# Working Group Meeting Summary – 2024 Critical Areas Ordinance (CAO) Update

**Topic:** Wetlands Areas – July 25, 2023 @ 9am-12pm via Zoom

**Meeting Purpose:** To engage in a comprehensive discussion of Wetlands Areas by reviewing and discussing the Best Available Science (BAS) summary, recommendations in the Consistency and Gap Analysis report (Chapter 2), and existing County code section KCC 19.200.

| Working Group Members Present | Working Group Members Not Present |
|---|---|
| Watershed Consulting Firm | Kitsap Public Health District |
| Dept. of Ecology | WA Dept. of Fish & Wildlife |
| Suquamish Tribe | Puyallup Tribe |
| Port Gamble S'Klallam Tribe | Skokomish Tribe |
| Squaxin Island Tribe | Point No Point Treaty Council |
| Kitsap Environmental Coalition | Jamestown |
| Kitsap Builders Association | |
| Kitsap Alliance of Property Owners | |
| Futurewise | |
| DCD Staff | |

**Meeting Materials:** Working Group Guidelines and Schedule, Gap Analysis Report, Best Available Science (BAS) Summary Report, KCC 19.200 – Wetlands

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**Recommendation #1 –** Consider eliminating Appendix A (KCC 19.200.210).

Per KCC 19.200.210.A.2, wetlands are categorized using the 2014 Ecology Wetland Rating System or as revised. This is consistent with BAS. This regulation then goes on to reference Appendix A of KCC Chapter 19.800, which contains detailed descriptions of the current Wetland Rating System categories.

As a code improvement, the County should consider eliminating Appendix A, and the reference to it in this section, and relying instead on the source document (Wetland Rating System) to provide the current descriptions of each wetland category. This will help ensure that the latest descriptions and point totals are always used, which the code requires, and that Appendix A will not become outdated when the Wetland Rating System is revised. Removing this information will also help simplify and streamline the wetland code.
*(Gap Analysis, pg. 7)*

**Recommendation #2 –** Consider removing reference to specific wetland rating system point totals.

KCC 19.200.210.B provides a general description of each wetland category, including the point totals to qualify for each category based on the current Wetland Rating System. This is consistent with BAS. As a code improvement, however, to ensure the latest criteria are used in the future, the County should consider removing the specific point totals from the code and relying on use of the Wetland Rating System, where these point totals can be found. This will ensure that if the Wetland Rating System is updated, the code will not be in contradiction with the Wetland Rating System and BAS. *(Gap Analysis, pg. 7)*

Discussion Summary: The goal for recommendation 1 and 2 is to keep the rating system up to date with the State rating system. Other governments have eliminated redundancies in code. The WAC does not stipulate which rating system must be used, just that one should be used and "to consider using Department of Ecology's." Most counties use the State's rating system, although one or two have developed their own. Department of Ecology is publishing an annotated version of their 2014 rating system to address numerous questions and clarification requests received from various jurisdictions.

**Future Considerations for Recommendation #1 & #2:**

- Could we just provide a link to the DOE 2014 rating system in code and update it as needed?
- Include links to specific code and/or documents being referenced in code for ease of use.

**Recommendation #3 –** Clarify application of exemptions for small wetlands.

KCC 19.200.210.C exempts some small Category III and IV wetlands from buffer provisions if certain criteria are met. BAS supports exemptions for certain wetlands from the avoidance and minimization measures of the mitigation sequence if all impacts are mitigated, and for certain wetlands from buffer provisions. In both cases, specific criteria must be met and a wetland report must be provided documenting that the criteria are met. The code currently includes most of the required criteria for these exemptions, however the following criterion (or equivalent) is missing is suggested to comply with BAS:

• *The wetland must not score 6 or more points for habitat function based on the*

*Washington State Wetland Rating System for Western Washington.*
This section also includes a requirement that "A wetland report is prepared that identifies the specific wetland function affected or at risk, and provides mitigation to replace the affected or lost wetland function, on a per function basis" (KCC 19.200.210.C.6). As written, this requirement indicates that mitigation would be required for wetlands exempt from the buffer provisions; however BAS does not require mitigation for exemptions only from the buffer provisions. However, if the County would like to include an exemption from avoidance and minimization measures for these wetlands (i.e., allow fill), full mitigation would be required for any impacts. The County should review this exemption, including whether it should be expanded to include wetland impacts, and clarify the intention of KCC 19.200.210.C.6. (*Gap Analysis, pg. 7)*

Discussion Summary: The goal is to add additional criteria. One criterion missing is "can't score more than 6 points." Clarification of the mitigation requirement is needed. Department of Ecology (DOE) has been clear that the scientific literature does not support exempting small wetlands on size alone. Regarding the idea of balancing development growth *and* environmental protections, the Growth Management Hearing Boards and the courts have made it clear the GMA requires that the functions and values of critical areas be protected and that "the land speaks first." A challenge lies with being able to map all wetlands within the County. Mapping is a laborious task that requires resources and time that the County may not have available. Maps are just a guide because the site is the decider, therefore, site visits are necessary. Currently small wetlands still require a 15-foot building setback. It is difficult to have a one-size-fits-all approach for Kitsap County due to dense population within the UGA's. More mitigation may be needed if increasing density in UGAs to offset negative impacts on connectivity to uplands. Small wetlands are contributors to "rest points" for habitat moving from one wetland to another. These are areas that connect the wetland system as a whole and help them function even while not having "high function" themselves. Continuing to exempt small wetlands or allowing infill of small wetlands may cause a desert of urban areas.

**Future Considerations for Recommendation #3:**

- Reference the WAC or RCW that points to wetland rating system so the public understands?
- Strike section KCC 19.200.210.C (Exemptions for small wetlands) from code altogether?
- Is the term "low functioning" supported by BAS?
- How does buffering small wetlands affect the County's ability to maximize development within urban areas as required in the GMA? Could this potentially lead to an expansion of the UGA's?
- Additional mitigation measures to offset increased density in UGA's?
- Professionally written and reviewed wetland reports are key. Are the current report requirements and review processes sufficient?
- Which takes precedence in the GMA requirements, high-density affordable housing or low function wetlands?

**Recommendation #4 –** Provide more detail on standard buffer condition requirements.

Some modifications and additional details in this section would improve clarity and align with Ecology guidance. BAS buffer recommendations are based on the assumption that the buffer is well vegetated with native species appropriate to the ecoregion. This is not currently stated in the code. If the buffer does not consist of vegetation adequate to provide the necessary protection, then either the buffer area should be planted or the buffer width should be increased. Ecology (2022) suggests the following language be added in the description of required standard buffer widths to ensure a buffer condition that is adequate to protect the wetland resource:

*The buffer widths … assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer must either be planted to create the appropriate native plant community or be widened to ensure that the buffer provides adequate functions to protect the wetland.* (*Gap Analysis, pg. 8)*

Discussion Summary: For buffer widths to provide adequate protections, the buffer must be well vegetated with native species. If they are not, the buffer is not sufficient and either needs to be planted or the buffer must be increased. The recommendation is to add code language to require native planting if the buffer is not already well vegetated or to require a larger buffer. The wetland delineation report should provide guidance regarding adequate vegetation of buffer. The science to support this recommendation has been around since 2005. Buffer slope, drainage, and other factors should be considered when determining adequate buffer width and based on the functionality of the buffer. Department of Ecology uses a general approach when interpreting invasive species that do not perform native functions. (i.e. Don't want to introduce reed canary grass even though it does a good job of filtering sediment.) The window of opportunity to meet development regulations seems to get smaller and less predictable which increases cost of housing. Is anyone asking, "when is enough enough?" The cost of improving buffers is not feasible for everyone. The county should look for opportunities to trade off to improve buffers for increase area to develop.

**Future Considerations for Recommendation #4:**

- Consideration of legally established land uses.
- Farmlands handled through farm plans and conservation districts?
- Volunteer stewardship program re: farmlands converted on wetlands & native species planting along buffers?
- Where would this go in the code? Beginning of 19.200.220?
- What is the increase in functionality of increasing the buffer width if buffer is already in bad shape?
- Define and regulate current buffer states? Permanently or temporarily impacted? (ex: asphalt within buffer being removed could be credited.)

**Recommendation #5 –** Review & update habitat corridor language.

The code's current buffer system includes the option of reducing the buffer through provision of a habitat corridor and implementation of minimization measures to reduce the level of impact from the adjacent land use. KCC 19.200.220.B.2.e. Ecology's 2022 guidance for CAO updates has updated the language for habitat corridor requirements. While the overall concept remains the same, more detail and clarification is provided on what is a "legally protected, relatively undisturbed and vegetated area." The County should review the updated guidance and consider whether any code updates are necessary to better align with the updated guidance.

Additionally, the language in KCC 19.200.220.B.2.e.i, indicating wetlands that require a corridor to reduce the buffer, should be updated for consistency with the wetland buffer tables and BAS in regard to habitat score ranges. While the moderate habitat score range has been updated in the buffer table, the language in this section still refers to a moderate or high habitat score as five points of more. This should be updated to six points or more, consistent with the buffer table and BAS. (*Gap Analysis, pg. 9)*

Discussion Summary: Code is unclear on how habitat corridor language is being implemented and/or interpreted. The County could look at existing language from other jurisdictions to see if this could be clarified. For certain the language of "less than 5 points", should match what DOE has which is "6 points or more" for consistency. Expand language on what qualifies as a corridor and explain that corridors allow buffers to not have to work as hard. Minimization measures are described in Table 220.F and applicant must select all that are applicable to minimize land use intensity. DOE has an updated minimization measures table with more detail available. Provide clarity on the difference between "habitat" and "critical habitat". Ensure applicants understand the information provided in the wetland report and how/why that effects their buffer width. Public education may be needed to explain the benefits and functions of the wetland buffers. In Kitsap, many of the wetlands, streams, riparian areas mostly run north-south so we have good movement north-south within the watersheds. There is not much east-west so there is not such easy movement from one watershed to another for the wildlife. It is concerning that we seem to be trading important buffers for needed corridors. DOE is not suggesting trading one for another but rather reducing buffers from high to moderate when combined with protected corridors. Reducing buffers to those for moderate intensity land uses can help protect the wetlands. Habitat function is one of three functions that Ecology identifies as value of wetlands – which the GMA requires protection of. We are in low-middle of the range of buffer widths that amphibians need in Washington, but we aren't getting all of it. Department of Fish and Wildlife recommends larger buffers for Herons for example. Protecting habitat for species that might not exist without it.

**Future Considerations for Recommendation #5:**

- What modifications can be allowed to standard buffers in KCC 19.200.220.B(2)(e) for habitat corridor and minimization measures?
- Remove all "5 point" language and replace with "6 point" reference from DOE.
- Is there a way the County could incentivize protection of habitat corridors?

**Recommendation #6 –** Review & update habitat corridor language.

KCC 19.200.220.B.2 includes several administrative buffer reduction options. Current BAS does not support additional buffer reductions beyond the habitat corridor/minimization measures reduction to reduce the level of impact from adjacent land use, as discussed above. In the past it was common to allow a buffer reduction with enhancement of existing, degraded buffer. This is listed as an allowed proposal for an administrative buffer reduction in KCC 19.200.220.B.2.d.i. However, Ecology's current buffer recommendations are based on a buffer that is already well vegetated. If the existing buffer area is not currently vegetated in a manner to provide the necessary buffer function, then the buffer area should be planted, or the buffer width should be increased. Reducing buffer area in circumstances where buffers are already degraded will result in a high-risk approach to protecting wetland function. Rather, Ecology recommends that buffer reductions should be tied to reducing the impacts from the adjacent land use. Further reductions would not generally be supported.
The reduction described in KCC 19.200.220.B.2.e is in line with BAS. Any other reduction would need to be processed through a variance or reasonable use exception. The County should consider removing the administrative buffer reductions for single-family dwellings and other proposed uses described in KCC 19.200.220.B.2, a-d. However, the County requires consistency with the variance criteria for all buffer reductions even if the review is administrative. (*Gap Analysis, pg. 9)*

Discussion Summary: KCC 19.200.220.2 section a through d include buffer reductions that are not supported by Best Available Science. Buffer reductions need to be tied to reducing the impacts of land use. Section e is a buffer reduction option supported by BAS. The County has implemented a monitoring permit for buffer reductions granted with mitigation requirements. This has just gone into effect this year. It is too soon to report back on the effectiveness of the monitoring permit process yet. Removing buffer reduction permits altogether may require extremely long legal processes, penalizing the property owner with no clear benefit. The wait time to get to the hearing examiner and the cost associated with a public hearing could increase drain on country resources and unduly negatively impact the applicants. Granting variances would also negatively impact the critical areas and should be reined in. The County could provide more clarity in the code regarding avoidance measures. Administrative buffer reductions refer to mitigation sequencing. There are steps built into the code for avoidance before a buffer reduction can be pursued. Administrative buffer reductions are a Type I and does not require noticing to the public. Most get processed with the building permit, but still need to meet all the same requirements as a variance (Type III) request. Important to note that just because certain individuals and/or groups don't "see" the value of habitat does not mean it isn't there. Administrative flexibility is important, and we should recognize the reality of administrative buffer reductions. Human health requirements always hold steady, but often habitat protections slip. If BAS says administrative buffer reductions aren't supported, then the county should realize that they will lead to degradation. If administrative buffer reductions are a continued practice, a tracking method should be implemented. The future use of a monitoring permit would track impacts.

**Future Considerations for Recommendation #6:**

- How many buffer reductions does the County process/approve each year?
- Include cross reference to 19.100.135 requiring zoning variance process to be exhausted first.
- If GMA requires BAS, how can we allow these reductions at all, if they aren't supported by BAS?
- Change from Type I to Type II process to ensure public notification and comment period?
- What potential impacts would this have on county resources?

**Recommendation #7 –** Consider applying increased protections to bog wetlands to prevent stormwater impacts.

Bogs are important carbon sinks that are highly sensitive to disturbance, particularly stormwater discharges and changes in pH. As a strategy to manage climate change impacts to wetlands, applying increased protections to bog wetlands and associated buffers to prevent stormwater impacts that could change pH and alter sensitive plant communities is recommended. KCC Table 19.200.220.E includes no additional surface discharges to bog wetlands as a recommended protection measure in addition to the listed buffer widths. The County could consider adding low impact development or stormwater management requirements to the text of the code. (*Gap Analysis, pg. 10)*

Discussion Summary: Not discussed. Move discussion to meeting #2 agenda.