

April 2, 2024

Presented by:

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Kitsap County Critical Areas Ordinance Update Planning Commission Work Study #1



UPDATED SECTIONS

19.100 – Introduction and Approval

19.150 - Definitions

19.200 – Wetlands

19.300 – Fish & Wildlife Habitat Conservation Areas

19.400 – Geologic Hazards

19.700 – Special Reports

BASIS OF CHANGES



Best Available Science Report



Consistency and Gaps Analysis, The Watershed Company



Updated State Guidance



Staff suggested edits



Public and Working Group Input

BEST AVAILABLE SCIENCE

WAC 365-190-080(2) requires that Counties and cities must include the best available science when designating critical areas and when developing policies and regulations that protect critical areas.

Must give special consideration of anadromous fisheries and are encouraged to protect both surface and groundwater resources.

NO NET LOSS

WAC 365-190-080(1) *Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect all functions and values of critical areas to ensure no net loss of ecological functions and values.*

19.100 INTRODUCTION AND APPROVAL: KEY CHANGES

- Clarified and added policy goals
- Clarified ‘emergency’ exemption
- Clarified criteria and process for expansion of nonconforming structures.
- Added mitigation sequencing to general applications requirements to include/cover all applicable critical areas. Removed from individual critical area chapters and redirected to 19.100.

19.100.105 POLICY GOALS

19.100.105.B.11	Policy Goals	RMZ Checklist Recommendation Q	Clarify language to include watershed-scale management considerations.
19.100.105.B.13	Policy Goals	RMZ Checklist Recommendation R	Added consideration of climate change impacts to support new climate change goals/policies in Comp Plan.

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

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

19.100.125(A) EMERGENCY EXEMPTIONS

19.100.125.A	Exemptions	RMZ Checklist Recommendation O	Moved definition of "emergency" to 19.150 Definitions. Elaborated on steps, timeline, mitigation, and "after the fact" permitting requirements.
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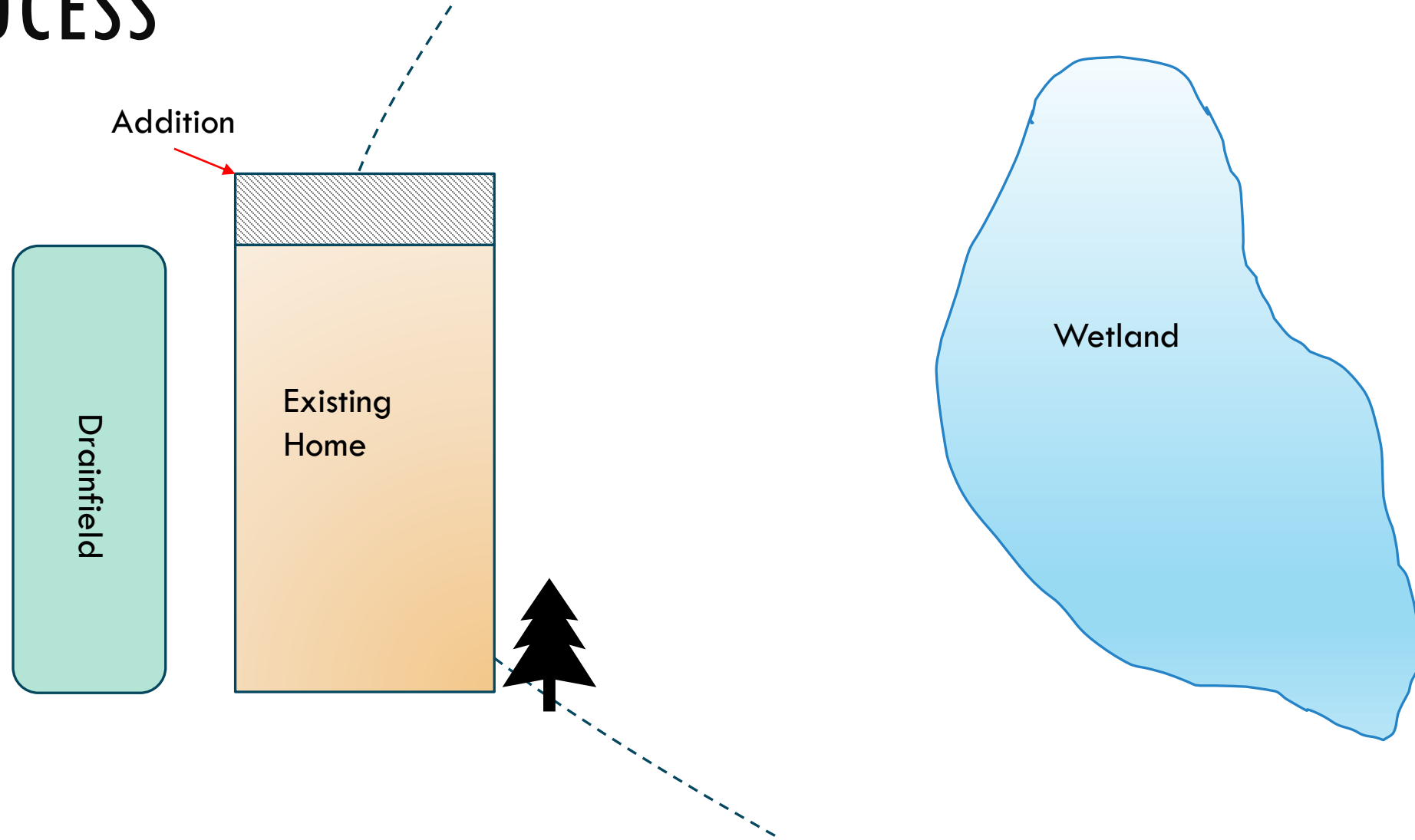
19.150.256 Emergency.

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

19.100.130 STANDARDS FOR EXISTING DEVELOPMENT

19.100.130.A.3	Standards for existing development	Staff Recommendation Re: Expansion of Nonconforming structure	Clarified criteria and process for expansion of nonconforming structures.
19.100.130.A.4	Standards for existing development	Staff Recommendation Re: Nonconforming (Damaged or Destroyed)	Added clarification for determining the date of “damage or destruction”.
19.100.130.B	Standards for existing development	Staff Recommendation	Removed “or hazard”. Added “or snag”.
19.100.130.B.1 19.100.130.B.2	Standards for existing development	RMZ Checklist Recommendation N Re: Danger Tree Removal	Added to language to include identifying method that does not adversely impact riparian ecosystem, encourage snags, and avoidance and mitigation to minimize impacts.

20% EXPANSION EXEMPTION FROM ADDITIONAL PERMIT PROCESS



19.100.155(D) GENERAL APPLICATION REQUIREMENTS

19.100.155.D	General Application Requirements	RMZ Checklist Recommendation H & Consistency and Gap Analysis	Added mitigation sequencing to general applications requirements to include/cover all applicable critical areas. Removed from individual critical area chapters and redirected to 19.100.
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D. Mitigation Sequencing. An applicant for a development proposal or alteration shall apply the following sequential measures, which appear in order of priority, to avoid impacts to critical areas and critical area buffers. Lower priority measures shall be applied only when higher priority measures are determined to be infeasible or inapplicable:

1. Avoiding the impact by not taking a certain action;
2. Minimizing the impact by:
 - a. Limiting the degree or magnitude of the action with appropriate technology; or
 - b. Taking affirmative steps, such as project redesign, relocation or timing;
3. Rectifying the impact to critical areas 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 adverse impact by replacing, enhancing, or providing substitute resources or environments; and
6. Monitoring the impact, hazard or success of required mitigation and taking remedial action.

19.200 WETLANDS: KEY CHANGES

- **Increased or Enhanced Wetland Buffer Width as-needed**
 - Ecology recommendation that buffer width assumes buffer is fully vegetated
 - Director may require increased buffer or vegetation on case-by-case basis
- **Provisions for decreasing buffer**
 - Clarifications added to current process for administrative buffer reduction criteria, buffer averaging and protection of trees
 - Added Type II process for reductions of 25% - 50%. Hearing no longer required, but still includes variance criteria, sequencing and notification.
- **“Buffer Break”**
 - Using DOE’s language, provided guidelines and definition for a disconnected buffer (aka buffer break)

19.200.210 WETLAND IDENTIFICATION AND FUNCTIONAL RATING

19.200.210.A.2	Wetland identification and functional rating	Staff recommendation	Added clarity on identification of hydric soils as potential wetlands.
19.200.210.A.3	Wetland identification and functional rating	Consistency & Gap Analysis 2.3.1 Recommendation #1	Clarified rating system used and removed reference to Appendix A.
19.200.210.B.1-4	Wetlands	Consistency & Gap Analysis 2.3.1 Recommendation #2	Removed reference to rating system points total to ensure code is not in contradiction when rating system and BAS is updated in the future.
19.200.210.C.6	Exemptions for Small Wetlands	Consistency & Gap Analysis 2.3.1 Recommendation #3	Clarifying application of exemptions for small wetlands.
19.200.210.C.8	Exemptions for Small Wetlands	Staff recommendation	Added to inform that 15-foot building setback still applies.

HYDRIC SOILS AS POTENTIAL WETLANDS

Hydric Soils

 Potential Wetlands



19.200.215 WETLAND REVIEW PROCEDURES

19.200.215.B.1	Wetland review procedures	Staff recommendation	Added to clarify the resources required to be used for delineation.
19.200.215.B.3	Wetland review procedures	Staff recommendation	Clarified that the department may only perform this function when resources allow.
19.200.215.C.2(a)(i) 19.200.215.C.2(a)(ii)	Wetland review process for single-family dwellings	Consistency & Gap Analysis	Removed 250-feet and replaced with 300-feet, since the largest possible wetland buffer on a site could be up to 300-feet.
19.200.215.C.2(c)	Wetland review process for single-family dwellings	Staff recommendation	Added for clarity on what is to be included in and with a wetland certification letter.

19.200.220 WETLAND BUFFER REQUIREMENTS

19.200.220.A	Wetland buffer requirements	Staff recommendation	Added "standard" before buffer widths and updated reference to the WA state wetland rating system for clarity.
19.200.220.B	Increased or Enhanced Wetland Buffer Width	Consistency & Gap Analysis 2.3.2 Recommendation #4	Added new section with suggested language from DOE regarding vegetation in buffers and standard buffer condition. New section specifies that the department may require enhanced vegetation of buffers or increased buffer widths on a case-by-case basis.



19.200.220 WETLAND BUFFER REQUIREMENTS (CONTINUED)

19.200.220.C.1-4	Provisions for Decreasing Buffer	Staff recommendation	<p>Added and reorganized existing language to clarify current processes for buffer averaging, administrative buffer reduction criteria, buffer averaging and protection of trees.</p> <p>For consistency with other chapters, added a Type II process for administrative buffer reductions between 25-50% for single-family residences, which requires noticing and consistency with variance criteria.</p>
19.200.220.C.5	Functionally Disconnected Buffer Area	Staff recommendation	Using DOE's language, provided guidelines and definition for a disconnected buffer (aka buffer break).
19.200.220.C.6(a)(i) 19.200.220.C.6(a)(ii)	Alternatives to reducing standard buffer width	Consistency & Gap Analysis 2.3.2 Recommendation #5	Updated habitat corridor language & minimization measures.
19.200.220.C.6(b)	Alternatives to reducing standard buffer width	Consistency & Gap Analysis 2.3.2 Recommendation #5	Clarified wetlands points language for consistency throughout 19.200.
19.200.220(F)	Examples of Measures to Minimize Impacts to Wetlands	DOE recommendation	Replaced minimization table with most recent table provided by DOE.
19.200.220.C.7	Variance	Staff recommendation	Added preference for buffer averaging prior to use of other buffer reductions. Added "quasi-judicial" to identify the type of process required for a variance.
19.200.220.D(a-b)	Protection of Buffers	Staff recommendation	Combined with 19.200.220.D to reference that the use of fencing and signs are methods of protecting the buffers.
19.200.220.E	Building or Impervious Surface Setback Lines	Staff recommendation	Added language to clarify that exempt small wetlands are not exempt from the building setback requirement.

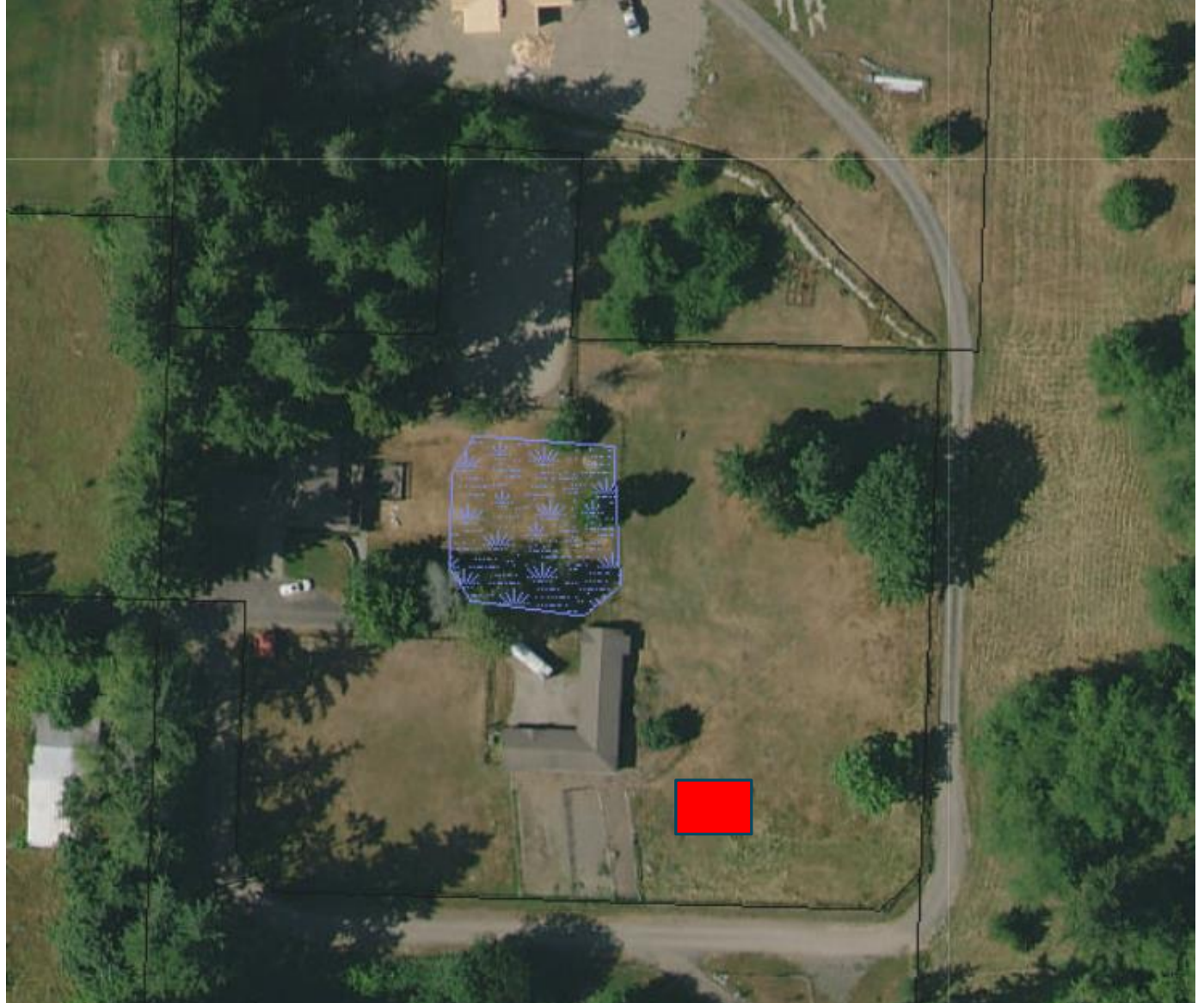
“FUNCTIONALLY DISCONNECTED BUFFER”

Example:

Building a shed.

The existing home is directly between the wetland and the proposed structure, creating a functional ‘break’.

The buffer width would not extend to the area behind the existing home for the purposes of this proposal.



19.200.225 ADDITIONAL DEVELOPMENT STANDARDS FOR CERTAIN USES

19.200.225.E.1	Surface Water Management	Consistency & Gap Analysis 2.3.2 Recommendation #7	Added protections to bog wetlands to prevent stormwater impacts.
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19.200.230 WETLAND MITIGATION REQUIREMENTS

19.200.230.A	Wetland mitigation requirements	Staff recommendation	Removed mitigation sequencing criteria from specific critical area chapters and added to 19.100.155.D for general application.
19.200.230.B	Mitigation Report	Staff recommendation	Added code reference for mitigation compliance. Removed requirement of a notarized memorandum of agreement by applicant and department director.
19.200.230.C	Native Species	Consistency & Gap Analysis 2.3.3 Recommendation #8	Added requirement of using native plant stock.
19.200.230.D	Wetland Buffer Mitigation Ratio	Staff recommendation	Added minimum mitigation ratio requirement.
19.200.230.E(2) (Table)	Wetland Mitigation Replacement Ratios	Consistency & Gap Analysis	Updated for consistency with ECY publication 22-06-014.
19.200.230.E(3)	Methods of Compensatory Mitigation	Consistency & Gap Analysis	Suggested addition per inclusion of preservation in ratio table.

19.200.230 WETLAND MITIGATION REQUIREMENTS (CONTINUED)

19.200.230.F	Mitigation Compliance	Staff recommendation	For increased effectiveness of mitigation and monitoring, added section clarifying that mitigation requirements are tied to the land, and that mitigation requirements shall be recorded as a covenant.
19.200.230.G.1	Alternative Mitigation Plans	Consistency & Gap Analysis #9	Added option of Credit-Debit Method to determine mitigation requirements described in Ecology Publication #10-06-011.
19.200.230.G.1(a)	Alternative Mitigation Plans	Staff recommendation	Added “as amended” to indicate referencing the most recent source provided by Ecology.
19.200.230.E	Monitoring Requirements	Staff recommendation	Moved language under mitigation compliance section, 19.200.230.F.5.

CHANGES TO 19.700.710 WETLAND DELINEATION REPORT AND 19.700.715 WETLAND MITIGATION REPORT

- .710: Added clarifying edit that largest potential buffer is 300' rather than 250'
- .715:
 - Legal, protective mechanism required for mitigation (easement, covenant) in addition to physical protection (signs, fence).
 - Clarified that monitoring is for a minimum of 5 years (current), but may be less if success demonstrated after two consecutive monitoring reports. Monitoring may be required for up to 10 years to demonstrate success.

19.300 FWHCA: KEY CHANGES

- **Increased Buffer Widths based on WDFW Riparian Management Guidance using a ‘predictive model’**
 - Increased buffer widths on Type ‘F’ Stream from 150 feet to 200 feet
 - Increased widths on Type ‘N’ streams from 50 to 100 feet, and
 - Added a new Type ‘O’ or “Other” stream with a 100-foot buffer.

- **Proposed Alternative UGA Buffer Widths for added flexibility, consistent with BAS, for projects that meet specific criteria.**

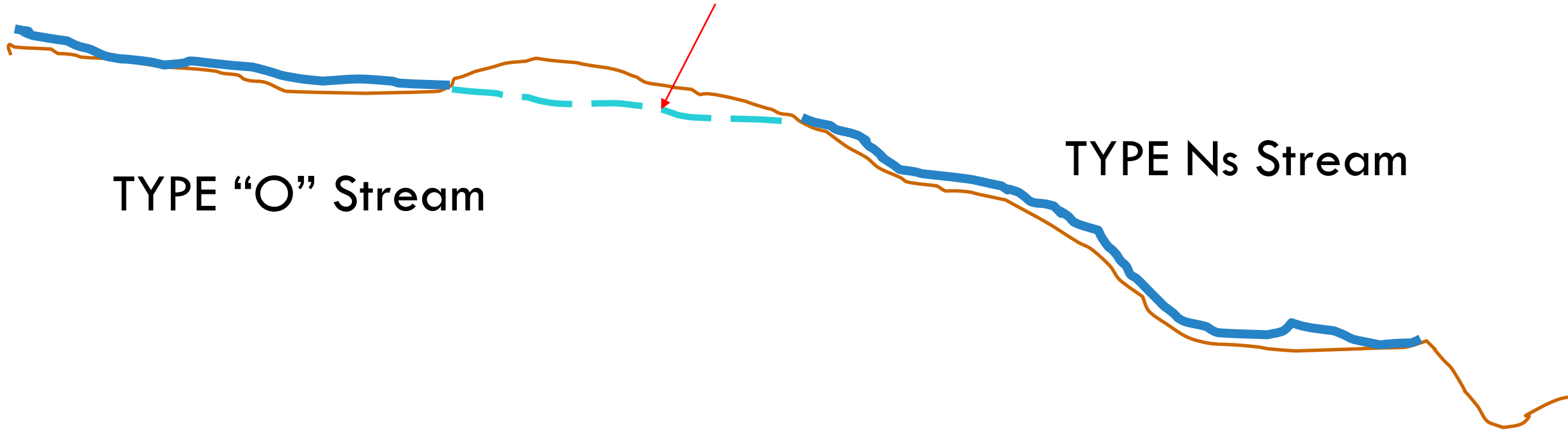
19.300.305 PURPOSE

19.300.310 FWHCA CATEGORIES

19.300.305	Purpose	RMZ Checklist Recommendation S	Added to purpose statement: <u>E. Retain and restore riparian buffers to the maximum extent practicable to preserve functions and values over time.</u>
19.300.310.B.3	Fish and wildlife habitat conservation area categories	Staff recommendation	Added description for "Type O" or "Other" streams.
19.300.310.B.4	Fish and wildlife habitat conservation area categories.	Administrative Edit	Added the Washington Department of Natural Resources Natural Heritage Program as a source for reviewing federal and/or state-listed endangered, threatened, and sensitive species.

TYPE "O" OTHER FWHCA

Seasonal subterranean flow



TYPE "O" Stream

TYPE Ns Stream

19.300.315 DEVELOPMENT STANDARDS

19.300.315	Mitigation Sequencing	Consistency & Gap Analysis #4	Added reference to new mitigation sequencing section in KCC 19.100.155.D.
19.300.315.A	Buffers	Staff recommendation	Added language reflecting current practice that fill, yard-waste or other debris shall not be placed in buffers.

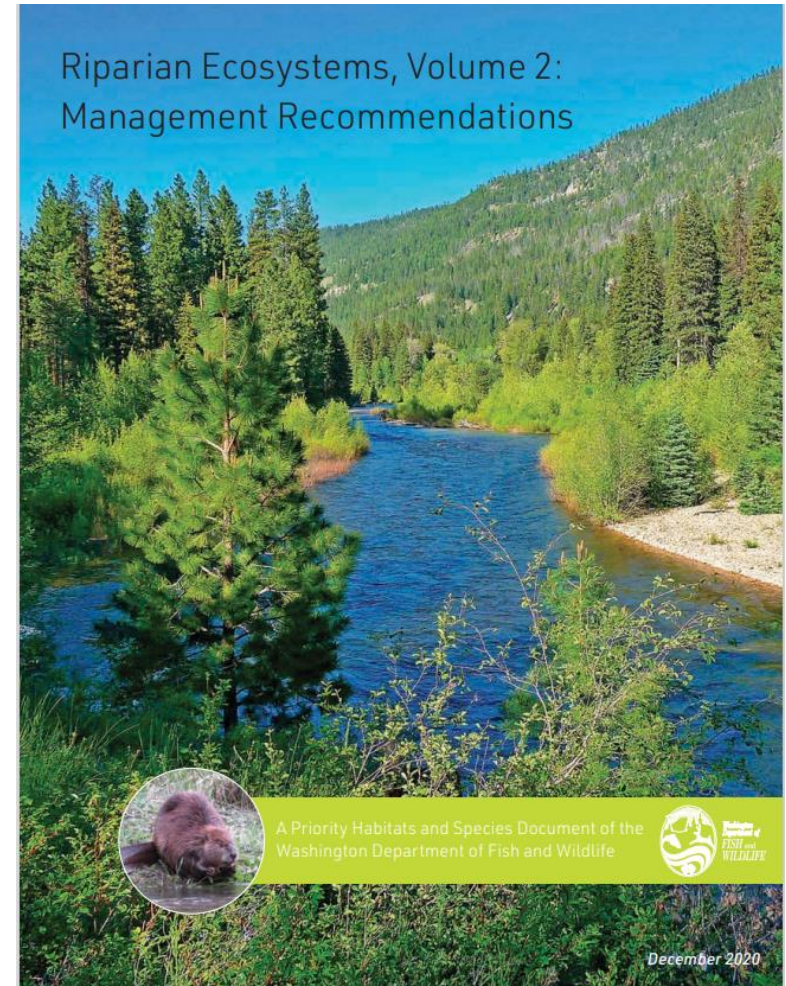
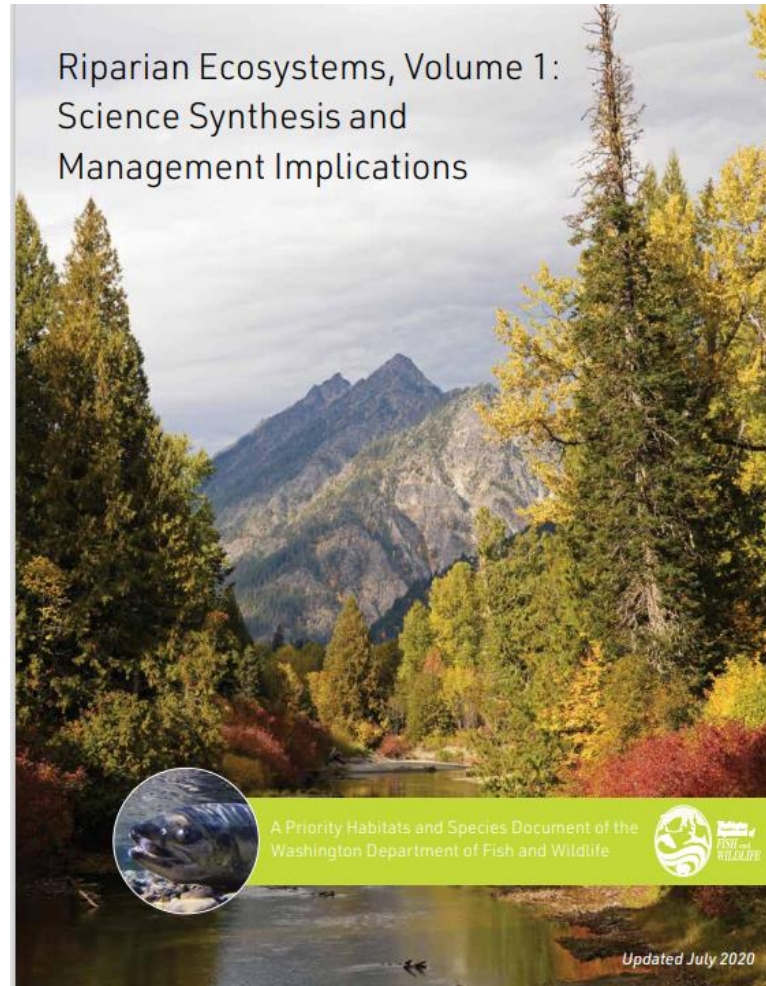
19.300.315 TABLE

19.300.315.A.1	Increased Stream Buffer Widths	Consistency & Gap Analysis #5	Increase standard buffer widths for all stream types to comply with Best Available Science provided by WDFW.
19.300.315.A.1	Alternative UGA Buffer Widths	Consistency & Gap Analysis #5	Added a new alternative buffer width for streams within Urban Growth Areas. Multifamily, redevelopment, or restoration projects within an UGA, may qualify to use the alternative width when specific criteria are met per 19.300.315(A)(3).

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

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

WDFW RIPARIAN ECOSYSTEM GUIDANCE



Riparian Ecosystems, Volume 1:
Science Synthesis and
Management Implications

VOLUME 1: SCIENTIFIC SYNTHESIS

- Volume 1 describes riparian functions and ecosystems.
- References the use of Site Potential Tree Height at a 200-year old stand (SPTH200) to determine the width of the RMZ
- Describes the pollution removal function to protect water quality.

What has changed since last update?

WDFW has stated that there are not substantive changes to Volume 1, but changes to layout, graphics, and more recent sources.



A Priority Habitats and Species Document of the
Washington Department of Fish and Wildlife



Updated July 2020

Riparian Ecosystems, Volume 2:
Management Recommendations

VOLUME 2: MANAGEMENT RECOMMENDATIONS

Published in December 2020.

Provides recommendations for application
of Volume 1, Scientific Synthesis.

Volume 2 is considered guidance and is
not considered BAS in of itself.



A Priority Habitats and Species Document of the
Washington Department of Fish and Wildlife



December 2020

RIPARIAN ECOSYSTEM GUIDANCE

Riparian Management Zone (RMZ)

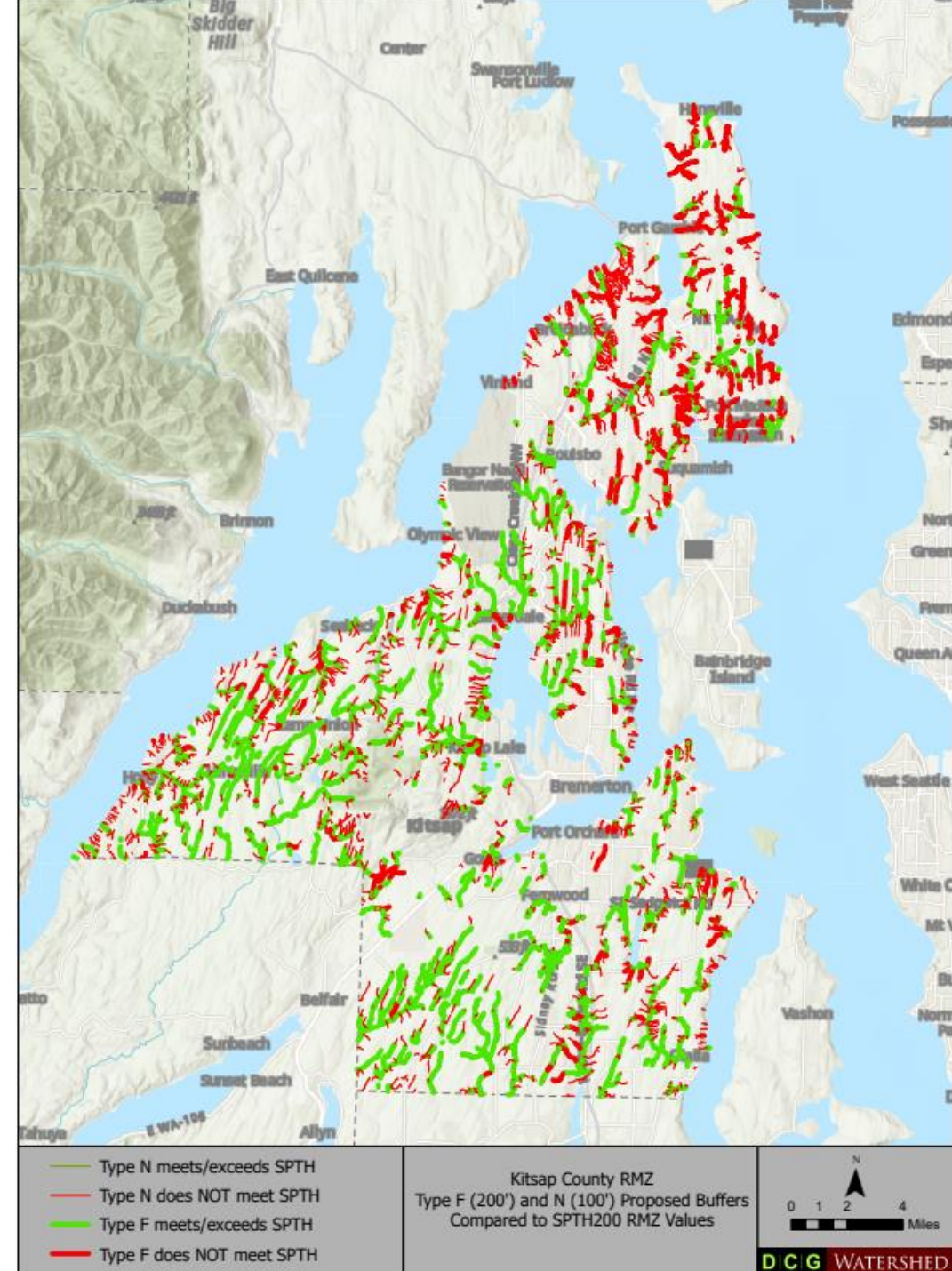
- Riparian ecosystem functions and values should be managed for all stream types
- Shift in management of riparian areas away from “riparian buffers”

RMZ width recommendations

- Uses the Site Potential Tree Height of 200-year-old stand (SPTH200), as determined by soil class
- Includes Channel Migration Zones (CMZs) in the delineation of an RMZ to account for lateral movement over time
- Suggests a minimum buffer of 100' for water infiltration and biofiltration

“PREDICTIVE MODEL”

- Retains existing stream typing system for predictability.
- Increase Type N stream buffers to meet WDFW’s water quality recommendations.
- Increase Type F stream buffers to better implement WDFW’s guidance based on SPTH200 model.
- Increasing Type F buffers from 150-ft to 200-ft would meet or exceed SPTH widths 72% of the time.



RIPARIAN PROTECTION AREAS — PREDICTIVE MODEL

DNR Forest Practice Board Stream Typing	Current Buffer Width	Proposed Riparian Protection Area	Change from Current CAO Regulation (ft)	Percent change from Current CAO Regulation (%)
Type F	150 feet	200 feet	+50 feet	33%
Type Np	50 feet	100 feet	+50 feet	100%
Type Ns	50 feet	100 feet	+50 feet	100%
Type O	N/A	100 feet	N/A	N/A

19.300.315 (CONTINUED)

UGA ALTERNATIVE BUFFER WIDTH

DNR Forest Practice Board Stream Typing	Current Buffer Width	Proposed UGA Alternative Buffer Width	Change from Current CAO Regulation (ft)	Percent change from Current CAO Regulation (%)
Type F	150 feet	150 feet	+0 feet	0%
Type Np	50 feet	75 feet	+25 feet	50%
Type Ns	50 feet	75 feet	+25 feet	50%
Type O	N/A	75 feet	N/A	N/A

UGA ALTERNATIVE BUFFER WIDTH

- **Applies to multi-family, redevelopment and habitat restoration in the UGA only**
 - Habitat restoration projects are measures beyond vegetative buffer enhancement
 - Redevelopment projects include a change in use or structure that does not result in an increase in impervious surface in the buffer and no new structures closer to the critical area.
- **May be applied when:**
 - An HMP demonstrates greater riparian function will be provided
 - Existing buffer has function-limited vegetation or predominantly invasive vegetation
 - Current buffer conditions are not the result of a willful code violation
 - Will not increase the risk of hazards to the site

EXAMPLE: UGA ALT. BUFFER WIDTH

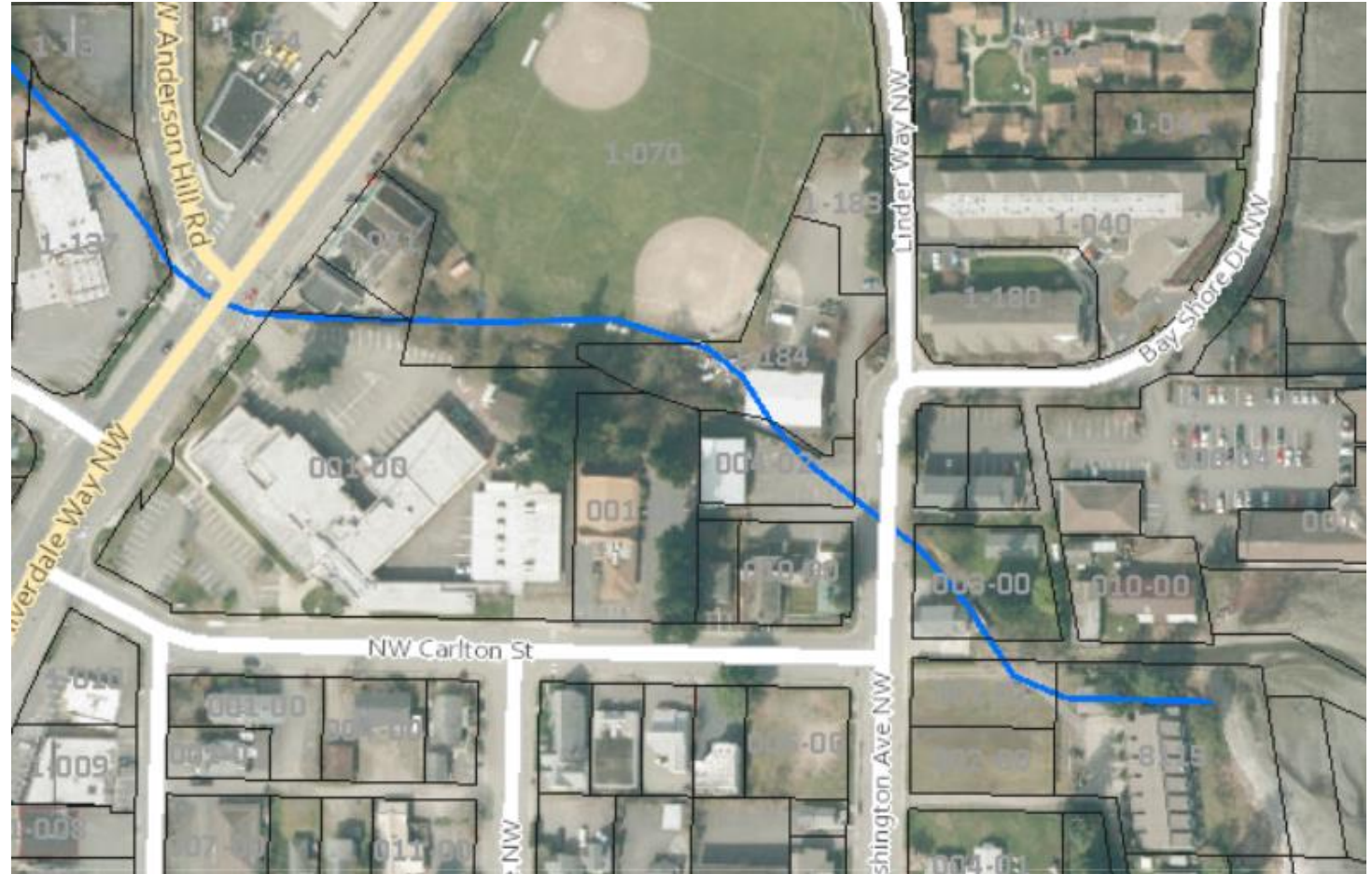
Strawberry Creek in Silverdale

Type F, currently piped and in artificial channels

Example: A redevelopment of one of the adjacent structures for multi-family is proposed.

The required standard buffer could be reduced to 150-feet from 200-feet. Any new or replacement impervious surface or clearing outside the 150-foot alternative buffer width would not require mitigation.

Existing impervious surfaces closer than 150' could still be replaced, but no new structure could be placed closer than existing without going through a buffer reduction process.



19.300.315 DEVELOPMENT STANDARDS (CONTINUED)

19.300.315.A.2	Buffer Measurement	Consistency & Gap Analysis #5	Consistent with WDFW Riparian Management Recommendations, clarified that buffer widths are measured from the edge of the Channel Migration Zone.
19.300.315.A.4	Provisions for Decreasing Buffer	Staff recommendation, and Consistency & Gap Analysis #4	Added and reorganized existing language to clarify current processes for administrative buffer reduction criteria and buffer averaging. Added new reference to mitigation sequencing standards, which have been moved to 19.100.155.D.
19.300.315.A.4.d	Provisions for Decreasing Buffer – Protection of Significant Trees	Staff recommendation	For consistency with Wetlands Chapter (19.200), added section for protection of significant trees when a buffer reduction is being used.
19.300.315.A.4.e	Functionally Disconnected Buffer	Staff recommendation	For consistency and clarity of current practice, allowed exception to standard buffer requirements when there is a break in connectivity to the existing buffer due to a significant development, such as built infrastructure, homes, and commercial structures. AKA “buffer break”.

19.300.315 DEVELOPMENT STANDARDS (CONTINUED)

19.300.315.A.5	Provisions for Increasing Buffer	Staff recommendation	Updated and clarified existing section relating to provisions for increasing buffer widths on a case-by-case basis.
19.300.315.A.6	Protection of Buffers – signage and fencing.	Administrative Edit	Moved existing language regarding buffer fencing or signage from 19.300.315.K.I for better clarity.
19.300.315.A.8	Piped Watercourses	Staff recommendation	Added a section in code to acknowledge the presence of piped streams, and require a minimum 15-foot setback from the piped stream when certain criteria is met.

19.300.315 DEVELOPMENT STANDARDS (CONTINUED)

19.300.315.K.2	Bank Stabilization	RMZ Checklist Recommendation K	Added language that bank stabilization may use other recommended techniques, including those with an approved critical area assessment and the guidelines of the Washington State Integrated Streambank Protection Guidelines.
19.300.315.L	Protection of Buffers – signage and fencing.	Administrative Edit	Moved language to 19.300.315.A.6 for better clarity.
19.300.315.N	Enhancement Activities	RMZ Checklist Recommendation T	In accordance with a WDFW provided checklist for Riparian Management Recommendations, added a section specifying enhancement activities that are exempt from habitat assessment report and mitigation requirements.

CHANGES TO 19.700.720 HABITAT MANAGEMENT PLAN

- The map from the biologist needs to show the buffer and setback and any proposed reduced buffers/setbacks; needs to show locations of identified significant trees; identification of local, state or federal priority/protected species
- Report needs to include:
 - Analysis of existing species, habitats, functions and values
 - The effect of the proposal on those listed above
 - Demonstration of 'no net loss' through mitigation sequencing (expanded clarifications)
 - When necessary due to a low-vegetated buffer or for utilizing Alternative UGA buffers, additional analysis of how the buffer will be enhanced or expanded or otherwise meet the no net loss threshold.

2024 NEXT STEPS*

(*DATES ARE TENTATIVE & SUBJECT TO CHANGE)



MARCH 2024: RELEASED
DRAFT CODE
AMENDMENTS



MARCH – APRIL 26 2024:
PUBLIC COMMENT PERIOD



APRIL 2 AND 16:
PLANNING
COMMISSION WORK
STUDY MEETINGS



MAY 21 2024:
PLANNING
COMMISSION PUBLIC
HEARING



JULY – AUGUST 2024:
PUBLIC COMMENT
PERIOD ON REVISIONS



AUGUST 2024: BOARD
OF COUNTY
COMMISSIONERS
PUBLIC HEARING



SEPTEMBER 2024: CAO
ADOPTION

FOR MORE INFORMATION:

Project webpage: kcowa.us/cao

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