



Klickitat County Planning Commission

## Critical Areas Ordinance Update Public Comments 2022

**FINAL**

This Public Comment Matrix includes a summary of all written public comments received during the public comment period. Common issues of concern have been binned into 15 separate issues; these issues are numbered 1-15 in column 1 (Issue Ref. No.) and summarized in column 2 (Summary of Concern). The public comments that referenced these issues are indicated in column 3 (Comment Number(s)). Column 4 (Department Response) includes responses to these comments and indicates whether a revision to the proposed CAO is recommended. Due to the length of comments contained in comment #9, a separate response document (Attachment A) has been included. All comments are attached in their entirety to this matrix for reference. An index of public comments is provided below.

### Index of All Textual Comments (#1-9)

Comment Number	Submitted On	Name	Organization	Comment Number	Submitted On	Name	Organization
1	3/21/2022	Deborah Johnson	WA Department of Health	6	4/8/2022	Brendan Keenan	Yakama Nation
2	3/28/2022	Nate Brown	WA Department of Ecology	7	4/22/2022	Pat Arnold	Friends of the White Salmon River
3	4/7/2022	Tricia Sawyer	WA Department of Ecology	8	4/22/2022	Laurie Wilhite	Resident
4	4/7/2022	Amber Johnson	WA Department of Fish and Wildlife	9	4/22/2022	Ethan Jones	Yakama Nation
5	4/8/2022	Tricia Sears	WA Department of Natural Resources				



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SUMMARY AND RESPONSE			
Issue Ref. No.	Summary of Concern <i>Complete comments are attached</i>	Comment Number(s)	Department Response
1	<b>Wetlands</b>		
	a. Section 3.3 B requires a delineation/survey if a wetland is within 300'. 250 feet is the widest buffer provided in the updated table for a category I (which corresponds with Ecology's recommendation for Category I wetlands in Eastern Washington). It seems a critical area report would be prudent to be required if a project or proposal is located within 250 ft of a wetland boundary in order to protect the maximum buffer area possible. You may consider reducing the 300ft.	2	<p><b><u>Change recommended.</u></b></p> <p>As noted by the commenter, the proposed review distance can be reduced down to 250 feet. Note, 300 feet had been previously included because the County's existing critical areas ordinance has a 300-foot buffer on Category I wetlands. However, the proposed regulations have incorporated Ecology's most recent recommended buffer tables that include land use intensity. In this new buffer table, 250 feet is the largest buffer.</p> <p>Note, both subsections B and C should be revised as noted below:</p> <p><i>B. If a proposal is located within <del>300</del>250 feet of a wetland, the applicant shall provide a wetland boundary/delineation/survey and wetland rating, with analysis of impacts to existing ecological functions prepared by a qualified professional. Wetland boundaries shall be delineated using the currently approved federal manual and supplements. Impacts shall be mitigated pursuant to adherence to appropriate buffers. Impacts that will not be mitigated by buffers will be mitigated pursuant to mitigation sequencing.</i></p> <p><i>C. If it is determined that a proposed development is not within <del>300</del>250 feet of a wetland, then the proposed development will not be reviewed for impacts to wetlands under this Chapter.</i></p>
	b. The new version of Wetland Mitigation Guidance was published in April 2021. We recommend using the "Permittee Responsible Language" found on pg. 90 for updated information and guidelines.	2	<p><b><u>Change not recommended.</u></b></p> <p>The County recognizes the language in the 2021 Wetland Mitigation Guidance and the consistency it uses with federal mitigation hierarchy but would prefer to keep the wetland mitigation section as written due to its terminology being familiar to applicants and staff.</p>

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	c. Mitigation Table ratios are basic – recommend updating required mitigation that bases requirements on wetland category and type of mitigation proposed (e.g. restoration, rehabilitation, etc.)	2	<b><u>Change not recommended.</u></b> The County would prefer to keep this information simple and as streamlined as possible.
2	<b>Fish and Wildlife Habitat Conservation Areas</b>		
	a. Klickitat County’s CAO does not fully adopt WDFW’s Priority Habitat and Species program. This is a critical resource to implement as it represents the best available science on this topic and will greatly reduce time/resources the County has to use to define/maintain regulated habitat maps as well as refer to management recommendations.	4	<b><u>Change not recommended.</u></b> WDFW Priority Habitats and Species maps are listed in Section 4.2.D. as being available to help identify location and extent of fish and wildlife habitat conservation areas. The County actively uses available resources, including referencing PHS management recommendations.
	b. Add language requiring consultation with WDFW when there is a need to clarify PHS definitions or mapping.  Suggested location in Section 1.13, Critical Areas Mitigation, subsection B, Mitigation Plans. Add:  <u>WDFW will be consulted when impacts to PHS are being mitigated.</u>  Suggested location in Section 1.13, Critical Areas Mitigation, subsection D, Mitigation Banking and In-Lieu Fee Mitigation. Add:  <u>To assess if these ecological</u>	4	<b><u>Change not recommended.</u></b> Section 4.2, subsection D, Mapping, already includes the following note regarding consultations with WDFW:  <i>“The County may consult with the Department of Fish and Wildlife when there is need to clarify definitions and mapping.”</i>  Furthermore, the County may consult with agencies or technical experts, as noted in section 1.11, Process for Critical Areas Review, or may require applicants to do so.  Subsection C of this same section states,  <i>“Request for Technical Assistance. The Director may engage technical consultants or agencies of expertise to provide third party review and interpret critical area data and findings submitted by or on behalf of the applicant in instances where County staff lack the resources or</i>

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	<u>benefits are realized for fish and wildlife conservation areas WDFW will be consulted.</u>		<i>expertise to review these materials. An applicant may be required to pay for or reimburse the County for the review costs incurred."</i>
	c. The Fish and Wildlife Conservation Areas (FWHCA) designation is too narrow - it does not designate or protect upland and non-aquatic FWHCA's.	9	<p><b><u>Change not recommended.</u></b>                      Subsection 4.2(A), Fish and Wildlife Habitat Conservation Areas Designation, includes many areas that are upland and non-aquatic. They are repeated here for reference:</p> <ol style="list-style-type: none"> <li>1. <i>Areas where state or federal designated endangered, threatened, and sensitive species have a primary association.</i></li> <li>2. <i>Habitats and species of local importance.</i></li> <li>3. <i>Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat.</i></li> <li>4. <i>Waters of the state, as classified in WAC 222-16-030.</i></li> <li>5. <i>Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.</i></li> <li>6. <i>State natural area preserves, natural resource conservation areas, and state wildlife areas.</i></li> </ol>
	d. Chapter IV appears to leave it to County discretion to determine which lands meet the criteria for fish and wildlife habitat conservation areas. The PHS database and maps represent "best available science" and should be required for mapping and identification of these critical areas	7	<p><b><u>Change not recommended.</u></b>                      WDFW Priority Habitats and Species maps are specifically identified under subsection 4.2(D), Mapping, and are used to identify fish and wildlife habitat conservation areas. Excerpt from this subsection is provided below:</p> <p><i>The approximate location and extent of fish and wildlife habitat conservation areas are shown on publicly available maps or other BAS sources, such as the WDFW Priority Habitats and Species maps, the United States Fish and Wildlife Service, and the NOAA Fisheries critical habitat maps. These maps are to be used as a guide and do not provide definitive information about fish and wildlife habitat conservation area size or presence. Fish and wildlife habitat conservation areas may exist that do not appear on the maps. The</i></p>

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			<i>County may consult with the Department of Fish and Wildlife when there is need to clarify definitions and mapping.</i>
	e. Clear language consistent with WAC 365-190-080(4) and WAC 365-190-130(4)(f) which say habitat definitions prevail over official mapping. While it is important to maintain good habitat mapping for the administration of a CAO, not all mapping perfectly encompasses the important habitat characteristics on a given site. If PHS becomes the basis for defining regulated habitats in the code, the old language could be repealed, including definitions for “Habitat of local importance”, “Species of local importance,” and “Primary association”: This would greatly simplify the public’s understanding of what is regulated and what is not, given that these terms are hard to quantify.	4	<b><u>Change not recommended.</u></b> The PHS maps, as noted in the comment response above, are to be used as approximate indicators of fish and wildlife habitat conservation areas. The County refers to PHS maps, but the designation of FWHCAs will be based upon subsection 4.2(A).
	f. Subsection C, Special Provisions – Streams. Revise reference to stream crossing design guidelines to be consistent with 2013 WDFW guidelines.	4	<b><u>Change recommended.</u></b> The County agrees that section 4.3, subsection C.5 should be revised to include reference to the 2013 guidelines. Suggested revision follows:  (5) <i>Stream crossings shall be designed according to the Washington Department of Fish and Wildlife <del>Fish Passage Design at Road Culverts, 1999</del> <u>Water Crossing Design Guidelines (2013)</u>, and the National Marine Fisheries Service <u>Guidelines for Salmonid Passage at Stream Crossings, 2000</u>, or as amended;</i>

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	g. Subsection C, Special Provisions – Streams. Add an acknowledgement that all stream crossing also require an HPA from WDFW.	4	<b><u>Change not recommended.</u></b> A hydraulic project approval is already referenced in subsection C.4.i.(6)
3	<b>Geologically Hazardous Areas</b>		
	a. Section 5.2.B: Check with Washington Geological Survey for additional/current seismic hazard information. Utilize Geologic Information Portal and incorporate this information into County maps.	5	<b><u>Comment noted.</u></b> The County will utilize available information during project review, including maps that are available from state and federal resource agencies.
	b. Section 5.2 – Language not clear/detailed/strong. Suggest pulling code language from examples in Issaquah and Woodway.	5	<b><u>Change not recommended.</u></b> This Chapter was updated for increased clarity and to be consistent with current best available science and understanding of risk factors.
	c. How is the County currently tracking and updating geotechnical reviews/reports and updating the resource maps?	5	<b><u>Comment noted.</u></b> The County currently reviews geotechnical reports using third party technical experts. Reference maps generally come from Washington Department of Natural Resources or the US Geological Survey. The County is actively working to develop a map of channel migration zones along portions of the White Salmon, Klickitat, and Little Klickitat Rivers.
	d. Unclear when geotechnical review is required due to lack of updated map – need to make review process more clear to ensure projects that should have a review don't organize one because they think they don't have to.	5	<b><u>Comment noted.</u></b> Reference maps generally come from Washington Department of Natural Resources or the US Geological Survey.
4	<b>Critical Aquifer Recharge Areas</b>		
	a. Section 6.2. For wellhead protection areas, see <a href="https://fortress.wa.gov/doh/swap/index.html">https://fortress.wa.gov/doh/swap/index.html</a> . There should be a CARAs map produced in conjunction with this	1	<b><u>Change not recommended.</u></b> The County hopes to create a map of CARAs in the future but will not have one prepared as part of this current update.

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	update that identifies all known features listed in B. above as "designated" CARA. How are Critical Aquifer Recharge Areas evaluated? At the same time, we encourage local jurisdictions to use the DOH SWAP map (link above) by reference rather than creating local mapping as WHPAs can change as systems or sources are added or removed, or as well operating characteristics change.		
	b. Section 6.5(B); The way in which this code is written, merely turning in the report satisfies the requirement. But since it translates to standards under 6.4(D), we'd suggest reviewing and approving the report as part of the official process. A third party that is a qualified professional could review and bill the developer to ensure all required standards are met.	1	<b><u>Change not recommended.</u></b> Per Section 6.5, subsection A, the County must review and approve all required hydrogeological assessments. As noted under response to Issue #8.e, the County can refer to technical assistance where needed to complete these reviews.
5	<b>Shorelands</b>		
	a. Please revise to include language in Section 1.4(c)(5) & 1.4(c)(11) that does not exempt these activities from permitting under the Flood Damage Prevention Ordinance.	3	<b><u>Change not recommended.</u></b> Please see Section 1.2, Applicability, subsection A, which acknowledges that other local, state, and federal rules may still apply. Specifically, this provision states,  <i>A. Compliance with the provisions of this Ordinance does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, Hydraulic Project Approval, Army Corps of Engineer Section 404 permits, National Pollution Discharge Elimination System permits, Endangered Species Act compliance, etc.). The applicant is</i>

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			<i>responsible for complying with these requirements, apart from the process established in this Ordinance.</i>
6	<b>Professional Qualifications</b>		
	a. Strengthen the language of what is considered a “qualified professional”. Recommended Language: “A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.” A PWS certificate is not required, but is encouraged.	2	<b><u>Change not recommended.</u></b> The definition of qualified professional already includes the requirement to have a minimum of two years of related work experience. Furthermore, the requirement to hold a Professional Wetland Scientist (PWS) certification assures the County, which may not necessarily have such knowledge or experience, that the applicant’s materials have been prepared by a previously vetted individual.
7	<b>Best Available Science</b>		
	a. The CAO update, including SEPA, lacks evidence that all sources of BAS have been evaluated and incorporated.	6, 9	<b><u>Change not recommended.</u></b> The County has used numerous BAS resources during the CAO update to ensure the CAO is offering appropriate protection measures to critical areas. See the Technical Memo dated 2/28/22 which covers wetland and fish and wildlife habitat conservation areas. Additional resources have been used, including available map resources, including those sources as part of the County’s shoreline master program shoreline Inventory and Characterization.

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	b. The term “best available science” is complicated—who at the County level is going to decide what meets the criteria set out by the state RCW? Applicants must be required to document use of BAS.	7, 9	<b><u>Comment noted.</u></b> The County will rely on applicants to provide documentation. County permit reviewers will review the applicant’s materials and determine if they meet the code requirements. The County may reach out for technical support as needed.
	c. Primary concern is underground aquifer and fish/wildlife habitat. I urge you to use best available science and WDFWs Priority Habitat and Species (PHS) research and mapping.	8	<b><u>Comment noted.</u></b> Please see the responses above (Issue Ref #2.a, 3.a, and 4.a) regarding use of available maps, including PHS.
8	<b>Review/Permitting Process</b>		
	a. Does the County have code enforcement? If not, need to correct Section 1.7(D).	1,5,6,9	<b><u>Change not recommended.</u></b> The County has a code enforcement officer.
	b. The CAO does not adequately address long-term environmental impacts as the current review process is solely based on immediate land use changes.		<b><u>Change not recommended.</u></b> Monitoring of mitigation projects is outlined in Section 1.13, Critical Areas Mitigation, subsection B.4, Monitoring Details. Monitoring of mitigation projects over several years, will help ensure success of mitigation projects.
	c. Any development types that are not subject to permitting processes outside of the Draft CAO (which could identify the presence of an extant critical area or fish and wildlife habitat conservation areas) will and perhaps already do fall through the cracks and contribute to environmental degradation.		<b><u>Comment noted.</u></b> As noted in several areas, the County will use available resources, including PHS maps and other local, state, and federal data during the development review process.

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	d. Klickitat County is required to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Applying standard, existing regulations and practices to anadromous fisheries does not constitute "special consideration". The draft CAO should attach elevated protections to these sensitive resources that will promote restoration and recovery.		<b><u>Change not recommended.</u></b> Special considerations for anadromous fish were added during the most recent revisions to the CAO. This includes the addition to Section 4.3, Fish and Wildlife Habitat Conservation Area Performance Standards, subsection C, Special provisions – Streams. The proposed language was derived from the City of White Salmons critical areas regulations. In addition to section 4.3, special consideration is also noted in Section 1.8, Appeals and Variances, where it is noted that a variance may only be granted when, <i>"(t)he decision to grant the variance considers the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat."</i>
	e. Klickitat County should revise draft CAO to include a permit process for all projects in the critical areas. All technical issues related to individual permits or determinations should be addressed through a report or consultation involving qualified professionals. Permit applications should be provided to Yakama Nation and the public for review and comment.		<b><u>Change not recommended.</u></b> The County does not plan to include a critical areas permit in the CAO. Rather, the County has added extensive language related to critical areas reporting and review requirements. These requirements and review criteria will be triggered by other forms of development review (e.g. clear and grade permit, building permit, etc.). As noted in Section 1.11, Process for Critical Areas Review, subsection C, Request for Technical Assistance, the Director <i>"may engage technical consultants or agencies of expertise to provide third party review and interpret critical area data and findings submitted by or on behalf of the applicant in instances where County staff lack the resources or expertise to review these materials."</i>
	f. The draft CAO should clearly describe how Klickitat County will gauge effectiveness of the Draft CAO over time. It is currently unclear how Klickitat County will determine whether this ordinance is adequate to protect critical area functions and values.		<b><u>Change not recommended.</u></b> The County is required to periodically review and update the CAO. At those specified intervals, the County will assess if changes are needed to address the effectiveness of the regulations in protecting the functions and values of the County' critical areas.

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9	<b>Cultural Resources</b>		
	a. The review process for evaluating impacts to cultural resources is not adequate. Current review places the responsibility on the applicant to review potential impacts to cultural resources but does not define a comprehensive way to do this. All projects that have potential impact to cultural resources must include a process that incorporates historic research, tribal consultation, data gathering, and archaeological survey. These requirements should be clearly outlined in the CAO to identify what cultural resource reports or other research will be relied upon to protect cultural resources identified during individual site-specific project review.	6	<b><u>Change not recommended.</u></b> The SEPA review process at the project level must include a review of potential impacts to cultural resources. The County's SEPA review for the CAO update is a non-project action.
10	<b>Buffers</b>		
	a. Recommend using WDFW SPTH Mapping Tool and the information contained in <i>Riparian Ecosystems Volume 1</i> to identify project specific site potential tree height which identifies the area of protection in riparian ecosystems within regulated water courses.	4, 6, 9	<b><u>Change not recommended.</u></b> The County acknowledges that the Washington Department of Fish and Wildlife (WDFW) has issued new management recommendations for riparian management zones. Although the County is not proposing the use of the term Riparian Management Zone, the proposed 150-foot buffers on Type F waterbodies is consistent with the protection measures recommended by WDFW. The County prepared a technical memorandum, dated 9/13/2021, to assess the consistency between WDFW recommendations and the proposed CAO.
	b. The proposed language outlined the conditions required for the use of buffer averaging. We would recommend also adding a provision that "There are no feasible alternative	2	<b><u>Change not recommended.</u></b> Any such application for buffer averaging would need to document the process of mitigation sequencing in which avoiding and minimizing are the first two priorities. The latter includes minimizing impacts by, <i>"limiting the degree or magnitude of the action and its implementation,</i>

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	to the site design that could be accomplished without buffer averaging”		<i>by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts.”</i>
	c. In the buffer vegetation removal section “Control fire” might be expanded to utilize Firewise Methodology, which begins with structures	2	<b><u>Change not recommended.</u></b> The suggested language is more applicable as a policy. The County may consider such language to recognize Firewise Methodology in future Comprehensive Plan updates.
11	<b>Mitigation</b>		
	a. Section 1.13.C, Financial Guarantees. Pierce County has a standard form for the Assignment of Funds that the County might want to consider adapting. See <a href="https://www.piercecountywa.gov/DocumentCenter/View/4234/Assignment-of-Funds-?bidId=">https://www.piercecountywa.gov/DocumentCenter/View/4234/Assignment-of-Funds-?bidId=</a>  Additionally, any project with an estimated cost over \$10,000 should require a financial guarantee.	1, 9	<b><u>Change not recommended.</u></b> The recommendation is appreciated. While the County may look into the suggestion, the County already has an acceptable process for this that has been identified.
	b. It is not appropriate to apply the general mitigation requirements to all critical areas. The compensatory mitigation provisions of WAC 365-196-830 are carried through to only two specific critical area types – Geohazard and wetlands – but do NOT extend to CARAs or other critical areas classes. When placed in general standards, these provisions imply that some degree of degradation to an aquifer is acceptable, while allowing even a	9	<b><u>Change not recommended.</u></b> The County agrees that, in regards to CARAs, mitigation requirements may not be appropriate in all cases due to the risk for potential impacts to potable water sources. As part of the critical areas review procedures in Section 1.11, an applicant must, unless exempt, submit a Critical Areas Checklist. The County will provide a response identifying further action needed. If a hydrogeologic assessment is required, Section 6.5, Reporting, subsection B.11, requires recommendations on “ <i>appropriate mitigation, if any, to assure that there shall be no measurable exceedance of minimum state groundwater quality standards or measurable reduction in available quantity of groundwater.</i> ”

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	limited degree of harm to an aquifer could result in lost potability.		
12	<b>Exemptions, Exceptions, Nonconformity, Violations and Enforcement, Appeals and Variances</b>		
	a. Exemptions. Consider adding consultation with WDFW and Yakama Nation to the Exemption Request and Review Process.	4, 9	<b><u>Change not recommended.</u></b> Please see the response to comment number 2.b above.
	b. Nonconforming Lots, Uses, and Structures. What is the rationale to support the 200 square foot expansion?	9	<b><u>Comment noted.</u></b> The allowance for minor expansion up to 200 square feet of nonconforming structures was included to allow flexibility for those instances where such an expansion is unlikely to impact a critical area. As noted in Section 1.6, subsection B.3., <i>“Enlarging or expanding nonconforming residential structures used for a conforming use in a manner that increases the extent of nonconformity may be allowed if the change is consistent with the provisions of this Ordinance and does not impact critical areas or their associated buffers.”</i>
	c. Violations, Penalties, and Enforcement. Complaint forms referenced under subsection D should be anonymous rather than required to provide personal information.	9	<b><u>Change not recommended.</u></b> Subsection D does not require personal information to be submitted.
	d. Section 1.8 Appeals and Variances. The criteria for a variance references the County’s zoning ordinance. Consider requiring more than just a standard variance and ensure consistency with BAS.	9	<b><u>Change not recommended.</u></b> The two additional criteria included in subsection A of Section 1.18, Appeals and Variances, are very important criteria for the protection of critical areas. In these cases, the granting of a variance must not further degrade the functions and values of the critical area and the decision must consider the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

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13	<b>Definitions</b>		
	a. Add: Priority Habitat and Species (PHS) Priority Habitat Priority Species	4	<b><u>Change not recommended.</u></b> Defining Priority Habitats and Species (PHS) is not necessary. References to WDFW are provided and PHS is defined already by the State.
14	<b>Language – Strength/Clarity</b>		
	a. Change “ordinance” to “chapter”, assuming the subsequent sections would not be a standalone title	1,4,5,7,9	<b><u>Change not recommended.</u></b> This is to be a stand-alone ordinance and not part of the County's code. References to “ordinance” are appropriate.
	b. Section 1.7(B): Many jurisdictions make payment for a third-party review a requirement and not a “may”. The County should consider whether subsidization of such costs constitutes gifting.		<b><u>Change not recommended.</u></b> The County prefers to keep this language as “may be required,” as there may be situations where payment or reimbursement are not applicable.
	c. Section 1.13(C)(1) – is this meant to be permissive or selective? Since there is a \$10K threshold, suggest using “shall” instead.		<b><u>Change not recommended.</u></b> Use of “may” will allow the County to selectively apply the financial assurance to such projects. However, the County understands that not all projects will fit this requirement. Thus, the County has written in flexibility for the Director to make this decision.
	d. SEPA definition is confusing, most requirements are in the WAC, not RCW.		<b><u>Change recommended.</u></b> SEPA definition is not necessary for the CAO as SEPA is not mentioned in the body of the document. SEPA definition should be removed.
	e. WAC 173-360 was repealed and replaced in 2018 – need to update		<b><u>Change recommended.</u></b> Section 6.4, subsection A.6 needs amended to change WAC reference to 173-360A. The following edit is proposed:  6. <i>Comply with WAC 173-303 and <del>173-360</del> 173-360A as well as International Building Code requirements.</i>

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	f. Ecology has asked us to include a heads-up that if you prohibit dry wells entirely, you are also prohibiting certain types of stormwater controls as an extension.		<b><u>Change not recommended.</u></b> Dry wells are not prohibited outright. They are not allowed on sites used for vehicle repair, servicing, and salvaging.
	g. The CAO is missing intention – it confirms the state law and requirements therein but rather than prioritizing the protection of critical areas, it sounds to prioritize the permission for human impacts with very little limitation.		<b><u>Change not recommended.</u></b> The critical areas ordinance is part of the County’s development regulations. While they offer standards for the protection of critical areas, it is important to recognize that these regulations are triggered by development.
	h. Critical areas mitigation, section 1.13, needs revision to provide clarity, including process for adaptive management, and consultation with the Yakama Nation and other resource agencies.		<b><u>Change not recommended.</u></b> Please see the response to comment number 2.b above regarding use of technical input from resource agencies.
	i. In Chapter I – General Provisions there is a purpose stated to “Allow for reasonable use of all properties in Klickitat County”. What is reasonable?		<b><u>Comment noted.</u></b> The reasonable use provisions, including submittal requirements, review criteria, and the review process are included in Section 1.5, subsection B.
	j. Same section, the language in Points A through D conflict with this purpose—the intent of the CAO is unclear.		<b><u>Comment noted.</u></b> The critical areas ordinance is part of the County’s development regulations. While they offer standards for the protection of critical areas, it is important to recognize that these regulations are triggered by development.
	k. Chapter I.4(C)(3) Operation, Maintenance and Repair: the language sounds very permissive as to allow almost anything, concluding with “to the extent feasible”. This ties into the intention of CAO not		<b><u>Change not recommended.</u></b> The exemptions for Operation, Maintenance, or Repair are consistent with State guidance. This exemption allows for current structures and uses to be maintained and repaired as long as the activities do not extend outside a previously disturbed area and provided that best

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	indicating protection of critical areas—this needs to be updated/made stronger.		management practices are used with the least impact to critical areas or their buffers.
	i. Chapter 1, 1.11(B)(3) – The language is vague and allows for a lot of impacts to slip through the cracks. Need to add definitions for “unlikely” to degrade functions and “substantial” evidence that two criteria will be met.		<b><u>Change not recommended.</u></b> These are fairly common terms that do not necessarily need defined. They are used to describe a wide variety of development situations. The intent of this section is to place the onus on an applicant to provide the best available science and rationale to not be required to prepare a critical areas report. If the Director determines that a critical areas report is not needed, this does not mean the application is exempt. The application would still need to meet the requirements of the CAO.
	m. The draft CAO defers to other land use regulations that are not adequate substitutes for a legally sufficient CAO. For example, the Klickitat County floodplain ordinance does not address ecological functions or habitat for any species other than humans.		<b><u>Change not recommended.</u></b> Some references to other County codes and ordinances may be applicable. In the specific case of frequently flooded areas, State guidance suggests referencing the Flood Damage Prevention Ordinance if it has recently been developed or updated. Klickitat County completed such an ordinance in 2020 (#O120120).
	n. Draft CAO does not acknowledge the Yakama Nation's jurisdiction as a co-manager of the natural resources within the jurisdiction of Klickitat County.		<b><u>Change not recommended.</u></b> The CAO is a regulatory document for the County to implement when reviewing development applications. Some references are included to other state agencies that have regulatory authority (i.e. permits may also be required from WDFW). The acknowledgement of tribal jurisdiction is not applicable from a regulatory sense in this CAO. Note, the County has included reference to the use of technical assistance, which may include agency, tribal, or other third-party entities during development review. See the response to comment #2.b above.
15	<b>Language – Grammar/Spelling/Correction</b>		
	a. Change “chapter” to “section” as you don’t have chapters within chapters. *Applies to multiple sections in CAO	multiple	<b><u>Change recommended.</u></b> The County acknowledges that some changes are appropriate as some uses of “chapter” should be “section.”

<b>Public Comment Matrix</b> <i>SUMMARY AND RESPONSE</i>			
Issue Ref. No.	Summary of Concern <i>Complete comments are attached</i>	Comment Number(s)	Department Response
	document*		
	b. Section 1.13, subsection (B)(4)(iv) references “the following chapters” but those chapters are not listed		<p><b><u>Change not recommended.</u></b>                      In the full context of the sentence, this statement is appropriate by referencing “the specific critical area.”</p> <p><i>iv. The mitigation plan shall address any additional mitigation requirements relevant to the specific critical area as specified in the following chapters.</i></p>
	c. Suggested grammatical and spelling edits.		<p><b><u>Change recommended.</u></b>                      The County appreciates the thorough review of this document and will address these grammatical and spelling edits in the next version of the draft CAO.</p>

# Attachment A - Response to YN Comment #9

The table below includes comments submitted on April 22, 2022, by the Yakama Nation via Ethan Jones regarding Klickitat County’s Draft Critical Areas Ordinance. Specific comments related to recommended changes are included in the comment document.

<b>Attachment A – Response to Comment #9</b>				
Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
<i>Executive Summary</i>	1	N/A	This section is still unclear as to whether and how activities that do require permits would trigger Draft CAO’s requirements.	<b><u>Change not recommended.</u></b> The intent of the Executive Summary is to give the reader an overview of the CAO. Specificity regarding whether a project would trigger the CAO review process is contained within the body of the CAO.
<i>1 - General Provisions</i>	2	1.1 Purpose	References to “reasonable use” should be consistent and use “reasonable <b>economic</b> use” (emphasis added).	<b><u>Change not recommended.</u></b> The suggested change is not necessary. Section 1.5, Exceptions, includes the term “reasonable economic use” in the determination of applicability of that exception.
	3	1.2 Applicability	This section remains unclear as to which projects are not applicable to CAO review, and how those activities will be reviewed/regulated—this will allow projects that do impact the natural environment to slip through the cracks and not be accounted for.	<b><u>Change not recommended.</u></b> Section 1.3 details the types of regulated development under the CAO
	4	1.3 Regulated Development and Alterations	There are types of permitted uses allowed in Klickitat County that are exempt from the Forest Practices Act—clarify how CAO requirements apply to uses that are not subject to other permit requirements.	<b><u>Change not recommended.</u></b> The exemption of Forest Practices is identified in Section 1.4, Exemptions. Development and alterations that are not exempt under Section 1.4 would be required to be reviewed under the CAO. Note, Section 1.4, subsection B, includes the following statement to ensure even exempt activities are protective of critical areas and their buffers.  <i>“All exempted alterations or development shall use reasonable methods to avoid potential impacts to critical areas and their buffers.”</i>

## Attachment A – Response to Comment #9

Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
	5	1.4 Exemptions	Any exemption review should require agency consultation, and still require County approval—many actions have been taken where mature vegetation in the shoreline is removed due to “fire risk “or “hazard trees”. The reasoning behind exemptions, particularly as it pertains to BAS, should be more clearly outlined in this section.	<b><u>Change not recommended.</u></b> Section 1.4, subsection A, includes specific language for the applicant and County to follow and review when considering an exemption request. As noted in the response above, even exempted development and alterations shall be protective of critical areas and their buffers. Furthermore, for an exemption request, the applicant has the burden of proof. As an example, If an applicant wants to remove trees from within a buffer, the County would request a copy of the approval letter from DNR or others to help in the County’s consultation decision.
	6	1.5 Exceptions	The County should elaborate on mitigation requirements (who determines necessity, how that determination is made, etc), and on all proposed developments within or adjacent to critical areas requiring sufficient evidence based on BAS to be considered for an exception from the CAO.	<b><u>Change not recommended.</u></b> An applicant’s submitted materials, including a critical areas report and mitigation plan, would be reviewed by the County. Specifically, the Director shall prepare recommendations to the Board of Adjustments.
	7	1.6 Non-Conforming Lots, Uses and Structures	The language in this section is ambiguous and needs to more clearly demonstrate how the standards follow BAS.	<b><u>Change not recommended.</u></b> The allowance for nonconforming structural expansion is intended to allow development flexibility in certain circumstances, but it is not an outright allowance. Section 1.6, subsection B.3, specifically recognizes that such enlargement or expansion of a conforming residential use must not impact critical areas or their associated buffers.
	8	1.7 Violations, Penalties, and Enforcement	Some of the language in this section is vague, such as: what constitutes an “inadequate plan”, what does “historic” truly mean in this context and who determines the adequacy of violators’ proposed restoration or mitigation actions. The process for violations should include an anonymous reporting option (requiring reports to state their name discourages reporting) and a	<b><u>Change not recommended.</u></b> The County will be responsible for evaluating reported violations. The County has recently hired an enforcement officer. This position reports directly to the County Commissioners.

## Attachment A – Response to Comment #9

Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
			way to track violations that are visible to agencies and the public to ensure complaints are responded to and addresses in a timely manner.	
	9	1.8 Appeals and Variances	Variance criteria should be consistent with BAS to ensure critical areas functions and values are not negatively impacted.	<p><b><u>Change not recommended.</u></b> Section 1.8 is very clear on the criteria used to grant a variance, referencing the County’s existing zoning ordinance (Section 6.2:3(2)) and specifying two additional requirements per subsection A, including the requirement in A.2 that:</p> <p style="text-align: center;"><i>The decision to grant the variance <b>considers the best available science</b> and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat. (emphasis added)</i></p>
	10	1.11 Process for Critical Areas Review	The critical areas determinations should not rest solely with the County staff, who may not have the expertise to accurately make such determinations—the County should adopt a new process for CA determination that includes consultation from Yakama Nation and relevant agencies.	<p><b><u>Change not recommended.</u></b> Per Section 1.11, subsection C, Request for Technical Assistance, the County can consult with third parties, including agencies and technical consultants to assist in the critical areas review process.</p>
	11	1.12 Critical Areas Report	The County should require a Habitat Management Plan any time that an affected critical area is a Fish and Wildlife Habitat Conservation Area and the standard riparian buffer width cannot be met.	<p><b><u>Change not recommended.</u></b> Per Section 1.12, subsection A.5, a Habitat Management Plan may be required if the standard riparian buffer width can’t be met.</p>
	12	1.13 Critical Areas Mitigation	The County should update their language in many of the sub-sections, related to BAS, “adaptive management”, mitigation plan requirements, and “contingency plan”. Mitigation plans should require a planting plan and the monitoring reports be available for review by YN and other relevant natural resource agencies.	<p><b><u>Change not recommended.</u></b> See the response to comment #10 above.</p>

## Attachment A – Response to Comment #9

Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
<b>2 - Definitions</b>	13		There are several existing definitions that should be re-worded for clarity, as well as several definitions that should be added to this section.	<b><u>Changes to be considered.</u></b> The County appreciates the thorough review of this document and will address necessary clarifications to definitions in the next version of the draft CAO.
<b>3 – Wetlands</b>	14	3.1 Purpose	Expand on the description to fully communicate the benefits that wetlands provide.	<b><u>Change not recommended.</u></b> Chapter 3 is consistent with best available science produced by the Washington State Department of Ecology. Further changes are not required.
	15	3.2 Classification and Designation	The guidance in this section should be updated to reflect the requirement for qualified professionals to formally determine presence/absence of wetlands, and utilize the multiple resources available not just NWI, which is outdated and inaccurate.	<b><u>Change not recommended.</u></b> See the response to comment #14 above
	16	3.3 Performance Standards	Define/specify terms such as “significant”, “activities”, and “mitigation sequencing”. Any revegetation efforts should require native vegetation and mitigation plans—written by qualified professionals—should include monitoring and adaptive management components.	<b><u>Change not recommended.</u></b> See the response to comment #14 above
	17	3.4 Wetland Mitigation	Recommend adding mitigation ratios in a table for clarity, and defining critical words/phrases such as “significant period of time”, “compensatory mitigation” and “mitigation sequencing.	<b><u>Change not recommended.</u></b> See the response to comment #14 above
<b>4 – Fish and Wildlife Habitat Conservation Areas</b>	18	4.1 Purpose	The County should utilize all critical resources (such as WDFW PHS) and utilize qualified professionals to determine FWHCA, and elaborate on why these areas are important.	<b><u>Change not recommended.</u></b> See the response to issue reference #2 in the Public Comment Response Matrix regarding mapping of critical areas. Please also see the response to comment #10 above regarding the County’s use of technical resource experts.
	19	4.2 Classification	FWHCA should be identified/documented and mapped to inform the permitting process, not be created as part of the permitting process—any	<b><u>Change not recommended.</u></b> See the response to issue reference #2 in the Public Comment Response Matrix regarding

## Attachment A – Response to Comment #9

Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
		and Designation	threatened, endangered or sensitive species and their associated habitats should be listed within the CAO. Sensitive species listed in the CAO should also include species and habitats of tribal cultural importance. The County should utilize all available agency resources for CA designation, and when in doubt consult with agencies rather than allowing for discretion.	mapping of critical areas. The County will use all available resources when reviewing and determining the presence/absence of FWHCAs. The designation of FWHCAs is consistent with the designation criteria in the Growth Management Act.
	20	4.3 Fish and Wildlife Habitat Conservation Areas Performance Standards	Ensure that buffer width requirements are based on BAS to better inform the public why these riparian areas are critical. All projects with potential buffer impacts should require a critical areas report by a qualified professional and the County should be explicit with buffer requirements to further prevent land owners from taking liberties with the existing provisions.	<p><b><u>Change not recommended.</u></b> See the response to issue reference #10.a in the Public Comment Response Matrix regarding the County's evaluation of WDFW riparian management recommendations and the review of best available science for riparian areas.</p> <p>The draft CAO now includes a detailed process to review critical areas applications. Please see the response to comments #10 and #11 above.</p>
	21	4.4 Fish and Wildlife HCA Mitigation	Mitigation plans should require the incorporation of adaptive management practices, which should be determined by a qualified professional. Mitigation plans must account for potential cumulative impacts of every project.	<p><b><u>Change not recommended.</u></b> Section 1.13, subsection B.4, Monitoring, includes detailed requirements for monitoring and contingency plans.</p>
<b>5 – Geologically Hazardous Areas</b>	22	5.1 Purpose	The purpose statement improperly fails to refer to protection of ecological function of mention CMZs.	<p><b><u>Change not recommended.</u></b> The purpose statement is consistent with WAC 365-190-120, Geologically hazardous areas. The intent of these regulations is to protect public health and safety.</p> <p><i>(1) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.</i></p>

## Attachment A – Response to Comment #9

Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
	23	5.2 Geologically Hazardous Areas Classification and Designation	The County should provide maps of these designated areas, and should follow BAS on designation and protection of RMZs and TMZs. The county should incorporate all available resources to this section provided by public agencies to ensure data is up to date, and reasoning behind regulatory decisions is identified.	<b><u>Change not recommended.</u></b> See the responses to issue reference #3 in the Public Comment Response Matrix regarding mapping of geologically hazardous areas.
	24	5.3 Geologically Hazardous Areas Performance Standards	The standards are vague—The County should utilize all available resources to identify CMZs and improve clarity of the report requirements in Subsection D.	<b><u>Change not recommended.</u></b> See the responses to issue reference #3.c in the Public Comment Response Matrix regarding mapping of channel migration zones.
<b>6 – Critical Aquifer Recharge Areas</b>	25	6.1 Purpose	The current CARA definition is outdated—this section should be revised to be consistent with the WAC365-190-030(3) definition and clearly provide for protection of water quality and quantity.	<b><u>Change not recommended.</u></b> The definition of critical aquifer recharge areas is included in Chapter 2. This definition has been reviewed by the Washington State Department of Health and is consistent with their requirements.
	26	6.2 Classification and Designation	The CAO should include surface water in their protections as there are areas that get their drinking water from surface water. The County should elaborate on the permitting process for this critical area protection and identify which land use activities pose a threat to aquifer quality.	<b><u>Change not recommended.</u></b> Chapter 6 pertains to the protection of aquifers used for potable water supply. While such aquifers may contribute to surface waters via springs, this chapter does not regulate the surface water withdrawal for drinking water purposes.
	27	6.4 Protection Measures	There are processes that should be regulated/prohibited—such as agricultural activities or salvage facilities—that have little to no restrictions. The County should prohibit these activities within the CARA unless approved by the common review process.	<b><u>Change not recommended.</u></b> Chapter 6 has been thoroughly reviewed by the Washington State Department of Health and is consistent with their requirements.

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Chapter	Comment Number	Subsection	Summary of Comment, Concern, or Proposed Change	Department Response
7 – Frequently Flooded Areas	28	7.1 Purpose	Frequently flooded areas regulations must follow BAS. Why has ecological function been omitted here?	<p><b><u>Change not recommended.</u></b>                      The purpose statement is consistent with WAC 365-190-110, Frequently flooded areas. The intent of these regulations is to protect public health and safety.</p> <p><i>Frequently flooded areas. Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.</i></p>
	29	7.2 Classification and Designation	This section must include BAS and address both ecological function/values and CMZs. The County should include mitigation measures specific to the purposes of minimizing damage to fish and ecological functions, and implement a monitoring /adaptive management program to ascertain if the buffers and other measures in the CAO are providing no net loss of riparian ecosystem function.	<p><b><u>Change not recommended.</u></b>                      Consistent with guidance from the Washington State Department of Ecology, this section now references the County’s recently adopted Flood Damage Prevention Ordinance.</p>