

# TECHNICAL MEMORANDUM

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Date: August 29, 2022

To: Mo-chi Lindblad, Director

From: Dan Nickel, Environmental Engineer

Project Name: Klickitat County CAO Update

Project Number: 121201.1

**Subject: Klickitat County Critical Areas Ordinance (CAO) Update, response to Planning Commission comments**

## Introduction

This memo is prepared in response to recent comments received by Klickitat County Planning Department (Mo-chi Lindblad, Director) from Planning Commissioners Rick Graves and Lori Zoller in separate letters dated July 18, 2022. The intent of this memo is to provide project background information as to the scope of the update and required elements, outline of key changes, and a brief discussion of impacts and benefits.

## Background

The Growth Management Act (GMA) requires all cities and counties in Washington to adopt regulations protecting “critical areas” in order to preserve the natural environment, wildlife habitats, and sources of fresh drinking water. Critical areas regulations also encourage public safety by limiting development in areas prone to natural hazards like floods and landslides. All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule. Klickitat County’s current Critical Areas Ordinance (CAO) was last updated in 2013 (Ordinance #O080613) and is required to undergo a periodic review. With this periodic review, the County is required to ensure policies and development regulations protect the functions and values of critical areas using the best available science (RCW 36.70A.172).

The following is a timeline of events related to the CAO Update:

### **Initial draft CAO development and early agency/tribal review**

The County began the periodic review process in early 2020. As a starting point, the County used the draft Shoreline Master Program’s proposed critical areas regulations. See the draft

SMP dated April 2019 on the County's website:

(<https://www.klickitatcounty.org/1237/Shorelines-Master-Plan-Update>). The SMP and embedded critical areas regulations were reviewed in 2018 by a Technical Advisory Committee/Citizen Advisory Committee (TAC/CAC) composed of representatives of agriculture, timber, landowners, environmental and other interests. The TAC/CAC accepted the SMP and supporting technical studies as sufficiently accurate and moved the process to the Planning Commission. The Planning Commission provided the Planning Department staff direction to conduct SEPA (State Environmental Policy Act) and initiate the formal public hearing process which includes distribution of the working draft SMP to the public and agencies for review and comment. The SMP update process was halted in 2019 following a SEPA appeal.

To begin the periodic update of the CAO, the County used the 2019 draft SMP critical areas regulations as a starting point since that document had already been vetted by the TAC/CAC and was based upon the most current information available at that time. Therefore, a separate draft CAO was created in 2020 based on the 2019 SMP draft. The County sent this draft CAO out for agency and tribal review in late 2020. Comments were received by the Washington Department of Ecology, Washington Department of Fish and Wildlife, and the Yakama Nation.

### **Second draft CAO Update**

Based on comments received and follow-up interviews with agency and tribal representatives, as well as internal review by the County and consultant team, additional revisions to the draft CAO were deemed necessary. The changes included, among others:

1. Improved layout and organization of the document to improve usability and understanding for both applicants and staff;
2. Updated exemption and exceptions language;
3. Clear critical areas review process; and
4. A review of Best Available Science (BAS) to ensure the update was consistent with current information.

The result of the above changes was a draft CAO full of tracked changes that made it extremely difficult to read and understand. After discussion with the County, it was determined that the best approach would be to consider the current draft as a completely new CAO. As a result, a

clean public review draft was completed in early 2022 and released for public comment. This draft is currently being reviewed by the Planning Commission.

## Key Changes

The focus of this CAO update is two-fold. First, to ensure consistency with State laws and best available science. Second, to enhance the overall usability of the CAO by providing clarity and improved layout so the document is easier to comprehend by applicants and County staff. As noted in the CAO Executive Summary, the following is a listing of key proposed changes to the CAO, ordered by section. This is not a complete list of all changes. Items raised recently by the Planning Commission comments are addressed in the next section.

### I. General Provisions

- Redefined the purpose statement to be consistent with GMA requirements
- Added clarity by listing the types of development and alterations that are regulated by the CAO, unless exempted
- Updated the Exemptions section for additional clarity
- Exceptions. Added a public agency and utility exception and combined with the reasonable use exception
- Added clarity regarding nonconforming lots, structures, and uses
- For additional clarity and understanding of County process and review requirements, the following details were added:
  - i. A clear critical areas review process;
  - ii. Critical areas report requirements; and
  - iii. A specific section on mitigation requirement, including mitigation sequencing, mitigation planning, and financial assurances.

### II. Definitions

- Numerous definitions were added to provide clarity in reviewing the associated regulations

### III. Wetlands

- Updated wetland rating system to be consistent with State requirements to use the 2014 rating system for Eastern Washington

- Updated the wetland buffer table to be consistent with best available science, including a variable system based on land use intensity to provide flexibility. This includes recognition of interrupted buffers (i.e. when bisected by roads) and the use of buffer averaging.
- IV. Fish and wildlife habitat conservation areas (includes streams)
- Provided clear stream typing definitions and updated buffers to be consistent with current best available science
  - Included a specific mechanism for identifying habitats and species of local importance
  - Similar to wetlands, included recognition of interrupted buffers. Adjusted buffer reduction allowances to be consistent with best available science.
  - For added clarity throughout this section, included specific references to the protection of waterbodies with anadromous fish. This also includes providing specificity on allowed activities within Type F streams and best management practices to minimize the impacts during development or other land management activities.
- V. Geologically hazardous areas
- Channel migration zones are included in the list of Erosion Hazard Areas
  - The description of potential landslide hazard areas was updated to be consistent with current best available science and understanding of risk factors
- VI. Areas with a critical recharging effect on aquifers used for potable water, otherwise known as Critical Aquifer Recharge Areas (CARAs)
- No significant changes proposed
- VII. Frequently flooded areas
- Added cross reference to the County's current Flood Damage Prevention Ordinance

## Addressing Specific Concerns

1. Mitigation Plan and 5-year monitoring requirements. A 5-year monitoring requirement is very commonly required for State and Federal permits when mitigation is required and is important to ensure success of mitigation. Mitigation failure rates are higher when monitoring requirements are not enforced or not followed through.

2. Special Provisions Streams. One of the key requirements under GMA for the protection of Fish and Wildlife Habitat Conservation Areas is to give “special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries” (RCW 36.70A.172(1)). Section 4.3.C, Special Provisions – Streams, was added specifically to address comments from agency and tribal representatives concerned about the County’s lack of protection measures per this GMA requirement. Section 4.3.C focuses on adding specificity on allowed activities within Type F streams and best management practices to minimize impacts during development or other land management activities when occurring adjacent to streams with anadromous fish.
3. Buffer Averaging change from 50% to 25%. The allowance to buffer average is proposed to change from 50% to 25%, consistent with BAS and State rules. The critical areas regulations proposed in shoreline jurisdiction are required to have buffer averaging of no greater than 25% per Washington Department of Ecology. To be consistent County-wide, the same buffer averaging requirement is proposed for wetland and stream buffers in areas outside of shoreline jurisdiction.
4. Financial Assurances. Financial guarantees are an important mechanism for local jurisdictions to ensure compliance with mitigation requirements. The County has included language to specifically remove small projects (those under \$10,000 of mitigation costs) from this financial assurance requirement.
5. Mapping. The County uses maps of critical areas based on existing State and Federal inventories. These maps are available online. Some maps have been incorporated into existing County datasets (see SMP shoreline inventory). Applicants may be required to supply information regarding existing conditions at the time of permit submittal.
6. Critical areas review process for adjacent properties. Properties that are near mapped critical areas may need a critical areas review. The distance depends on the type of critical area. For example, properties near a mapped wetland may need to have a critical areas review if the wetland is within 300 feet<sup>1</sup> of the proposed impact.
7. Impacts to private property owners regarding nonconformity. Properties that have been legally established and zoned for allowable development but are restricted due to

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<sup>1</sup> Note, Department of Ecology has commented that their wetland guidance lists the highest buffer for Eastern Washington as 250 feet. Therefore, the farthest review distance should be 250 feet. This is a recommended change based on this comment.

existing buffers and setbacks may use the Reasonable Use Exception provisions in Section 1.5.B. Structures that have been legally built but are now nonconforming due to buffers and setbacks may be maintained, repaired, renovated, remodeled, and in some circumstances that do not further impact buffers, can expand up to a limited amount.