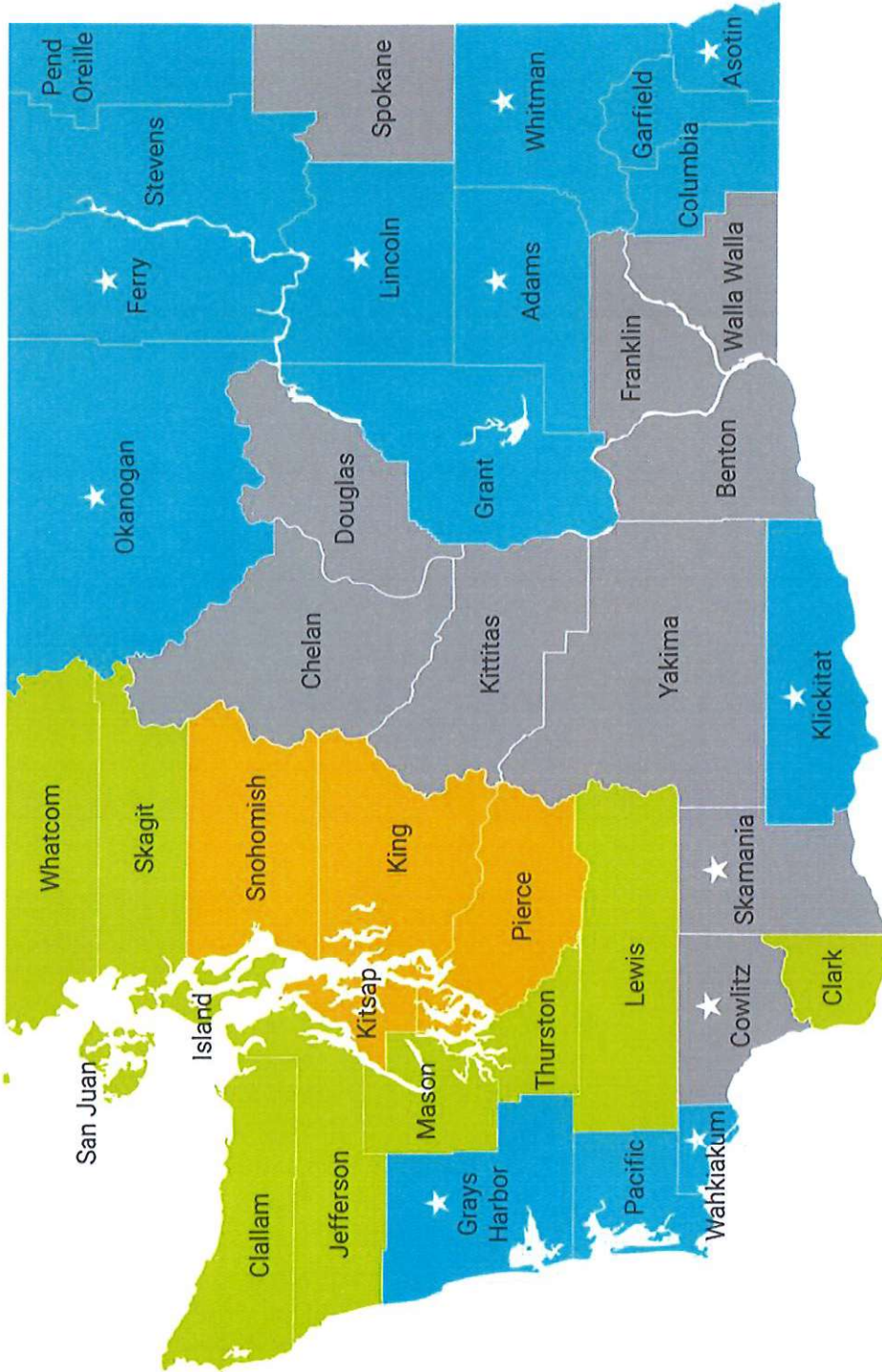


\*

# ITEM # 11.A CAO Update 4/14/26 PC



2024 Due December 31<sup>st</sup> 2025 Due December 31<sup>st</sup> 2026 Due December 31<sup>st</sup> 2027 Due June 30<sup>th</sup>

★ Starred counties are partially planning under the Growth Management Act

\* I.T.E.M # 11.11 CAD Update 4/14/85 PC

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## Critical Area Ordinance Ecology Guidance on Wetlands

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From Atkins, Emily (ECY) <eatk461@ECY.WA.GOV>

Date Fri 4/19/2024 12:00 PM

 1 attachment (253 KB)

ECY Regional Floodplain Specialists - Spring 2024.pdf;

Greetings,

You are receiving this email because your jurisdiction is required under the Growth Management Act (Ch. 36.70A RCW) to conduct a periodic review of your Critical Areas Ordinance (CAO) by December 31, 2024.

The Department of Ecology would like to assist you with the review and update of the CAO chapters for wetlands, critical aquifer recharge areas, and frequently flooded areas. Most of this information will focus on wetland guidance. In our role of providing technical assistance to local governments during this process, we would like to call your attention to some important and, hopefully, useful information:

### Wetland Guidance for Critical Areas Ordinance (CAO) Updates

In October 2022, Ecology published a document providing guidance and example language for updating the wetland chapter of your Critical Area Ordinance. It includes:

- An updated and expanded minimization measures table for use with the buffer tables Improved correlation between the discussion and the sample regulations.
- A new section on functionally disconnected buffers.
- Clarification on corridor requirements and expanded applicability.
- Recommendations from the 2021 interagency wetland mitigation guidance document.

### Wetland Delineation Manual

The US Army Corps of Engineers has updated and expanded their delineation manual with regional supplements. To maintain consistency between the state and federal delineations of wetlands, Ecology has repealed [WAC 173-22-080](#) (the state delineation manual) and replaced it with a revision of [WAC 173-22-035](#) that states delineations should be done according to the currently approved federal manual and supplements. We recommend using the following language:

Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the [City or County] meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter.

### Washington State Rating Systems

Ecology has updated the Washington State Wetland Rating Systems for western Washington. The western Washington rating system was amended in 2023. The eastern Washington rating system is currently undergoing an update, which should be completed by the end of 2024. The current version of the eastern Washington rating system remains valid. These amendments provide a more accurate characterization of wetland functions based on the most recent science.

If your CAO requires the use of the 2004 rating systems, you may want to consider updating your CAO to require the use of the 2014 version as revised. If citing the Ecology document publication number for western Washington's rating system, please use Ecology Publication #23-06-009.

### Determining Wetland Buffers

For the 2024-2027 GMA update cycle, we are not proposing any changes to the recommended wetland buffer widths but have clarified some suggested criteria such as habitat corridors and minimization measures associated with buffer reductions. Buffer tables can be found in our most current CAO guidance document:

<https://apps.ecology.wa.gov/publications/documents/2206014.pdf>

### Mitigation Tools

- In coordination with the U.S. Army Corps of Engineers and the Environmental Protection Agency, Ecology has recently updated Part 1 of Wetland Mitigation in Washington State (insert publication number). Ecology has also developed a number of mitigation tools since the first publication of Wetland Mitigation in Washington State Parts 1 and 2 in 2006. Ecology has developed a credit-debit tool for calculating when a proposed wetland mitigation project adequately replaces the functions and values lost when wetlands are impacted. This optional tool is designed to provide an objective method for assessing mitigation adequacy for both regulators and applicants during the mitigation process. You may want to include language that allows the use of the credit-debit method in your CAO.
- The federal rule on compensatory mitigation requires that some type of watershed approach be used in siting mitigation. Ecology, the US Army Corps of Engineers, and the Environmental Protection Agency have developed guidance to help applicants select potential off-site mitigation sites. To download a copy of Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington), (Ecology Publication #09-06-032, December 2009), please see <https://fortress.wa.gov/ecy/publications/summarypages/0906032.html>. Referring to this guidance in your CAO would assist applicants proposing mitigation for development projects.
- You should consider including language in your CAO that allows the use of wetland banks and in-lieu fee (ILF) programs as compensation for unavoidable wetland impacts. To learn more about these approaches to mitigation, see Ecology's website at <https://ecology.wa.gov/water-shorelines/wetlands/mitigation>.
- Ecology, WDFW, and the US Army Corps of Engineers have developed guidance to help applicants develop advance mitigation proposals. Advance mitigation is used only by a single applicant to compensate for a specific project (or projects) with pre-identified impacts to wetlands. To download a copy of Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation (Ecology Publication #12-06-015, December 2012), please see <https://fortress.wa.gov/ecy/publications/SummaryPages/1206015.html>. Your CAO could reference this guidance to assist applicants who are considering this option.

### Small Cities Option to Adopt County CAO

In 2023 SB 5374 was passed, which allows cities with populations under 25,000 to adopt the county's critical area ordinance by reference as long as the CAO is not under appeal. Once adopted by reference, the city is not required to take further action during future GMA periodic updates. Counties are entitled to a portion of the city's grant funding that otherwise would have been used to update their CAOs. The cities must still submit their adoption by reference through Department of Commerce for 60-day review.

### Small Cities Guidance

In the past, Ecology provided a separate guidance for wetland CAO's in small cities. This guidance was incorporated into our 2022 [Wetland Guidance for Critical Areas Ordinance \(CAO\) Updates](#).

### Frequently Flooded Areas

Ecology's regional floodplain specialists are available to provide assistance to local governments with Frequently Flooded Areas (FFAs). The attached PDF shows a map of the state with the names, contact information, and county assignments for each of our five regional floodplain specialists. Please reach out to your assigned specialist if you have any questions regarding FFAs.

### Critical Aquifer Recharge Area

Ecology provides guidance for cities and counties to meet the Growth Management Act (GMA) requirements to protect public groundwater drinking supplies. [The Critical Aquifer Recharge \(CARA\) guidance](#) helps local jurisdictions and the public understand what is required for the protection of local groundwater resources under the GMA. It includes guidance for planning, ordinances, and for including the Best Available Science (BAS) as these relate to CARAs.

If you have any questions regarding wetlands as you're updating your CAO please contact me. We would be happy to explain our guidance or review your draft language.

Thank you,

Emily Atkins

*She/Her*

*Critical Areas Ordinance Coordinator*

*Shorelands and Environmental Assistance Program*

*WA State Dept of Ecology*

[emily.atkins@ecy.wa.gov](mailto:emily.atkins@ecy.wa.gov) | 360-628-6680



## Critical Areas

\* <https://mrsc.org/explore-topics/>

This page provides an overview of the regulations for wetlands and other "critical areas" for all cities, towns, and counties in Washington State.

environment/  
regulations/  
critical-areas

It is part of MRSC's series on the [Growth Management Act](#).

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### Overview

The Growth Management Act (GMA) ([Chapter 36.70A RCW](#)) 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.

[RCW 36.70A.030](#) defines five types of critical areas:

- Wetlands

- Areas with a critical recharging effect on aquifers used for potable water
- Fish and wildlife habitat conservation areas
- Frequently flooded areas
- Geologically hazardous areas

Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas ([RCW 36.70A.172](#)). All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule. For more information on the schedule and required updates, see our page on [Comprehensive Planning](#).

The [Washington State Department of Commerce](#) provides many resources for creating an effective critical areas ordinance. The handbook below provides an overview of critical areas issues, as well as detailed guidance for each step in the process (from designating critical areas to specific protection methods and monitoring).

- [Critical Areas Handbook: A Handbook for Reviewing Critical Areas Regulation](#) (2023) – Guide on implementing local government regulation of critical areas and natural resources, including ordinance and code examples.

Local governments can take certain actions to create flexibility in their critical areas regulation. For information on exemptions and exceptions to critical areas regulation, see our page on [Flexibility in Environmental Regulation](#).

## Statutes and Administrative Regulations

### Statutes

- [RCW 36.70A](#) – *Growth Management Act*
  - [RCW 36.70A.030](#)(48) – Defines wetlands.
  - [RCW 36.70A.060](#) – *Natural resource lands and critical areas—Development regulations*
  - [RCW 36.70A.710](#) – Creates the [Voluntary Stewardship Program](#) (VSP) which allows participating counties to develop local work plans that use voluntary and incentive-based tools, as an alternative to regulation, to protect critical areas and agricultural lands. For more information and examples of programs, see the "Voluntary

Stewardship Plans" section of our [Flexibility in Environmental Regulation](#) page.

- [RCW 36.70A.172](#) – *Critical areas - Designation and protection - Best available science to be used*
- [RCW 36.70A.175](#) – *Wetlands to be delineated in accordance with manual*
- [Chapter 90.48 RCW](#) – *Water Pollution Control*; along with the Shoreline Management Act, this chapter the Washington State Department of Ecology with protecting, restoring, and regulating wetland resources.
- [Chapter 90.58 RCW](#) – *Shoreline Management Act*; along with the Water Pollution Control Act, this chapter tasks the Washington State Department of Ecology the protecting, restoring, and regulating wetland resources.
- [Chapter 90.84 RCW](#) – *Wetlands Mitigation Banking*

#### Administrative Regulations

- [WAC 365-190](#) – *Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas*
- [WAC 365-195](#) – *Growth Management Act - Best Available Science*
- [WAC 365-196-485](#) – *Critical Areas (relationship to the comprehensive plan)*
- [WAC 365-196-830](#) – *Protection of Critical Areas*
- [Chapter 173-22 WAC](#) – *Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State*
- [Chapter 197-700 WAC](#) – *Wetland Mitigation Banks*

#### Best Available Science

GMA requires local governments to include the best available science (BAS) in developing policies and development regulations to protect the functions and values of critical areas ([RCW 36.70A.172](#)).

Jurisdictions must demonstrate that the best available science has been considered when creating their critical areas ordinance by documenting scientific sources that support their approach to regulating critical areas and explaining when policies depart from science-based

recommendations. [Chapter 365-195 WAC](#) serves as a guide for establishing what is considered the best available science.

Several state agencies provide helpful guidance on addressing the GMA's best available science requirements. See resources below. (Note that these agencies may also have regulatory authority for some critical areas under federal or state laws.)

- **Department of Ecology:**
  - [Best Available Science for Wetlands](#)
  - [Critical Aquifer Recharge Areas Guidance](#)
  - [Frequently Flooded Areas: Critical Areas Ordinance](#)
  - [Wetland Guidance for Critical Areas Updates](#)
- [Department of Fish and Wildlife: Priority Habitats and Species](#)
- **Department of Natural Resources:**
  - [Geologic Hazards and the Environment](#)
  - [Geologic Information Portal](#)
  - [Geologic Planning](#)

#### Examples of BAS Reviews

Below are examples from local governments in Washington State that provide best available science review references and/or reports.

- [Cle Elum Best Available Science](#) (2020)
- [Kitsap County Best Available Science Summary Report](#) (2023)
- [Langley Best Available Science and Gaps Analysis](#) (2022)
- [Pierce County Critical Areas Ordinance Gap Analysis and Best Available Science](#) (2023)
- [Skagit County Best Available Science Review](#) (2025)
- [Tukwila Best Available Science Review and Gap Analysis](#) (2018)

#### Critical Areas Update Process

Critical Areas Ordinances must be evaluated and, if needed, revised every ten years per the schedule provided in [RCW 36.70A.130](#)(5). MRSC's page

on [Comprehensive Planning](#) outlines the process and timeline for these updates in greater detail.

The Washington Department of Commerce publishes a [Critical Areas Checklist](#) (2024) to help local governments update their critical areas ordinance and development regulations.

Examples

- [Snohomish County Critical Areas Regulation Update](#)
- [Thurston County Critical Areas Ordinance Update](#)
- [Vancouver Critical Areas Protection Ordinance Update](#)

Examples of Critical Areas Ordinances

Below are examples of city and county critical area ordinances from Washington State.

City

- [Bainbridge Island Municipal Code Sec. 16.20.150](#) – Addresses special rules that apply to their mixed use town center that contains intricate critical area designation.
- [Bothell Municipal Code Sec. 14.04.030](#) – Clarifies the relationship that critical areas have with other regulations such as those through SEPA.
- [Mattawa Ordinance No. 24-690](#) (2024) – Adopting GMA periodic update and adopting Grant County Critical Areas ordinance by reference.
- [Mukilteo Municipal Code Ch. 17.52](#) – *Critical Areas Regulations*
- [Olympia Municipal Code Ch. 18.32](#) – *Critical Areas*
- [Quincy Ordinance No. 24-610](#) (2024) – Adopting Grant County Critical Areas ordinance by reference.
- [Redmond Zoning Code Sec. 21.64.010](#) – *Critical Areas*
- [Spokane Municipal Code Ch. 17E](#) – *Environmental Standards*
- [Wenatchee Municipal Code Ch. 12.08](#) – *Critical Areas*
- [Woodinville Municipal Code Sec. 21.51](#) – *Critical Areas*

County

- [Clark County Code Ch. 40.4](#) – *Critical Areas and Shorelines*

- [Cowlitz County Code Ch. 19.15](#) – Encourages landowners to protect critical areas by offering a range of incentives intended to provide equitably for such protection.
- [Douglas County Code Title 19](#) – Classifies critical area types included in an Environment chapter that also addresses SEPA, Resource Lands, and stormwater.
- [Kitsap County Critical Areas Code Title 19](#)
- [Skagit County Code Ch. 14.24](#) – A detailed example of county codes for critical areas.
- [Spokane County Code Ch. 11.20](#) – Another detailed example.

## Wetlands

Wetlands are fragile ecosystems that serve important functions, including reducing erosion, siltation, flooding, ground and surface water pollution, as well as providing wildlife, plant, and fisheries habitats. Wetlands include swamps, marshes, bogs, and similar areas.

Strategies for saving wetlands (and other critical areas) include limiting uses and avoiding development in some areas, transferring development density to other sites or non-sensitive portions of larger sites, and publicly purchasing valuable or unique wetlands. Buffer areas around wetlands and along streams are also used to protect the functions of these critical areas.

Many local governments hire wetland experts to prepare and update wetlands ordinances. Local governments also require developers to perform special studies of wetlands located on proposed development sites. Some jurisdictions have prepared lists of preferred wetlands consultants.

Examples of Wetlands Ordinances and Informational Handouts

Codes and Ordinances

- [Clallam County Code Section 27.12.215](#) – *Protection Standards for Regulated Wetlands*
- Kent Development Assistance Brochures:
  - [Conceptual Mitigation Plans for Wetlands, Streams, and Associated Buffers](#)
  - [Final Conceptual Mitigation Plans for Wetlands, Streams, and Associated Buffers](#)

- [Wetland Delineation Reports](#) (2015)
  - [Kitsap County Brochure # 27 - Wetlands](#) (2022)
  - [Mukilteo Municipal Code Ch. 17.52B](#) – *Wetland Regulations*; recommended as an example for other cities.
  - [Redmond Zoning Code Sec. 21.64.030](#) – *Wetlands*
  - [Spokane Municipal Code Ch. 17E.70](#) – *Wetlands Protection*
  - [Woodinville Municipal Code Sec. 21.51.340](#) – *Wetlands - Mitigation*
- 

## Court Decisions

This section contains a selected list of court decisions about critical areas and the Growth Management Act.

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## Agricultural Land

[Clallam County v. W. Washington Growth Mgmt. Hearings Board](#) (2005), *review denied* (2008) – The court concluded that preexisting agricultural uses are not exempt from all critical areas regulation. The court also held that the county was not limited to exempting only designated agricultural resource land from full critical areas regulation and that it may expand its exempt agricultural land to meet its local conditions. However, the county must balance such expanded exemption with corresponding restrictions that take into account the specific harms threatened by the expanded class of farm lands.

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## Best Available Science

[Whidbey Environmental Action Network v. Island County](#) (2020) – This matter concerned whether Island County's critical areas ordinance provided proper protection of the western toad, identified by the Department of Fish and Wildlife as a "candidate" and "priority" species whose priority area is "any" occurrence. Whidbey Environmental Action Network (WEAN) claimed the ordinance failed to properly designate upland occurrences of the western toad and that it gave too much discretion to the planning director to waive the requirement for a biological site assessment when development is located within 1,000 feet of habitat for protected species or a conservation area or buffer. The Court of Appeals, Division 2, agreed that the County's limited protection of "any occurrence" to only those occurrences that have

been documented as of the date of ordinance adoption is contrary to the best available science in the WAC; the ordinance should provide for automatic designation of upland occurrences of the western toad when identified. The court also agreed that the authority given to the planning director to waive a biological site assessment is contrary to law because it gives the director nearly unfettered discretion, with no restrictions. This is contrary to the GMA because it does not ensure adequate protection of critical areas and contrary to the WAC, which requires a precautionary approach when waiving requirements that protect critical areas.

[Ferry Cty. v. Growth Mgmt. Hearings Bd.](#) (2014) – The Department of Fish and Wildlife recommended 31 species for consideration for local importance designation in Ferry County. The county did not designate any species of local importance or areas for fish and wildlife conservation. The hearings board decided that Ferry County's Critical Areas Ordinance was non-compliant with the GMA because it failed utilize the best available science (BAS) or provide a reasoned explanation for deviating from BAS to designate species of local importance or fish and wildlife conservation areas. The superior court ruled in favor of the county, but upon appeal the hearing board decision was reinstated. The court found that the county failed to use BAS and the reasoning provided for their ordinance was unsubstantiated.

[Yakima County v. E. Wash. Growth Mgmt. Hearings Bd.](#) (2012) – The hearings board decided that the county's standard stream buffers were unsupported by the best available science, and that the minimum adjustments allowed to be made to stream and wetland buffers failed to comply with the GMA. The court of appeals held that the superior court erroneously reversed the hearings board's decision on stream buffer widths, noting that the record did not show the county systematically analyzed the efficacy of the stream buffers in place since 1995, or that "for the most part" these buffers had adequately performed their intended function. However, the court of appeals ruled that the superior court properly reversed the hearings board's decision to invalidate the county's decision not to designate and regulate type 5 ephemeral streams under the county's critical areas ordinance. The court determined that the county provided a reasoned justification in deciding not to designate or regulate ephemeral streams as critical areas.

[Olympic Stewardship Found. v. W. Wash. Growth Mgmt.](#) (2012), *review denied* (2012) – Olympic Stewardship Foundation challenged the county's vegetation regulations applicable to rivers subject to channel migration,

arguing that the regulations violated the GMA's "best available science" requirement and that the Legislature's 2010 amendment to [RCW 36.70A.480](#) invalidates the county's nonconforming use regulation for critical areas. The court held there was no duty on a county to describe each step of the deliberative process that links the science that it considers to the adopted policy or regulation; rather, the county must address on the record the relevant sources of best available scientific information included in the decision-making. The court also found that, by prohibiting vegetation removal and development only within those areas determined to be "high risk" critical areas, any dedications of land within the critical areas are de facto "reasonably necessary as a direct result of the proposed developments," in compliance with [RCW 82.02.020](#).

[Stevens County v. Futurewise](#) (2008), *review denied* (2009) – The court held that substantial evidence supported the growth board's decision that the county's critical habitat code provisions did not comply with the GMA, because the county failed to designate all critical habitats and failed to consider the best available science in designating critical habitats, as required by [RCW 36.70A.172](#)(1). The county had to use some kind of scientific methodology in a reasoned process of analysis to designate the habitats.

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### "No Harm" Standard

[Swinomish Indian Tribal Community v. W. Washington Growth Mgmt. Hearings Board](#) (2007) – The tribe challenged the county's critical areas ordinance alleging, among other things, that a "no harm" provision failed to protect critical areas, as required by [RCW 36.70A.060](#)(2). The court concluded that the "no harm" standard protected critical areas by maintaining existing conditions. The GMA does not impose a duty on local governments to enhance critical areas. The county did not need to require buffers near rivers, where previously existing buffers had long since been removed (there is no requirement to enhance). The court also concluded that, while best available science needed to be considered and included in its record, the county did not need to follow it. A county may depart from the best available science if it provides a reasoned justification for doing so.

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### Public Health and Safety Considerations

[Futurewise v. Snohomish County](#) (2019) – Following the Oso landslide, the county updated its regulations designating and protecting critical areas,

including geologically hazardous areas. Futurewise appealed to the Growth Management Hearings Board, arguing that the county's regulations failed to adequately protect the public health and safety from geologically hazardous areas as required by the Growth Management Act. The Hearings Board concluded that the regulations met a majority of the Growth Management requirements. Futurewise appealed and the court of appeals affirmed finding that the Growth Management Act does not require the county to consider public health and safety when developing critical area regulations.

Local government must adopt regulations to protect critical areas. They must use best available science in developing their regulations. But there is no requirement that they consider public health and safety when developing critical area regulations. The statutes require the protection of critical areas and not anything external to the critical areas, such as public health and safety.

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### Shoreline Master Plan Updates

[\*KAPO v. Central Puget Sound Growth Mgmt. Hearings Board\*](#) (2011) – Following 2010 amendments to [RCW 36.70A.480](#) that applied retroactively, the court held that the GMA was to regulate critical areas in shoreline areas until such time as Shoreline Management Act plans are updated.

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### Subdivisions

[\*Stevens County v. E. Wash. Growth Mgmt. Hearings Bd\*](#) (2011), *review denied* (2012) – The court concluded that the county subdivision code failed to protect critical areas, as required by the GMA. Significantly, the code did not address impervious surface coverage in multiple important contexts, it did not apply county-wide, and it did not mention methods for addressing storm water or impervious surface coverage.

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### Recommended Resources

Several state agencies provide a number of resources specific to each type of critical area. See the links below for more information.

#### Critical Aquifers Recharge Areas

- [Department of Ecology: Critical Aquifer Recharge Areas](#) – Includes

detailed Critical Aquifer Recharge Areas Guidance Document.

#### Fish and Wildlife Habitat Conservation Areas

- **Washington Department of Fish and Wildlife**
  - [Priority Habitats and Species \(PHS\) List](#) – Comprehensive information on important fish, wildlife, and habitat resources in Washington, including a list of management recommendations.
  - [Riparian Management Zone Checklist for Critical Areas Ordinances](#) (2023) – Voluntary tool to supplement Commerce's Critical Areas checklist, specifically the section on protection of fish and wildlife habitat and conservation areas.
  - [Water Resource Inventory Area \(WRIA\) Map](#) – Clickable map showing fish populations, federal protection status, and hatchery information for all WRIsAs.
- [Washington Recreation and Conservation Office: Governor's Salmon Recovery Office](#)

#### Frequently Flooded Areas

- [Washington Department of Ecology: Frequently Flooded Areas: Critical Areas Ordinance](#) – Information on developing a chapter on frequently flooded areas.



#### Geologically Hazardous Areas

- [Washington Department of Natural Resources: Geological Hazards and the Environment](#) – Information on various hazards, including hazard maps.


#### Wetlands

- **Governor's Office for Regulatory Innovation and Assistance (ORIA):**
  - [Joint Aquatic Resources Permit Application](#) (JARPA)
  - [Wetland Permits](#) (Scroll to bottom to view)
- **Washington Department of Ecology:**
  - [Wetlands](#) – Wealth of resources on wetlands, including guidance on local regulations and best available science.
  - [Interagency Wetland Mitigation Guidance](#) – Two-part interagency document providing guidance on wetland mitigation. Wetland –


Department of Ecology describes how to rate wetlands in Eastern and Western Washington.

- [Local Wetland Regulations: Growth Management Act Technical Assistance](#)  – Guidance for local governments
- [Wetland Mitigation Banking](#)  – Document explains how mitigation banking benefits wetlands.

#### Other Resources

- [Center for Watershed Protection](#)  – Provides guidance to communities on how to integrate wetlands into larger watershed protection efforts. Includes articles, slide shows, bibliographies, links, and events.
- [MRSC: Flexibility in Environmental Regulation](#)

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