



CRITICAL AREAS ORDINANCE

Planning Commission Recommendations on Second Draft



	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
1	Wetland Buffers (19.200.220)	<p>Replace the base buffer widths in the Second Draft with those of the 1998 Ordinance and further reduce the buffer on Category I wetlands.</p> <p>Category 1 = reduced from 200 ft. to 100 ft. Category 2 = stays 100 feet Category 3 = stays 50 feet Category 4 = reduced from 30 feet to 25 feet</p> <p>Retain all buffer reduction alternatives from the Second Draft.</p>	<p>The majority of the Planning Commission believed that there is no County study indicating that the current wetland buffers are inadequate and there is no locally-applicable, significant best available science to support the increases proposed in the Second Draft.</p>	<p>Review of literature from Crittenden, Beull, Flora and Duff.</p>
2	Stream Buffers (19.300.315)	<p>Replace buffers widths in the Second Draft with those of the 1998 Ordinance.</p> <p>Type S = reduced from 200 feet to 100 feet Type F = reduced from 150 feet to 100 feet Type Np = stays 50 feet Type Ns = reduced from 50 feet to 25 feet</p> <p>Retain all buffer reduction alternatives from the Second Draft.</p>	<p>The majority of the Planning Commission believed that there is no County study indicating that the current stream buffers are inadequate and there is no locally-applicable, significant best available science to support the increases proposed in the Second Draft.</p>	<p>Review of literature from Crittenden, Beull, Flora and Duff.</p>

	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
3	Notice to Title (19.100.150)	Remove the requirement for properties containing critical areas or their buffers to file a Notice to Title as part of the building permit process.	The majority of the Planning Commission voted that the Notice to Title unnecessarily clouds the title of properties. The County should not attempt to protect individuals who are not willing to conduct due diligence before purchasing a property. Real Estate Disclosure laws may address this issue without additional the County requirements.	Not Specified
4	Danger Tree Removal (19.100.130.B)	Remove the requirement for danger tree removal to receive County/arborist approval before they are felled. Also, landowners alone would determine what replanting, if any, would occur after the danger trees were felled.	The majority of the Planning Commission voted that trees that may pose a danger to humans or property should not need the delays caused by County approval. The property owner should be making the determinations of what constitute danger trees.	Not Specified
5	Dedication of Buffers (19.200.220.G and 19.300.315.A.9)	Remove the ambiguous language about the dedication of buffers. Revise the sections to allow the option for the property owner to dedicate the critical area as open space.	The majority of the Planning Commission voted that the language could be interpreted as a requirement rather than an option. Additionally, the revised language would clarify that the property owner may dedicate the critical area to the County as a permanent open space tract.	Not Specified
6	Appeals (19.100.145.B)	Increase the appeal period for critical area permitting decisions from 10 days to 30 days.	The majority of the Planning Commission voted that a 10-day appeal period was inadequate for neighboring property owners or other interested parties to appeal a critical area decision. After discussion of a number of time periods, it was decided that 30 days was adequate.	Not Specified

	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
7	Definitions (19.150)	Include definitions of “reasonable”, “public welfare” and “significant” in the document. These definitions are to be developed by staff.	The majority of the Planning Commission expressed concern about the ambiguous nature of words such as “reasonable”, “significant” and “quality of life” and that these words provide too much discretion by County staff in the interpretation of codes and their impacts to private property owners. They requested staff develop definitions for these terms.	Not Specified
8	Goals and Policies (19.100.105)	Revise goals and policies section to replace “quality of life” with “maintenance of life” as a determining factor in the protection of critical areas. Additionally, protections should be limited to that of federal, state and county regulations.	The majority of the Planning Commission believed that “quality of life” was too vague and “maintenance of life” was more specific.	Not Specified
9	Definitions (19.150.325)	Replace the definition of “fish and wildlife habitat” with “fish, plant and wildlife critical habitat”. Such habitat would be designated through a separate public process with the Planning Commission as the decision-making body.	The Planning Commission voted that wildlife protection was too broad and could include the entire County. They voted that specific species should be designated for protection and that this designation should be made through a public planning process.	Not Specified
10	Fish and Wildlife Conservation Areas (19.300.310.A.3)	Removes Class I and II Wildlife Conservation Area designations and protection requirements e.g. eagles, herons, pileated woodpeckers, etc.	The majority of the Planning Commission voted that the protection of wildlife was too broad with too great an impact to County property owners.	Not Specified
11	Pesticides/Herbicide Use in Buffers (19.200.230.H.6 and 19.200.315.F)	Prohibits mechanical spraying of pesticides within 60 feet of wetlands, streams, roadside ditches or shorelines and no aerial spraying within 300 feet of these areas.	The majority of the Planning Commission voted that the use of pesticides/herbicides in and around critical areas is a primary contributor to water quality issues. Prohibiting the use of these chemicals could reduce this impact.	Not Specified

	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
12	Wetland Mitigation Requirements (19.200.250)	Delete mitigation requirements for intrusions into wetland buffers e.g. buffer averaging or other reduction mechanisms.	The majority of the Planning Commission believed that buffers were not regulated critical areas and impacts to them do not require mitigation. If the wetland, stream, slope or other area was not impacted by the reduced buffer, mitigation of the lost buffer should not be required.	Department of Ecology Wetlands Guidance
13	Roads or Structures within Buffers and Impacts to Buffer Widths (19.200.220.D.1)	Included specific language that when an existing road or structure is within a buffer, the buffer shall terminate when it intersects with that road or structure.	The majority of the Planning Commission believed that the break in connectivity of habitat caused by a road or structure in a buffer should be taken into consideration. They voted this break made any buffer beyond the road or structure unnecessary. Example: An existing road is 50 feet from a wetland with a 100-foot buffer. Due to the road, the required buffer is now 50 feet rather than 100 feet.	Not Specified
14	Critical Aquifer Recharge Areas Categories (19.600.610)	Specifically identifies four additional aquifers (Seabeck, Island Lake, Gorst and Poulsbo) as Category I Aquifer Recharge Areas and specifically identifies one aquifer (Vashon) as a Category II Aquifer Recharge Area.	The majority of the Planning Commission voted that these specific areas should be identified in the Ordinance to remove any confusion regarding their category.	Kitsap County Public Utility District No. 1, the Bremerton Water District and the Kitsap County Health District
15	Notification of High-Risk Uses near Critical Aquifers (19.600.615)	Add requirement to notify all “affected and interested parties” when a high-risk use is being sited near a critical aquifer. Currently only water purveyors, tribes and other agencies are notified.	Concern was expressed that parties other than agencies and water purveyors should be made aware of these proposed high-risk activities and have the ability to comment during the permitting process.	Not Specified
16	Mapping of Critical Aquifers (19.600)	Requires the County, through the P.U.D. and Health District, to produce maps of critical aquifers and other areas of concern.	The majority of the Planning Commission voted that the accurate mapping of critical aquifers was necessary for the Ordinance to provide appropriate protection of drinking water.	Kitsap County Public Utility District No. 1, the Bremerton Water District and the Kitsap County Health District

	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
17	Reconstruction on Non-Conforming Structures (19.100.130.A.4)	When a non-conforming structure (one that does not meet current critical area buffers and setbacks) is destroyed by fire or other means, the applicant shall have 60 months rather than 12 months to commence reconstruction before current critical area restrictions apply. Also, the deadline for completion of the reconstruction was removed.	The majority of the Planning Commission expressed concern that the timelines for reconstruction of non-conforming structures was too short and could affect a property owner's ability to rebuild.	Not Specified
18	Critical Areas and Open Space Taxation Program (19.200.255)	Properties with critical areas or buffers will automatically be eligible for the Open Space Taxation program. The property owners would have the option of pursuing tax relief through this program.	The majority of the Planning Commission voted that if critical areas were restricting the use of land by private property owners that the property owner should be eligible for tax incentives through the Open Space Taxation Program. They voted this should be automatic.	Not Specified
19	County Purchase of Critical Areas (19.200.255)	Allows the County to offer to purchase private property constrained by critical areas with the Conservation Futures Fund.	The majority of the Planning Commission believed that the County should offer to purchase private property encumbered by critical areas or their buffers.	Not Specified
20	Metrics (19.200 and 19.300)	Requires the County to measure water quality and species population prior to applying new critical areas development standards.	The majority of the Planning Commission voted that the County should measure water quality and habitat before applying site-specific restrictions.	Review of literature from Crittenden, Buhl, Flora and Duff.
21	Non-Conforming Uses within Buffers (19.200.230.B)	Include language specifying the grandfathered status of non-conforming uses within wetlands and their buffers.	The majority of the Planning Commission believed additional language is required to identify non-conforming uses as grandfathered related to forest practice applications.	Not Specified
22	Special Report Applicability (19.200.240.B)	Include language to allow the extension of the applicability of special reports (wetland delineations, geotechnical reports, etc.) to be extended beyond 3 years if negotiated with applicant.	The majority of the Planning Commission believed that special reports should be valid longer than three years, if appropriate.	Not Specified

	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
23	Reasonable Use (19.150.300)	Remove the words “strict” and “all” from the reasonable use section that limits the ability for a property owner to develop their land.	The majority of the Planning Commission believed that the existing language should be revised to increase flexibility with reasonable use exceptions.	Not Specified
24	Definitions “Out of Category Compensation” (19.150.497)	Includes a definition for “out-of-category compensation”.	The majority of the Planning Commission voted to add this definition as an option for wetland mitigation.	Department of Ecology Fresh Water Wetlands Volume 1
25	Definitions “Base Buffer Width” and “Standard Buffer Width”	Include definitions of “base buffer width” and “standard buffer width” to clarify the difference between the two.	The majority of the Planning Commission believed that the use of these two terms were confusing and needed clarification. Base buffer width is the starting point for determining the flexible buffer of a particular wetland. Standard buffer width is the end point after the wetland rating system has been applied.	Not Specified
26	Wetland Chapter (19.200)	Retain the 1998 Ordinance’s wetland rating system rather than apply the newly updated Department of Ecology Wetland Rating System for Western Washington.	The majority of the Planning Commission believed that the new Department of Ecology Wetland Rating System was too complex, cumbersome, expensive and time consuming. These factors may affect the cost and availability of housing.	Not Specified
27	Bank Stabilization on Shorelines (19.300.315.K)	Remove the requirement for shoreline properties to use soft-shore bank stabilization if possible. Other forms of stabilization (hard-armoring bulkheads, etc.) may be considered equally.	The majority of the Planning Commission believed all forms of bank stabilization (soft-bank, hard-armoring bulkheads, etc.) should be allowed equally rather than requiring property owners assess soft-shore first.	Not Specified

	Section	Summary of Motion	Planning Commission Deliberations	Scientific Bases Provided with Motion
28	Applicability – Nexus and Proportionality Required (New Item Added 19.100.110.H)	Include nexus provisions in order to demonstrate that all mitigation is clearly equivalent to the proposed impacts.	Based upon the interpretation of court cases, the majority of the Planning Commission voted that language should be included to clearly specify that required mitigation for impacts to critical areas be equivalent to the impacts themselves.	Not Specified
29	Review Authority (19.100.120.C)	Remove discretion of the Department to impose additional conditions if there is a concern that previous conditions will cause an impact to critical areas.	The majority of the Planning Commission voted that the language gave unnecessary authority to the Department to impose additional conditions on projects approved under previous versions of County regulations. Example: A short plat that was approved in 1980 with a 25-foot buffer to a Category I wetland could be required to have a larger buffer if future development proposals significantly impact the wetland.	Not Specified
30	Expansion of Non-Conforming Structures (19.100.125.H)	Revise the exemption for existing structures by removing limitations to expansions of non-conforming structures. Remodels and reconstruction of houses may get closer to the critical area and are not restricted on how large the expansion may be.	The majority of the Planning Commission believed that no limitations should be placed on the reconstruction or remodeling of existing structures unless within a flood hazard area or landslide area or where such expansion would affect listed species.	Not Specified
32	Clarification of Fill or Excavation (19.150.285, 19.150.320, 19.150.380 and 19.150.390)	Clarification that activities that cause a disturbance of less than 10 cubic yards of earth are not considered fill or excavation.	The majority of the Planning Commission believed that without a clear distinction of “fill and excavation” that minor activities such as garden maintenance could inappropriately prohibited.	Not Specified
33	Miscellaneous Revisions	Various small changes to the Ordinance to improve clarity and consistency.	The majority of the Planning Commission voted that these changes would help staff and the public understand and apply the Ordinance.	Not Specified