than the outer buffer edge; or</u> 2. <u>Implement a farm resource conservation and management plan agreed upon by the conservation district and the applicant to protect and enhance the fish and wildlife habitat conservation area.</u></i>	To correct underline and strikeout errors in draft and match restrictions for Agriculture in Wetlands chapter. Staff concur.
64	300.315(I) Trails and Trail-Related Facilities	<i>(I) Trails and Trail-Related Facilities.... ... (3). Viewing platforms, interpretive centers, benches and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected conservation area. (4). Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer portion of the buffer and a minimum of twenty-five feet from the stream edge, except where stream crossings or viewing areas have been approved. (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 unless otherwise approved by the department.</i>	<i>(I) Trails and Trail-Related Facilities.... ... (3)Viewing platforms, interpretive centers, benches, <u>and picnic centers</u>, and access to them,.... <u>Platforms shall be limited to one hundred square feet in size, unless demonstrated through a Habitat Management Plan that a larger structure will not result in a net loss of habitat and critical functions.</u> (4). Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer portion <u>25%</u> of the buffer and a minimum of twenty five feet from the stream edge, except where stream crossings or <u>for direct access to viewing areas have been approved by the Department.</u> (5). Trails shall generally be limited to pedestrian use... Trails shall be constructed with pervious materials <u>(e.g., gravel, rock, bark) except where determined infeasible.</u> <u>6. Regional or public trails and trail-related facilities which have been publicly reviewed, and with design considerations 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.</u></i>	Draft changes for consistency with Title 22 and 19.200 Wetlands; To address public comment. Staff concur.

65	300.315 (J) Utilities	<p><i>Utilities. Placement of utilities within designated fish and wildlife habitat conservation areas may be allowed pursuant to the following standards:</i></p> <p>...</p> <p><i>(6) Utility corridor maintenance shall include the following measures to protect the environment of regulated-fish and wildlife habitat conservation areas.</i></p> <p><i>a. Utility towers shall be painted with brush, pad or roller and shall not be sandblasted or spray painted, unless appropriate containment measures are used, nor use lead-based paints.</i></p> <p><i>b. No pesticides, herbicides or fertilizers may be used in fish and wildlife conservation areas or their buffers, except those approved by the U.S. E.P.A. and the Washington State Department of Ecology. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label.</i></p>	<p><i>Utilities. Placement of utilities within designated fish and wildlife habitat conservation areas <u>and buffers</u> may be allowed pursuant to the following standards:</i></p> <p>...</p> <p><i>(6)(b) No pesticides, herbicides or fertilizers may be used in <u>fish and wildlife conservation wetland</u> areas or their buffers except those approved by the U.S. <u>Environmental Protection Agency (EPA)</u> and Washington <u>State</u> Department of Ecology. Where approved, <u>they</u> must be applied by a licensed applicator in accordance with the safe application practices on the label.</i></p>	To correct underline/ strikeout errors in draft. Staff concur.
	GEOLOGICALLY HAZARDOUS AREAS	[NOTE: This chapter was substantially reorganized to accommodate new information. The current and draft language are provided here for ease of review. Unless text is in red, the underline/strikeouts are as indicated in the draft.]		
66	400.405 Purpose and applicability	<p><i>This section applies to all regulated uses included in this title within the largest buffer or setback in areas designated as geologically hazardous areas, as categorized in Section <u>19.400.410</u> below. The intent of this section is to:</i></p> <p><i>A. Provide standards to protect human life and property from potential risks;</i></p> <p><i>B. Regulate uses of land in order to avoid damage to structures and property being developed and damage to neighboring land and structures;</i></p>	<p><i><u>(A) This section applies to all chapter regulateds 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. included in this title within the largest buffer or setback in areas designated as geologically hazardous areas, as categorized in Section <u>19.400.410</u> below.</u></i></p> <p><i>The intent of this section is to:</i></p> <p><i><u>1. A- Provide standards to protect human life and property from potential risks;</u></i></p>	As in draft.

		<p>C. Control erosion, siltation, and water quality to protect anadromous and resident fish and marine shellfish;</p> <p>D. Provide controls to minimize shoreline erosion caused by human activity;</p> <p>E. Use innovative site planning by placing geologically hazardous areas and buffers in open space and transferring development density to more suitable areas on the site.</p>	<p>2. B. Regulate uses of land in order to avoid damage to structures and property being developed and damage to neighboring land and structures;</p> <p>3. C. Control erosion, siltation, and water quality to protect anadromous and resident fish and shellfish.</p> <p>4. D. Provide controls to minimize erosion caused by human activity; and</p> <p>5. E. Use innovative site planning by placing geologically hazardous areas and buffers in open space and transferring development density to suitable areas on the site.</p> <p><u>This chapter applies to development activities, actions requiring project permits, and clearing, except those identified as exempt in 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.</u></p>	
67	400.410 General Requirements (A)- NEW	<p>N/A</p> <p>(H) Storm Water Standards. Storm water discharges shall be in compliance with Title 12 of this code (Storm Water Management).</p>	<p><u>(A) Any development activity or action requiring a project permit or any clearing within an erosion or landslide area shall:</u></p> <p><u>1. Comply with the requirements in an approved geotechnical report when one is required, including application of the largest buffer and/or building setback;</u></p> <p><u>2. Utilize best management practices (BMPs) and all known and available technology appropriate for compliance with this chapter and typical of industry standards;</u></p> <p><u>3. Prevent collection, concentration or discharge of stormwater or groundwater within an erosion or landslide hazard area and be in compliance with Title 12 of this code (Stormwater Management);</u></p> <p>4. Minimize impervious surfaces and retain vegetation to minimize risk of erosion or landslide hazards;</p> <p>5. Minimize vegetation removal.</p>	As in draft; This section is new, but includes current regulations, as indicated in "Current" column.
68	400.410 General Requirements (B)- NEW	<p>.415(O)Prohibitions.</p> <p>(1) Critical facilities, as defined in Chapter 19.150, are prohibited in areas of high geologic hazard.</p> <p>[19.150.225 Critical facilities. "Critical facilities" means those facilities necessary to protect the public health, safety and welfare</p>	<p><u>.410(B) Any development activity or action requiring a project permit or any clearing within an erosion or landslide area shall not:</u></p> <p><u>1. Result in increased risk of property damage, death, or injury;</u></p> <p><u>2. Cause or increase erosion or landslide hazard risk;</u></p> <p><u>3. Increase surface water discharge, sedimentation, slope instability, erosion or landslide potential to adjacent</u></p>	As in draft; To correct underline error in draft only.

		<p>and which are defined as essential facilities or Category III and IV buildings in accordance with Chapter 14.04 of this code, the Kitsap County Building and Fire Code. These facilities include but are not limited to schools, hospitals, police stations, fire departments and other emergency response facilities, and nursing homes. Critical facilities also include sites of hazardous material storage or production.]</p>	<p><u>downstream or downdrift properties beyond pre-development conditions;</u></p> <p>4. <u>Adversely impact wetlands, fish and wildlife habitat conservation areas or their buffers; or</u></p> <p>5. <u>Be identified as a</u> critical facility necessary to protect the public health, safety and welfare. <u>This</u> 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.</p>	
69	<p>400.410 General Requirements (D)-Clearing, grading and vegetation removal- NEW ORGANIZATION</p>	<p><i>.415(D)(2)- Vegetation Removal. Minor pruning of vegetation or tree removal for view enhancement, or elimination of danger trees to maintain slope integrity may be allowed, provided that such activity is approved by the department. The thinning of limbs on individual trees is preferred to the removal or topping of trees for view corridors. At a minimum, no more than thirty percent of the live tree crowns shall be removed. Total buffer thinning shall not exceed twenty-five percent.</i></p> <p><i>.415(E)-Seasonal restrictions. Clearing and grading shall be limited to the period between May 1 to October 1, unless the applicant provides an erosion and sedimentation control plan prepared by a professional engineer licensed in the state of Washington that specifically and realistically identifies methods of erosion control for wet weather conditions.</i></p> <p><i>.415(J)(1)- Only the clearing necessary to install temporary erosion control measures will be allowed prior to the clearing for roads and utilities construction.</i></p> <p><i>.415(G)- Cut and Fill Slopes. The faces of all cut and fill slopes shall be protected to prevent erosion as required by the engineered erosion and sedimentation control plan.</i></p> <p><i>.415(J)(2)- Clearing for roads and utilities shall be the minimum necessary and shall remain within marked construction limits.</i></p> <p><i>.415(J)(3)- Clearing for overhead power lines shall be the minimum necessary for construction and will provide the required minimum clearances of the serving utility corridor.</i></p>	<p><u>(D)Clearing, grading and vegetation removal.</u></p> <p><u>(1) Minor pruning of vegetation for view enhancement may be allowed through consultation with the department. ... [415(D)(2)]</u></p> <p><u>(2) Vegetation shall not be removed from a landslide hazard area, except for hazardous trees based on review by a qualified arborist or as otherwise provided for in a vegetation management and restoration plan.</u></p> <p><u>(3) Clearing and grading....[415(E)]</u></p> <p><u>(4) Only the clearing and grading necessary...[415(J)(1)]</u></p> <p><u>(5) The faces of cut and fill slopes shall be protected...[415(G)]</u></p> <p><u>(6) Clearing for roads and utilities....[415(J)(2)]</u></p> <p><u>(7) Clearing for overhead power lines..[415(J)(3)]</u></p>	<p>As in draft; This section is new, but includes current regulations, as indicated.</p>

70	400.410 General Requirements (E)-Existing Logging Roads and (F)- NEW ORGANIZATION	<p><i>.415(K) Existing Logging Roads. Where existing logging roads occur in geologically hazardous areas, a geological or geotechnical report (See Section 19.700.725) may be required prior to use as a temporary haul road or permanent access road under a conversion or COHP forest practices application.</i></p> <p><i>.415(L) Clustering Requirements. The department may require clustering to increase protection to geologically hazardous areas.</i></p> <p><i>.415(M) Vegetation Enhancement. The department may require enhancement of buffer vegetation to increase protection to geologically hazardous areas</i></p>	<p><i>(E) Existing logging roads....[.415(K)]</i></p> <p><i>(F) The department may also require:</i></p> <p style="padding-left: 40px;"><i>(1) Clustering....[.415(L)]</i></p> <p style="padding-left: 40px;"><i>(2) Enhancement...[.415(M)]</i></p>	As in draft.
71	400.415 Designation of geologically hazardous areas- NEW	N/A	<p><i>The county has designated geologically hazardous areas pursuant to RCW 36.70A.170 by defining them and providing criteria for their identification. Project proponents are responsible for determining whether a geologically hazardous area exists and is regulated pursuant to this chapter. The department will verify on a case-by-case basis the presence of geologically hazardous areas identified by project proponents. Specific criteria for the designation of geologically hazardous areas are contained in this chapter. While the county maintain some maps of potentially geologically hazardous areas, they are for informational purposes only and may not accurately represent all such areas.</i></p>	As in draft.
72	400.420 Erosion hazard areas (A)- General and (B)(1) Potential erosion hazard areas / Areas of high erosion hazard	<p><i>400.410 Geologically hazardous area categories.</i></p> <p><i>(1) Areas of High Geologic Hazard.</i></p> <p><i>(a) Areas with slopes greater than or equal to 30 percent and mapped by the Coastal Zone Atlas or Quaternary Geology and Stratigraphy of Kitsap County as “Unstable”(U), “Unstable Old Land Slides (UOS) or “Unstable Recent Slides” (URS).</i></p> <p><i>(b) Areas with slopes greater than or equal to 30 percent in grade and deemed by a qualified geologist or geotechnical engineer to meet the criteria of U, UOS, or URS.</i></p>	<p><i>(A). General. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. These include coastal erosion-prone areas and channel migration zones, and may be inclusive of landslide areas.</i></p> <p><i>(B). Potential erosion hazard areas. Potential erosion hazard areas are depicted on the Kitsap County Erosion Hazards map. These potential erosion hazard areas are identified using the following criteria:</i></p> <p style="padding-left: 40px;"><i>(1). Areas of high erosion hazard</i></p> <p style="padding-left: 80px;"><i>(a). Channel Migration Zones, as mapped by the Washington Department of Ecology;</i></p> <p style="padding-left: 80px;"><i>(b). Coastal erosion with a sediment source rating value of 0.6 to 1.0, per the Prioritization Analysis of Sediment Sources in Kitsap County;</i></p>	As in draft.

73	<p>400.420 Erosion hazard areas (A)- General;</p> <p>(B)(2) Potential erosion hazard areas / Areas of moderate erosion hazard;</p> <p>(C) Erosion Hazard Indicators</p>	<p><i>(2) Areas of Moderate Geologic Hazard.</i></p> <p><i>(a) Areas designated U, UOS, or URS in the Coastal Zone Atlas or Quaternary Geology and Stratigraphy of Kitsap County, with slopes less than 30 percent; or areas found by qualified geologist to meet the criteria for U, URS, and UOS with slopes less than 30 percent; or</i></p> <p><i>(b) Slopes identified as “Intermediate”(I) in the Coastal Zone Atlas or Quaternary Geology and Stratigraphy of Kitsap County, or areas found by qualified geologist to meet the criteria of I; or</i></p> <p><i>(c) Slopes 15 percent or greater, not classified as I, U, UOS, or URS with soils classified by the U.S. Department of Agriculture Natural Resources Conservation Service as “highly erodible” or “potentially highly erodible”; or</i></p> <p><i>(d) Slopes of 15 percent or greater with springs or groundwater seepage not identified in subsections(a), (b) or (c) above; or</i></p> <p><i>(e) Seismic Areas subject to liquefaction from earthquakes (Seismic Hazard Areas) such as hydric soils as identified by the Natural Resources Conservation Service, and areas that have been filled to make a site more suitable. Seismic areas may include former wetlands which have been covered with fill.</i></p>	<p><u><i>(B)(2) Areas of moderate erosion hazard</i></u></p> <p><i>(a). Areas identified as geologically hazardous for soil erosion (soil type and slope grade) by NRCS Kitsap County Soil Survey;</i></p> <p><i>(a) (b).</i> Slopes 15 percent or greater, not classified as I, U, UOS, or URS with soils classified by the U.S. Department of Agriculture <u>NRCS</u> as “highly erodible” or “potentially highly erodible”;</p> <p><i>(b) (c).</i> <u>Coastal erosion with a sediment source rating value of 0.3 to 0.6 per the Prioritization Analysis of Sediment Sources in Kitsap County.</u></p> <p><u><i>(C) Erosion Hazard Indicators. The project proponents are responsible for determining actual presence and location of an erosion hazard area. These areas may be indicated by, but not limited to, the following:</i></u></p> <p><u><i>(1). Any of the above criteria currently identified in subsection (B) or amended hereafter.</i></u></p> <p><u><i>(2). Coastal Erosion Hazards.</i></u></p> <p><u><i>(a). Areas with active bluff retreat that exhibit continuing sloughing or calving of bluff sediments, resulting in a vertical or steep bluff face with little or no vegetation;</i></u></p> <p><u><i>(b). Lands located directly adjacent to freshwater or marine waters that are identified as regressing, retreating, or potentially unstable as a result of undercutting by wave action or bluff erosion. The limits of the active shoreline erosion hazard area shall extend landward to include that land area that is calculated, based on the rate of regression, to be subject to erosion processes within the next ten year time period.</i></u></p> <p><u><i>(3). Channel Migration Zones. The lateral extent that a river or stream is expected to migrate over time due hydrologically and geomorphologically related processes, as indicated by historic record, geologic character, and evidence of past migration over the past one hundred years.</i></u></p>	<p>(B)(2)(a) and (b) are duplicative. Delete added section (a) in draft, retain (b).</p> <p>Staff concur.</p>
74	<p>.400.425 Landslide hazard areas (A)- General and (B)(1) Potential landslide hazard areas / Areas of high erosion hazard</p>	<p><i>[.410(A)(1)(b)]</i></p>	<p><u><i>(A). General. Landslide hazard areas include those areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors, such as bedrock, soil, slope (gradient), slope aspect,</i></u></p>	<p>As in draft.</p>

			<p><u>structure, hydrology, and other factors. Landslide hazards are further classified as either shallow or deep-seated.</u></p> <p><u>(B). Potential Landslide Hazard Areas. Potential landslide hazard areas are depicted on the Kitsap County Landslide Hazards map. These potential landslide hazard areas are identified using the following criteria:</u></p> <p><u>(1). Areas of high landslide hazard.</u></p> <p><u>(a). Shallow landslide areas with Factor or Safety (FS) of 0.5 to 1.5. FS is a method (Harp, 2006) for slope stability based on the angle of the slope from LiDAR elevation data and strength parameters.</u></p> <p><u>(b). Areas with slopes greater to or equal to 30 percent in grade and deemed by a qualified geologist or geotechnical engineer to meet the criteria of U, UOS, or URS.</u></p> <p><u>(c). All deep-seated landslides areas.</u></p>	
75	<p>400.425 Landslide hazard areas (A)- General;</p> <p>(B)(2) Potential landslide hazard areas / Areas of moderate landslide hazard;</p>	[.410(A)(2)(c) and (d)]	<p><u>(B)(2) Areas of moderate landslide hazard.</u></p> <p><u>(a) Shallow landslide areas with FS of 1.5 to 2.5</u></p> <p><u>(b) Slopes of 15 percent or greater <u>and</u> not classified as I, U, UOS, or URS, with soils classified by the U.S. Department of Agriculture NRCS as “highly erodible” or “potentially highly erodible”; or slopes of 15 percent or greater with springs or groundwater seepage</u></p> <p><u>(c) Slopes in all areas equal to or greater than 40 percent.</u></p>	Should not have been underlined in draft.
76	400.425(C) Landslide Hazard Indicators- NEW	N/A	<p><u>(C)Landslide Hazard Indicators. Project proponents are responsible for determining the actual presence and location of a <u>landslide seismic hazard area.</u></u></p> <p>...</p> <p><u>(14) Areas within 3200 feet of areas classified as U, UOS, + URS.</u></p>	Correct typo error (seismic to landslide); Based on public /technical comment, amend landslide indicator to areas within 200’ of unstable / slides, and removed “intermediate” soils. This is for consistency with the rest of the chapter. Staff concur.
77	400.430 Seismic hazard areas	N/A	<p><u>(A). General. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced landsliding, seismic ground shaking, dynamic settlement, fault rupture, soil liquefaction, or flooding caused by tsunamis and seiches.</u></p>	Should not have been underlined in draft.

			<p><u>(B). Potential Seismic hazard areas. Potential seismic hazard areas are depicted on the Kitsap County Seismic Hazards map. These potential seismic hazard areas are identified using the following criteria:</u></p> <p><u>(1). Areas of high seismic hazard are those areas with faults that have evidence of rupture at the ground surface.</u></p> <p><u>(2). Areas of moderate seismic hazard</u></p> <p><u>(a). Areas susceptible to seismically induced soil liquefaction, such as hydric soils as identified by the NRCS, and areas that have been filled to make a site more suitable for development. This may include former wetlands that have been covered with fill.</u></p> <p><u>(b). Areas identified as Seismic Site Class D, E, and F.</u></p> <p><u>(c). Faults without recognized evidence of rupture at the ground surface.</u></p>	
78	400.430 (C)- Seismic Hazard Indicators-NEW	N/A	<p><u>(C). Seismic Hazard Indicators. Project proponents are responsible for determining actual presence and location of a seismic hazard area. These areas may be indicated by, but not limited to, the following:</u></p> <p><u>(1) Any of the above criteria currently identified in subsection (B) or amended hereafter;</u></p> <p><u>(2) Areas identified as potential landslide areas. Includes slopes that can become unstable as a result of strong ground shaking, even though these areas may be stable under non-seismic conditions;</u></p> <p><u>(3) Areas identified as high and moderate liquefaction and dynamic settlement hazard areas by the Washington Department of Natural Resources, including areas underlain by unconsolidated sandy or silt soils and a shallow groundwater table (static groundwater depth <30 feet) capable of liquefying in response to earthquake shaking. Dynamic settlement hazard areas are those underlain by more than 10 feet of loose or soft soil not susceptible to liquefaction, but that could result in vertical settlement of the ground surface in response to earthquake shaking.</u></p> <p><u>(4) Tsunami and Seiche hazard areas. Generally, these are areas that are adjacent to Puget Sound marine waters and lakes that are designated as "A" or "V" zones as identified by FEMA and depicted on the FEMA maps or other maps adopted by Kitsap County.</u></p> <p><u>(5) Fault rupture hazard areas, including areas where displacement (movement up, down, or laterally) of the ground surface has occurred during past earthquake(s) in the Holocene</u></p>	As in draft.

			<p><u>Epoch, and areas adjacent that may be potentially subject to ground surface displacement in a future earthquake.</u></p>	
79	<p>19.400.435(A) Development Standards-Erosion and Landslide Hazard Development Standards</p>	<p>[.415(B) Minimum Buffer Requirement....native vegetation from the toe of the slope to twenty-five feet beyond the top of the slope unless otherwise allowed through a geological report or a site-specific determination.]</p> <p>[.415(C)(1) Building/Impervious Surface Setback Requirements- Areas of High Geologic Hazard.from the top of the slope shall be equal to the height of the slope (1:1 horizontal to vertical) plus the greater of one-third the vertical slope or twenty-five feet.]</p> <p>[.415(C)(2)...Areas of Moderate Geologic Hazard.shall be forty feet from the top of slope. As required in Section 19.400.410(B), above, the twenty-five feet adjacent to the top of the slope shall be retained as a native vegetation buffer, with an additional minimum 15-foot building and impervious surface setback. The department may decrease the setback when such a setback would result in a greater than 1:1 slope setback....]</p> <p>[.415(C)(3) Toe of Slope Building Setback...]</p>	<p>1. <u>Development activities or actions requiring project permits or clearing shall not be allowed in landslide hazard areas unless the applicant demonstrates:</u></p> <p><u>(a). There is no alternate location for the structure on the subject property; and</u></p> <p><u>(b). a geotechnical report demonstrates that building within a landslide hazard area will provide protection commensurate to being located outside the landslide hazard area and meets the requirements of this section. This may include proposed mitigation measures.</u></p> <p>2. <u>Top of slope building setback. All development activities or actions that require project permits or clearing in erosion and landslide hazard areas shall provide native vegetation from the toe of the slope to twenty-five feet beyond the top of slope, with an additional minimum fifteen-foot building and impervious surface setback, unless otherwise allowed through a geologic assessment. The minimum building and setback shall be increased from the top of the slope as follows:</u></p> <p><u>(a) For high landslide hazard areas, the setback shall be equal to the height of the slope (1:1 horizontal to vertical) plus the greater of one-third of the vertical slope height or twenty-five feet.</u></p> <p><u>(b) For moderate landslide hazard areas, the setback shall be forty feet from the top of slope.</u></p> <p>3. Toe of slope building setback.....</p> <p><u>4. The department may require a larger native vegetation width than the standard buffer distance as determined above, if any of the following are identified through the geological assessment process:</u></p> <p><u>(a) The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts; or</u></p> <p><u>(b)The area has a severe risk of slope failure or downslope stormwater drainage impacts.</u></p> <p><u>5. The minimum native vegetation width and/or building setback requirement may be decreased if a geotechnical report demonstrates that a lesser distance, through design and engineering solutions, will adequately protect both the proposed development and the erosion and/or landslide hazard area. The department may decrease the</u></p>	<p>These are not in the existing code, but build off of the same or similar requirements; Recommendations reflect correction to draft for underline as new text.</p> <p>Staff concur.</p>

			<u>setback when such a setback would result in a greater than 1:1 slope setback.</u>	
80	400.435(B) –Seismic Hazard Development Standards	<p><i>[.415(N) Seismic Hazard Area Development Standards.</i></p> <p><i>(1) Proposed new development within a seismic hazard area shall be in accordance with Chapter 14.04 of this code, the Kitsap Kitsap County Building and Fire Code.</i></p> <p><i>(2) Applicants for public and commercial building proposals within seismic hazard areas shall submit a geotechnical report(See Section 19.700.725) addressing any fill or grading that has occurred on the subject parcel. Any fill placed for such development shall have documented construction monitoring as required by Title 14.04 of this code, the Kitsap County Building and Fire Code. ...]</i></p>	<p><u>B. Seismic Hazard Development Standards.</u></p> <p><u>1. Development activities or actions requiring a project permit occurring within 200 feet of a “High Hazard” seismic hazard area may be allowed with an approved geotechnical report that confirms the site is suitable for the proposed development and addresses any fill or grading that has occurred on the subject parcel.</u></p> <p><u>2. Development activities or actions requiring a project permit within in a seismic hazard area shall be in accordance with Chapter 14.04 of this code, the Kitsap County Building and Fire Code.</u></p>	<p>Addresses the degree of certainty of known “high hazard” areas, versus those areas without evidence of surface fault rupture.</p> <p>Staff concur.</p>
81	19.400.440 Review Procedures	<p><i>[400.410(2)(B)Site Specific Determinations. A geologic or geotechnical report is a site investigation process to evaluate the on-site geology affecting a subject property and proposed development. Should an applicant question the information the county must rely on to determine whether a location contains a geologically hazardous area or area of geologic concern, the county may ask the applicant to submit the appropriate geotechnical or geologic report to confirm or modify the existing information known about the area. The requirements for reports are contained in Special Reports, Chapter 19.700.</i></p> <p><i>The intent of this provision is to allow obviously non-geologically hazardous sites to be determined as such. Where there is any ambiguity about the potential for geologic hazards whatsoever, the department will require a geotechnical or geological report, rather than make a non-geologically hazardous determination.]</i></p> <p><i>[400.415(A) Development Standards- Review. Where applicable the department will approve, approve with conditions or deny the development proposal based on the department’s evaluation of site-specific conditions. The department will also consider any proposed mitigation measures included in a geotechnical report, if one is required.]</i></p>	<p><u>(A) Map review. The Kitsap County Geologically Hazardous Areas Maps (Erosion, Landslide, and Seismic) provide an indication of where potential geologically hazardous areas are located within the County. The department will complete a review of the map to determine if the proposed activity is located within a hazard area.</u></p> <p><u>(B). A geological assessment shall be required when the proposed activity is located within a potential hazard area.</u></p> <p><u>(C). A geotechnical professional shall complete a field investigation and geological assessment to determine whether or not the site for the proposed activity is located within 200 feet of the geologic hazard. (Special Reports 19.700).</u></p> <p><u>(D). The geological assessment shall be submitted in the most applicable form as follows:</u></p> <p><u>(1). A geological letter. When the geologist or geotechnical professional finds that no hazard area exists within 200 feet of the site, a stamped letter may be submitted demonstrating those findings;</u></p> <p><u>(2). A geological report. When the geologist finds that a geologically hazardous area exists within 200 feet of the site, but will not impact the site or need engineering design recommendations;</u></p> <p><u>(3). A geotechnical report. When the geotechnical engineer finds that a geologically hazardous area exists within 200 feet of the site, and will require engineering design recommendations or other mitigation measures necessary in order to construct or develop within the geologically hazardous area.</u></p> <p><u>(E). The department shall review the geological assessment and either:</u></p>	<p>As in draft.</p>

			<p><u>(1). Accept the geological assessment and approve the application; or</u></p> <p><u>(2). Reject the geological assessment and require revisions or additional information.</u></p>	
82	400.445 Independent consultant review	N/A	<p>If the department lacks the necessary expertise, the department may require an independent consultant review of the application by a qualified professional to assess compliance with this chapter. If independent consultant review is required, the applicant shall make a deposit with the department to cover the cost of the review. Unexpended funds will be returned to the applicant following final decision on the application.</p>	<p>This section is recommended for deletion. It is duplicative of 21.04.140 KCC, Third Party Review. Add reference to this existing section in 19.100.120 Review Authority: <i>The department may require, or the applicant may request, at the applicant's expense, third party review in cases where additional professional or technical expertise is required due to scale or complexity and /or in cases where independent review is deemed necessary.</i></p> <p>Staff concur.</p>
83	400.4450 Recording and disclosure	N/A	<p><u>In addition to the required Critical Area Notice to Title for development activities within a critical area, the following shall be signed, notarized, recorded with the County Auditor prior to permit issuance for development in a geologically hazardous area requiring a geotechnical report:</u></p> <p>(A) <u>An abstract and description of the specific types of risks identified in the geotechnical report;</u></p> <p>(B) <u>A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with developments on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks; and</u></p> <p>(C) <u>A statement that the owner(s) of the property acknowledge(s) that this chapter does not create liability on the part of Kitsap County, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.</u></p>	<p>Remove "required", assuming that Notice to Title is removed for all other critical area types; note to amend existing appendix for notice to title to include these items, as this is the only critical area it would be used for.</p> <p>Staff concur.</p>
	FREQUENTLY FLOODED AREAS		No Planning Commission changes proposed to draft.	
	CRITICAL AQUIFER RECHARGE AREAS			
84	600.610(A)(2) and (3) Critical aquifer recharge area categories- Category I Critical Aquifer Recharge Areas	(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 an underlying protective impermeable layer.	(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 an underlying protective impermeable layer. which are not separated from the underlying aquifers by an impermeable layer that provides adequate protections from contamination to the aquifer(s) below.	<p>Retain original language. The draft changes were a result of staff misinterpretation of the WAC. As the Aquifer Recharge map is not being updated, changes to how they are identified are also not appropriate.</p> <p>Staff concur.</p>

		(3) Areas identified as significant recharge areas due to special circumstances or identified in accordance with WAC 365-190-080...	(3) Areas identified as significant recharge areas due to special circumstances or identified in accordance with WAC 365-190-100(4)...	
	SPECIAL REPORTS			
85	700.715 Wetland mitigation report- NEW (intro.)	N/A	(A) <u>Compensatory mitigation shall be required for activities that result in the loss of wetland acreage or functions, in accordance with 19.200.250 (Wetland Mitigation Requirements).</u> 1. <u>A compensatory mitigation ...</u>	Numbering. Staff concur; will need to re-number 19.700.715
86	700.715 Wetland Mitigation Report (A)	As required by Section <u>19.200.250 (Wetland Mitigation Requirements)</u> , a mitigation plan shall be prepared. A detailed mitigation plan shall contain the following: A. Executive summary which summarizes the project, its potential wetland related impacts, and the proposed mitigation to include the following information: 1. Applicant Name/Address/Phone. 2. Agent/Consultant. 3. Description of land use proposal. 4. Description of mitigation area. 5. Description of impact avoidance and minimization measures. 6. Description of unavoidable wetland impacts and mitigation measures: a. Size (acres); b. Wetland classification; c. Hydrogeomorphic (HGM) classification; d. Wetland rating; e. Functions;	As required by Section <u>19.200.250 (Wetland Mitigation Requirements)</u> , a mitigation report shall be prepared and shall contain the following (see Appendix H for a Mitigation Plan Checklist): (A) <u>Cover / Title Page/and Table of Contents as described in Appendix H, Mitigation Plan Checklist;</u> <u>(1) Project name.</u> ...	Add references to Mitigation Plan Checklist (Appendix H); Staff concur

		<p>f. Compensation ratios used.</p> <p>7. Explanation of other impacts to waters of the state.</p> <p>8. Goals, objectives and monitoring period.</p>		
87	700.715(M) Performance Bonds and Demonstration of Competence	<p>(M) Performance Bonds and Demonstration of Competence. A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing..... A performance bond, assignment of savings, or other like security will be required by the department in an amount necessary to provide for future site monitoring and possible corrective action required for compensatory mitigation projects. This bond, assignment of savings, or the security will be released no later than five years after completion of the mitigation project. If the approved mitigation is not completed or fails to meet its success standards, the property owner must agree to a property access release form, with forfeiture of funds after the specified monitoring period.</p>	<p>P. Performance Bonds and Demonstration of Competence. A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing... A performance bond, assignment of savings, or other like security will be required by the department in an amount necessary to provide for future site monitoring and possible corrective action required for compensatory mitigation projects. <u>Typically, this amount is one and a half times the estimated cost of mitigation. Once the project is completed and a maintenance bond is established, the performance bond will be released. The maintenance bond, as determined by the wetland specialist, will be released upon success of the project, as determined by the metrics in the Mitigation Plan, and This bond, assignment of savings, or the security will be released no earlier than five years after completion of the mitigation project.</u> If the approved mitigation is not completed or fails to meet its success standards, the property owner must agree to a property access release form, with forfeiture of funds after the specified monitoring period.</p>	<p>To clarify the process by which mitigation bonds are released, and the relationship to maintenance bond. Staff concur.</p>
	APPENDICES			
88	Appendix E- Kitsap County Critical Area and Buffer Notice	[As in 19.800 Appendix E]	[Replace with template specific to Geologically Hazardous Areas.]	<p>If Notice to Title is otherwise removed from the CAO, it would only apply to 19.400 Geologically Hazardous Areas, which asks for additional information; Replace with new template. Staff concur.</p>
89	Appendix F- Critical Area Decision Types	[As in 19.800 Appendix F]	[Edit per changes proposed in draft and above]	Staff concur.