

## Summary of Critical Areas WAC Amendments

January 2017

This table provides information on the more substantive amendments and their effective dates to the Commerce Washington Administrative Code (WAC) chapters applicable to critical areas since their adoption. Some minor amendments to wording are not included. Commerce staff compiled this table. For the 2010 official revisions summary, go to the Code Reviser web site at <http://lawfilesexternal.wa.gov/law/wsr/2010/03/10-03-085.htm>.

### Effective Dates of WAC Amendments

WAC Chapter Provision - Description of Amendment	Effective Date
Chapter 365-190 WAC Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas	Original adoption 4/15/91
<p><b>365-190-030 Definitions</b></p> <p>(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture (<del>(Soil)</del>) <u>Natural Resources Conservation Service Soil (<del>(Classification System)</del>) Survey Program</u>, may experience (<del>(severe to very severe)</del>) <u>significant erosion</u>. <u>Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.</u></p> <p>(6)(a) "<u>Fish and wildlife habitat conservation areas</u>" are areas that serve a critical role in sustaining <u>needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.</u></p> <p>(b) "<u>Habitats of local importance</u>" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by <u>counties and cities.</u></p> <p><del>((7))</del> (8) "<u>Frequently flooded areas</u>" are lands in the flood plain subject to <u>at least</u> a one percent or greater chance of flooding in any given year, <u>or within areas subject to flooding due to high ground water.</u> These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and (<del>(the like)</del>) <u>areas where high ground water forms ponds on the ground surface.</u></p> <p>(10) "<u>Landslide hazard areas</u>" are areas (<del>(potentially subject to)</del>) <u>at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.</u></p>	1/19/2010

<p>(18) <u>"Seismic hazard areas"</u> are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, <del>((or))</del> soil liquefaction, <u>debris flows, lahars, or tsunamis.</u></p> <p>(19) <u>"Species of local importance"</u> are those species that are of local concern due to their population status or their sensitivity to habitat <del>((manipulation))</del> <u>alteration</u> or that are game species.</p> <p>(21) <u>"Volcanic hazard areas"</u> shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, <u>lahars</u>, mudflows, or related flooding resulting from volcanic activity.</p> <p>(22) <u>"Wetland" or "wetlands"</u> means areas that ..., <u>or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.</u> However, wetlands may include those artificial wetlands intentionally created from nonwetland areas <del>((created))</del> to mitigate conversion of wetlands, if permitted by the county or city.</p>	
<p><b>365-190-030 Definitions – Fish and Wildlife Habitat Conservation Areas</b></p> <p>(6)(c): <u>"Fish and wildlife habitat conservation areas"</u> amended to reflect statutory amendment in 2012 to RCW 36.70A.030 to <u>"not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company."</u></p>	1/27/15
<p><b>365-190-040 Process</b></p> <p>Amendments to (1) and (2) recognized counties and cities have adopted their initial critical areas regulations under the GMA.</p> <p>(4) Classification of critical areas - the <u>"natural heritage program"</u> was added to the state agency classification system in 4(b), formerly 4(c).</p> <p>(6) <u>"Classifying, inventorying, and designating lands does not imply a change in a landowner's right to use his or her land under current law. <u>The law requires that natural resource land uses be protected from land uses on adjacent lands that would restrict resource production. Development regulations adopted to protect critical areas may limit some land development options...."</u></u></p> <p><u>(7) Overlapping designations. The designation process may result in critical area designations that overlay other critical area or natural resource land classifications. <del>((That is,))</del> <u>Overlapping designations should not necessarily be considered inconsistent.</u> If two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply.</u></p> <p><u>If a critical area designation overlies a natural resource land designation, both designations apply.</u> For counties and cities required or opting to plan under <del>((chapter 36.70A RCW))</del> <u>the act</u>, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to <u>RCW 36.70A.060.</u></p> <p><u>(8) Counties and cities <del>((shall))</del> <u>must</u> involve the public in classifying and designating natural resource lands and critical areas. <u>The process should include:</u></u></p> <p>Public participation <u>program:</u></p> <p>Public participation should include, at a minimum, <u>representative participation from the following entities:</u> Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and</p>	1/19/2010

<p>cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations and should address proposed nonregulatory incentive programs.</p> <p>Counties and cities <del>((should))</del> <u>are encouraged to consider</u> <del>((using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit), newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used))</del> a variety of opportunities to <u>adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.</u></p> <p>The department <del>((of community development will))</del> <u>provides technical assistance in preparing public participation</u> <del>((plans, including: A pamphlet series, workshops, and a list of agencies available to provide help))</del> <u>programs.</u></p> <p>Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to <a href="#">RCW 36.70A.060</a> and 36.70A.170. At <del>((least these))</del> <u>a minimum the following steps should be included in the adoption process:</u></p> <p>Accept the requirements of <a href="#">chapter 36.70A RCW</a> <del>((, especially definitions of agricultural lands, forest lands, minerals, long term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.))</del>;</p> <ul style="list-style-type: none"> <li>(ii) Consider minimum guidelines developed by <u>the department</u> <del>((of community development))</del> under <a href="#">RCW 36.70A.050</a> <del>((-))</del>;</li> <li>(iii) Consider other definitions used by state and federal regulatory agencies <del>((-))</del>;</li> <li>(iv) Consider definitions used by <del>((the county and city and other))</del> <u>similarly situated counties and cities</u> <del>((-))</del>;</li> <li>(v) Determine recommended definitions and check conformance with minimum definitions <del>((of))</del> in <a href="#">chapter 36.70A RCW</a> <del>((-))</del>;</li> <li>(vi) Adopt definitions, classifications, and standards <del>((-))</del>;</li> <li>(vii) Apply definitions <del>((to the land))</del> by mapping designated natural resource lands <del>((-))</del>; <u>and</u></li> <li>(viii) Establish <del>((designation amendment))</del> <u>procedures for amending natural resource lands and critical areas designations.</u></li> </ul>	
<p><b>365-190-080 Critical Areas</b> - Replaced this section that addressed all five types of critical areas with provisions that apply generally to all critical areas:</p> <p><u>(1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the function and values of critical areas. The department provides additional recommendations for adopting critical areas regulations in <a href="#">WAC 365-196-485</a>.</u></p> <p><u>(2) Counties and cities must include the best available science as described in <a href="#">chapter 365-195 WAC</a>, when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are encouraged to also protect both surface and ground water resources, because these waters often recharge wetlands, streams and lakes.</u></p>	1/19/2010

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

Guidance for each of the five types of critical areas were moved and reorganized into five new separate sections for each critical area, 090 – 130. Critical areas - Under subsection (2), the phrase "that support listed species" had been removed in response to comments and to adhere more closely to the underlying statute. [Clarify or remove this and put in deleted and added words]

**365-190-090** Wetlands – a new section was created that includes the text about wetlands from former WAC 365-190-080, with revisions:

(1) Wetlands. The wetlands of Washington state are fragile ecosystems ~~that~~ ~~which~~ serve a number of important beneficial functions. Wetlands assist in the reduction of erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs or property losses.

(2) In designating wetlands for regulatory purposes, counties and cities shall use the definition of wetlands in [RCW 36.70A.030\(22\)](#). Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they exist on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance.

~~—(a) Counties and cities that do not now rate wetlands shall consider a wetlands rating system to reflect the relative function, value and uniqueness of wetlands in their jurisdictions. In developing wetlands rating systems, counties and cities should consider the following:~~

~~—(i) The Washington state four-tier wetlands rating system;~~

~~—(ii) Wetlands functions and values;~~

~~—(iii) Degree of sensitivity to disturbance;~~

~~—(iv) Rarity; and~~

~~—(v) Ability to compensate for destruction or degradation.~~

~~—If a county or city chooses to not use the state four-tier wetlands rating system, the rationale for that decision must be included in its next annual report to department of community development.~~

(3) Wetlands rating systems. Wetland functions vary widely.

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<p><u>(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.</u></p> <p><u>(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.</u></p> <p><u>(c) If a county or city chooses to use an alternative rating system, it must include the best available science.</u></p> <p><u>(d) A rating system should evaluate, at a minimum, the following factors:</u></p> <ul style="list-style-type: none"> <li><u>(i) Wetlands functions and values;</u></li> <li><u>(ii) Degree of sensitivity to disturbance;</u></li> <li><u>(iii) Rarity;</u></li> <li><u>(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and</u></li> <li><u>(v) The ability to replace the functions and values through compensatory mitigation.</u></li> </ul> <p><del>(4b)</del> Counties and cities may use the National Wetlands Inventory <u>and a landscape-scale watershed characterization as information sources as an information source</u> for determining the approximate distribution and extent of wetlands. <u>The National Wetlands Inventory is an This inventory providing</u> maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior - Fish and Wildlife Service. <u>A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology, and hydrology. Any potential locations of wetlands based on the National Wetlands Inventory or landscape-scale watershed characterization should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries, and its wetland boundaries should be delineated for regulation consistent with the wetlands definition in <a href="#">RCW 36.70A.030(22)</a>.</u></p> <p><del>(5e)</del> Counties and cities <u>must use the methodology for regulatory delineations in the adopted state manual identified in <a href="#">RCW 36.70A.175</a>.</u> <del>should consider using the methodology in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, cooperatively produced by the United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Soil Conservation Service, and United States Fish and Wildlife Service, that was issued in January 1989, and regulatory guidance letter 90-7 issued by the United States Corps of Engineers on November 29, 1990, for regulatory delineations.</del></p>	
<p><b>365-190-100 Critical aquifer recharge area (CARA)</b> – a new section was created that includes the text about CARAs from former WAC 365-190-080, with the following revisions:</p> <p>... (3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute directly or indirectly to contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that</p>	1/19/2010

do not facilitate degradation. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

...(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

- (i) General land use;
- (ii) Waste disposal sites;
- (iii) Agriculture activities;
- (iv) Well logs and water quality test results;
- (v) Proximity to marine shorelines; and
- (vi) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the ground water, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

- (i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;
- (ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;
- (iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;
- (iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and
- (v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.
- (c) Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat. Protecting adequate recharge of these aquifers may provide additional benefits in maintaining fish and wildlife habitat conservation areas.

**365-190-110 Frequently flooded areas**— a new section was created that includes the text about frequently flooded areas from former WAC 365-190-080, with the following revisions.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

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<p>(a) Effects of flooding on human health and safety, and to public facilities and services;</p> <p>(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, <u>including the provisions for urban growth areas in RCW 36.70A.110</u>;</p> <p>(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out <del>without any measurable increase in flood heights</del>;</p> <p>(d) The potential effects of tsunamis, high tides with strong winds, sea level rise, <u>and extreme weather events, including those potentially resulting from global climate change</u>;</p> <p>(e) Greater surface runoff caused by increasing impervious surfaces.</p>	
<p><b>365-190-120 Geologically hazardous areas</b> – a new section was created that includes the text about geologically hazardous areas from former WAC 365-190-080, with the following revisions.</p> <p>(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are <u>minimized acceptable</u>. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas <u>must be is best avoided</u>. The distinction <u>between avoidance and compensatory mitigation</u> should be considered by counties and cities that <u>do not currently do not now</u> classify geological hazards, as they develop their classification scheme.<u>(5) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.</u></p> <p>(6) Landslide hazard areas <del>shall</del> include areas <del>potentially</del> subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible <u>to landslide</u> because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. <del>Example of these may include, but are not limited to,</del> <u>and include, at a minimum,</u> the following:</p> <p>(a) Areas of historic failures, such as:</p> <p>(i) Those areas delineated by the United States Department of Agriculture <del>Soil</del> <u>Natural Resources</u> Conservation Service as having a <u>“severe” significant</u> limitation for building site development;</p> <p>(ii) Those <u>coastal</u> areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology <u>Washington coastal zone-atlas</u>; or...</p> <p>(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, <u>including stream channel migration zones</u>;...</p> <p>(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and</p>	1/19/2010

<p>(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of <del>consolidated rock bedrock</del>. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.</p> <p>(7) Seismic hazard areas <del>shall</del> <u>must</u> include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement <u>or subsidence</u>, soil liquefaction, surface faulting, <u>or tsunamis</u>. <u>Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table</u>. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, <u>and ground settlement may occur with shaking</u>. The strength of ground shaking is primarily affected by:...</p> <p>(8) Other geological <del>events</del> <u>hazard areas</u>:</p> <p>(a) Volcanic hazard areas <del>shall</del> <u>must</u> include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity....</p>	
<p><b>365-190-130 Fish and wildlife habitat conservation areas</b> - a new section was created that includes the text about fish and wildlife habitat conservation areas from former WAC 365-190-080, with the following revisions.</p> <p><del>(5) Fish and wildlife habitat conservation areas. Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. In some cases, intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.</del></p> <p><u>(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.</u></p> <p><u>Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.</u></p> <p>(2) Fish and wildlife habitat conservation areas <u>that must be considered for classification and designation</u> include:</p> <ul style="list-style-type: none"> <li>(a) Areas <del>with which</del> <u>where</u> endangered, threatened, and sensitive species have a primary association;</li> <li>(b) Habitats and species of local importance, <u>as determined locally</u>;</li> <li>(c) Commercial and recreational shellfish areas;</li> <li>(d) Kelp and eelgrass beds; herring, smelt, and <u>other forage fish</u> spawning areas;</li> <li>(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;</li> </ul>	1/19/2010

- (f) Waters of the state;
- (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
- (h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

~~(3) Counties and cities may consider the following when classifying and designating these areas:~~ When classifying and designating these areas, counties and cities must include the best available science, as described in [chapter 365-195 WAC.](#)

(a) Counties and cities should consider the following:

- (i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate:
- (ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);
- (iii) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;
- (iv) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;
- (v) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(b) Counties and cities may also consider the following:

- (i) Potential for restoring lost and impaired salmonid habitat;
- (ii) Potential for designating areas important for local and ecoregional biodiversity; and
- (iii) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

~~(i) Counties and cities should classify seasonal ranges and habitat elements with which federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.~~

~~(ii) Counties and cities should determine which habitats and species are of local importance. Habitats and species may be further classified in terms of their relative importance.~~

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Recovery plans and management recommendations for many of these species are available from the United States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and

wildlife. Additional information is also available from the Washington state department of natural resources, natural heritage program, and aquatic resources program.

~~Counties and cities may use information prepared by the Washington department of wildlife to classify and designate locally important habitats and species. Priority habitats and priority species are being identified by the department of wildlife for all lands in Washington state. While these priorities are those of the department, they and the data on which they are based may be considered by counties and cities.~~

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program can provide a list of high quality ecological communities and systems and rare plants.

...

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities ~~shall~~ must classify kelp and eelgrass beds, identified by the Washington state department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the *Puget Sound Environmental Atlas, Volumes 1 and 2* Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-260271 and the *Puget Sound Environmental Atlas*.

...

(f) Waters of the state.

(i) Waters of the state are defined in ~~Title 222 WAC~~ RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington. Stream types are classified in TITLE 222 WAC, the forest practices regulations. Counties and cities ~~should~~ may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on Washington state department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);

(C) Historic presence of species of local ~~concern~~ importance;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some ~~of the higher classes of~~ waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Washington state department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the Washington state department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington state department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

Chapter 365-195 WAC Best Available Science	Original Adoption 2000
<b>365-195-900 Background and purpose</b> – no amendments	
<b>365-195-905 Criteria for determining which information is the “best available science”</b> – no amendments	
<b>365-195-910 Criteria for obtaining the best available science</b> – no amendments	
<b>365-195-915 Criteria for including the best available science in developing policies and development regulations</b> – no amendments	
<b>365-195-920 Criteria for addressing inadequate scientific information</b> – no amendments	
<b>365-195-925 Criteria for demonstrating “special consideration” has been given to conservation or protection measures necessary to preserve or enhance anadromous fisheries</b> – no amendments	
Chapter 365-196 WAC Procedural Criteria for Adopting Comprehensive Plans and Development Regulations (Formerly Chapter 365-195, reorganized and adopted in a new Procedural Criteria chapter in 2010)	Original Adoption 1991
<p><b>365-196-485 Critical Areas</b> -formerly 365-195-410, this section addressed original critical areas designation and ordinances prior to adoption of the comprehensive plan. In 2010, the previous section was repealed and a new section adopted that addresses critical areas that recognizes all cities and counties have designated critical areas and adopted ordinances. The previous section is no longer relevant and therefore not provided here.</p> <p><u>New Section</u></p> <p>(1) Relationship to the comprehensive plan.</p> <p>(a) The act requires that the planning goals in <a href="#">RCW 36.70A.020</a> guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.</p> <p>(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.</p> <p>(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.</p> <p>(d) <a href="#">RCW 36.70A.070</a>(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and storm water runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.</p>	2/19/2010

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas of critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in [chapter 365-190 WAC](#).

(c) Critical areas should be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should take this information into account.

<p>(e) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See <a href="#">WAC 365-196-855</a>.</p> <p>(4) Avoiding impacts through appropriate land use designations.</p> <p>(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by <a href="#">RCW 36.70A.115</a>. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.</p> <p>(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the one hundred year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated, including the provisions in <a href="#">RCW 36.70A.110(8)</a>.</p> <p>(c) If critical areas are included in urban growth areas, they still must be designated and protected. See <a href="#">WAC 365-196-310</a>.</p>	
<p><b>365-196-485 Critical Areas</b> – further amended as follows.</p> <p>(4) Avoiding impacts through appropriate land use designations.</p> <p>(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the one hundred-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated(<del>(, including the provisions in RCW 36.70A.110(8))</del>). <a href="#">RCW 36.70.110(8)</a> prohibits expansion of the urban growth area into the one hundred-year flood plain in some cases. See <a href="#">WAC 365-196-310</a>.</p>	12/3/2010