



Kittitas County Critical Areas Ordinance Update

CITIZEN ADVISORY COMMITTEE (CAC)

MEETING SUMMARY AND SUMMARY OF SUBMITTED COMMENTS

For August 20, 2014 Meeting

Meeting Attendees:

CAC Members: Present: Paul Jewell, Kevin Eslinger, Dave Whitwill
Absent: Jill Scheffer, Chad Bala, Mark Charlton, Dave Duncan, Brad Haberman, Tip Hudson, Jim Miller, Arvilla Ohlde, Linda Baker, Mark Teske, John Ufkes, Marc Kirkpatrick

Chair & Staff: Robert "Doc" Hansen, Lindsey Ozbolt, Kaycee Hathaway

Consultants: Anna Nelson, Adam Merrill, Margaret Clancy

Others: John Marvin (TAC), Amy Tousley

Action Items from Meeting:

- Review and comment on proposed policies & regulations.

Summary:

Agenda Item 1. Introductions

CAC members and meeting attendees introduced themselves.

Paul J. Requested clarification about discussion on boat launches associated with the Planning Commission hearing on the SMP update. There was follow-up discussion with the group regarding the draft regulations and potential changes that would be brought before the Board at the September 16 Board public hearing. A revised draft SMP should be available in early September.

Kevin E. Citizens are concerned about the broad terminology of the critical area aquifer section.

Paul J. Sent information to them which emphasized that this section is not about the amount of water withdrawn and the regulations are specific to certain uses.

Agenda Item 2. General Provisions for Critical Area Regulations

Adam gave a brief outline of what the general provisions look like and asked the group to review the definitions.

Kevin E. Clarification on a Naturally Occurring Pond?

Adam M. The definition is that it hasn't been "intentionally created." A definition is included in the draft regulations.

Agenda Item 3. Fish and Wildlife Habitat Conservation Areas (FWHCAs)

Adam M. explained the what, where and why of FWHCAs. He clarified that there are Federal/ State mandated priority habitat species and that the County can designate their own local priority habitat.

Adam provided a map of where fish stream habitat conservation areas are as well as where wildlife habitat conservation areas are. All the information is from Washington States data. These maps are meant as a tool/ guideline for the County rather than a definitive determination.

The group discussed County designated habitat. The consensus of the group was that this should not be in County Code if it doesn't need to be there. Adam M will check to see if it is mandated by the state or if it can be removed completely.

Dave W. What is the purpose of a habitat survey? The state regulates this why are we trying to regulate this as well?

Adam M. Our intent with the priority habitat is to align ourselves with other permitting agencies. The habitat survey would be a means to help determine on large projects if the development would have an impact on the priority habitat.

Kevin E. Can HPA reviewed applications be exempt? Is there leniency with exemptions within this chapter?

Adam M. Pointed out the exemptions chapter and that the group will be spending the last meeting talking about exemptions. All of the exemptions that are being proposed are such that they are compliant with the GMA.

There was general discussion by the group regarding relying on and being consistent with other regulations and regulatory agencies for protection of the resource (e.g., instream structures and WDFW and HPAs), rather than duplicating reviews and/or requiring more than required by other agencies.

Agenda Item 4. Next Steps

Anna asked the group to provide any specific language changes (beyond those discussed at the meeting) for consideration in the next working draft regulations and policy documents. The next meeting will be September 17, 2014 and will cover both wetland and geologic hazards. There was discussion regarding having two meetings for these topics or a longer meeting.

Meeting adjourned at 3:15 p.m. (See next page for summary of submitted comments)

Summary of Submitted Comments and Initial Responses

The following is a summary of written comments submitted related to the meeting agenda items. The comments shown below are excerpts from these items that include the specific comments. Also shown are the initial responses to the comments.

No.	Name	Comment	Response
# x	Name Title/Location Date of Em/Ltr	<i>Comment shown below may be a summary or an excerpt from submitted comments.</i>	<i>Response from Consultant team</i>
1	John Marvin Email-8/28/14	Review goal statement for consistency with 365-190-130(1). Insert "sensitive" into first sentence list of species.	Revision made to introductory (goal) text of "Fish and Wildlife Habitat and Conservation Areas" subsection.
2	John Marvin Email-8/28/14	GPO 2.6.3A Insert "designate" before "protect" for GMA consistency. Review other sections for consistency.	"Designate and protect" language has been added to each section where appropriate to be consistent with GMA.

No.	Name	Comment	Response
3	John Marvin Email-8/28/14	<p>17A.01.XXX Purpose and Intent</p> <p>1. <u>The purpose of this Title is to designate and protect classify the functions and values of ecologically sensitive areas/ and hazardous areas and to protect these areas and their functions and values.</u></p> <p>2. <u>provide for reasonable use of private property.</u></p> <p>3. <u>Kittitas County finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the County and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood waters, ground water recharge and discharge, erosion control, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.</u></p> <p>4. <u>The regulations of this Title are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.</u></p> <p>5. <u>This Title is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this Title to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards. RCW 36.70A.020(12) (CTED Model CAO Ord.)</u></p>	<p>These comments will be considered when the full “General Provisions” chapter is drafted, for review and discussion at the November CAC meeting.</p>
4	John Marvin Email-8/28/14	<p>17A.01.XXX Authority Please consider the following edits.</p> <p><u>The Director may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this Title.</u></p>	<p>These comments will be considered when the full “General Provisions” chapter is drafted, for review and discussion at the November CAC meeting.</p>
5	John Marvin Email-8/28/14	<p>17A.01.XXX Applicability</p> <p>The CAO can eliminate some of the exemptions by being more explicit on what the CAO does and does not apply to. For example, if the CAO states that it does not apply to Forest Practices (except conversions), you can remove that from the exemptions list. The applicability to agriculture and ag activities should reference the VSP RCWs.</p> <p>1. Unless specifically exempted, regulations apply to all new or modified uses, activities, and developments within or adjacent to critical areas <u>and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the [city/county].</u></p>	<p>These comments will be considered when the full “General Provisions” chapter is drafted, for review and discussion at the November CAC meeting.</p>

No.	Name	Comment	Response
6	John Marvin Email-8/28/14	<p>17A.01.XXX Exemptions. Exemptions are a difficult subject. Exemptions need to be extremely limited in scope and with a very explicit approval. Unlike Shorelines, there is nothing in the GMA or its rules about exemptions from critical areas standards. In Hazen et. al. v. Yakima County (case No. 08-1-0008c), the Eastern Washington Growth Management Hearings Board (EWGMHB) found that Yakima County had neither provided science to support its exemptions nor did it provide defined standards for the Administrator to base any decision or place any conditions on exempted activities. Since all critical areas decisions are to be founded on BAS, the exemptions resulted in a violation of RCW 36.70A.172. Yakima County subsequently removed all exemptions and addressed them through legal non-conforming status, applicability, allowed uses, or definition of "development".</p> <p>A majority of the listed exemptions can be addressed through applicability, legal non-conformity allowed uses, or the definition of "development", including exemptions 2,3,4,8,11,12,13,14,15 and 18. The CTED Model CAO Ordinance suggests some limited allowed uses when following BMPs. The remaining exemptions (1,5,6,7,9,10,16, and 17) are going to require some kind of process, definitions, and/or BAS, or deleted. For reference, the CTED CAO Model Ordinance only lists emergencies, operation/maintenance/repair, passive outdoor activities, and forest practices as exempt.</p>	These comments will be considered when the full "General Provisions" chapter is drafted, for review and discussion at the November CAC meeting.
7	John Marvin Email-8/28/14	<p>17A.01.XXX Exceptions Consistent with the CTED CAO Model Ordinance, consider utilizing the hearing examiner for exceptions for the legal analysis required.</p>	These comments will be considered when the full "General Provisions" chapter is drafted, for review and discussion at the November CAC meeting.
8	John Marvin Email-8/28/14	<p>17A.01.XXX General Protective Measures – All of the proposed provisions are useful tools in the protection of critical areas, and are fully supported.</p> <p>1.a.iii. – Include "buffers" with habitat conservation areas, consistent with the other criterion.</p> <p>2.a.iii. - Include "buffers" with habitat conservation areas, consistent with the other criterion.</p> <p>3. Temporary or permanent field identification. This is a provision to protect the functions and values of critical areas. Why would the Director consult with the project proponent on protection measures? I don't see this consultation in any other protection measures. Permanent field identification (fencing, signage) is intended to protect critical areas into the future, and to inform future property owners of the presence, and legal requirements of a previous land use decision, contrary to the staff statement at the end of the paragraph.</p>	These comments will be considered when the full "General Provisions" chapter is drafted, for review and discussion at the November CAC meeting.

No.	Name	Comment	Response
9	John Marvin Email-8/28/14	<p>17A.01.XXX Critical Areas Mitigation</p> <p>Consider adding the text below, consistent with the CTED CAO Model Ordinance.</p> <p><u>Any action taken pursuant to this Title shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with this section to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.</u></p>	<p>These comments will be considered when the full “General Provisions” chapter is drafted, for review and discussion at the November CAC meeting.</p>
10	John Marvin Email-8/28/14	<p>17A.01.XXX Review Process – Consider making critical areas review a standalone permit, including a notice of application and a comment period. Applying the CAO as an overlay creates a process that will often prohibit the Yakama Nation from participating in a process, in addition to denying the Yakama Nation the opportunity to insure its treaty reserved resources are protected. Under the current Project Permit Application code (KCC 15A), Flood development permits and Critical areas binding determinations are exempt from a notice of application (KCC 15A.03.080). To adequately protect the functions and values of critical areas, all developments proposed within or present the potential to adversely affect the functions and values of critical areas (variance, buffer reductions) should be permitted through a process that provides a notice of application and allows for comment.</p>	<p>These comments will be considered when the full “General Provisions” chapter is drafted, for review and discussion at the November CAC meeting.</p>
11	John Marvin Email-8/28/14	<p>17A.02.XXX Adjacent.</p> <p>This is a good definition and is fully supported. However, the inclusion of a bald eagles nest buffer brings into question how other upland wildlife species will be addressed. Other much more sensitive species like Blue Heron or Sage Grouse may not be adequately designated and protected. Would number 2 of the list include the upland wildlife buffer provisions in Table 17A.04.XXX?</p>	<p>This definition was taken verbatim from Commerce’s model ordinance; it appears that the reference to bald eagle nests was in response to the to the State’s bald eagle protection rules. However, the protection rules were recently amended to state that Bald Eagle Management plans are no longer required unless Bald Eagles are listed as Threatened or Endangered in Washington State (they are currently listed as a ‘sensitive species’). Therefore, the reference to bald eagle nests in the “adjacent” definition has been removed.</p>

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12	John Marvin Email-8/28/14	<p>17A.02.XXX Priority Habitat.</p> <p>"Priority habitat" means a habitat type with a unique or significant value to one (1) or more species. An area classified and mapped as priority habitat must have one (1) or more of the following attributes: comparatively high fish or wildlife densities; comparatively high fish or wildlife species diversity; <u>important fish and wildlife spawning/breeding</u> habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridors; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish beds. A priority habitat may be described by its unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife (WAC 173-26-020(28)). [Revised Final Draft SMP]</p> <p>A reference to the SMA guidelines is inappropriate in a CAO. The definition, as edited, is consistent with the WDFW PHS List (2008): http://wdfw.wa.gov/publications/00165/wdfw00165.pdf</p>	Revision made.
13	John Marvin Email-8/28/14	<p>17A.02.XXX Priority Species.</p> <p>"Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. <u>Priority species include State Endangered, Threatened, Sensitive, and Candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable.</u> Priority species are those that meet any of the criteria listed in WAC 173-26-020(29). [Revised Final Draft SMP] <u>A species identified and mapped as priority species fit one or more of the following criteria:</u></p> <p><u>Criterion 1. State-Listed and Candidate Species:</u></p> <p><u>State-listed species are native fish and wildlife species legally designated as Endangered (WAC 232-12-014), Threatened (WAC 232-12-011), or Sensitive (WAC 232-12-011). State Candidate species are fish and wildlife species that will be reviewed by the department (POL-M-6001) for possible listing as Endangered, Threatened, or Sensitive according to the process and criteria defined in WAC-232-12-297.</u></p>	The existing definition contains a reference to the WAC, which details the priority species criteria that is specified. No change recommended.

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		<p>17A.02.XXX Priority Species.</p> <p><u>Criterion 2. Vulnerable Aggregations:</u> <u>Vulnerable aggregations include species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to aggregate. Examples include heron rookeries, seabird concentrations, marine mammal haulouts, shellfish beds, and fish spawning and rearing areas.</u></p> <p><u>Criterion 3. Species of Recreational, Commercial, and/or Tribal Importance:</u> <u>Native and non-native fish and wildlife species of recreational or commercial importance, and recognized species used for tribal ceremonial and subsistence purposes, whose biological or ecological characteristics make them vulnerable to decline in Washington or that are dependent on habitats that are highly vulnerable or are in limited availability.</u></p> <p><u>A reference to the SMA guidelines is inappropriate in a CAO. The definition, as edited, is consistent with the WDFW PHS List (2008):</u> http://wdfw.wa.gov/publications/00165/wdfw00165.pdf</p>	
14	John Marvin, Email-8/28/14	17A.02.XXX Development - This is a good definition and is fully supported.	Comment noted.
15	John Marvin, Email-8/28/14	<p>17A.04.XXX Purpose of Chapter</p> <p>The purpose of this chapter is to identify <u>designate</u> and protect regulated <u>critical</u> fish and wildlife species and habitats, including anadromous species and their habitats, <u>consistent with the best available science.</u></p>	Revisions made.

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16	John Marvin, Email-8/28/14	<p>17A.04.XXX Designation, Mapping, and Classification.</p> <p>The designation scheme is confusing. At first review, it looked like the CAO was only designating <u>aquatic</u> T, E and S species. This is what necessitated the proposed edits to the definitions of priority habitats and species, which will cover stated listed species. Are all federally listed species covered by state listing? To be all-inclusive, it is recommended that “aquatic” be deleted as a standard for state and federal T, E, S species. State Priority Habitats and Species covers subsection c, so that could be deleted, or combined with subsection b to cover all areas of primary association for federal and state listed T, E, and S species. In addition, the lists of T, E, and S species from the BAS report should be added as an appendix, or at least referenced for future review.</p> <p>The proposed standards are inconsistent with the draft Shoreline Master Program critical areas provisions. It seems like two very different set of critical areas standards will be confusing to the public, and difficult to administer. The standards in the SMP were well vetted through the TAC and CAC. It is recommended that the proposed CAO provisions be deleted and replaced with the standards in the draft SMP for aquatic and wildlife habitat conservation areas.</p>	<p>The designation system is identical to the system codified in WAC 365-190-130. No change recommended.</p> <p>The format of the FWHCA chapter follows the format of the model ordinance. However, the substantive portions of the chapter, such as buffers, reporting standards, etc. are identical to the SMP. Special regulations for docks, shoreline stabilization, etc. were incorporated directly in the FWHCA chapter, as opposed to the FWHCA regulations in the SMP. That is because individual chapters in the SMP are dedicated to these uses. No change recommended.</p>
17	John Marvin, 8/28/14	<p>17A.04.XXX.2. Mapping – It is Kittitas County’s responsibility to designate and protect critical areas. The provision requiring the “Permit applicant” to be responsible for determining if critical areas are present is inconsistent with the GMA and its requirements to include BAS.</p>	Revision made.
18	John Marvin, Email-8/28/14	<p>17A.04.XXX.3. Habitat Boundary Survey – Excluding aquatic habitat conservation areas from this standard is inconsistent with the GMA and its requirements to include BAS. The process from habitat survey to habitat management plan is confusing and unorganized. The designation and process should be first, then the protection provisions last in the section. Waivers from habitat surveys and management plans must be based on BAS, including consultation with scientists from the WDFW and the Yakama Nation. It is inappropriate for the Director to waive these requirements without BAS. The first step, after maps, should be a survey to determine if the habitat is present on the area proposed for development, then if there is habitat present, a management plan.</p>	<p>The purpose of the habitat boundary survey regulation is to detail the requirements for when a wildlife habitat survey may be required. Unlike streams and water bodies, it is difficult for the layperson to determine if a particular area meets the requirements to be considered a priority habitat. The reporting requirements section requires that the OHWM of waterbodies be identified. No change recommended.</p> <p>Given the course-nature of the existing habitat maps, the County should maintain some flexibility over when a habitat study is required. The waiver from the study requirements can only be used under certain conditions, as specified in the regulations. No change recommended.</p>

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19	John Marvin, Email-8/28/14	17A.04.XXX.4. Waters of the State Classification. Please consider the requirements of RCW 365-190-130 (f)(ii) " <i>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.</i> "	We will consider this recommendation. Please note, the RCW says "should," therefore, this is not a statutory requirement.
20	John Marvin, Email-8/28/14	17A.07 .XXX Habitats and Species of Local Importance Designation and Process – While the County is not required to designate any specific habitats or species without a specific proposal in front of them, case law has established that there must be a process to designate and protect them in the future. It is recommended to include a requirement that proposals are required to be consistent with the BAS and specify that the proposal would be processed as a comp plan/regulatory amendment consistent with KCC Title 15A. I was confused by the constriction of the CAC on this subject. The County has had it in the code for 20 years, how many applications has the County processed in that time?	A habitat and species of local importance designation process will be developed that is consistent with GMA requirements. This issue will likely be revisited at a future CAC meeting based on discussion at the August 2014 CAC meeting.
21	John Marvin, Email-8/28/14	17A.04.XXX Buffers – I need to digest the BAS report and the proposed buffers more before commenting.	Comment noted.
22	John Marvin, 8/28/14	17A.04.XXX.5. Increased Buffers. Consider adding the following criteria: <ul style="list-style-type: none"> • T, E, S species use; • Anadromous species use • Spawning or breeding habitat; • Intensity of the proposed use; • Areas of highly functioning riparian habitat. 	The proposed standard buffer widths were based upon BAS, which shows that the buffers are adequate to protect aquatic habitats and species. No change recommended.
23	John Marvin, Email-8/28/14	17A.04.XXX.6 and .7 Buffer Averaging and Reduction. There should be a preference to averaging over reduction, consistent with mitigation sequencing. First step is to average the buffer through avoidance and minimization and a reduction is only allowed when associated with a mitigation plan, and is the minimum necessary to afford the proposed use. Include subsection c of averaging into the provisions for reduction. " <i>c. The buffer averaging <u>reduction</u> will not reduce aquatic habitat functions or adversely affect salmon habitat.</i> "	Revisions made.
24	John Marvin, Email-8/28/14	17A.04.XXX Permitted Activities. The standard of " <i>No net loss of riparian habitat functions</i> " in in subsection 3.d. should be required in each permitted use.	Revision made.

No.	Name	Comment	Response
25	John Marvin, Email-8/28/14	<p>17A.04.XXX.2. Stream Bank Stabilization</p> <p>g. What is the definition of an “existing legally-established permanent structure”? Protecting a single-family residence is acceptable, but protecting accessory structures like sheds or outhouses is not. All proposals for stream bank stabilization should be required to utilize the WDFW Integrated Streambank Protection Guidelines (ISPG)</p> <p>http://wdfw.wa.gov/publications/00046/wdfw00046.pdf</p>	An “existing legally-established permanent structure” is a structure that was constructed pursuant to the relevant regulations that were on the books at the time the structure was built. Regulation revised to apply only to “primary” structures.
26	John Marvin, Email-8/28/14	<p>17A.04.XXX.6. Instream Structures</p> <p>What is “<i>an approved water basin restoration project approved by the County.</i>”? There are a number of restoration plans that have been developed in the Yakima Basin, so any reference needs to be more specific, or delete the requirement. Most instream habitat structures are intended to modify flows and adversely affect habitat in a positive direction. Not sure what this standard is trying to accomplish.</p> <p><i>“restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the Salmon Recovery Board Habitat Project List or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.”</i></p>	Revision made (changed to ‘County-approved’ restoration project).
27	John Marvin, Email-8/28/14	<p>17A.04.XXX.6. Onsite Sewage Systems and Wells</p> <p>The Kittitas Public Health Department should be consulted on this section. I believe there is a minimum 100-foot setback from Onsite Sewage Systems and wells/surface waters.</p>	No change recommended. This section does not supersede the water/sewer requirements of KCC Title 13 (Water and Sewers); any requirements of that Title would still apply. The Health Department staff has been consulted with on earlier versions of the draft critical areas code (e.g., CARAs) and will continue to have the opportunity to review the draft code for consistency with Title 13.