

ORDINANCE NO. 376-2007

ORDINANCE REGARDING GROWTH MANAGEMENT,
REVISIONS TO TITLE 19 (CRITICAL AREAS)

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners makes the following findings:

1. On December 1, 2005, the Kitsap County Board of Commissioners (Board) adopted Ordinance 351-2005, enacting new amendments to the 1998 Kitsap County Critical Areas Ordinance.
2. In February 2006, appeals were filed with the Central Puget Sound Growth Management Hearings Board (CPSGMHB) challenging various provisions of the 2005 Critical Areas Ordinance (CAO). In one appeal, the Hood Canal Environmental Council and others asserted that Kitsap County's CAO provided inadequate protection for wetlands and marine shorelines. In another appeal, Kitsap Alliance of Property Owners and others asserted that Kitsap County's CAO was too restrictive. The CPSGMHB consolidated these appeals into one: *Hood Canal v. Kitsap County*, CPSGMHB Case No. 06-3-0012c.
3. On August 28, 2006, the CPSGMHB issued its Final Decision and Order denying Kitsap Alliance of Property Owners' appeal, but granting Hood Canal Environmental Council's appeal, and remanding the challenged wetland and shoreline provisions back to Kitsap County. *Hood Canal v. Kitsap County*, CPSGMHB Case No. 06-3-0012c, Final Decision and Order (August 28, 2006). The CPSGMHB determined that Kitsap County's exemption of small, isolated Category III and Category IV wetlands under a certain size was not compliant with the Growth Management Act (GMA) and the Best Available Science (BAS) in Kitsap County's record. The CPSGMHB also determined that Kitsap County's 35-foot buffers on marine shorelines designated Urban, Semi-Rural, and Rural were not compliant with the GMA because they were not supported by the BAS in Kitsap County's record.

Section 2. Procedural Findings. The Kitsap County Board of Commissioners makes the following findings regarding the process and public participation aspects for amending Kitsap County's Critical Areas Ordinance (CAO):

1. Between September and December 2006, the Kitsap County Department of Community Development reviewed the record established during the 2005 CAO update for the Best Available Science related to the remand issues.
2. In December 2006, Kitsap County Staff developed and published a work plan to amend the 2005 CAO and achieve compliance as ordered by the CPSGMHB.

3. On December 11, 2006, following timely and effective public notice, the Kitsap County Board of Commissioners (Board) held a work-study session to discuss and review and proposed work plan, the remand issues, and various options for amending the CAO to achieve compliance.
4. On December 19, 2006, following timely and effective public notice, the Kitsap County Planning Commission (Planning Commission) held a work-study session to discuss and review the proposed work plan, the remand issues, and various options for amending the CAO to achieve compliance.
5. On December 28, 2006, Kitsap County Staff issued a memo to the Planning Commission explaining the background of the proposed changes and identifying the proposed changes to the CAO for the Planning Commission's consideration. This memo was posted to the County's website, mailed to all interested parties, and made available to the public.
6. On January 9, 2007, following timely and effective public notice, the Planning Commission held a public hearing from 6:30-10:00 PM to hear public testimony on the proposed amendments. Over 150 citizens attended and were invited to comment orally and in writing. The Planning Commission held the comment period open to allow for the submittal of additional comments prior to their scheduled deliberations.
7. On January 19, 2007, Kitsap County Staff issued a memo to the Planning Commission summarizing the status of the remand effort and transmitting key items of Best Available Science that were identified and relied upon by the CPSGMHB in their remand order. This memo was posted on the County's website and made available to the public, along with its attachments.
8. On January 22, 2007, following timely and effective notice, the Board of County Commissioners held a public afternoon briefing session at which the Board was apprised of the status of the remand effort and the upcoming Planning Commission deliberations.
9. On January 23, 2007, following timely and effective public notice, the Planning Commission began deliberations on the proposed amendments. This public meeting was continued to January 26, 2007, at which time the Planning Commission concluded their deliberations and voted on recommendations to the Board.
10. On February 7, 2007, Kitsap County Staff issued memo to the Board of County Commissioners summarizing the recommendations to the CAO voted on by the Planning Commission. This summary was posted to the County's website, mailed to all interested parties, including the Planning Commission, and made available to the public.
11. On February 8, 2007, Kitsap County Staff issued a Fact Sheet clearly comparing the existing CAO provisions with the proposed changes to the CAO and answering common questions asked by the public.

12. On February 12, 2007, following timely and effective public notice, the Board of County Commissioners held a public hearing to hear public testimony on the proposed amendments, taking into account the recommendations of the Planning Commission and the recommendations of Kitsap County Staff. The Board held the comment period open to allow for the submittal of additional comments prior to their scheduled deliberations.
13. On February 13, 2007, the Planning Commission formally adopted its Findings of Facts explaining the rationale for its recommendations.
14. On February 14, 2007, the Board of County Commissioners began deliberations on the proposed amendments, as recommended by the Planning Commission and Kitsap County Staff. The public meeting was continued to February 21, 2007 to have additional time to review the record. It was then continued to February 26, 2007, the Board's regular Monday morning public meeting that is televised, to ensure greater public dissemination. The Board is aware that this is one business day past the deadline set by the Growth Board. However, the Board felt it was very important to make its decision at a televised meeting given the affect of these changes throughout the County. At the February 26, 2007 meeting, the Board voted to adopt changes to the 2005 CAO in accordance with the remand order.

Section 3. General Substantive Findings. The Kitsap County Board of Commissioners makes the following substantive findings regarding the amendments to Kitsap County's Critical Areas Ordinance (CAO):

1. Pursuant to RCW 36.70A.172, and WAC 365-195-900 through -925, the following amendments to the CAO are based on and supported by BAS. These amendments protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.
2. By removing the wetland exemptions identified by the CPGMHB and by requiring mitigation for functions impacted by development, Kitsap County is protecting all functions and values of each identified wetland. No wetland function will be lost.
3. By increasing the buffers for marine shorelines Kitsap County is protecting the full range of the applicable functions and values that are present in the critical area. Kitsap County chose not to, at least not at this time, differentiate among the various resources within the marine shoreline, the County is committed to conducting a nearshore habitat assessment in the near future to be able to more specifically understand and protect these resources.

Section 4. Kitsap County Code Section 19.200.210, last amended by Ordinance 351-2005, is amended as follows:

A. General

1. Wetlands are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do

support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, estuaries, marshes, bogs, and similar areas. For regulatory purposes, wetland delineations shall be determined by the Washington State Wetlands Identification and Delineation Manual, March 1997, or as amended hereafter.

2. Kitsap County uses the Washington Department of Ecology Washington State Wetland Rating System for Western Washington, revised 2004, or as amended hereafter, to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Wetlands shall be generally designated as follows:

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

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

C. Non-Regulated Wetlands.

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

- 3.—Created Wetlands: Wetlands created intentionally from a non-wetland site that were not required to be constructed as mitigation for adverse wetland impacts. These may include, but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment ponds, farm ponds not contiguous, as defined in this title, and landscape amenities.

D. Criteria for Determining Wetlands Divided by a Manmade Feature.

1. When a wetland is divided by a manmade feature (e.g., a road embankment), the wetland shall be rated as if it is not divided, if there is a perennial or intermittent surface water connection between the two wetlands and either of the following criteria is met:
 - a. It can be demonstrated that the separate wetlands were one discrete wetland prior to construction of the manmade feature. This may be accomplished through an analysis of secondary information such as aerial photographs and soils maps; or
 - b. The two separated wetlands can be shown to function as one wetland. This shall be determined based on normal conditions (i.e., in the absence of unauthorized activity, the wetlands possess similar vegetative or wildlife assemblages or hydrologic regime).
2. Separated wetland areas may be rated jointly in the absence of a perfectly level culvert where it can be demonstrated that a level surface water connection is present within the culvert that permits flow of water, fish, or other organisms in both directions. Separated wetland areas may also be rated jointly in the absence of a perfectly level culvert with two-way water flow if the bottom of the culvert is below the high water marks in the receiving wetland or if the high water marks on either side differ by six inches or less in elevation.
3. Connecting Mosaic Pattern Wetlands. In cases where the wetlands to be categorized are smaller than one acre in size and separated from each other by 100 feet or less (on average), the DOE mosaic methodology shall be used to determine the wetland category. The area of the wetlands must be greater than 50 percent of the total combined area of wetland and upland for the patchwork to be categorized as one wetland. The boundary of the mosaic wetlands must reflect the ecological interconnectedness of the wetlands within the mosaic. The County will not accept mosaic boundaries drawn to minimize the area of wetland within the mosaic.

Section 5. Kitsap County Code Section 19.300.315(A), last amended by Ordinance 351-2005, is amended as follows:

A. Buffers and Building Setbacks.

1. Buffers. Buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Buffers shall be

maintained along the perimeter of fish and wildlife habitat conservation areas, as listed in Table 19.300.315. Refuse shall not be placed in buffers.

Table 19.300.315: Fish and Wildlife Habitat Conservation Area Development Standards			
Streams			
Water Type	Buffer Width	Minimum Building Setback	Other Development Standards
S Segments of Big Beef Creek, Curley Creek, Chico Creek, Burley Creek, Union River, Blackjack Creek and Tahuya River	200 feet	15 feet beyond buffer	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
F	150 feet	15 feet beyond buffer	
Np	50 feet	15 feet beyond buffer	
Ns	50 feet	15 feet beyond buffer	
Saltwater Shorelines and Lakes			
Shoreline Designation¹	Buffer Width	Minimum Building Setback	Other Development Standards
<u>Urban</u>	<u>50 feet</u>	<u>15 feet beyond buffer</u>	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
Urban, Semi-Rural and Rural shorelines and Lakes less than 20 acres	<u>35 feet</u> <u>100 feet</u>	15 feet beyond buffer	
Conservancy	50 feet	15 feet beyond buffer	
Natural	100 feet	15 feet beyond buffer	
Wildlife Habitat Conservation Areas			
Class I	Buffer widths and setbacks will be determined through a mandatory Habitat Management Plan (HMP)		

Table 19.300.315: Fish and Wildlife Habitat Conservation Area Development Standards

Class II	Site-specific conditions will determine the need for the preparation of a HMP
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¹as defined in Title 22 Kitsap County Code (Shoreline Management Master Program)

2. Buffer Measurement. Distances shall be measured from the ordinary high water mark (OHM) or from the top of the bank where the OHM cannot be identified. Buffers shall be retained in their natural condition. It is acceptable, however, to enhance the buffer by planting indigenous vegetation, as approved by the department. Alteration of buffer areas and building setbacks may be allowed for development authorized by Section 19.100.140 (Reasonable Use Exception), Section 19.100.125 (Exemptions), Section 19.100.130 (Standards for Existing Development) or Section 19.100.135 (Variances). The buffer width shall be increased to include streamside wetlands, which provide overflow storage for stormwaters, feed water back to the stream during low flows or provide shelter and food for fish. In braided channels, the ordinary high water mark or top of bank shall include the entire stream feature.

3. Buffer Widths and Setbacks for Shorelines. The building setback or buffer width for new development shall be based on the Kitsap County Shoreline Management Master Program environment designation, or as required by Chapter 17.450, (View Blockage Requirements), as now or hereafter amended, whichever is greater. (Note: Setbacks for Conservancy-Public Lands to be determined by the Kitsap County Shoreline Management Master Program.)

4. Provision for Decreasing Buffer.
 - a.—In lieu of going through the formal variance process, an administrative reduction to buffer widths for streams, except for urban, conservancy and natural shorelines, may be granted subject to the requirements of this section. Where an applicant demonstrates pursuant to the variance criteria that buffer widths cannot be met, a habitat management plan (HMP) will be required that shall meet the requirements as described in Chapter 19.700 (Special Reports). The department may decrease the buffer if, after consultation with the Washington State Department of Fish and Wildlife, and review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area. The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Administrative buffer reductions may be allowed for rural, semi-rural shoreline environments and lakes less than 20 acres where a vacant parcel has a common property line with two or more lots which abut the ordinary high water line and which are developed with structures. In these cases, the standard buffer may be reduced to the greater of 50 feet or the average of the standard buffer and setbacks of the structures on the adjacent properties. All other

