

ORDINANCE NO. ___-2021

**LOCALLY ADOPTING
KITSAP COUNTY'S SHORELINE MASTER PROGRAM, TITLE 22 KCC
AND AMENDING PROVISIONS OF TITLE 15, 19 AND 21 KCC FOR CONSISTENCY**

BE IT ORDAINED:

Section 1. **General Findings.** The Kitsap County Board of Commissioners makes the following findings regarding the local adoption of the Kitsap County Shoreline Master Program and associated amendments to Kitsap County Code Title 15, 19, and 21 for consistency:

1. Kitsap County's Shoreline Master Program, Title 22 KCC (SMP) implements the requirements of Chapter 90.58 RCW, the Shoreline Management Act of 1971 (SMA or the Act), and Chapter 36.70A RCW, the Growth Management Act (GMA).
2. Periodic reviews of the Kitsap County Shoreline Master Program are required by RCW 90.58.080. Kitsap County shall amend the Shoreline Master Program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the Department of Ecology in accordance with the schedule established by RCW 90.58.080.4, for Kitsap County, on or before June 30, 2021.
3. Pursuant to RCW 90.58.080 the periodic review established by the SMA is to:
 - a. Assure that the master program complies with applicable law and guidelines in effect at the time of the review; and
 - b. Assure consistency of the master program with the local government's comprehensive plan and development requirements adopted under chapter 36.70A RCW, if applicable, and other local requirements.
4. RCW 90.58.080 directs local governments to develop and administer local shoreline master programs for the regulation of uses on shorelines of the state. RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the local comprehensive plan required by GMA. All other portions of the local shoreline master program, including the regulations, are to be considered a part of the local development regulations required by GMA.
5. RCW 90.58.050 provides that the Act is intended to establish a cooperative program between local government and the state. Local governments have primary responsibility for planning and administering the regulatory program, and the state, through the Department of Ecology (Ecology), has a supportive and review role with an emphasis on assisting local governments and ensuring compliance with the Act.

6. In Ecology's supportive role, RCW 90.58.060 and RCW 90.58.200 authorize Ecology to adopt guidelines as necessary and appropriate to carry out the provisions of the Act. Chapter 173-26 WAC provides these guidelines as the minimum procedural requirements for updating local programs but recognizes that some procedural systems can be based on local needs and circumstances. RCW 90.58.080 requires a local SMP be consistent with these guidelines.
7. Under RCW 90.58.090, the Department of Ecology must approve master programs prepared by local governments or adopt them by rule consistent with the Act.
8. Kitsap County's local master program was first adopted in 1976, and last amended in 2014.
9. This update is prepared in accordance with Chapter 173-26 WAC to satisfy the requirements therein and in the Act.

Section 2. General Procedural Findings. The Kitsap County Board of Commissioners makes the following findings regarding the process and public participation aspects for amending Kitsap County's Shoreline Master Program (SMP) for Periodic Review:

1. On October 20, 2020, during a regularly scheduled and properly noticed meeting, the Planning Commission was briefed on the scope of work and timeline for the Shoreline Master Program periodic review process.
2. On October 28, 2020, during a regularly scheduled and properly noticed meeting, the Board of County Commissioners reviewed and approved the Shoreline Master Program Periodic Review Public Participation Plan. Public outreach regarding the proposed amendments was conducted through:
 - a. A dedicated web page and online open house portal;
 - b. Legal notices published in the official newspaper of record for Kitsap County;
 - c. Monthly project updates and community question and answer time offered virtually throughout the periodic review process;
 - d. Announcements posted to subscribers of www.nextdoor.com and Facebook in Kitsap County;
 - e. Electronic announcements and notifications to:
 - i. Subscribers of relevant GovDelivery lists in the Kitsap County Electronic Notification System;
 - ii. Relevant Kitsap County advisory groups; and
 - iii. Relevant local, state and federal agencies, and community groups;
 - f. Notification letters to federally recognized tribes with usual and accustomed areas in Kitsap County and relevant tribal organizations;
 - g. Meetings with citizen advisory groups and various interested parties.
3. On October 30, 2020, the Public Participation Plan was submitted to and approved by Ecology.

4. From November 2020 to **June 2021**, the Department of Community Development sent an electronic notification via GovDelivery announcement to all subscribers of the SMP topic, Commissioner District newsletters, and numerous code update topic subscribers announcing the kick-off of the SMP periodic review process and how to participate and stay engaged.
5. On November 25, 2020, during a regularly scheduled and properly noticed meeting, the Board of County Commissioners reviewed and approved a proposed scope of code amendments noted in the Consistency Analysis Report.
6. On December 17, 2020; January 21, 2021; February 18, 2021; March, 18, 2021; April 15, 2021; and **May 20, 2021**; following timely and effective notice, the Department of Community Development conducted virtual monthly project update meetings about the Shoreline Master Program periodic review process, soliciting and answering live questions from members of the public.
7. In January 2021, following timely and effective notice, the Department of Community Development provided briefings and outreach to the Kingston, Manchester, and Suquamish citizen advisory groups; tribes; and community groups.
8. On January 19, 2021, during a regularly scheduled and properly noticed meeting, the Department of Community Development provided a status update, and reviewed with the Planning Commission preliminary approaches for draft amendments to several sections of the Shoreline Master Program and related codes.
9. On January 25, 2021, during a regularly scheduled and properly noticed meeting, the Department of Community Development reviewed and discussed with the Board of County Commissioners preliminary approaches to all proposed draft amendments to the Shoreline Master Program and related codes to kick off discussions and receive initial feedback.
10. On January 27, 2021, during a regularly scheduled and properly noticed meeting, the Department of Community Development provided a status update and shared with the Planning Commission the project webpage.
11. On January 28, 2021, the Department of Community Development sent formal letters via email about the public comment period and public hearing to partners and interested parties including tribes, cities, counties, special districts, community groups, environmental groups, and state and federal agencies.
12. From February 2 to March 3, 2021, following timely and effective public notice, the Department of Community Development and Department of Ecology held a joint public comment period on the proposed amendments, staff report, and State Environmental Policy Act (SEPA) determination. Ecology and the County received twenty comments via email, the online open house comment portal and public hearing testimony.

13. On February 2, 2021, during a regularly scheduled and properly noticed meeting, the Planning Commission held a work study session on the proposed draft amendments to the Shoreline Master Program and related codes. Department staff provided an overview of the proposed code amendments to Titles 15, 19, 21, and 22.
14. On February 5, 2021, the Department of Community Development submitted a 60-day notice of intent to adopt amendment to Washington State Department of Commerce in accordance with RCW 36.70A.106 and WAC 173-26-100(5).
15. On February 15, 2021 Kitsap County issued a Notice of Public Hearing in the legal publication of record regarding the content of the proposed amendments before the Planning Commission.
16. On February 16, 2021, during a regularly scheduled and properly noticed meeting, the Planning Commission held a second work study session on the proposed draft amendments to the Shoreline Master Program and related codes. This was an opportunity to discuss the proposed draft amendments prior to the March 2, 2021 joint public hearing Ecology and subsequent deliberations.
17. On February 18, 2021, Kitsap County issued a State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) per WAC-197-11-340(2). The SEPA comment and appeal period closed on March 4, 2021. The Department received one SEPA comment letter from the Suquamish Tribe, which also served as the Tribe's comment letter for the Shoreline Master Program draft proposed amendments and related codes.
18. On March 2, 2021, following timely and effective legal notice, the Planning Commission held a joint public hearing with the Department of Ecology to consider testimony on the proposed draft amendments to the Shoreline Master Program and related codes.
19. On March 16 and April 6, 2021, during regularly scheduled and properly noticed meetings, the Planning Commission deliberated on proposed amendments to KCC Titles 15, 19, 21 and 22, public comments received, and the record, and made recommendations via approved motions during deliberations. The Planning Commission recommended approval of the draft SMP and related text amendments, incorporating the text revisions voted on during the deliberation meetings.
20. On March 19, 2021, during a regularly scheduled and properly noticed meeting, the Department of Community Development briefed the Board of County Commissioners on the public comments received during the joint Planning Commission and Ecology comment period and public hearing.
21. On April 6, 2021, the Department of Community Development issued a draft No Net Loss Addendum for the Planning Commission deliberations.
22. On April 9, 2021, following the Planning Commission's final deliberation, the Department of Community Development submitted draft Planning Commission recommendation, draft No Net

Loss Addendum, and public comment matrix to Ecology for initial determination. The Planning Commission recommendation was merged with the Department's comments before submittal to Ecology.

23. On April 20, 2021, during a regularly scheduled and properly noticed meeting, the Planning Commission adopted findings of fact, as required by Kitsap County Code 21.08.100(F) that the amendments, as recommended during deliberations:
 - a. Are supported by the Capital Facilities Plan;
 - b. Are consistent with the GMA, the Countywide Planning Policies, The Kitsap County Comprehensive Plan, and other applicable laws and policies;
 - c. Are consistent with the applicable decision criteria in Kitsap County code 21.08.070, as demonstrated in the findings and conclusions of the staff report and adopted herein;
 - d. Reflect current local circumstances; and
 - e. Promotes the public interest and welfare of the citizens of Kitsap County.
24. On April 28, 2021, the Department of Community Development forwarded the Planning Commission findings of fact and recommendation to the Kitsap County Board of Commissioners for consideration.
25. On May 5, 2021, during a regularly scheduled and properly noticed meeting, the Kitsap County Board of Commissioners was provided an overview of the proposed ordinance which included amendments to the Shoreline Master Program and related amendments in Titles 15, 19, and 21.
26. On **May 12, 2021**, Kitsap County issued a Notice of Public Hearing in the legal publication of record regarding the content of the proposed ordinance before the Board of County Commissioners.
27. From **May 12 to May 26, 2021**, following timely and effective public notice, the Department of Community Development held a public comment period on the proposed ordinance and staff report. The County received **XX** comments via email, the online open house comment portal and public hearing testimony.
28. On **May 24, 2021**, following timely and effective legal public notice, the Kitsap County Board of Commissioners held a public hearing on the proposed ordinance.
29. On **June 7, 2021**, during a regularly scheduled and property noticed meeting, the Kitsap County Board of Commissioners considered the proposed ordinance, the findings and recommendation of the Planning Commission, the Department recommendation and analysis in the staff report, the public testimony provided, and the record.

Section 3. General Substantive Findings. The Kitsap County Board of Commissioners makes the following findings regarding Kitsap County's Shoreline Master Program (SMP) codified in Title 22 and associated amendments required for consistency in Title 15 (Flood Hazard Areas), Title 19 (Critical

Areas Ordinance), Title 21 (Land Use and Development Procedures) and Title 22 (Shoreline Master Program).

1. The SMP is consistent with the 14 statewide planning goals contained within the Act, in particular planning goal number 14 (Goals and policies of the Shoreline Management Act) per RCW 36.70A.480.
2. The SMP is consistent with, the County Wide Planning Policies adopted May 11, 2015 and the Kitsap County Comprehensive Plan, in particular the Environmental Element of the 2016 Comprehensive Plan.
3. The SMP is supported by the Capital Facilities Plan, which concludes that projected levels of service standards for shoreline public access are currently being met. The SMP contains a shoreline environment designation system designed to reflect current and future Urban Growth Area boundaries.
4. During the SMP Periodic Review, Kitsap County actively encouraged early and continuous public involvement consistent with the Act, the Guidelines and GMA, including RCW 90.58.130, RCW 36.70A.035, RCW 36.70A.130, WAC 173-26-090 and WAC 173-26-100.
5. Kitsap County has complied with the State Environmental Policy Act, Ch. 43.21C RCW.
6. The adoption and implementation of SMP Periodic Review amendments are expected to result in no net loss of shoreline ecological functions over time.
7. The proposed amendments promote the public interest and welfare of the citizens of Kitsap County.

Section 4. Local Adoption.

1. The Kitsap County Shoreline Master Program (Kitsap County Code Title 22), attached hereto as Appendix 1, is hereby locally approved as required in WAC 173-26-100.
2. The locally approved SMP was forwarded to and reviewed by the Washington State Department of Ecology for final review and approval in accordance with WAC 173-26-110.

Section 5. For consistency, Kitsap County Code Section 15.08.140, last amended by Ordinance 080-1980, is amended as follows:

15.08.140 Floodway.

“Floodway” means ~~the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.~~ the area that has been established in effective federal emergency management flood insurance rate maps or floodway maps. The floodway does not include lands that

can be reasonably expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state or a political subdivision of the state.

Section 6. For consistency, Kitsap County Code Section 19.200.210, last amended by Ordinance No. 545-2017, is amended as follows:

19.200.210 Wetland identification and functional rating.

A. General.

1. All wetland delineations shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement. All areas within the county meeting the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this title.
2. Kitsap County uses the Washington Department of Ecology Washington State Wetland Rating System for Western Washington, revised 2014 or as hereafter amended, to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Wetlands shall be generally designated as follows. (See Chapter 19.800, Appendix A, for more detailed description.)

B. Wetlands.

1. Category I Wetlands. Category I wetlands include, but are not limited to, wetlands that represent rare or unique wetland types, those that are more sensitive to disturbance than most wetlands, those that are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or those that provide a high level of function. Category I wetlands score twenty-three points or more out of twenty-seven on the wetlands ratings system.
2. Category II Wetlands. Category II wetlands are those wetlands that are more difficult to replace and provide high levels of some functions. Category II wetlands score between twenty and twenty-two points out of twenty-seven on the wetlands ratings system.
3. Category III Wetlands. Category III wetlands are those wetlands with a moderate level of function and can often be adequately replaced with mitigation. Category III wetlands score between sixteen and nineteen points on the wetlands ratings system.
4. Category IV Wetlands. Category IV wetlands have the lowest level of function and are often heavily disturbed. Category IV wetlands score less than sixteen points out of twenty-seven on the wetlands ratings system.

C. Exemptions for Small Wetlands. Category III wetlands that are less than one thousand~~two thousand five hundred~~ square feet and Category IV wetlands that are less than four thousand~~seven thousand five hundred~~ 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:

1. They are isolated wetlands and not part of a wetland mosaic;
2. They are not associated with riparian areas or their buffers;
- ~~3.~~ They are not associated with shorelines of the state or their associated buffers;
- ~~4.~~ They do not contain a Class I fish and wildlife habitat conservation area, identified by the Washington Department of Fish and Wildlife; ~~and~~
5. They do not contain federally listed species or their critical habitat; and
46. ~~The~~ A wetland report is prepared that identifies the specific wetland function affected or at risk, and ~~the~~ provides proposed mitigation to replace the affected or lost wetland function, on a per function basis.

Section 7. For consistency, Kitsap County Code Section 19.200.220, last amended by Ordinance 545-2017, is amended as follows:

19.200.220 Wetland buffer requirements.

A. Determining Buffer Widths. The following buffer widths are based on three factors: the wetland category, the intensity of the impacts, and the functions or special characteristics of the wetland that need to be protected as established through the rating system. These factors must be determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by the Washington State Department of Ecology). If a wetland meets more than one of the characteristics listed in Tables 19.200.220(B) through (E), the greater of the buffers recommended to protect the wetland is applied. Buffers shall be measured horizontally from a perpendicular line established at the wetland edge based on the buffer width identified using the tables below.

**Table 19.200.220(A)
Land Use Impact “Intensity” Based on Development Types**

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
High	Commercial, urban, industrial, institutional, retail sales, residential subdivisions with more than 1 unit/acre, new agriculture (high-intensity processing such as dairies, nurseries and greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), new transportation corridors, high-intensity recreation (golf courses, ball fields), hobby farms
Moderate	Single-family residential lots, residential subdivisions with 1 unit/acre or less, moderate-intensity open space (parks), new agriculture (moderate-intensity such as orchards and hay

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
	fields), transportation enhancement projects
Low	Forestry, open space (low-intensity such as passive recreation and natural resources preservation, minor transportation improvements)

**Table 19.200.220(B)
Width of Buffers for Category IV Wetlands**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Score for all 3 basic functions is less than 16 points	Low – 25 feet Moderate – 40 feet High – 50 feet	None

**Table 19.200.220(C)
Width of Buffers for Category III Wetlands**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (6-5 – 7 points)*	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Score for habitat 3 – 4 <u>5</u> points	Low – 40 feet Moderate – 60 feet High – 80 feet	None

*If wetland scores 8 – 9 habitat points, use Table 19.200.220(D) for Category II buffers.

**Table 19.200.220(D)
Width of Buffers for Category II Wetlands**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
High level of function for	Low – 150 feet	Maintain connections to other

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
habitat (score 8 – 9 points)	Moderate – 225 feet High – 300 feet	habitat areas
Moderate level of function for habitat (6.5 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6.5 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff
Estuarine	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Interdunal	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Not meeting above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

TABLE 19.200.220(E)
Width of Buffers for Category I Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Wetlands of high conservation value	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries No septic systems within 300 feet of wetland Restore degraded parts of buffer
Bogs	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
Forested	Buffer width to be based on	If forested wetland scores high

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
	score for habitat functions or water quality functions	for habitat (8 – 9 points), need to maintain connections to other habitat areas Restore degraded parts of buffer
Estuarine	Low – 100 feet Moderate – 150 feet High – 200 feet	None
Wetlands in coastal lagoons	Low – 100 feet Moderate – 150 feet High – 200 feet	None
High level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Interdunal wetland with high level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (6.5 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6.5 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	None
Not meeting any of the above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

B. Modification of Buffer Widths. The following modifications to buffer widths may be considered provided the applicant first demonstrates that reductions or alterations to the required wetland buffer cannot be avoided, minimized or mitigated (in that order):

1. Buffer Averaging. Standard buffer widths may be modified by the department for a development proposal first by averaging buffer widths, 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. The following standards shall apply to buffer averaging:

- a. The decrease in buffer width is minimized by limiting the degree or magnitude of the regulated activity.
- b. For wetlands and/or required buffers associated with documented habitat for endangered, threatened, or sensitive fish or wildlife species, a habitat assessment report has been submitted that demonstrates that the buffer modification will not result in an adverse impact to the species of study.
- c. Width averaging will not adversely impact the wetland.
- d. The total buffer area after averaging is no less than the total buffer area prior to averaging.
- e. For Category III and IV wetlands with habitat scores less than five points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 update, as amended, the minimum buffer width at any point will not be less than fifty percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.
- f. For all other wetlands, the minimum buffer width at any point will not be less than seventy-five percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.
- 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:
 - i. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the dripline of the tree(s), unless otherwise approved by the department.
 - ii. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
 - iii. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
 - iv. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
 - v. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.

vi. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention in the tree protection area.

vii. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

2. Administrative Buffer Reductions. 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 that 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:

a. The department may administratively reduce the buffer pursuant to the variance criteria listed in Section 19.100.135. Applicants may propose to utilize provisions contained in KCC 19.200.230.

b. For proposed single-family dwellings, the department may administratively reduce a buffer by up to twenty-five percent of the area required under the standard buffer requirement, but not less than thirty feet.

c. For all other proposed uses, the department may administratively reduce the buffer by up to twenty-five percent of the area required under the standard buffer requirement, but not less than forty feet.

d. To minimize impacts and provide equivalent functions and values as required by this section, applicants may propose:

i. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;

ii. The use of alternative on-site wastewater systems in order to minimize site clearing;

iii. Infiltration of storm water where soils permit; and

iv. Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.

v. To utilize provisions contained in KCC 19.200.230.

e. The buffer widths recommended for proposed land uses with high-intensity impacts to wetlands can be reduced to those recommended for moderate-intensity impacts under the following conditions:

i. For wetlands that score moderate or high for habitat (five points or more for habitat functions), the width of the buffer can be reduced if both of the following criteria are met:

(A) A relatively undisturbed, vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.

(B) Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 19.200.220(F).

ii. For wetlands that score less than five points for habitat, the buffer width can be reduced to that required for moderate land use impacts by applying measures to minimize the impacts of the proposed land uses, such as the examples summarized in Table 19.200.220(F).

**Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands**

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Storm water runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping • Commercial 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland <ul style="list-style-type: none"> • Apply integrated pest management • Retrofit storm water detention and treatment for roads and existing adjacent development <ul style="list-style-type: none"> • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces <ul style="list-style-type: none"> • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Residential areas 	<ul style="list-style-type: none"> • Use privacy fencing; plant dense vegetation to delineate buffer edge

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
		and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract
Dust	<ul style="list-style-type: none"> • Tilled fields 	<ul style="list-style-type: none"> • Use best management practices to control dust

3. Variance. In cases where proposed development cannot meet the administrative buffer reduction criteria described in this section, a variance shall be required as described in Section 19.100.135. Applicants may propose to utilize provisions contained in KCC 19.200.230.

C. Fencing and Signs.

1. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as required by the department, between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per county approval.
2. The department may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land of the project site. Such signs will identify the wetland buffer. The department may approve an alternate method of wetland and buffer identification, if it provides adequate protection to the wetland and buffer.

D. Protection of Buffers. The buffer shall be identified on a site plan and on site as required by the department and this chapter. Refuse shall not be placed in buffers.

E. Building or Impervious Surface Setback Lines. A building or impervious surface setback line of fifteen 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.

Section 8. For consistency, Kitsap County Code Section 19.200.225, last amended by Ordinance 545-2017, is amended as follows:

19.200.225 Additional development standards for certain uses.

In addition to meeting the development standards of this chapter, those uses identified below shall also comply with the standards of this section and other applicable state, federal and local laws.

A. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as construction of roads, shall comply with the

provisions of this title, including the maintenance of buffers around wetlands.

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. Wetlands shall be avoided by at least one of the following methods:

1. Locate fencing no closer than the outer buffer edge; or
2. Implement a farm resource conservation and management plan agreed upon by the conservation district and the applicant to protect and enhance the functions and values of the wetland.

C. Road/Street Repair and Construction. Any private or public road or street repair, maintenance, expansion or construction may be allowed within a critical area or its buffer only when all of the following are met:

1. No other reasonable or practicable alternative exists and the road or street serves multiple properties whenever possible;
2. For publicly owned or maintained roads or streets, other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc., shall be allowed whenever possible;
3. The road or street repair and construction are the minimum necessary to provide safe roads and streets; and
4. Mitigation shall be performed in accordance with specific project mitigation plan requirements. Applicants may propose to utilize provisions contained in KCC 19.200.230.

D. Land Divisions and Land Use Permits. All proposed divisions of land and land uses (including but not limited to the following: short plats, large lot subdivisions, performance-based developments, conditional use permits, site plan reviews, binding site plans) which include regulated wetlands, shall comply with the following procedures and development standards:

1. The area of a wetland and its buffers may be included in the calculation of minimum lot area for proposed lots, except for the area with permanent open water.
2. Land division approvals shall be conditioned to require that wetlands and wetland buffers be dedicated as open space tracts, or an easement or covenant encumbering the wetland and wetland buffer. Such dedication, easement or covenant shall be recorded together with the land division and represented on the final plat, short plat or binding site plan, and title.
3. In order to implement the goals and policies of this title, to accommodate innovation, creativity, and design flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the clustered development or similar innovative site planning is strongly encouraged for projects with regulated wetlands on the site.
4. After preliminary approval and prior to final land division approval, the department may require the common boundary between a regulated wetland or associated buffer and the adjacent

land be identified using permanent signs and/or fencing. In lieu of signs and/or fencing, alternative methods of wetland and buffer identification may be approved when such methods are determined by the department to provide adequate protection to the wetland and buffer.

E. Surface Water Management. Surface water discharges from storm water facilities or structures may be allowed in wetlands and their buffers when they are in accordance with Title 12 (Storm Water Drainage) subject to the provisions of Section 19.100.145, Special use review, and this subsection. The discharge shall neither significantly increase nor decrease the rate of flow or hydroperiod, nor decrease the water quality of the wetland. Pretreatment of surface water discharge through biofiltration or other best management practices (BMPs) shall be required.

F. Trails and Trail-Related Facilities. 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:

1. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.
2. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance and existing hydrological characteristics, shrubs, snags and important wildlife habitat.
3. 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.
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 twenty-five percent of the buffer, except where wetland crossings or for direct access to viewing areas have been approved by the department.
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 a demonstrated need, subject to review and approval by the department. Trails shall be constructed with pervious materials except where determined infeasible.
6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap County Non-Motorized Facility Plan (and associated recognized community trails), and as amended, and provided design considerations are made to minimize impacts to critical areas and buffers, shall not be subject to the platform, trail width, or trail material limitations above. Such trails and facilities shall be approved through special use review (Section 19.100.145), unless any underlying permit requires a public hearing.

G. Utilities. Placement of utilities within wetlands or their buffers may be allowed pursuant to the following standards and any other required state and federal approvals:

1. The utility maintenance or repair, as identified in Section 19.100.125(E), shall be allowed in wetlands and wetland buffers so long as best management practices are used.
2. Construction of new utilities outside the road right-of-way or existing utility corridors may be permitted in wetlands or wetland buffers only when: (a) no reasonable alternative location is available, (b) the new utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and (c) as required in the filing and approval of applicable permits and special reports (Chapter 19.700) required by this title.
3. Construction of sewer lines or on-site sewage systems may be permitted in wetland buffers only when: (a) the applicant demonstrates that the location is necessary to meet state or local health code minimum design standards (not requiring a variance for either horizontal setback or vertical separation), and (b) there are no other practicable or reasonable alternatives available and (c) construction meets the requirements of this section. Joint use of the sewer utility corridor by other utilities may be allowed.
4. New utility corridors shall not be allowed when the wetland or buffer has known locations of federal- or state-listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved habitat management plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer.
5. New utility corridor construction and maintenance shall protect the wetland and buffer environment by utilizing the following methods:
 - a. New utility corridors shall be aligned to avoid cutting trees greater than twelve inches in diameter at breast height (four and one-half feet), measured on the uphill side, unless no reasonable alternative location is available.
 - b. New utility corridors shall be revegetated with appropriate native vegetation at not less than preconstruction densities or greater immediately upon completion of construction, or as soon thereafter as possible if due to seasonal growing constraints. The utility shall ensure that such vegetation survives.
 - c. Any additional utility corridor access for maintenance shall be provided at specific points rather than by parallel roads, unless no reasonable alternative is available. If parallel roads are necessary, they shall be the minimum width necessary for access, but no greater than fifteen feet, and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.
 - d. Drilling for new utility corridors shall have entrance/exit portals located completely outside of the wetland buffer boundary, and drilling shall not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.

~~e.~~ The department may require other additional mitigation measures.

6. Utility corridor maintenance shall include the following measures to protect the wetland and buffer environment:

a. Painting of utility equipment, such as power towers, shall not be sprayed or sandblasted, unless appropriate containment measures are used. Lead-based paints shall not be used.

b. No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology. Where approved, they must be applied by a licensed applicator in accordance with the safe application practices on the label.

H. Parks. Development of public park and recreation facilities may be permitted in wetlands or their buffer subject to the provisions of Section 19.100.145, Special use review, and other applicable 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.

Section 9. For consistency, Kitsap County Code 21.04.100, last amended by Ordinance 557-2018, is amended as follows:

21.04.100 Review Authority Table.

The Review Authority Table shows permits regulated by this chapter, how they are classified and who the review authority is.

	Permit/Activity/Decision	Review Authority	Type I	Type II	Type III	Type IV
DEVELOPMENT ENGINEERING PERMITS – See also Title 12, Stormwater Drainage						
1	Site Development Activity Permit – Subject to SEPA	D		X		
2	Site Development Activity Permit – SEPA Exempt	D	X			
ENVIRONMENTAL PERMITS – See also Titles 18, Environment, 19, Critical Areas Ordinance, and 22, Shoreline Master Program						
3	Conditional Waiver, View Blockage Requirement	D		X		
4	Critical Area Buffer Reduction	D	X	X		
5	Critical Area Variance	HE			X	
6	Current Use Open Space	BC				X
7	Shoreline Administrative Conditional Use Permit	D		X		
8	Shoreline Buffer Reduction	D	X	X		
9	Shoreline Conditional Use Permit	HE			X	

	Permit/Activity/Decision	Review Authority	Type I	Type II	Type III	Type IV
10	Shoreline Permit Exemption	D	X			
11	Shoreline Revision	D		X		
12	Shoreline Substantial Development Permits	D HE		X	✖	
13	Shoreline Variance (> 25%)	HE			X	
14	<u>Shoreline Variance (<25% or within any portion of the reduced buffer in shoreline residential designation)</u>	D		X		
15	Timber Harvest Permit	D	X			
LAND USE PERMITS – See also Title 17, Zoning						
16	Administrative Conditional Use Permit	D		X		
17	Administrative Conditional Use Permit Major Amendment – Proposed After Approval	D		X		
18	Administrative Conditional Use Permit Minor Amendment – Proposed After Approval	D	X			
19	Conditional Use Permit	HE			X	
20	Conditional Use Permit Major Amendment – Proposed After Approval	HE			X	
21	Conditional Use Permit Minor Amendment – Proposed After Approval	D	X			
22	Development Agreement	BC				X
23	Home Business	D	X			
24	Master Plan	HE			X	
25	Master Plan – Amendments	D		X		
26	Performance Based Development	HE			X	
27	Performance Based Development Major Amendment – Proposed After Approval	HE			X	
28	Performance Based Development Minor Amendment – Proposed After Approval	D	X			
29	Rezone ¹	PC/BC			X	
30	Sign	D	X			
31	Zoning Variance – Director’s (≤ 10%)	D	X			
32	Zoning Variance – Administrative (> 10% to ≤ 25%)	D		X		
33	Zoning Variance – Hearing Examiner (> 25%)	HE			X	

	Permit/Activity/Decision	Review Authority	Type I	Type II	Type III	Type IV
	LAND DIVISION PERMITS – See also Title 16, Land Division and Development					
343	Binding Site Plan	D		X		
354	Binding Site Plan Alteration	D		X		
365	Final Large Lot Plat	D	X			
376	Final Large Lot Plat Alteration	D		X		
387	Final Plat	D	X			
398	Final Plat Alteration	HE ²		X		
4039	Final Short Plat	D	X			
410	Final Short Plat Alteration	D		X		
421	Land Segregation Vacation	D/HE		X	X	
432	Legal Lot Determination	D	X			
443	Preliminary Large Lot Subdivision	D		X		
454	Preliminary Large Lot Subdivision – Major Amendment	D		X		
465	Preliminary Large Lot Subdivision – Minor Amendment	D	X			
476	Preliminary Short Subdivision	D		X		
487	Preliminary Short Subdivision – Major Amendment	D		X		
498	Preliminary Short Subdivision – Minor Amendment	D	X			
5049	Preliminary Subdivision	HE			X	
510	Preliminary Subdivision – Major Amendment	HE			X	
521	Preliminary Subdivision – Minor Amendment	D		X		
	MISCELLANEOUS PERMITS					
532	Building Code Interpretation	BO	See Chapter 14.04	See Chapter 14.04	See Chapter 14.04	See Chapter 14.04
543	Building Permit	BO	Exempt	Exempt	Exempt	Exempt
554	Change of Use	BO	X			
565	Code Compliance	D	X			
576	Concurrency Certificate	CE	X			
587	Director’s Interpretation	D	X			
598	Reasonable Use Exception	HE			X	

	Permit/Activity/Decision	Review Authority	Type I	Type II	Type III	Type IV
6059	Road Vacation	CE				X
610	Temporary Use	D	X			
62+	Transfer of Development Right Program	D/HE/BC	X	X	X	X
D = Director BC = Board of County Commissioners BO = Building Official CE = County Engineer HE = Hearing Examiner PC = Planning Commission						

- 1 Hearing examiner recommendation subject to board of county commissioners approval.
- 2 Hearing at request of noticed party, RCW 58.17.215.

Section 10. Typographical/Clerical Errors. Should any amendment made to this Ordinance that was passed by the Board during its deliberations be inadvertently left out of the final printed version of the plan, maps or code, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board, and shall be corrected.

Section 11. Severability. If any provision of this Ordinance or its application to any person, entity or circumstance is for any reason held invalid, the remainder of the Ordinance, or the application of the provision to other persons, entities or circumstances is not affected.

Section 12. Effective Date. This Ordinance shall take effect fourteen days from the date of the Department of Ecology’s written notice of final action stating that the Shoreline Master Program has been approved.

Dated this ____ day of June, 2021

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON**

ATTEST:

ROBERT GELDER, Chair

EDWARD E. WOLFE, Commissioner

Dana Daniels, Clerk of the Board

CHARLOTTE GARRIDO , Commissioner

Approved as to form by the Kitsap County Prosecutor's Office