



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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December 28, 2006

To: Kitsap County Planning Commission

From: Patty Charnas, Natural Resources Manager

Subject: **Kitsap County Critical Areas Ordinance – Proposed Revisions based on the Critical Areas Ordinance remand**

This is to follow up to the December 19, 2006 Planning Commission work study session. During that session, the Planning Commission was apprised of the Kitsap County work plan to achieve compliance with the Growth Management Hearings Board's remand of two sections of the Critical Areas Ordinance (CAO) (Kitsap County Code Title 19 Critical Areas). These remanded sections are certain wetland exemptions and certain shoreline buffer widths. The purpose of this memo is to present the proposed language.

Background

Kitsap County adopted updates and revisions to its CAO on December 1, 2005. In March, 2006, the CAO was challenged by two groups: Hood Canal Environmental Council (representing several other groups along with the Suquamish Tribe); and the Kitsap Alliance of Property Owners (supported by the Pacific Legal Foundation and the Kitsap Association of Realtors). A total of eight different legal issues were considered by the Central Puget Sound Growth Management Hearings Board (CPSGMHB). These issues ranged from asserting that the CAO did not adequately protect critical areas to objections on protecting critical areas along shorelines.

On August 28, 2006, after considering all issues, the CPSGMHB issued a Final Decision and Order (copies available) directing Kitsap County to take legislative action on two specifically challenged areas. The Board found that the CAO fails to comply with the Growth Management Act by exempting from regulation certain small isolated wetlands. The Board also found that the 35 foot buffer width on shorelines considered urban, rural and semi-rural under the Kitsap County Shoreline Management Plan was insufficient. The remand requires action on or by February 23, 2007.

The Final Decision and Order was appealed by the Pacific Legal Foundation. The County requested a stay of the remand on shoreline buffers pending Kitsap County Superior Court review. On December 18, 2006, the request for a stay was denied.

Proposed Revisions

1. Wetlands exemption.

Title 19 Chapter 200 addresses **wetland regulations**. The remand directs specific attention to Section 19.200.210 that includes subsection **C. Non-regulated Wetlands**. It is proposed that the following revisions be made to the ordinance, as follows:

19.200.210 Wetland Identification and Functional Rating

B. Regulated Wetlands. (See Chapter 19.800 Appendix A for more detailed description).

1. Category I Wetlands: Category I wetlands are those regulated wetlands that include but are not limited to rare, unique wetland types that are more sensitive to disturbance than most wetlands and that contain ecological attributes that are impossible to replace within a human lifetime. Category I wetlands score 70 points or more out of 100 on the wetlands ratings systems.
2. Category II Wetlands: Category II wetlands are those regulated wetlands that score between 51-69 points out of 100 on the wetlands ratings system.
3. Category III Wetlands: Category III wetlands are those regulated wetlands, ~~2,500 square feet or greater,~~ that score between 30-50 points on the wetlands ratings system.
4. Category IV Wetlands: Category IV wetlands are those regulated wetlands, ~~7,500 square feet or greater,~~ that score less than 30 points out of 100 on the wetlands ratings system.
5. Wetlands intentionally created from non-wetland areas to mitigate conversion of other wetlands.
6. Mosaic wetlands as defined at 19.150.695.

C. Non-Regulated Wetlands.

1. ~~Category III Wetlands: Isolated wetlands less than 2,500 square feet.~~
2. ~~Category IV Wetlands: Isolated wetlands less than 7,500 square feet.~~

2. Shoreline Buffers.

Title 19 Chapter 300 addresses **fish and wildlife habitat conservation areas**. Section 19.300.315 identifies the buffer areas for designated fish and wildlife habitat conservation areas, which include streams, lakes and saltwater shorelines. The buffer width for shorelines is guided by the type of **shoreline environment designation** of the Kitsap County Shoreline Management Master Program (Kitsap County Code Title 22). Based on the remand order, it is proposed that the following revisions be made to the ordinance, as follows:

Table 19.300.315: Fish and Wildlife Habitat Conservation Area Development Standards

Saltwater Shorelines and Lakes			
Shoreline Designation¹	Buffer Width	15 feet beyond buffer	Other Development Standards
Urban, Semi-Rural and Rural shorelines and Lakes less than 20 acres	35 feet <u>150 feet</u>	15 feet beyond buffer	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
Conservancy	50 feet	15 feet beyond buffer	
Natural	100 feet	15 feet beyond buffer	

4. Provision for Decreasing Buffer.

a. In lieu of going through the formal variance process, an administrative reduction to buffer widths for streams may be granted subject to the requirements of this section. Where an applicant demonstrates pursuant to the variance criteria that buffer widths cannot be met, a habitat management plan (HMP) will be required that shall meet the requirements as described in Chapter 19.700 (Special Reports). The department may decrease the buffer if, after ~~consultation with the Washington State Department of Fish and Wildlife, and~~ review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area. The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Reductions of greater than twenty-five percent for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800 Appendix F). Granting of a reduced buffer shall be the minimum necessary for the permitted use. When applicable, the order of sequence for buffer reductions shall be as follows:

- i. Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement;
- ii. Reduction of the overall buffer area by no more than twenty-five percent of the area required under the standard buffer requirement;
- iii. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;
- iv. Use of alternative on-site wastewater systems in order to minimize site clearing;
- v. Infiltration of stormwater where soils permit; and,
- vi. Retention of native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.

b. ~~Only stream buffers are eligible for administrative buffer reductions.~~

Some clarifications

As proposed, provisions for decreasing buffer widths have been revised to apply to saltwater shorelines and lakes as well as to streams. Using the buffer widths proposed as a result of the remand, the permit notification types can be summarized, as follows:

<u>Buffer width Reduction (ft)</u>	<u>Permit Notification Type</u>	<u>Habitat Management Plan</u>	<u>Decision</u>
None (150 feet)	Type I (runs with building permit)	Not required	Director*
148 to 112 (1 to 25 %)	Type I	Required	Director
111 to 75 (26 to 49 %)	Type II (administrative buffer reduction with notice)	Required	Director
74 feet or more (50 % or more)	Type III (public notice and hearing)	Required	Hearing Examiner

*Director, Department of Community Development

Revision process

The proposed revisions will be made available on the Kitsap County web page though links to the Department of Community Development main web page. Public testimony will be accepted at the Planning Commission public hearing and at the Board of County Commissioners public hearing. Written public comments will be accepted during January and February 2007 up to and including the public hearing of the Board of County Commissioners. Written public comments must be submitted to the address given below:

**Patricia Charnas
ATTN: CAO Remand
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614 Division Street (MS 36)
Port Orchard, WA 98366**

Cc: Board of County Commissioners
Interested Parties