

Kitsap County Critical Areas Update

March 1, 2017 Public Review Draft

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ITEM	Draft CAO Provision	RECOMMENDED CHANGES
1	§ 19.150 Definitions	<p>19.150.170 Bog. [For consistency with best available science (BAS), we recommend replacing this definition with the following from <i>Wetland Guidance for CAO Updates, Western Washington Version</i> (Washington State Department of Ecology Publication No. 16-06-001, Olympia, WA, June 2016; hereafter, CAO Guidance)]: “Bog” means a low-nutrient, acidic wetland with organic soils and characteristic bog plants, as described in <i>Washington State Wetland Rating System for Western Washington: 2014 Update</i> (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014). [Same comment for 19.150.315 Fen]</p> <p>19.150.325 Fish and wildlife habitat conservation areas [For clarity and consistency with state law (see WAC 220-660 Hydraulic code rules and RCW 90.48.020 Water Pollution Control Act) we recommend the following revision to the FWHCA definition]: "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 <u>or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans that lie within the boundaries of and are maintained by a port district or an irrigation district or company.</u> [Also, the current definition does not appear to acknowledge habitats with recreational or cultural significance (shellfish areas, forage fish spawning areas or state natural area preserves; see WAC 365-190-130).]</p> <p>19.150.395 Grazed wet meadows [Recommend striking this definition as use of these emergent wetlands as part of an existing and ongoing agricultural operation is already allowed and bringing new areas into production for haying or grazing should be reviewed as a potential new critical area impact. “Grazed wet meadows” is not a term used by the Ecology or the Corps for wetland regulation.]</p> <p>19.150.43025 Hydric soils. [For consistency with BAS and state and federal delineation standards, we recommend replacing this definition with the following from <i>Field Indicators of Hydric Soils in the United States A Guide for Identifying and Delineating Hydric Soils, Version 8.0, 2016.</i> (United States Department of Agriculture, Natural Resources Conservation Service, in cooperation with the National Technical Committee for Hydric Soils.):</p>

“Hydric soils” means a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part soils which are wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of hydrophytic plants.

19.150.465 Mitigation

[For consistency with state and federal rules (see WAC 197-11-768) recommend revising to the following]:

"Mitigation" means:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(6) Monitoring the impact and taking appropriate corrective measures.

19.150.480 Ordinary high water mark

[For consistency with state law (see RCW 90.58.030(2)(c)), recommend the following revision]:

“Ordinary high water mark” means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existing on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: 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.~~

19.150.495 Pond.

[For clarity and consistency with BAS, the Kitsap County SMP and other state and federal statutes, recommend striking this definition. Water bodies less than 20 acres are still waters of the state and may be subject to shoreline regulation as associated wetlands (see RCW 90.58.030(2)(d), WAC 173-22-040 and KCC 22.150.145).]

19.150.700725 Wetlands, isolated.

[Recommend replacing with the following definition from *Wetland Guidance for CAO Updates, Western Washington Version* (Ecology Publication No. 16-06-001; hereafter CAO Guidance)]:

		<p>“Wetlands, isolated” or “isolated wetlands” means <u>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 functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law.</u></p>
2	§ 19.200.205 Purpose and Objectives	<p>D. Prevent turbidity and pollution of wetlands and fish or shellfish bearing <u>other regulated waters of the state</u>; and</p>
3	§ 19.200.210 Wetland identification and functional rating	<p>B.3-4: To be consistent with BAS (see § XX.040, p. 24, CAO Guidance) and to ensure that resource functions are protected, we recommend adding the following conditions to the exemptions for small Cat. III and IV wetlands:</p> <p><u>Are not associated with riparian areas or their buffers;</u></p> <p><u>Are not associated with shorelines of the state or their associated buffers;</u></p> <p><u>Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology);</u></p> <p><u>Do not contain a Priority Habitat or a Priority Area1 for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter XX.XX; and</u></p> <p><u>Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.</u></p>
4	§ 19.200.220 Wetland buffer requirements	<p>C.1.b. Administrative Buffer Reductions</p> <p>[As noted in previous comments, we recommend striking this provision. An outright buffer reduction will not protect resource functions and is not consistent with the BAS. Reductions in buffer width should only be allowed through buffer averaging. We support the proposed buffer averaging provisions in the current draft.]</p>
5	§ 19.200.225 Additional development standards for certain uses	<p>B. Agricultural Restrictions. In all development proposals that would introduce or expand agricultural 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... [Recommend striking this provision as it is not consistent with resource protection and may be a challenge for the County to implement. Existing and ongoing agriculture, including grazing and haying within emergent wetlands, is an allowed use but expansion of agricultural activities or construction of agricultural facilities that may impair critical area functions should be required to apply mitigation sequencing and mitigate for unavoidable impacts. Such activities would need to be reviewed and approved by state and federal resource agencies and we believe it is in the best interest of the regulated public and the County to strike this provision.]</p> <p>F. Utilities. Placement of utilities within wetlands or their buffers may be allowed pursuant to the following standards:...</p> <p>[Since utility work in wetlands or in-water will require state and federal approval (and as stated in previous comments), we recommend adding the following language to this section; same comment for ¶ G. Parks.]: <u>Before beginning work in-water or within wetlands, it shall be the utilities responsibility to ensure that all other required state and federal approvals have been obtained.</u></p>

6	§ 19.200.250 Wetland mitigation requirements	C. Wetland Replacement Ratios TABLE 19.200.250 [As restoration science has not sufficiently evolved to create or re-establish bogs or Wetlands of High Conservation Value (Category I wetlands) and for consistency with state and federal mitigation standards, we recommend changing “Case-by-case” to “Not considered possible”; see mitigation table on p. 43, CAO Guidance. Also change “6:1 Rehabilitation” to “Case-by-case” in the Rehabilitation column for these wetland types.]
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