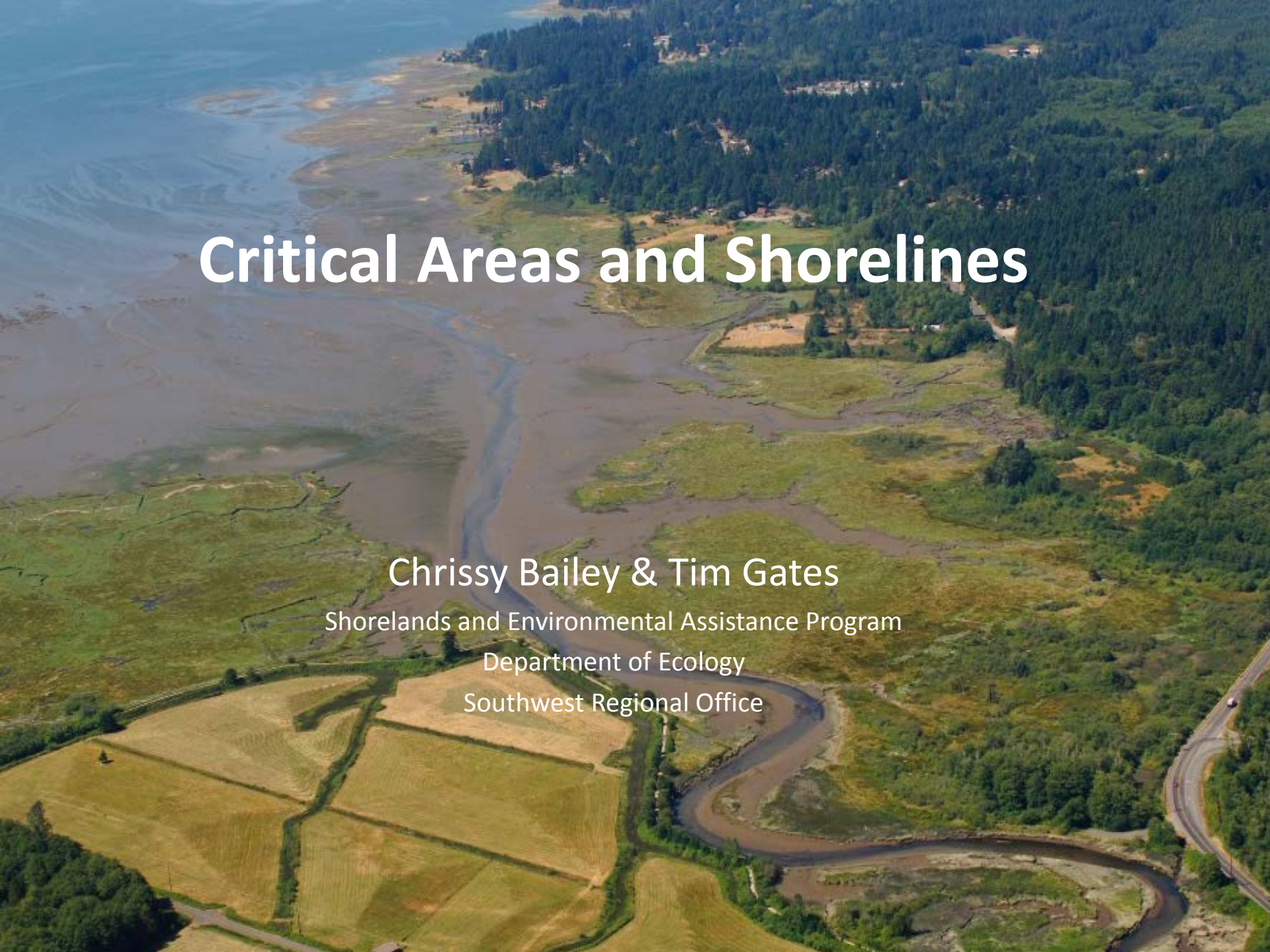


Critical Areas and Shorelines

Chrissy Bailey & Tim Gates
Shorelands and Environmental Assistance Program
Department of Ecology
Southwest Regional Office

I. Introduction

II. Specific Critical Areas

III. Exceptions & Exemptions

I. Introduction

Context: “No Net Loss”
Legalities: “Transfer” of critical area protections
Options for addressing critical areas

Context: Updates address all 3 SMA policy objectives

- Plan for **water-dependent uses**

- Promote **public access** to publicly-owned shorelines

- Protect **environmental resources** ("**no net loss** of ecological functions necessary to sustain shoreline natural resources")

SMA Policy: RCW 90.58.020
No Net Loss: WAC 173-26-201(2)(c)

Several ways to achieve No Net Loss

- Inventory shorelines and update **environment designations** with appropriate use and development standards
- Regulations for **uses** *(commercial, residential, industrial)* and **modification activities** *(bulkheads, piers and docks)*
- Follow **mitigation sequence** (avoid and minimize, compensate for unavoidable impacts)
- **Critical area regulations**

ENVIRONMENT DESIGNATION	URBAN	RURAL	CONSERVANCY	NATURAL
Agriculture	P	P	P	C
Commercial Feedlots	X	C	X	X
Aquaculture				
non-floating	P	P	P	C
floating	C	C	C	C
gravel enhancement projects > 1,000 c.y.	C	C	C	C
Forest Practices	P/X	P	P	C
Commercial				
Water dependent	P	C	C[2]	X[1]
non-water dependent/ with waterfront	C	C	C[2]	X
non-water dependent without waterfront	P	C	C[2]	X

WAC 173-26-201(2)(c)

“Critical areas” = 5 types designated under GMA

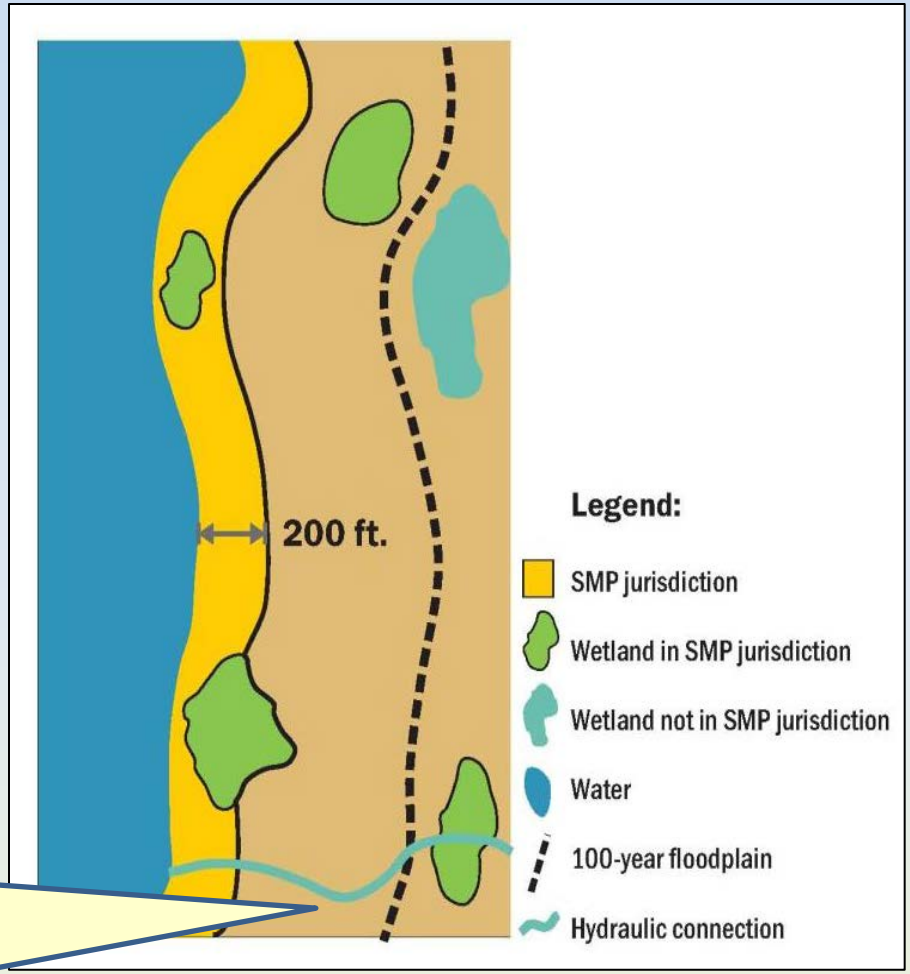
+ Critical aquifer recharge areas

WAC 173-26-221(2)(a)

Areas where the Shoreline Act applies

Minimum:

- **Marine** waters
- **Lakes** > 20 acres
- **Larger streams** *(> 20cfs mean annual flow)*
- "**shorelands**" 200' landward from water's edge, including 200' of contiguous floodplain from edge of floodway
- **associated wetlands**, including all wetlands within 100-year floodplain.



Local option:

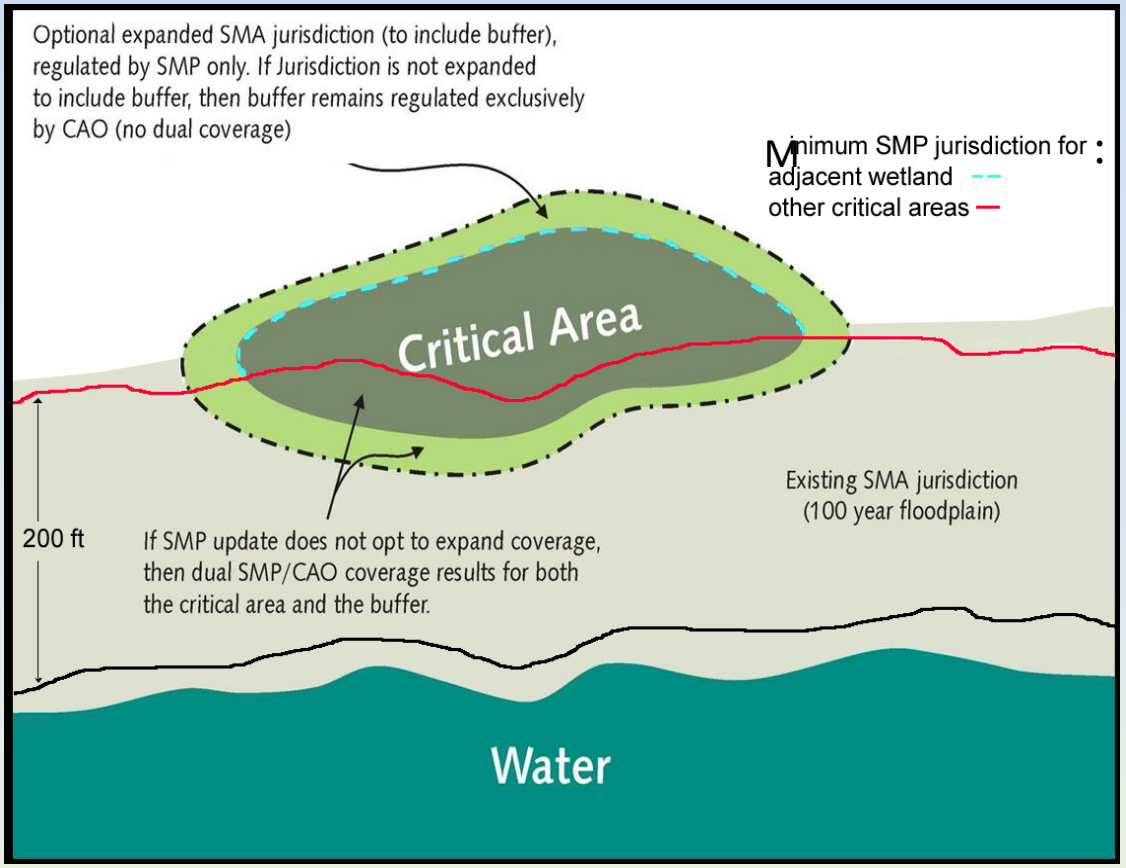
1) all or portions of the **100-year floodplain**
2) **"land necessary for critical area buffers"**

SMA: 90.58.030(2)
GMA: RCW 36.70A.480(6)

Option to expand shoreline to include buffers

If a new SMP does *not* include the option to expand SMA jurisdiction to include "land necessary for buffers for critical areas," then the local jurisdiction shall continue to regulate those critical areas and their required buffers under GMA as well as SMP.

This is sometimes referred to as "dual coverage."



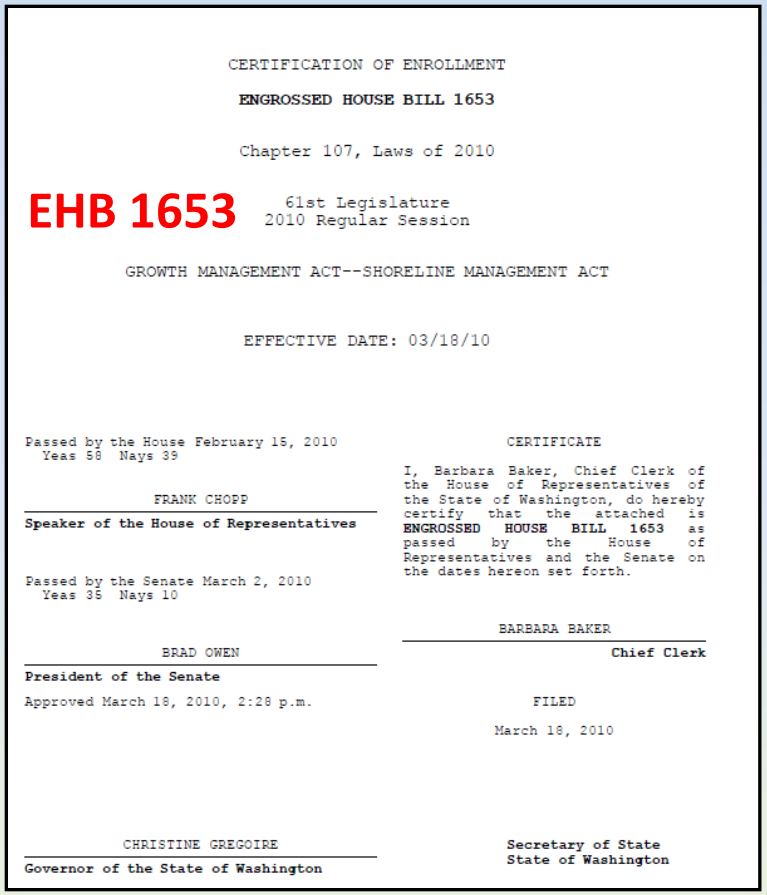
GMA: RCW 36.70A.480(6)

Critical area protections "transfer" to updated SMPs

2003 law, clarified by Legislature in 2010 :

Updated SMPs are to provide "sole" regulation of critical areas in shoreline jurisdiction.

Ecology's test for adequacy of critical area regulations is whether they achieve "no net loss of functions"



CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1653

Chapter 107, Laws of 2010

EHB 1653 61st Legislature
2010 Regular Session

GROWTH MANAGEMENT ACT--SHORELINE MANAGEMENT ACT

EFFECTIVE DATE: 03/18/10

Passed by the House February 15, 2010
Yeas 58 Nays 39

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 2, 2010
Yeas 35 Nays 10

BRAD OWEN
President of the Senate

Approved March 18, 2010, 2:28 p.m.

CHRISTINE GREGOIRE
Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1653** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED

March 18, 2010

Secretary of State
State of Washington

- ***Statute on CAOs/SMPs****: RCW 36.70A.480*
- ***SMP guidelines****: WAC 173-26-191(2)(b), -221(2)*

NOTE: Ignore dated SMA provisions RE: “equal or better”

GMA was more recently updated with clear intent to replace the “at least equal” test.

Look here

GMA Section 480

Test for level of protection to critical areas is that they assure “no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by Ecology guidelines.”

SMA Section 090

GMA: RCW 36.70A.480 (4)

SMA: RCW 90.58.610 (says GMA governs relationship between SMPs and critical areas)

Two options for regulating critical areas in SMPs

1. Integrate critical area provisions into SMP

SMP

Critical area regulations

(new or revised from existing)

2. Incorporate specific, dated CAO by reference

SMP

"Critical areas provisions of Ordinance # 07-11, dated August 4, 2007, are hereby incorporated by reference, with the following exceptions…"

CAO (Appendix)

Ordinance # 07-11
August 4, 2007

WAC 173-26-191(2)(b)

How to integrate CAO: "Applicability" section

1. Subject to the exceptions listed below, the critical areas provisions of Ordinance # 07-11, dated August 4, 2007, are incorporated by reference, *except that:*

- Reasonable Use Exceptions
- Appeal, and
- Enforcement decisions

within shoreline jurisdiction shall be governed by this Program and not the Critical Areas Ordinance.

Some ***procedures*** must follow SMA requirements. *(e.g., must use Ecology Variance permit to address "reasonable use")*

2. In the event standards in the Critical Areas Ordinance are inconsistent with standards and requirements in this Program, this Program shall govern.

- List sections that don't apply *(e.g, exemptions for small wetlands)*

Some ***standards*** may need to vary within shorelines *(e.g., to allow for water-dependent uses, or to meet "no net loss" test)*

WAC 173-26-201

Critical areas also under “General Regulations” section

Critical Areas integration often addressed “globally” under Introduction section…

… and more specifically under General Regulations.

Contents

Reference in development standards matrix

WHATCOM COUNTY SHORELINE MANAGEMENT PROGRAM

Shoreline Uses	Shoreline Area Designation								
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic
*Height Limit (a/b)	25' / 35'	25' / 35'	20' / 35'	25' / 35'	20' / 35'	20' / 35'	15' / 25'	10' / 15'	15'
Open Space % (c/d)	30% / 25%	40% / 40%	50% / 60%	30% / 25%	50% / 60%	50% / 60%	60% / 75%	95%	N/A
Residential – Single Family & Duplex									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16								
Side Setback	5'	5'	10'	5'	10'	10'	15'	15'	N/A
*Height Limit (a/b)	30' / 30'	30' / 30'	30' / 35'	30' / 30'	30' / 35'	30' / 35'	30' / 35'	30' / 35'	N/A
Residential – Multifamily (3/6 units)									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16							N/A	N/A
Side Setback (e/f)	5' +	5' +	15' +	5' +	15' +	15' +	20'	N/A	N/A
*Height Limit (a/b)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A
Residential – Multifamily (7+ units)									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16							N/A	N/A
Side Setback (e/f)	5' +	5' +	15' +	5' +	15' +	15' +	20'	N/A	N/A
*Height Limit (a/b)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A
Open Space	30%	40%	50%	30%	50%	50%	60%	N/A	N/A
Residential – Decks & Accessory Structures									
Shore Setback				n County Critical Areas Ordinance, WCC 16.16					
Side Setback	5'	5'		5'	10'	10'	15'	N/A	N/A
*Height Limit	15'	15'		15'	15'	15'	15'	N/A	N/A

Whatcom County: Critical area buffers are incorporated into SMP table that spells out height and dimensional standards

Reference in development standards matrix

3.15 Table of Regulations

Important Note: Critical area buffers apply to all shorelines regulated by this Program. Refer to Section 5.2 (Critical Areas and Shoreline Vegetation Conservation). Critical areas regulations impose buffer requirements that are established on a case-by-case basis and will require a plan prepared by a qualified professional. The Ordinary High Water Mark (OHWM) setbacks prescribed below apply to water-oriented uses (i.e. water-dependent, water-related and water-enjoyment uses) that may be allowed within the critical area buffer per Section 5.2(B)(13). The purpose of the setback is to ensure that a separation exists between water-oriented uses and the shoreline.

REGULATIONS	Urban Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
Agriculture					
OHWM Setback	*	*	*	*	NA
Building height	35'	35'	35'	35'	NA
Aquaculture					
OHWM setback	15'	15'	25'	50'	NA
Building height	35'	35'	35'	35'	10'
Boating Facilities *(Boat Launches & Marinas)*					
Water-dependent					
OHWM setback	0'	0'	0'	0'	NA
Building height	35'	30'	30'	25'	20'
Water-related					
OHWM setback	15'	15'	15'	25'	NA
Building height	35'	30'	30'	25'	NA
Commercial & industrial Development					
Water-dependent					
OHWM Setback	0'	NA	25'	NA	NA
Building Height	75'	NA	35'	NA	35'
Water-related & enjoyment					
OHWM Setback	15'	NA	50'	NA	NA
Building Height	75'	NA	35'	NA	35'
Non-water-oriented					
OHWM Setback	*	NA	*	NA	NA
Building Height	75'	NA	50'	NA	NA

OHWM = Ordinary high water mark
NA = Not applicable, refer to the appropriate Master Program section for additional standards
1 = Within one hundred (100) feet from the ordinary high water mark (OHWM)
2 = Greater than one hundred (100) feet from the OHWM to the edge of the shoreline jurisdiction
* = Use must be located outside of the Critical area buffer. See Section 5.2(B)(13) Certain exceptions apply.

City of Tumwater: Dimensional standards apply only to uses that are *water oriented* (and therefore allowed within critical area buffers). All other use/development must adhere to the critical area buffers.

However you decide to address critical areas…

- **Review CAO early**. It may include adequate standards. Use checklist for a "gap analysis."

> Review previous Ecology comments on CAOs. If suggestions were not addressed, Ecology may ask again.

- SMA must address **preferred water-oriented uses** in appropriate designations.

> e.g., clarify water-dependent uses are allowed in buffers without a variance (following the mitigation sequence).

- Existing CAO may not be adequate to address "No Net Loss"

> i.e., SMP provisions ensuring more effective protection mitigation may be needed.

Specific critical areas

1. **Wetlands**
2. **Geologically hazardous areas**
3. **Fish and wildlife habitat conservation areas**
4. **Frequently flooded areas**

5. **Critical aquifer recharge areas**

Not addressed in Ecology guidelines at all. No need to vary aquifer protections in shoreline jurisdiction.

WAC 173-26-221(2)(c)

Specific critical areas

1. Wetlands

2. Geologically hazardous areas

3. Fish and wildlife habitat conservation areas

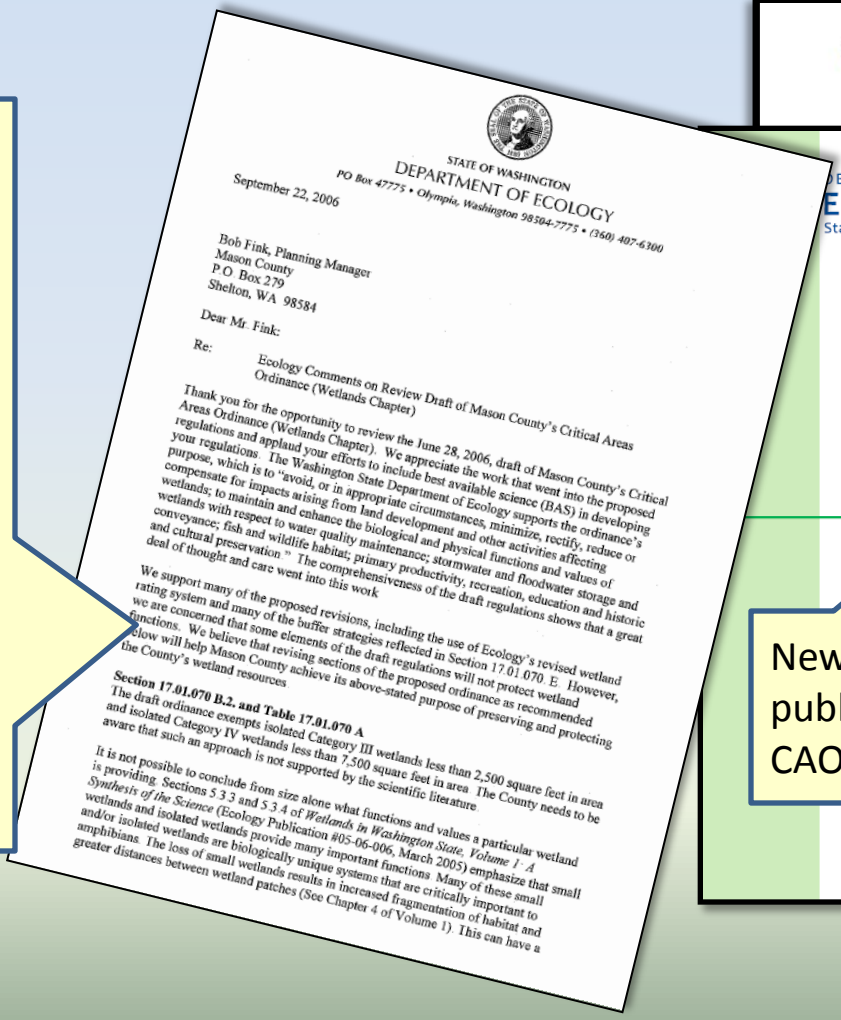
4. Frequently flooded areas

WAC 173-26-221(2)(c)(i)

Wetlands: consult Ecology guidance

"Local governments should consult the department's technical guidance documents on wetlands."

Look for Ecology comment letters on your draft CAO. These may identify areas that need attention in the SMP.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

September 22, 2006

Bob Fink, Planning Manager
Mason County
P.O. Box 279
Shelton, WA 98584

Dear Mr. Fink:

Re: Ecology Comments on Review Draft of Mason County's Critical Areas Ordinance (Wetlands Chapter)

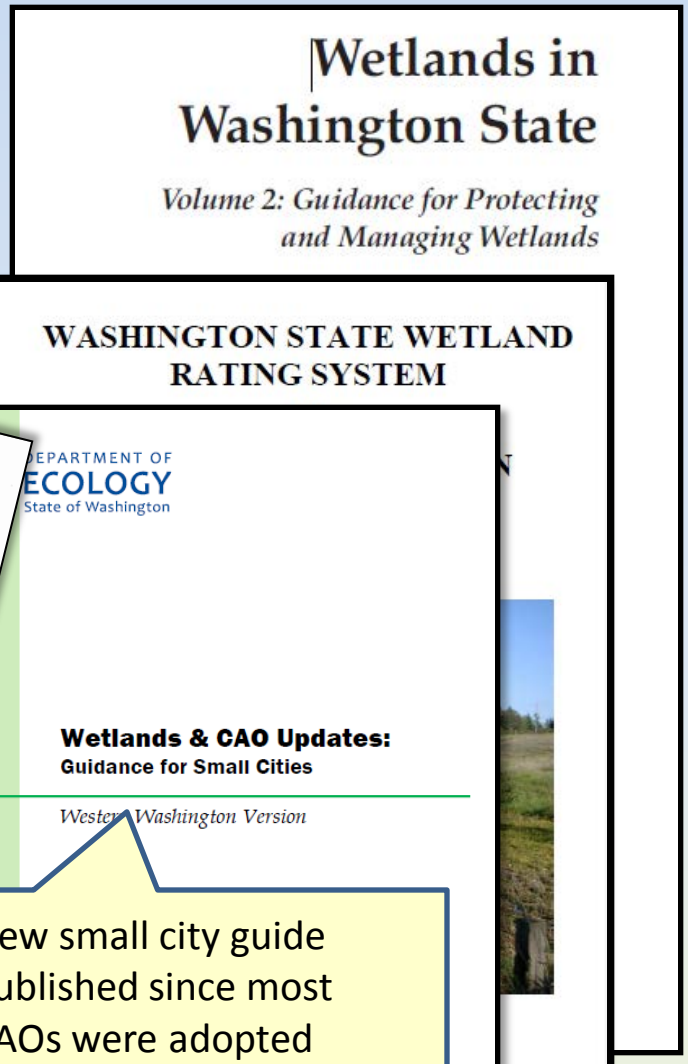
Thank you for the opportunity to review the June 28, 2006, draft of Mason County's Critical Areas Ordinance (Wetlands Chapter). We appreciate the work that went into the proposed regulations and applaud your efforts to include best available science (BAS) in developing your regulations. The Washington State Department of Ecology supports the ordinance's purpose, which is to "avoid, or in appropriate circumstances, minimize, rectify, reduce or compensate for impacts arising from land development and other activities affecting wetlands; to maintain and enhance the biological and physical functions and values of wetlands with respect to water quality maintenance; stormwater and floodwater storage and conveyance; fish and wildlife habitat; primary productivity, recreation, education and historic and cultural preservation." The comprehensiveness of the draft regulations shows that a great deal of thought and care went into this work.

We support many of the proposed revisions, including the use of Ecology's revised wetland rating system and many of the buffer strategies reflected in Section 17.01.070.E. However, we are concerned that some elements of the draft regulations will not protect wetland functions. We believe that revising sections of the proposed ordinance as recommended below will help Mason County achieve its above-stated purpose of preserving and protecting the County's wetland resources.

Section 17.01.070 B.2. and Table 17.01.070 A

The draft ordinance exempts isolated Category III wetlands less than 2,500 square feet in area and isolated Category IV wetlands less than 7,500 square feet in area. The County needs to be aware that such an approach is not supported by the scientific literature.

It is not possible to conclude from size alone what functions and values a particular wetland is providing. Sections 5.3.3 and 5.3.4 of *Wetlands in Washington State, Volume 1: A Synthesis of the Science* (Ecology Publication #05-06-006, March 2005) emphasize that small wetlands and isolated wetlands provide many important functions. Many of these small and/or isolated wetlands are biologically unique systems that are critically important to amphibians. The loss of small wetlands results in increased fragmentation of habitat and greater distances between wetland patches (See Chapter 4 of Volume 1). This can have a



Wetlands in Washington State

Volume 2: Guidance for Protecting and Managing Wetlands

WASHINGTON STATE WETLAND RATING SYSTEM

DEPARTMENT OF ECOLOGY
State of Washington

Wetlands & CAO Updates:
Guidance for Small Cities

Western Washington Version

January 2010
Publication No. 10-06-002
(1st Revision July 2011)

New small city guide published since most CAOs were adopted

WAC 173-26-221(2)(c)(i)(A)

Wetlands: definition and delineation (no flexibility)

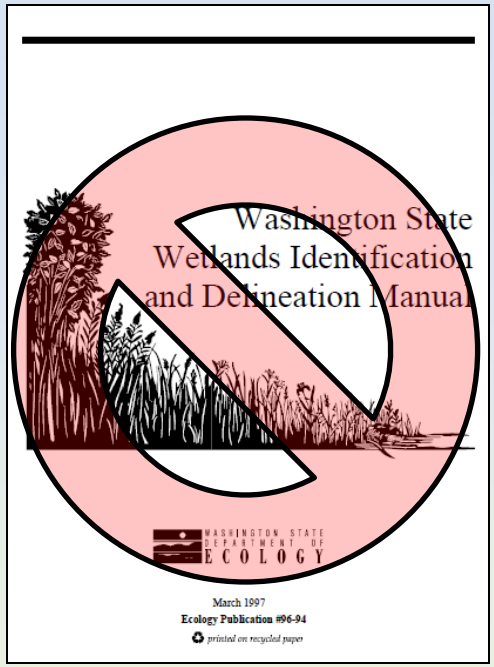
Definition: Use statutory language

Delineation:

• Ecology repealed state delineation manual (effective March 14, 2011).

• Use latest Army Corps of Engineers delineation manual with regional supplements.

• Sample text: "Delineations should be done according to the currently approved federal manual and regional supplements."



Statutory Wetlands definition: RCW 36.70A.030 (21):
Ecology delineation rule: WAC 173-22-035

Wetlands: regulations should be *comprehensive*

"Regulations shall **address the following uses to achieve**, at a minimum, **no net loss of wetland area and functions**, including lost time when the wetland does not perform the function:

• All activities that require a **shoreline permit** *(dredging, drilling, dumping, filling, construction)*

and

• Significant **vegetation removal** *(except for forest practices)*;

• Other uses or development that results in an ecological impact to the physical, chemical, or biological characteristics of wetlands; or

• Activities reducing the functions of buffers.

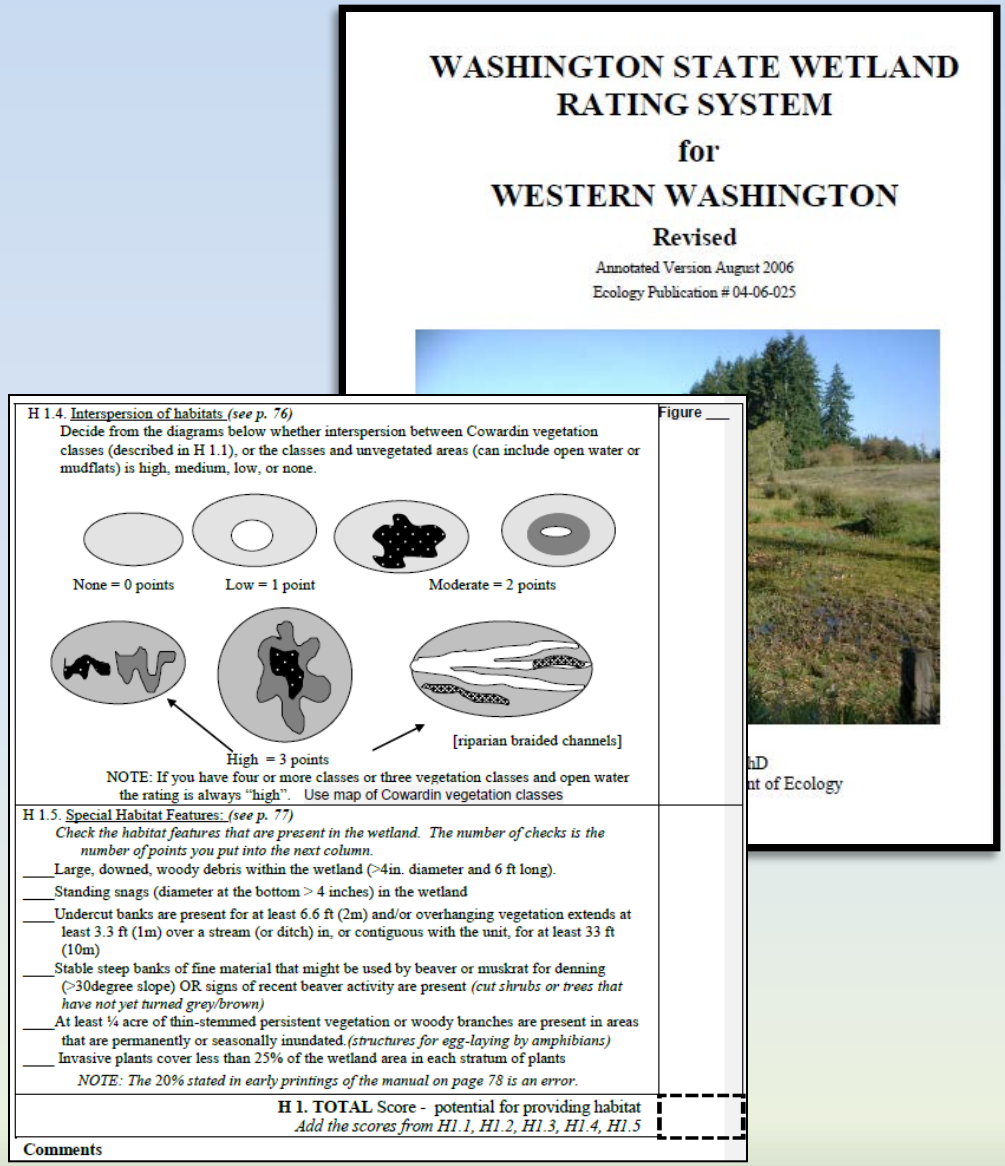
WAC 173-26-221(2)(c)(i)(A)

Wetlands: rating system

Adopt Ecology's 4-tier system, use of field forms

(Category I is high, Category IV is low)

OK to adopt 2004 version "as amended."



WASHINGTON STATE WETLAND RATING SYSTEM

for

WESTERN WASHINGTON

Revised

Annotated Version August 2006

Ecology Publication # 04-06-025

hD

nt of Ecology

H 1.4. Interspersion of habitats *(see p. 76)*

Decide from the diagrams below whether interspersion between Cowardin vegetation classes (described in H 1.1), or the classes and unvegetated areas (can include open water or mudflats) is high, medium, low, or none.

Figure ___

None = 0 points

Low = 1 point

Moderate = 2 points

High = 3 points

[riparian braided channels]

NOTE: If you have four or more classes or three vegetation classes and open water the rating is always "high". Use map of Cowardin vegetation classes

H 1.5. Special Habitat Features: *(see p. 77)*

Check the habitat features that are present in the wetland. The number of checks is the number of points you put into the next column.

___Large, downed, woody debris within the wetland (>4in. diameter and 6 ft long).

___Standing snags (diameter at the bottom > 4 inches) in the wetland

___Undercut banks are present for at least 6.6 ft (2m) and/or overhanging vegetation extends at least 3.3 ft (1m) over a stream (or ditch) in, or contiguous with the unit, for at least 33 ft (10m)

___Stable steep banks of fine material that might be used by beaver or muskrat for denning (>30degree slope) OR signs of recent beaver activity are present *(cut shrubs or trees that have not yet turned grey/brown)*

___At least ¼ acre of thin-stemmed persistent vegetation or woody branches are present in areas that are permanently or seasonally inundated *(structures for egg-laying by amphibians)*

___ Invasive plants cover less than 25% of the wetland area in each stratum of plants

NOTE: The 20% stated in early printings of the manual on page 78 is an error.

H 1. TOTAL Score - potential for providing habitat

Add the scores from H1.1, H1.2, H1.3, H1.4, H1.5

Comments

WAC 173-26-221(2)(c)(i)(B)

Wetlands: buffers and setbacks

Buffers should be based on the wetlands rating system.

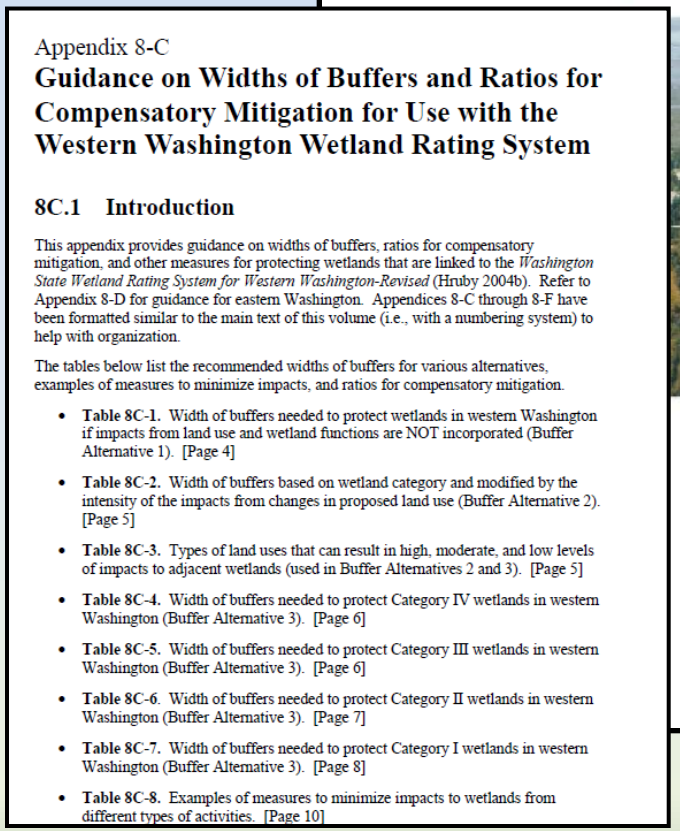
Options:

1. Appendix 8-C in Ecology *Wetlands in WA Vol 2: Guidance for Protecting and Managing Wetlands*

2. Small City Guide

3. Develop your own regionally specific, scientifically based method.

Building setback from buffer edge



Appendix 8-C

Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System

8C.1 Introduction

This appendix provides guidance on widths of buffers, ratios for compensatory mitigation, and other measures for protecting wetlands that are linked to the *Washington State Wetland Rating System for Western Washington-Revised* (Hruby 2004b). Refer to Appendix 8-D for guidance for eastern Washington. Appendices 8-C through 8-F have been formatted similar to the main text of this volume (i.e., with a numbering system) to help with organization.

The tables below list the recommended widths of buffers for various alternatives, examples of measures to minimize impacts, and ratios for compensatory mitigation.

- **Table 8C-1.** Width of buffers needed to protect wetlands in western Washington if impacts from land use and wetland functions are NOT incorporated (Buffer Alternative 1). [Page 4]
- **Table 8C-2.** Width of buffers based on wetland category and modified by the intensity of the impacts from changes in proposed land use (Buffer Alternative 2). [Page 5]
- **Table 8C-3.** Types of land uses that can result in high, moderate, and low levels of impacts to adjacent wetlands (used in Buffer Alternatives 2 and 3). [Page 5]
- **Table 8C-4.** Width of buffers needed to protect Category IV wetlands in western Washington (Buffer Alternative 3). [Page 6]
- **Table 8C-5.** Width of buffers needed to protect Category III wetlands in western Washington (Buffer Alternative 3). [Page 6]
- **Table 8C-6.** Width of buffers needed to protect Category II wetlands in western Washington (Buffer Alternative 3). [Page 7]
- **Table 8C-7.** Width of buffers needed to protect Category I wetlands in western Washington (Buffer Alternative 3). [Page 8]
- **Table 8C-8.** Examples of measures to minimize impacts to wetlands from different types of activities. [Page 10]

Wetlands in Washington State

Volume 2: Guidance for Protecting and Managing Wetlands

Final

WAC 173-26-221(2)(c)(i)(D)

Wetlands: buffer “Alternative 3” is most flexible

Appendix 8-C:

Most flexible option uses habitat value & land use intensity to assign appropriate buffer

Example buffers for Category III wetland

Cat III wetland	Buffer width by land use
Moderate level of habitat function (habitat score of 20 - 28 pts.)	Low: 75’
	Moderate: 110’
	High: 150’
Low level of habitat function (habitat score less than 20 pts.)	Low: 40’
	Moderate: 60’
	High: 80’

Wetlands: mitigation standards

Use **mitigation ratios** from Ecology guidance

Ratios can be **increased** (e.g., when creating lower category wetlands) or **decreased** (e.g., when creating higher category wetland)

Allow **off-site** Compensatory Mitigation (e.g., when on-site conditions inadequate to establish wetland vegetation, soil or hydrology)

Require annual **monitoring reports** for 5 to 10 years

Category	Creation	Rehabilitation	Enhancement
IV	1.5: 1	3: 1	6:1
III	2:1	4:1	8:1
II	3:1	8:1	12:1
I	4:1	8:1	16:1
I (Forested)	6:1	12:1	24:1

WAC 173-26-221(2)(c)(i)(D)

Specific critical areas

1. Wetlands

2. Geologically hazardous areas

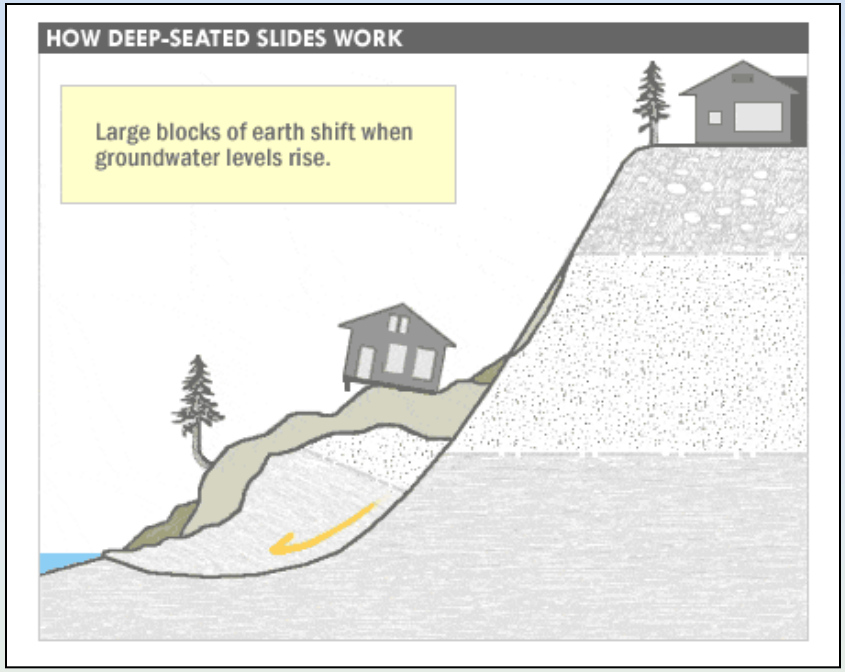
3. Fish and wildlife habitat conservation areas

4. Frequently flooded areas

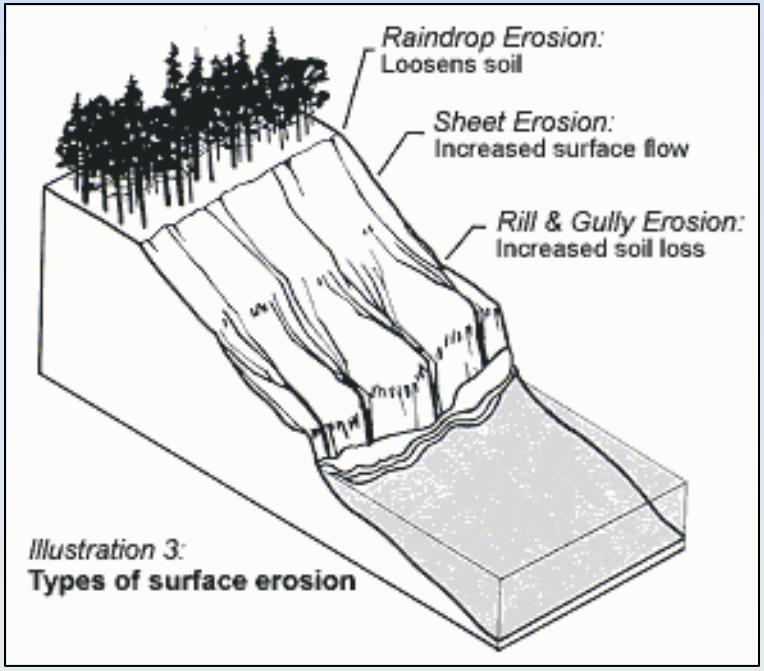
WAC 173-26-221(2)(c)(ii)

Geologically hazardous areas: two main relevant types

Landslide hazard areas



Erosion hazard areas



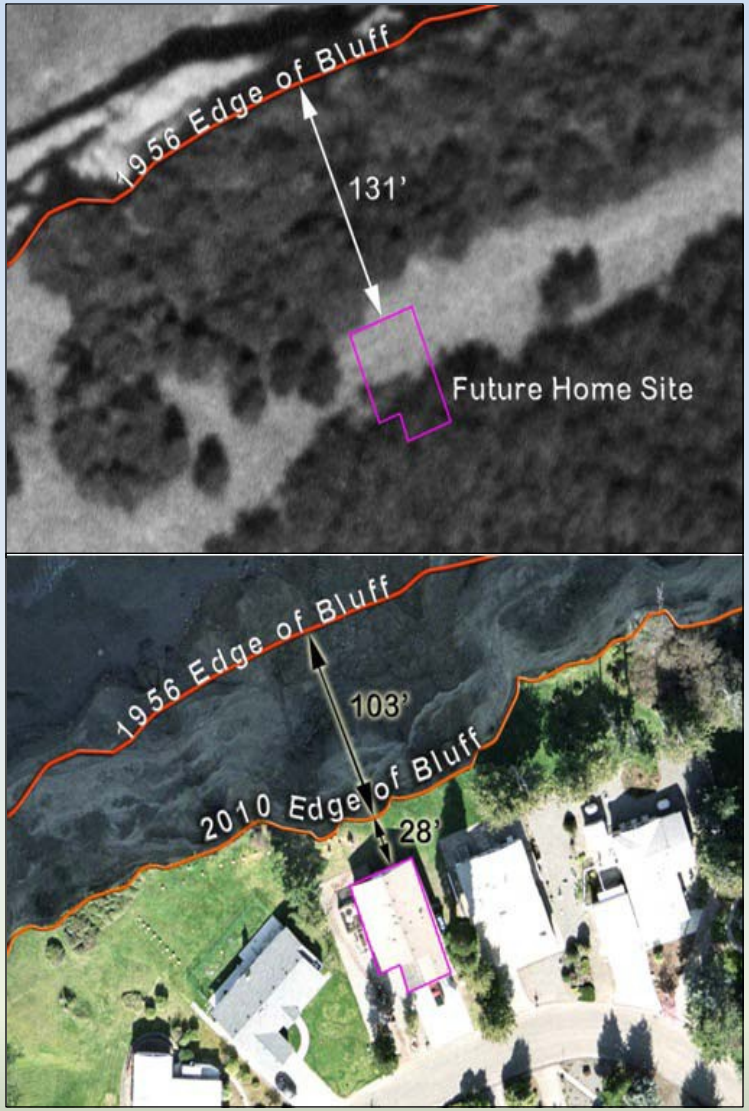
Ecology guidelines are not specific to other geological hazards addressed under GMA *(seismic, mine and volcanic hazards)*

WAC 173-26-221(2)(c)(ii)

Geologically hazardous areas: key principle

"Do not allow **new development or the creation of new lots** that would cause foreseeable risk from geological conditions to people or improvements during the life of the development."

"Do not allow **new development** that would require structural shoreline stabilization over the life of the development."



WAC 173-26-221(2)(c)(ii)(B) and (C)

Geo-hazards: Typical CAO approaches can be adequate

Setbacks from edge of hazard areas

Requiring projects within 300’ of a hazard to include **geotechnical report,** to demonstrate how hazards are to be avoided

For erosion-prone areas, require **Soil Erosion and Sediment Control Plan**

Photo by Len Palmer

(d) Recommended buffers from the landslide hazard areas shoreline bluffs and the tops of other slopes on the property.
Located on page(s) 7, Figure 2
(e) Recommended setbacks from the landslide hazard areas shoreline bluffs and the tops of other slopes on the property.
Located on page(s) 7, Figure 2

(8) Recommendations for the preparation of a detailed clearing and grading plan which specifically identifies vegetation to be removed, a schedule for vegetation removal and replanting, and the method of vegetation removal.
Located on page(s) 7, 8, 9

(9) Recommendations for the preparation of a detailed temporary erosion control plan which identifies the specific mitigating measures to be implemented during construction to protect the slope from erosion, landslides and harmful construction methods.
Located on page(s) 7, 8, 9

(10) An analysis of both on-site and off-site impacts of the proposed development.
Located on page(s) 7, 8

(11) Specifications of final development conditions such as, vegetative management, drainage, erosion control, and buffer widths.
Located on page(s) 7

(12) Recommendations for the preparation of structural mitigation or details of other proposed mitigation.
Located on page(s) 8, 9

(13) A site map drawn to scale showing the property boundaries, scale, north arrow, and the location and nature of existing and proposed development on the site.
Located on Map(s) Fig. 2

I, Fred Rosenbaum hereby certify under penalty of perjury that I am a civil engineer licensed in the State of Washington with specialized knowledge of geotechnical/geological engineering or a geologist or engineering geologist licensed in the State of Washington with special knowledge of the local conditions. I also certify that the Geotechnical Report, dated 12/23/09, and entitled Geotechnical Report Parcel #'s 1210f-42-00140 and 1208-46-00052 meets all the requirements of the Mason County Resource Ordinance, Landslide Hazard Section, is complete and true, that the assessment demonstrates conclusively that the risks posed by the landslide hazard can be mitigated through the included geotechnical design recommendations, and that all hazards are mitigated in such a manner as to prevent harm to property and public health and safety. (Signature and Stamp)

State of Washington

Common practice: Require Report from licensed civil engineer or engineering geologist.

Geologically hazardous areas: exceptions allowed when…

"Exceptions may be made for the limited instances where stabilization is necessary **to protect allowed uses where no alternative locations are available** and no net loss of ecological functions will result."

"Stabilization structures or measures **to protect existing primary residential structures** may be allowed where no alternative exists and if no net loss of ecological functions will result."

Use of "No Net Loss" = require mitigation for unavoidable impacts…

WAC 173-26-221(2)(c)(ii)(C) and (D)

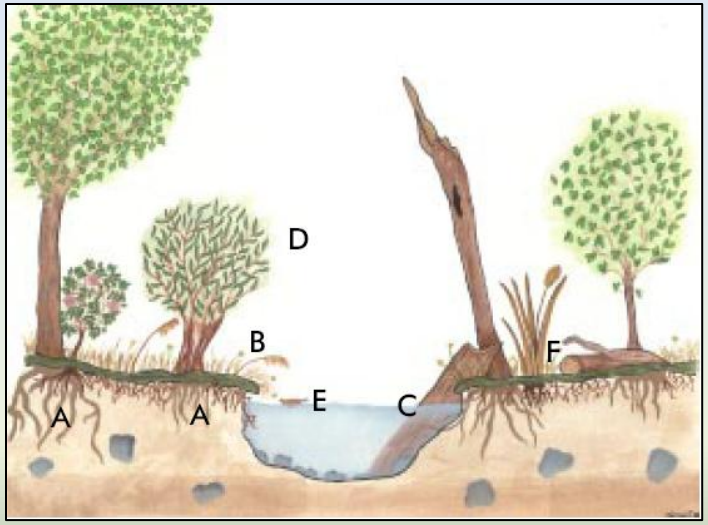
Specific critical areas

1. Wetlands

2. Geologically hazardous areas

3. Fish and wildlife habitat conservation areas

4. Frequently flooded areas



WAC 173-26-221(2)(c)(iii) & (iv)

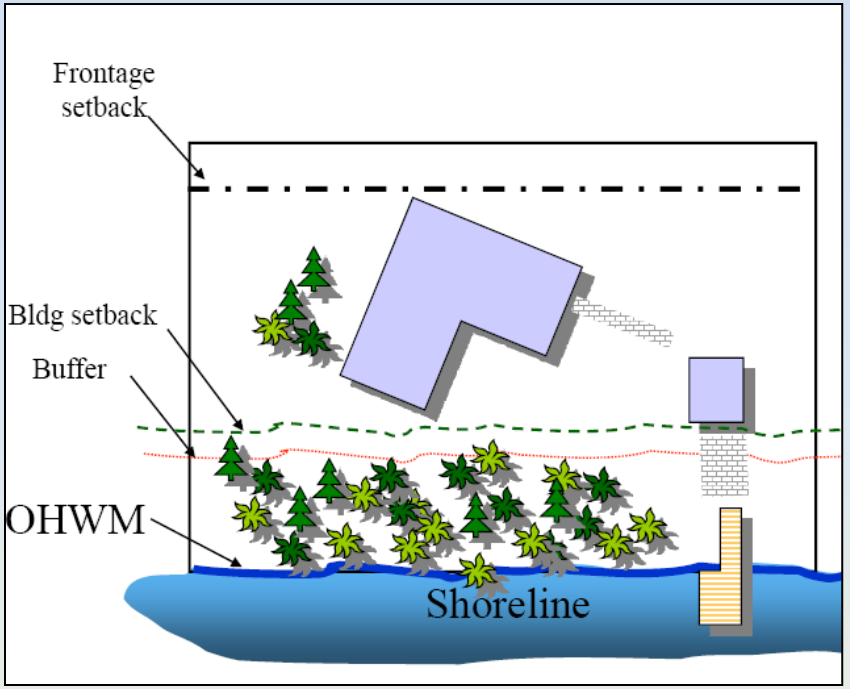
Fish and wildlife habitat conservation areas

Ecology guidelines separate these:

- **Saltwater** habitats
- **Freshwater** habitats

No net loss is the standard. Buffers and development standards for over and in water structures are common provisions.

Ecology is looking for a minimum below which a variance is required.



WAC 173-26-221(2)(c)(iii) and (iv)

“Literature-based” fish and wildlife buffers

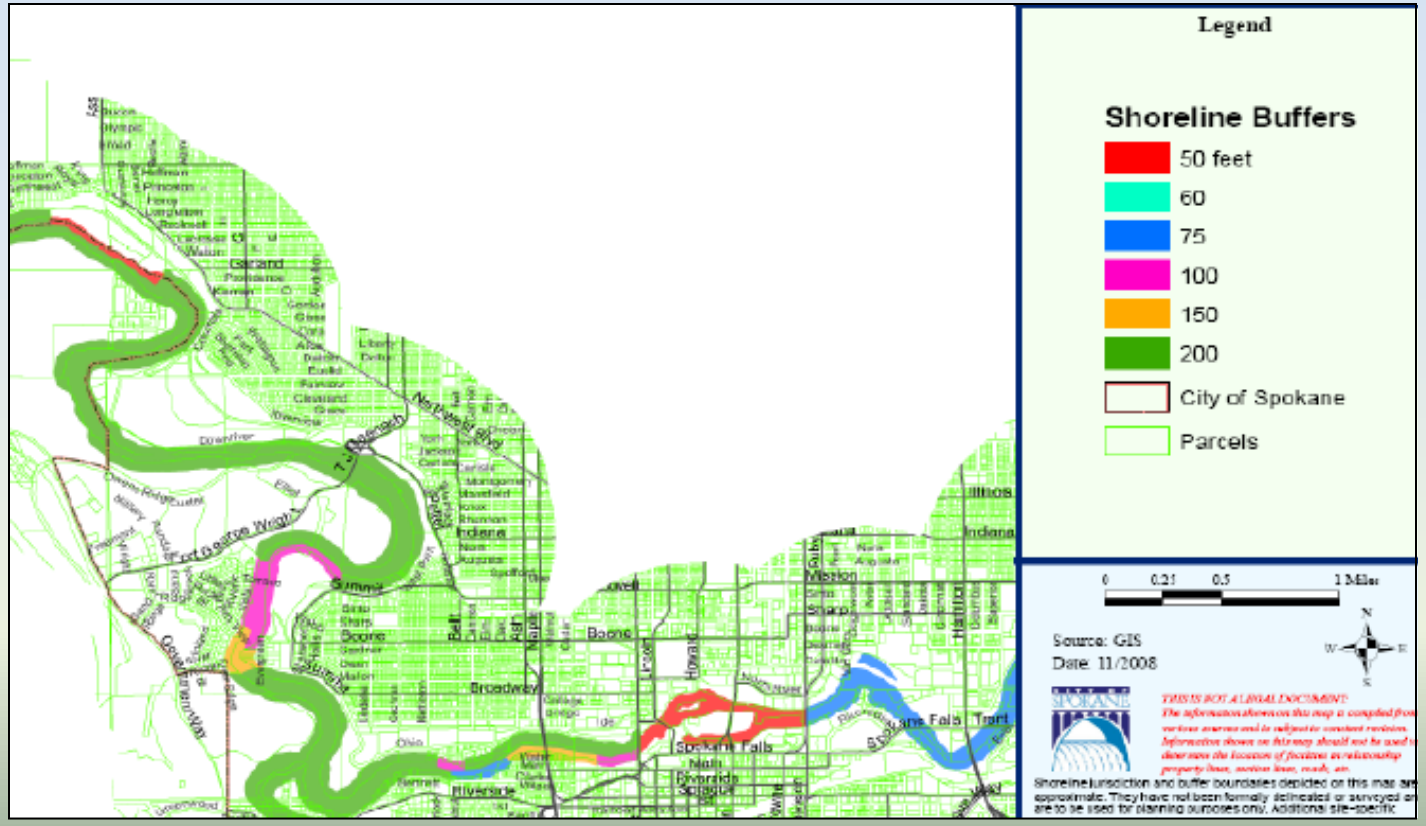
County SMPs have typically incorporated CAOs with “literature-based” buffers that define an area or zone(s).

Typically buffers are required to be retained in their natural condition, except as provided specifically (may require “Habitat Management Plans”).

Habitat Type	Buffer
Rivers (DNR Type S Stream)	150 feet
Marine Shoreline	150 feet
Lake Shoreline	100 feet

“Inventory-based” fish and wildlife habitat buffers

- Tailored buffers based on existing conditions and future anticipated development in shoreline jurisdiction (*show your work*)
- Can use environment designations and/or use regulations to vary buffers
- Option for areas with constrained lots: percentage of parcel depth *(examples at end of slideshow)*



Specific critical areas

1. Wetlands

2. Geologically hazardous areas

3. Fish and wildlife habitat conservation areas

4. Frequently flooded areas

WAC 173-26-221(3)

Frequently flooded areas

Most local CAOs use FEMA regulations that focus on **construction practices**.

Ecology guidelines recognize flooding and channel migration as natural processes that can be a safety threat.

Regulations emphasize limiting development that will need **structural** flood hazard measures (e.g., levees) in the future.

When new structures are needed, must meet No Net Loss standard.

WAC 173-26-221(3)(b)

Frequently flooded areas: flood hazard reduction

Use existing Comprehensive Flood Management Plans, etc.

Development in floodplains should not significantly or cumulatively increase flood hazards.

Limit uses to necessities like bridges; encourage more natural hydrologic conditions.

WAC 173-26-221(3)(b) & (c)

Frequently flooded areas: channel migration zones

Does your CAO address Channel Migration Zones (CMZs)?

Ecology requires that your SMP address CMZs.

The Guidelines provide basic parameters that can be used to establish the general extent of CMZs for SMP management purposes.

**CMZs do not extend SMA jurisdiction automatically*

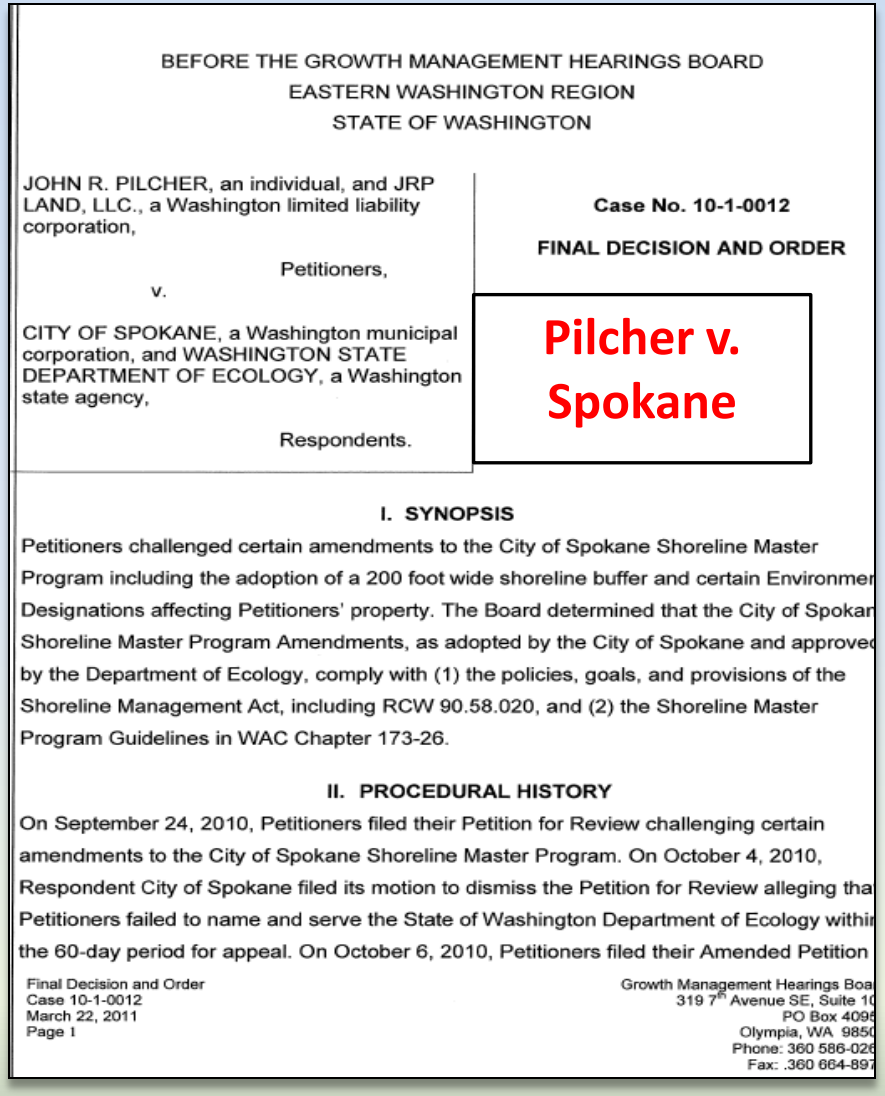
WAC 173-26-221(3)(c)

Frequently flooded areas: channel migration zones

Example of use of CMZ data:

Ecology denied a last-minute change to Spokane SMP that reduced buffers in an area subject to migration.

Growth Hearings Board upheld Ecology on appeal, based on evidence in the record supporting the extent of the channel migration zone.



BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

JOHN R. PILCHER, an individual, and JRP LAND, LLC., a Washington limited liability corporation,

Petitioners,

v.

CITY OF SPOKANE, a Washington municipal corporation, and WASHINGTON STATE DEPARTMENT OF ECOLOGY, a Washington state agency,

Respondents.

Case No. 10-1-0012

FINAL DECISION AND ORDER

Pilcher v. Spokane

I. SYNOPSIS

Petitioners challenged certain amendments to the City of Spokane Shoreline Master Program including the adoption of a 200 foot wide shoreline buffer and certain Environmer Designations affecting Petitioners' property. The Board determined that the City of Spokar Shoreline Master Program Amendments, as adopted by the City of Spokane and approve by the Department of Ecology, comply with (1) the policies, goals, and provisions of the Shoreline Management Act, including RCW 90.58.020, and (2) the Shoreline Master Program Guidelines in WAC Chapter 173-26.

II. PROCEDURAL HISTORY

On September 24, 2010, Petitioners filed their Petition for Review challenging certain amendments to the City of Spokane Shoreline Master Program. On October 4, 2010, Respondent City of Spokane filed its motion to dismiss the Petition for Review alleging tha Petitioners failed to name and serve the State of Washington Department of Ecology withi the 60-day period for appeal. On October 6, 2010, Petitioners filed their Amended Petition

Final Decision and Order
Case 10-1-0012
March 22, 2011
Page 1

Growth Management Hearings Boa
319 7th Avenue SE, Suite 1
PO Box 409
Olympia, WA 985
Phone: 360 586-02
Fax: .360 664-89

Exceptions & exemptions

- Issues around “exceptions” in CAOs
- Example of buffers tailored to existing conditions

Some things Ecology looks for in critical area regulations

- Inappropriate exceptions in CAOs *(e.g., exemptions that provide no protections for small wetlands)*
- Conflicts between SMP and CAO provisions (e.g., trails providing access to the water)
- How setbacks and buffers mesh/interact (i.e., do you have a setback or a buffer or both? Is there a setback from the edge of the buffer? etc.)

- NOTE: SMP "exemption" is a very specific exemption from **permit requirements** spelled out in laws and rules (see definition of "development" and "substantial development")

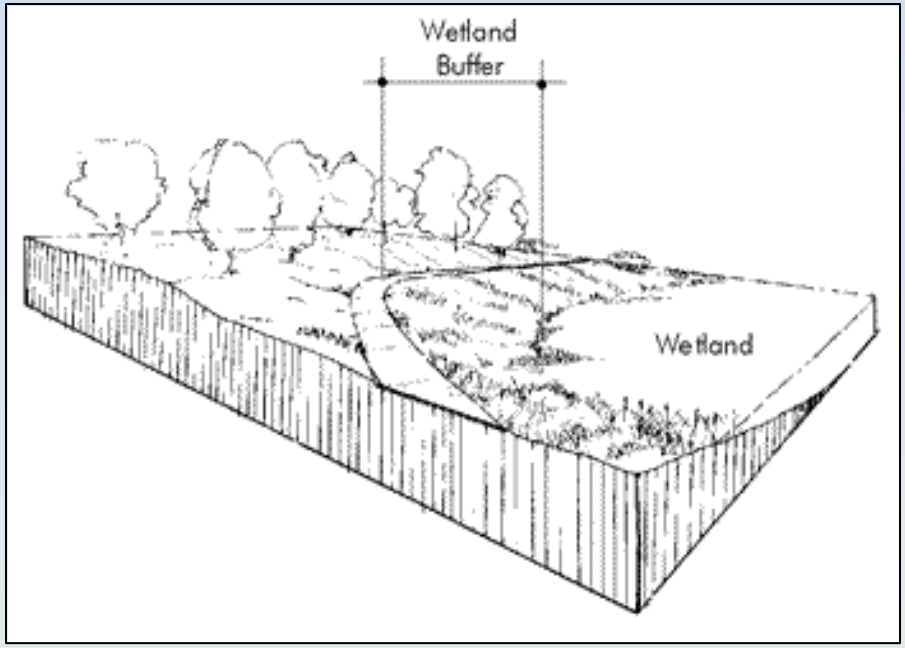
Permit exemptions: WAC 173-27-040(2)

On regulating uses within critical area buffers

Regulations should limit **permitted uses** in buffers.

Can include reasonable exceptions, e.g.:

- Stormwater bioswales in outer 25%
- Recreational trails in outer 25%
- Selective timber cut in outer 25% of Category I / II, and outer 50% of Category III / IV



Buffer averaging and reduction

Buffer Width Averaging

• Total area of buffer after averaging = area within buffer prior to averaging.

Buffer Reduction

• No reductions of more than 25% of standard width *without a variance* (also applies to averaging)

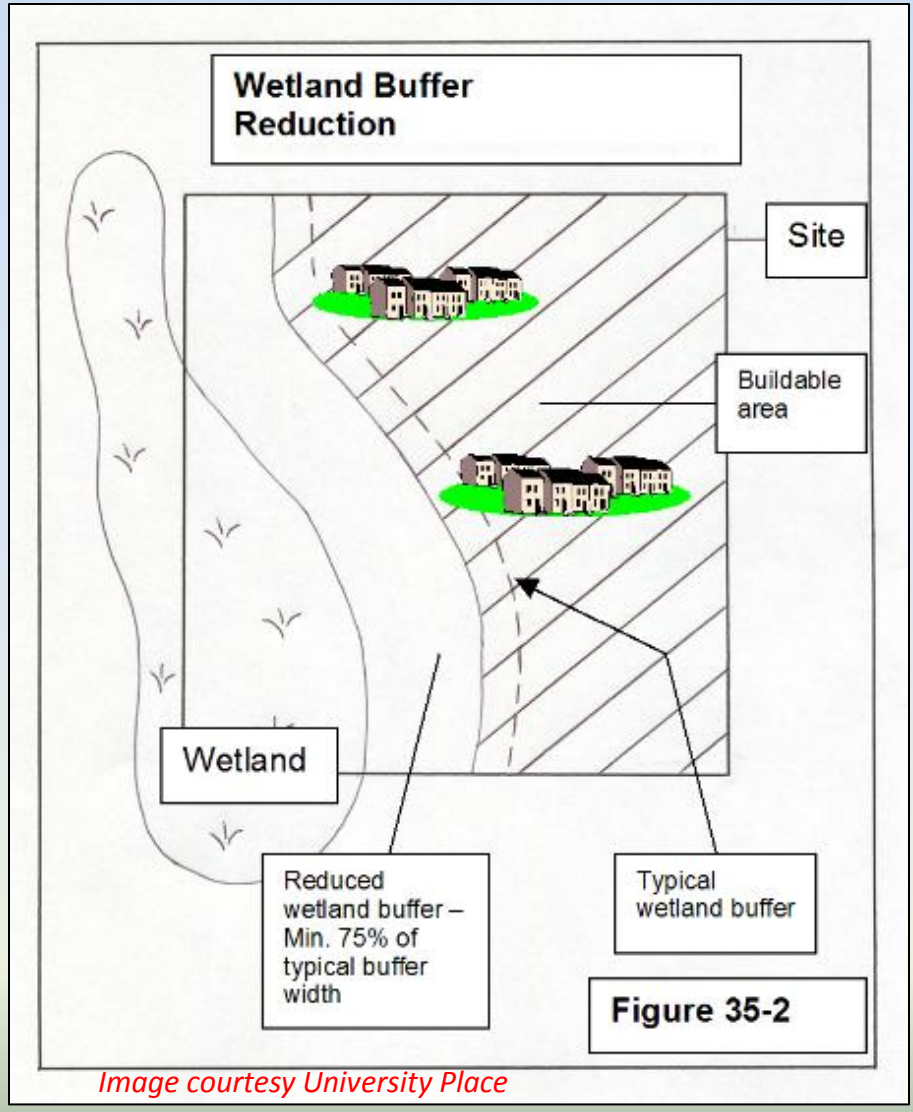


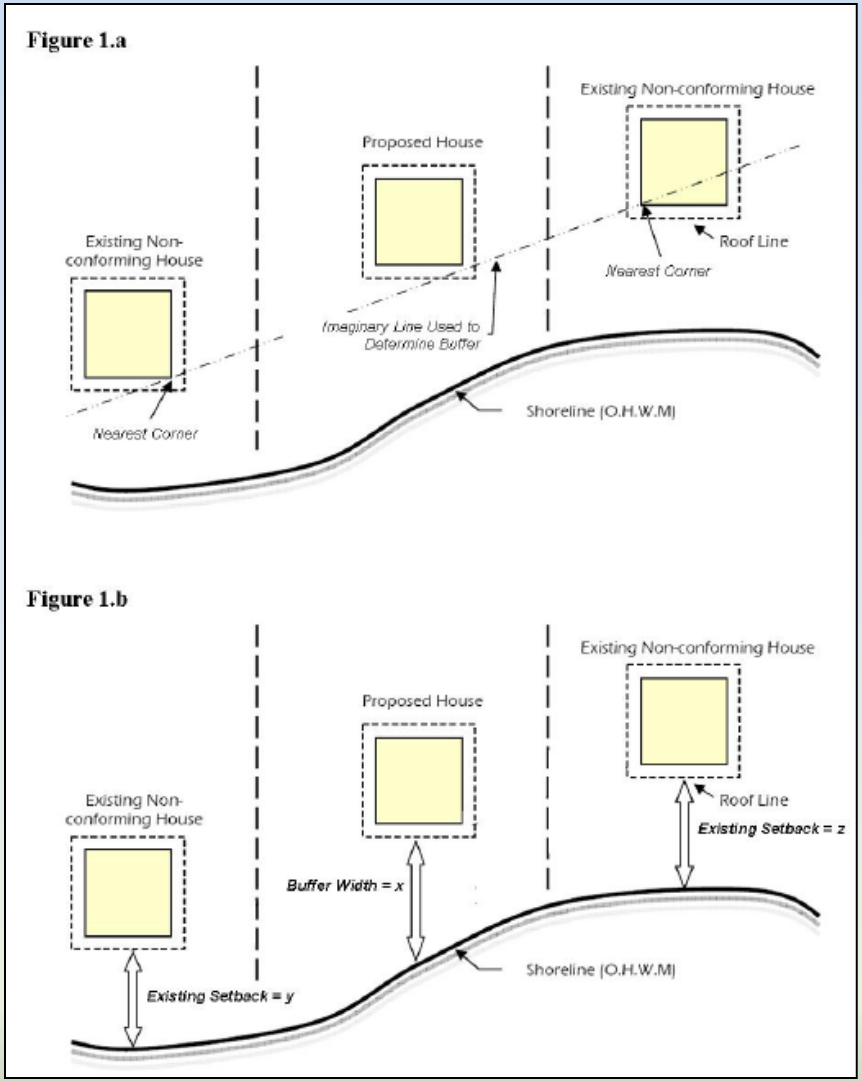
Image courtesy University Place

Exception for single family homes: common line

View protection provision for single family residences

Jefferson Co SMP example:
On non-conforming lots, authorizes use of **common line setback to** accommodate shore views roughly comparable to adjacent residences.

SMP includes specific criteria for when this option can be used



Exception from Variance: single family homes on small lots

Jefferson Co example: To address buildable but very shallow lots (depth of the lot = or < buffer)

Regulations – Exceptions to Critical Area and Shoreline Buffer Standards:
A new single family residence on legal lot that is nonconforming with respect to buffer standards may be allowed *without a shoreline variance* provided:

- "Buildable area" landward of the shoreline buffer <2,500 sf twenty + driveway <1,100 sf.
- Must consolidate lots under common ownership that will alleviate the nonconformity;
- Doesn't apply to geologic hazard areas
- Must mitigate adverse impacts (e.g., pervious pavement)
- No structures closer than 30' from the ordinary high water mark

SMP defines very specific circumstances where a SFR can be built on a small lot without a Variance permit. Includes requirements to mitigate impacts.

Agriculture: see Ecology guidelines

Review Critical Areas Ordinance carefully to ensure existing and ongoing agriculture is not affected.

SMA requires that SMPs "shall not require modification of or limit **agricultural activities** occurring **on agricultural lands**."

Use the broad inclusive statutory definitions of "agricultural activities" and "agricultural lands."

New agricultural activities would need to comply with any required buffers

Many counties taking up the "Voluntary Stewardship" program to address critical areas on agricultural land (WA Conservation Commission)

Definitions: WAC 173-26-020(3)
Agriculture use regulations: WAC 173-26-241(3)(a)

Forestry: see Ecology guidelines

SMPs should rely on State Forest Practices Act Rules as adequate management for **commercial forest practices**,

except for

conversions to another use ("Class IV - General Forest Practices")

NOTE: The SMA (state law) includes a limitation of harvesting 10% merchantable timber in 10-year period on Shoreline of Statewide Significance *(very large rivers)*

WAC 173-26-241(3)(e)

View corridors

OK to include allowances for **pruning and selective cutting** for view corridors, but don't allow huge loopholes.

Example approach:

"Alter minimum needed for views, minimize shrub vegetation removal and ground disturbance. "

Can include specific criteria, e.g.,:
Trees <6" dbh: Can cut up to 10% of without county authorization.

Trees > 6" dbh: Limited to 15 percent of such trees in the buffer. Need county approval, must replace with native trees/shrubs.

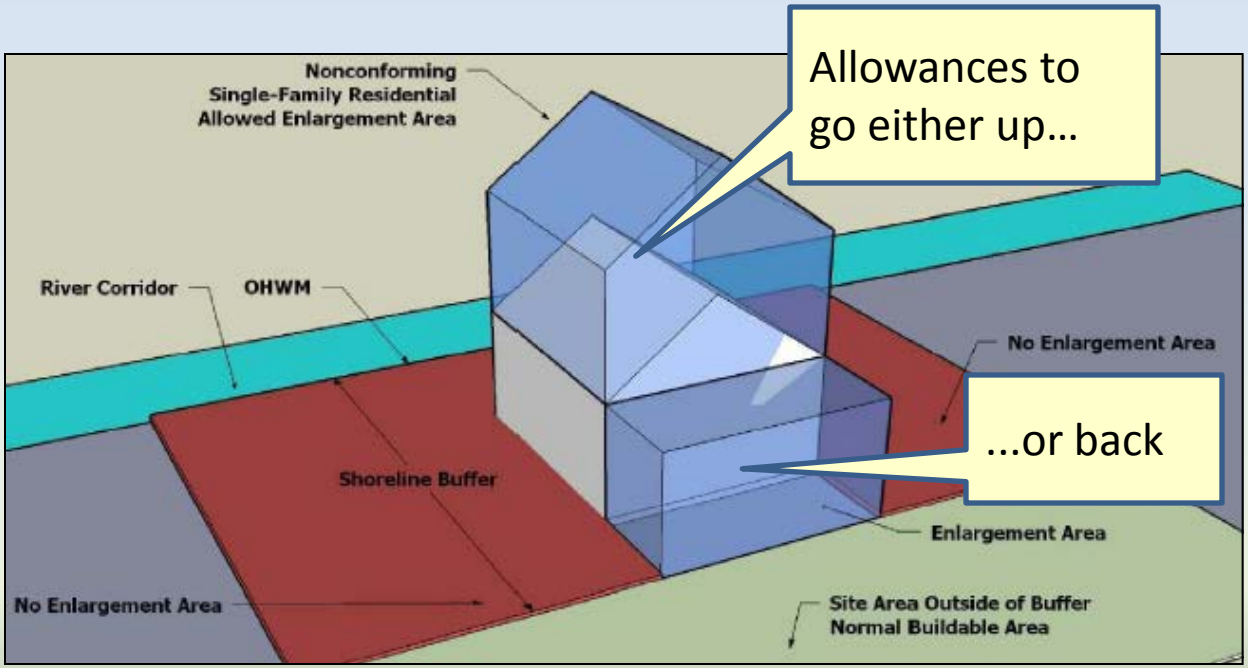
Illustration 12:
Alternative Pruning Practices: Conifers

Remodel/reconstruction (nonconforming structure)

Allowances for remodels , and reconstruction of structures destroyed by fire or other natural disaster .

Typically allow reconstruction within existing building footprint.

Local policy decision: Some SMPs allow a small or one-time increase if the modification doesn't increase nonconformity (intrusion into a buffer).



Ecology "default" for non-conforming uses: WAC 173-27-080

Other common allowances

Maintaining **existing landscaped areas within buffer**

Unpaved trails associated with residential use < 3’ wide unless additional width needed for safety in a hazard area.

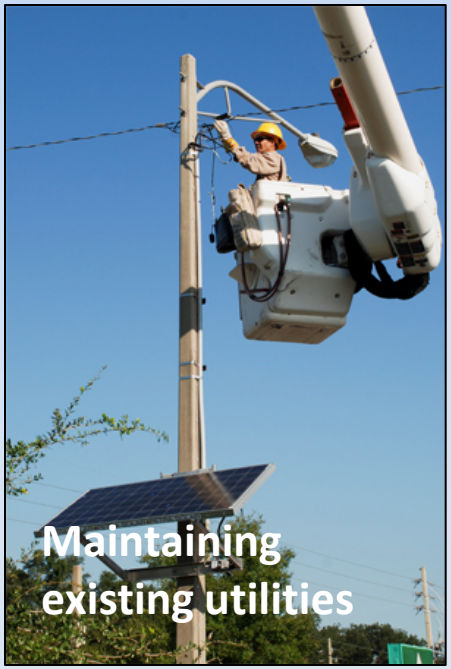
Harvesting Wild Crops

Noxious weeds and **hazard trees**

Passive recreation (fishing /hunting)

Site investigative work

Maintaining existing roads/driveways and **facilities w/in existing ROW**, e.g. electric; water, sewer lines; natural gas, cable


Maintaining existing utilities

Removing invasive species, Enhancing buffers

Example from Bremerton: designations + parcel depth

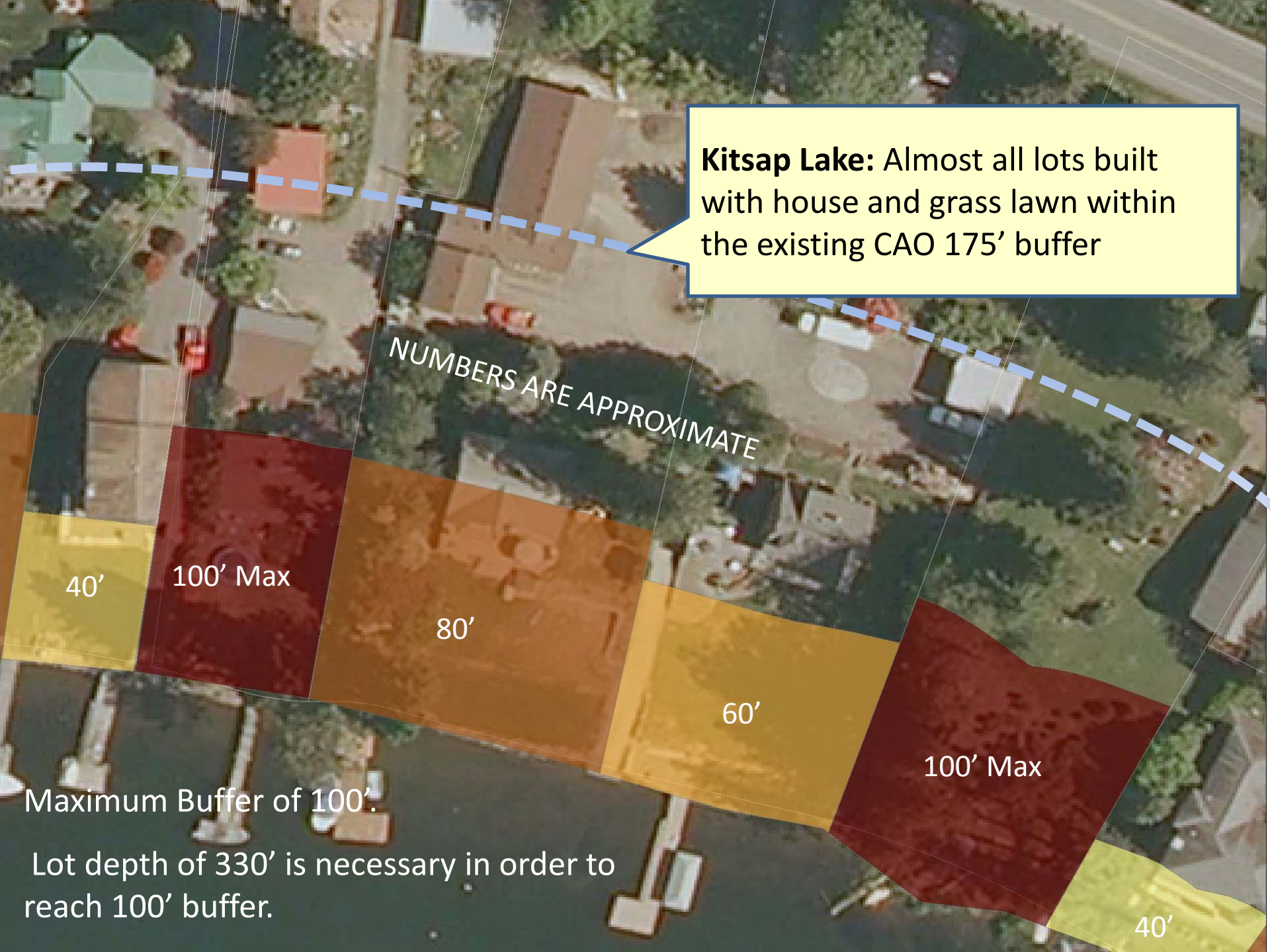
DESIGNATION	Minimum Building Setback	Buffer Width Standard
URBAN CONSERVANCY	15 feet beyond buffer	175 feet
SINGLE FAMILY & MULTI FAMILY RESIDENTIAL		
Lot depth less than 125’	5 feet beyond buffer	20% of lot depth
Lot depth 125’ to 199’	10 feet beyond buffer	20% of lot depth
Lot depth greater than 200’	15 feet beyond buffer	30% of lot depth (maximum of 100’)
RECREATIONAL	15 feet beyond buffer	100 feet
COMMERCIAL / INDUSTRIAL / DOWNTOWN WATERFRONT	15 feet beyond buffer	50 feet

(1) If lot depth<150’ on Commercial or Recreational lots, buffer reduced to 20% of lot depth.
(2) In no case shall a buffer be less than 10’ or greater than 100’ in the Shoreline Residential Designation*.*

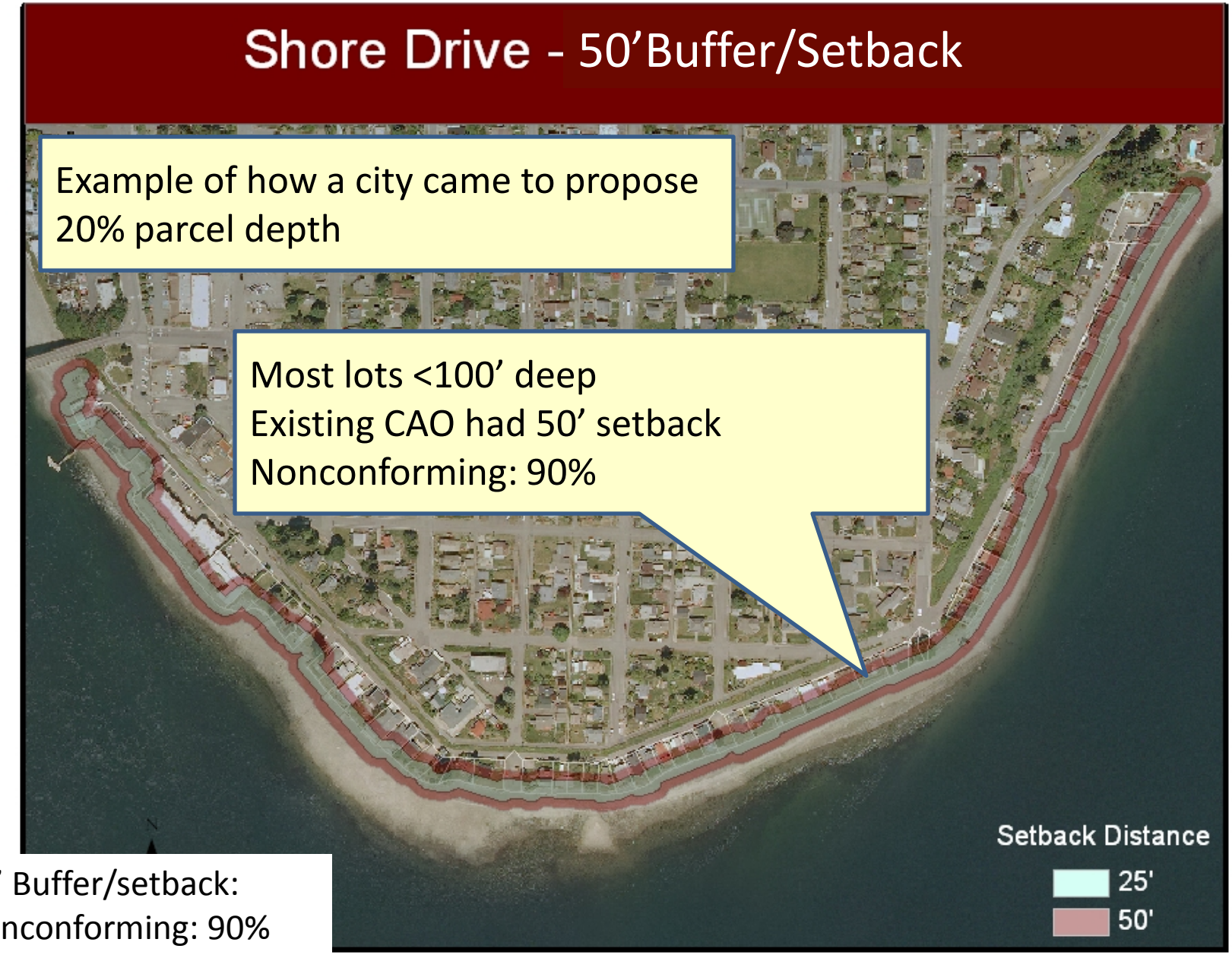
Residential buffers are site-specific to parcels

- Tailored buffers = need high-res data, more analysis up-front

- Residential buffers determined by lot depth (20% - 30%)
- 5’ -15’ setback
- Small lot = small buffer
- Big lot = big buffer

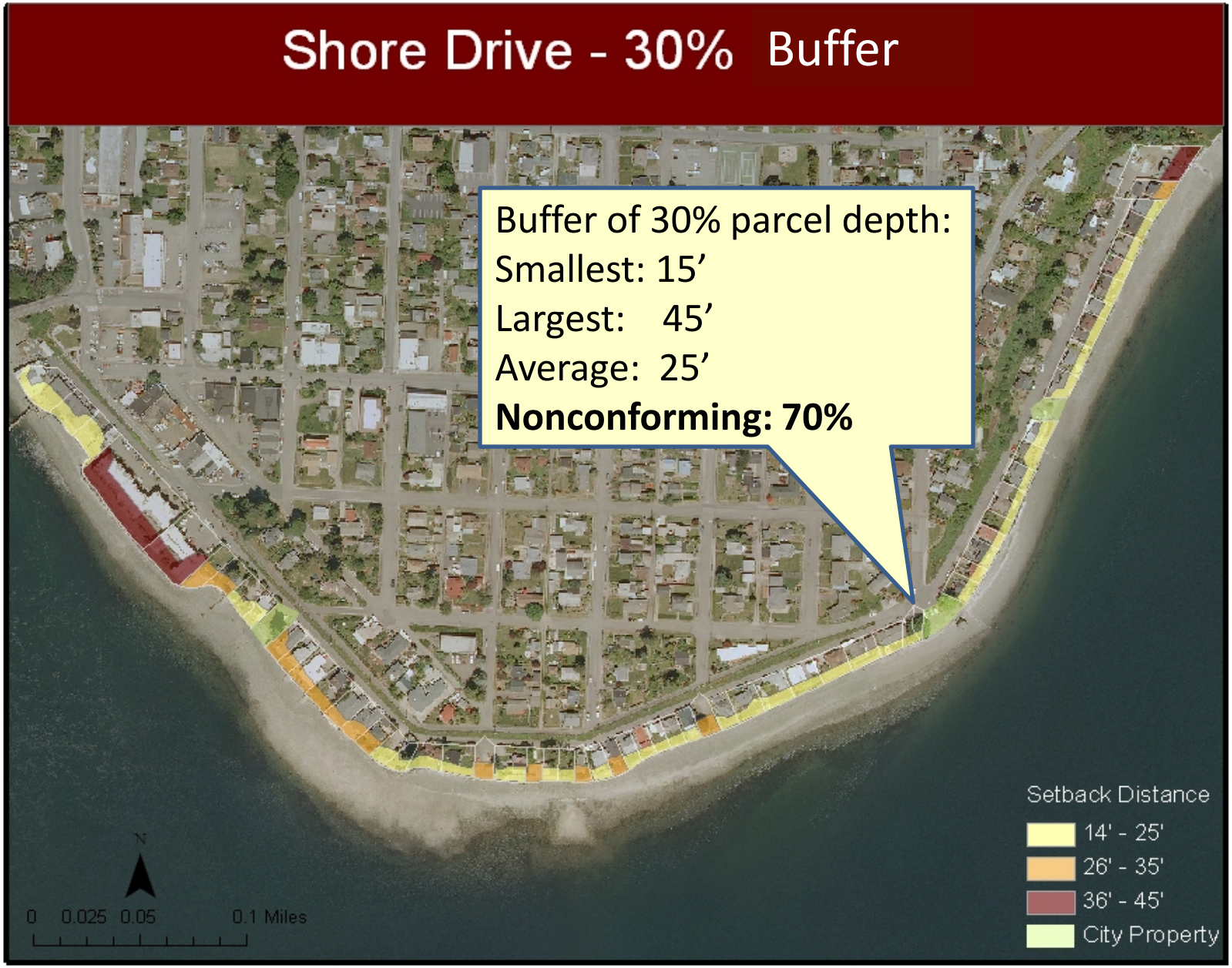

Kitsap Lake: Almost all lots built with house and grass lawn within the existing CAO 175’ buffer
NUMBERS ARE APPROXIMATE
40’
100’ Max
80’
60’
100’ Max
40’
Maximum Buffer of 100’.
Lot depth of 330’ is necessary in order to reach 100’ buffer.

Shore Drive - 50’Buffer/Setback

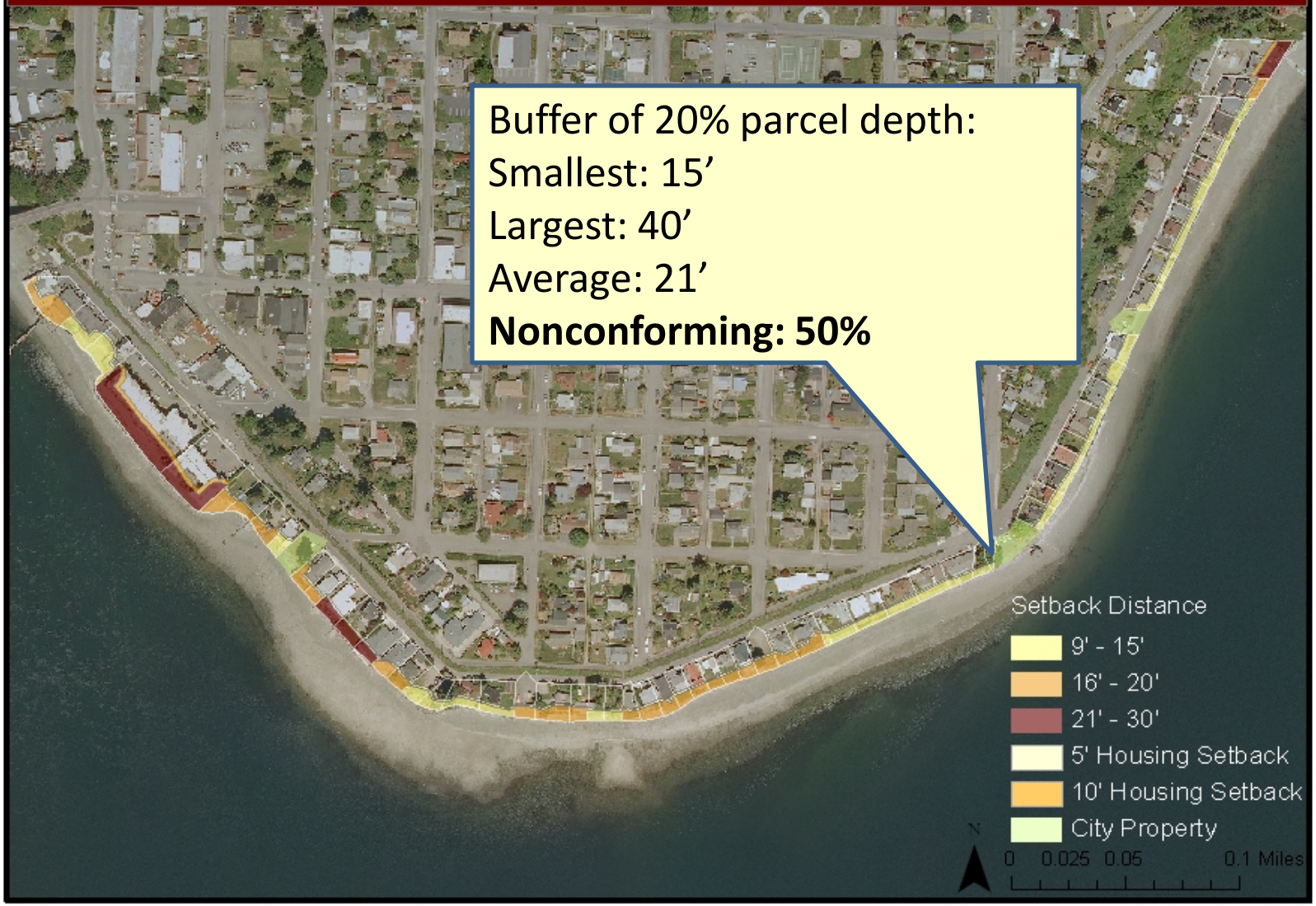


50’ Buffer/setback:
Nonconforming: 90%

Shore Drive - 30% Buffer



Shore Drive - 20% Buffer



Vegetation Conservation requirements for urban areas

Quality vs. Quantity

In built-out urban areas (few undeveloped lots, extensive mowed areas), even small amounts of enhanced vegetation on existing developed lots can benefit habitat functions.

City draft SMP approach: require buffer enhancements if a residence expands by more than 500 sf.

Good luck!

- Address issue early
- See existing agency comment letters on your CAO
- Work closely with SMP planner

Use the checklist to help evaluate existing regulations

STATE RULE (WAC) REQUIREMENTS	*LOCATION*	*INITIAL REVIEW / COMMENTS*
		MCC17.01.070E.6(c) should be – 070E.3)
Wetlands **rating** or categorization system is based on rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Use Ecology Rating system or regionally specific, scientifically based method. WAC 173-26-221(2)(c)(i)(B)]	MCC 17.01.070.E. DEVELOPMENT STANDARDS MCC 17.01.070.E.1 adopts Ecology rating system	Consistent with Ecology recommendations.
Buffer requirements are adequate to ensure wetland functions are protected and maintained in the long-term, taking into account ecological functions of the wetland, characteristics of the buffer, and potential impacts associated with adjacent land uses. WAC 173-26-221(2)(c)(i)(B)	17.01.070.E.2 Wetland Buffers adopts Ecology recommended approach to establishing buffers based on rating system, land use intensity and habitat score.	Closely parallel Ecology recommendations. Wetland buffers found compliant by Growth Management Hearings Board.
Wetland **mitigation** requirements are consistent with WAC 173-26-201(2)(e) and which are based on the wetland rating. WAC 173-26-	MCC 17.01.070.F MITIGATION FOR WETLAND IMPACTS	Consistent with Ecology recommendations.