

Critical Areas Checklist

A Technical Assistance Tool from Growth Management Services – updated May 2024

Name of city or county:	
Staff contact, phone, and e-mail address:	
INSTRUCTIONS This checklist is intended to help local governments update their development regulations, pursuant to the schedule in RCW 36.70A.130(5). We strongly encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS), along with their updates. However, If the jurisdiction is using a portion of their Periodic Update Grant (PUG) to update the Critical Areas Ordinance, this checklist is required. This checklist may be used by all jurisdictions, including those local governments planning for resource lands and critical areas only. For general information on update requirements, refer to A Guide to the Periodic Update Process Under the Growth Management Act – Fully Planning Counties & Cities, 2022 and WAC 365-196-610. For additional information, resources, and general checklists pertaining to comprehensive plan and development regulation periodic updates please visit Commerce’s Growth Management Act Periodic Update webpage. Bold items are a GMA requirement or may be related requirements of other state or federal laws. <u>Underlined</u> items are links to Internet sites and may include best practices or other ideas to consider. Commerce WAC provisions are advisory under Commerce’s statutory mandate to provide technical assistance, RCW 43.330.120 which states that the Department of Commerce “...<i>shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.</i>” If you have questions, call GMS at (360) 725-3066. How to fill out the checklist Using the current version of your critical areas regulations, fill out each item in the checklist. Select the check box or type in text fields, answering the following question: Is this item addressed in your current Critical Areas Ordinance (CAO)? If YES, fill in the form with citation(s) to where in the plan or code the item is addressed. We recommend using citations rather than page numbers because they stay the same regardless of how the document is printed. If you have questions about the requirement, follow the hyperlinks to the relevant statutory provision or rules. If you still have questions, visit the Commerce Growth Management Services Web page or contact one of the Commerce planners assigned to your region.	CONTENTS Instructions..... 1 Overall Requirements.....2 Wetlands.....3 Critical Aquifer Recharge Areas.....5 Frequently Flooded Areas....6 Geologically Hazardous Areas..... 7 Fish and Wildlife Habitat Conservation Areas.....8 Designating and Protecting Waters of the State.....9 Anadromous Fisheries.....10 Reasonable Use Exceptions..... 10 Agricultural Activities.....11 Forest Practices Regulations.....11 Good Ideas.....12

CRITICAL AREAS

Regulations protecting critical areas are required by **RCW 36.70A.060(2)** and **RCW 36.70A.172(1)**. [WAC 365-195-900 through 925](#) provide guidelines. Guidance can also be found in [Commerce's Critical Areas Handbook](#) (2022); the Minimum Guidelines [WAC 365-190-080 through 130](#); Best Available Science [WAC 365-195](#); and Procedural Criteria, [WAC 365-196-485](#) and [WAC 365-196-830](#), and on Growth Management's [Critical Areas](#) webpage.

Regulations required to protect critical areas	Addressed in current plan or regulations? If yes, note where
OVERALL REQUIREMENTS The CAO includes best available science to clearly designate and protect all critical areas that might be found within the jurisdiction. 1. Designation of Critical Areas RCW 36.70A.170(1)(d) requires all counties and cities to designate critical areas. RCW 36.70A.170(2) requires that counties and cities consider the Commerce Minimum Guidelines pursuant to RCW 36.70A.050 . RCW 36.70A.050 directs Commerce to adopt the Minimum Guidelines to classify critical areas. WAC 365-190-080 through 130 provide guidance on defining or "designating" each of the five critical areas. WAC 365-190-040 outlines the process to classify and designate natural resource lands and critical areas. 2. Definition of Critical Areas RCW 36.70A.030(11) provides definitions for critical areas. Sections (20) regarding geologically hazardous areas; and (48) regarding wetlands were updated in 2010. WAC 365-190-030 provides definitions in the Minimum Guidelines. 3. Protection of Critical Areas RCW 36.70A.060(2) requires counties and cities to adopt development regulations that protect the critical areas required to be designated under RCW 36.70A.170 . RCW 36.70A.172(1) requires the inclusion of best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. WAC 365-196-830 provides guidance on protection of critical areas.	Was BAS documented in the record for the review and updates to the critical areas regulations? ☐ Yes ☐ No Location in Text: Do your regulations address no net loss and require compensatory mitigation? ☒ Yes ☐ No Location in Text: 14.20.520 (4)

4. Inclusion of Best Available Science RCW 36.70A.172(1) requires inclusion of the best available science (BAS). <u>WAC 365-195-900 through 925</u> outlines recommended criteria for determining which information is the BAS, for obtaining the BAS, for including BAS in policies and regulations, for addressing inadequate scientific information, and for demonstrating “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries. <u>WAC 365-195-915</u> provides criteria for including BAS in the record. 5. No net loss of critical area functions and values is a requirement for development regulations in <u>WAC 365-196-830(4)</u>. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm.	14.20.520(4)
WETLANDS DEFINITION The definition of wetlands is consistent with RCW 36.70A.030(48).	Is the wetland definition consistent with RCW 36.70A.030(48)? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.487

WETLANDS DELINEATION Wetlands are delineated using the approved federal wetland delineation manual and applicable regional supplements in accordance with WAC 173-22-035. See Ecology's Wetland Delineation page and WAC 365-190-090 for additional assistance.	Are wetlands delineated using the approved Federal Wetland Delineation Manual and Regional Supplements? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.720(3)
WETLANDS PROTECTION Policies and regulations protect the functions and values of wetlands. <u>RCW 36.70A.172(1)</u>. Counties and cities are encouraged to make their actions consistent with the intent and goals of "protection of wetlands", Executive Order 89-10 as it existed on September 1, 1990. WAC 365-190-090(3) recommends using a wetlands rating system that evaluates the existing wetland functions and values to determine what functions must be protected. Ecology updated its recommended wetlands rating systems effective January 2015. For information on the rating system, including the July 2018 adjustments to ranges for habitat scores, see: • 2014 Updates to the Washington State Wetland Rating Systems • Washington State Wetland Rating System for Western Washington • Washington State Wetland Rating System for Eastern Washington For other resources and guidance on protecting wetlands, go to Ecology's Local Wetland Regulations: Growth Management Act technical assistance and see: • Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington (2022)	Do the regulations use a rating system to determine wetlands protection? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.710

CRITICAL AQUIFER RECHARGE AREAS

Policies and regulations protect the functions and values of critical aquifer recharge areas. **RCW 36.70A.172(1)**.

Policies and regulations protect the quality and quantity of groundwater used for public water supplies. **RCW 36.70A.070(1)** and [WAC 365-196-485\(1\)\(d\)](#).

The following references also relate to protection of groundwater resources:

- **RCW 90.44** – Regulation of Public Groundwaters
- **RCW 90.48** – Water Pollution Control
- **RCW 90.54** – Water Resources Act of 1971
- **RCW 36.36.020** - Creation of aquifer protection area (1985)
- [WAC 365-190-100](#) Critical Aquifer Recharge Areas 2023
- [WAC 173-100](#) Groundwater Management Areas and Programs (1988)
- [WAC 173-200](#) Water Quality Standards for Groundwaters of the State of Washington (1990)
- [WAC 365-196-735](#) Consideration of state and regional planning provisions (list) (2010)

The [Critical Aquifer Recharge Areas Guidance Document](#) (2021) provides information on protecting functions and values of critical aquifer recharge areas, best available science, how to work with state and local regulations and adaptive management.

Also, consider the following:

- Prohibiting or strictly regulating hazardous uses in critical aquifer recharge areas (CARAs) and designating and protecting wellhead areas. See Ecology's guidance on [Critical Aquifer Recharge Areas](#).
- Limiting impervious surfaces to reduce stormwater runoff, as required under Phase I and II municipal stormwater permits. Ecology's Stormwater Manual for Western Washington (2012) includes low impact development (LID) related definitions, requirements, and an LID performance standard. See [Stormwater Management and Design Manuals](#) on Ecology's web page.
- For additional guidance on LID resources, see Commerce's [Incentivizing low-impact development guidebook](#).

If groundwater is used for potable water, do regulations protect the quality and quantity of ground water?

☐ Yes

☐ No

☐ N/A

Location in text:

Are the critical aquifer recharge regulations consistent with current mapping of these critical areas?

☐ Yes

☐ No

☐ N/A

Location in text:

FREQUENTLY FLOODED AREAS

Regulations protect the functions and values of frequently flooded areas and safeguard the public from hazards to health and safety. [RCW 36.70A.172\(1\)](#).

[WAC 365-196-830](#) provides: "Protection' in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety."

[WAC 365-190-110](#) directs counties and cities to consider the following when designating and classifying frequently flooded areas:

- (a) Effects of flooding on human health and safety, and to public facilities and services;
- (b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in [RCW 36.70A.110](#);
- (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;
- (d) The potential effects of tsunamis, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;
- (e) Greater surface runoff caused by increasing impervious surfaces.

Classification of and regulations for frequently flooded areas should not conflict with the FEMA requirements for the [National Flood Insurance Program \(NFIP\)](#). See [Ecology's Frequently Flooded areas: Critical Areas Ordinance](#) webpage and [44 CFR 60](#).

Communities that are located on Puget Sound or the Strait of Juan de Fuca, or have lakes, rivers or streams that directly or indirectly drain to those water bodies, are subject to the NFIP Biological Opinion (BiOp) for Puget Sound. The biological opinion required changes to the implementation of the NFIP in order to meet the requirements of the Endangered Species Act (ESA) in the Puget Sound watershed. FEMA Region X has developed an implementation plan that allows communities to apply the performance standards contained in the Biological Opinion by implementing:

- 1) [a model ordinance](#);
- 2) [a programmatic Checklist](#); or
- 3) on a permit by permit basis as long as it can be demonstrated that there is no adverse effect to listed species. Communities have the option of utilizing their CAOs as part of a programmatic response to address the requirements of the biological opinion. FEMA must approve a community's biological opinion compliance strategy.

Additional resources:

[RCW 86.12](#) Flood Control by Counties

[RCW 86.16](#) Floodplain Management

[RCW 86.26](#) State Participation in Flood Control Maintenance

[RCW 86.16.041](#) Floodplain Management Ordinance and Amendments

[WAC 173-158-070](#) Requirements for construction in Special Flood Hazard Areas

Are frequently flooded areas designated and regulated using FEMA and Ecology guidance?

☒ Yes

☐ No

☐ N/A

Location in Text:

Yes, but in a separate chapter of the FMC. See FMC 14.05 Flood Hazard Management

Reference made at 14.20.1000

Are you utilizing your CAO as part of a programmatic response to the BiOp?

☐ Yes

☐ No

☒ N/A

Location in Text:

DEFINITION OF GEOLOGICALLY HAZARDOUS AREAS The definition of geologically hazardous areas is consistent with <u>RCW 36.70A.030(20)</u> and <u>WAC 365-190-120(1)</u>. "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.	Is the geologically hazardous areas definition consistent with RCW 36.70A.030(20)? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.180
PROTECTION OF GEOLOGICALLY HAZARDOUS AREAS Regulations protect the functions and values of geologically hazardous areas and safeguard the public from hazards to health and safety. <u>RCW 36.70A.172(1)</u>. <u>WAC 365-196-830</u> provides: "'Protection'" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety." Geologically hazardous areas are designated, and their use is regulated or limited consistent with public health and safety concerns. <u>RCW 36.70A.030(20)</u> <u>WAC 365-190-120</u> describes the different types of hazardous areas: • Geologically hazardous areas include: • Erosion hazards • <u>Landslide hazards</u> • <u>seismic hazards</u> • <u>tsunami hazards</u> • <u>volcanic hazards</u> • <u>channel migration zones</u> • areas subject to other geological events such as coal mine hazards including: mass wasting, debris flows, rock falls, and differential settlement. The Department of Natural Resource's Washington Geological Survey <u>Geologic Hazards and the Environment</u> website includes information on earthquakes and faults, landslides, volcanoes and lahars, tsunamis, hazardous minerals, emergency preparedness, historic mines and includes geologic hazard maps that can be accessed from the <u>Geologic Information Portal</u>.	Are uses in geologically hazardous areas designated and regulated or limited consistent with public health and safety? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.900-960

DEFINITION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS The definition of fish and wildlife habitat conservation areas is consistent with WAC 365-190-030(6). The definition of fish and wildlife habitat conservation areas was amended to state that they do not include: <i>“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”</i>.	Is the FWHCA definition consistent with WAC 365-190-030(6)? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.180
PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS Policies and regulations protect the functions and values of fish and wildlife habitat conservation areas. RCW 36.70A.172(1) and WAC 365-190-030(6). WAC 365-190-130(4) says local jurisdictions must consult current information on priority habitats and species identified by WDFW. Additional information that must be consulted is available from DNR’s natural heritage program and aquatic resources program. BAS regarding biodiversity areas and corridors has advanced significantly. Recent updates and resources include: • Aquatic Habitat Guidelines • Priority Habitat and Species maps • Priority Habitats and Species List (updated June 2023) • Priority Habitats and Species: Management recommendations: • Landscape Planning for Washington’s Wildlife (2009) • Land Use Planning for Salmon, Steelhead and Trout (2009) • Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications (2020) • Riparian Ecosystems, Volume 2: Management Recommendations (2020) • Riparian Management Zone Checklist for CAOs (2023) • Shrub-Steppe Management Recommendations (2020) • Oregon White Oak Woodlands Ecosystems Management Recommendations (1998) • Management recommendations for Washington's Priority Species (by taxa) • Puget Sound Kelp Conservation and Recovery Plan (2020) • Stream Habitat Restoration Guidelines (2012) • Water Crossing Design Guidelines (2013) “Areas where endangered, threatened, and sensitive species have a primary association” must be considered per WAC 365-190-130(2)(a). Consult WDFW’s Threatened and Endangered Species list and U.S. Fish and Wildlife Service’s Information for Planning and Consultation resources for up to date information on all state and federal listed species.	Have you reviewed your regulations regarding any applicable changes in management recommendations for priority habitats and species? ☒ Yes ☐ No ☐ N/A Location in Text 14.20.720 Have you reviewed your regulations regarding any changes in species listings? ☐ Yes ☐ No ☐ N/A Location in Text

DESIGNATING AND PROTECTING WATERS OF THE STATE RCW 90.48.020 defines waters of the state, which include all surface waters, salt waters, groundwater and all other water courses in Washington. WAC 365-190-130(2)(f) recommends designating all waters of the state as fish and wildlife habitat conservation areas (FWHCAs). Stream types are classified in WAC 222-16-030 with field verification, or an alternate system that considers factors listed in WAC 365-190-130(4)(f)(iii). See http://www.dnr.wa.gov/forest-practices-water-typing to use Washington State Department of Natural Resources (DNR)'s stream typing system. Establish riparian management zones to maintain no net loss of riparian ecosystem functions and values. Designate areas that risk contaminating or harming shoreline resources including tidelands and bedland suitable for shellfish harvest, kelp and eelgrass beds and forage fish spawning areas.	Do you designate waters of the state as FWHCAs? ☒ Yes ☐ No ☐ N/A Location in Text: 14.20.820 Do your regulations protect waters of the state? ☒ Yes ☐ No ☐ N/A Location in Text: Article V consisting of 14.20.800-840
ANADROMOUS FISHERIES Policies and regulations for protecting critical areas give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1) is the requirement and WAC 365-195-925 lists criteria involved. This requirement applies to all five types of critical areas. WAC 365-190-130(4)(i) recommends sources and methods for protecting fish and wildlife habitat conservation areas, including salmonid habitat. 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. Counties and cities should consider recommendations found in the regional and watershed specific salmon recovery plans (see the Governor's Salmon Recovery Office webpage and the Puget Sound Partnership's Salmon Recovery webpage). Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery (October 2009) is an excellent resource.	Do your regulations give special consideration to anadromous fisheries? ☐ Yes ☐ No ☐ N/A Location in Text:

REASONABLE USE EXCEPTIONS The Critical Areas Ordinance (CAO) allows for “reasonable use” if the CAO would otherwise deny all reasonable use of property. Reasonable use provisions should limit intrusions into critical areas to the greatest extent possible and apply the mitigation sequence as needed for no net loss of ecosystem functions and values <u>RCW 36.70A.370</u>. Common exemptions include emergencies, remodels that do not further extend into critical areas, surveying, walking, and development that has already been completed with critical areas review under a previous permit. See <u>Critical Areas Handbook, Chapter 3: Structuring Critical Areas Regulations, p.10 (Updated 2022)</u>.	Do you have reasonable use provisions? ☒ Yes ☐ No Location in Text: 14.20.590
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AGRICULTURAL ACTIVITIES (COUNTIES ONLY) Non-VSP Counties Critical areas regulations as they specifically apply to agricultural activities in counties or watersheds not participating in the <u>Voluntary Stewardship Program (VSP)</u> have been reviewed, and if needed, revised pursuant to <u>RCW 36.70A.130</u>. <u>RCW 36.70A.710(6)</u> "Agricultural activities" means all agricultural uses and practices as defined in <u>RCW 90.58.065</u>. VSP Counties After watershed work plan approval, <u>VSP counties</u> are encouraged to reference and describe their participation in the program within their critical areas development regulations (<u>WAC 365-196-832</u>). See <u>Critical Areas Handbook</u>, Chapter 5: Protecting Critical Areas in Natural Resource Lands (2022).	Did you review your regulations as they apply to agricultural activities? ☐ Yes ☐ No ☒ N/A Location in Text:
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FOREST PRACTICES APPLICATION REGULATIONS

If applicable, regulations for forest practices have been adopted: RCW 36.70A.570.

RCW 76.09.240, requires many counties over 100,000 in population, and the cities and towns within those counties to adopt regulations for forest practices. These are often included in clearing and grading ordinances.

Have you adopted forest practices regulations?

- ☐ Yes
☐ No
☒ N/A

Location in Text:

GOOD IDEAS

Non-regulatory measures to protect or enhance functions and values of critical areas may be used to complement regulatory methods. These may include:

- public education
- stewardship programs
- pursuing grant opportunities
- water conservation
- joint planning with other jurisdictions and non-profit organizations
- stream and wetland restoration activities
- [transfer of development rights](#)

Monitoring and adaptive management is encouraged in [WAC 365-195-905\(6\)](#) to improve implementation of your regulations. See Commerce’s Monitoring and Adaptive Management chapter in the [Critical Areas Handbook](#), Chapter 7: Monitoring and Adaptive Management of Critical Areas (2022).

Are you using non-regulatory measures to protect critical areas?

- ☐ Yes
☒ No

Location in Text:

Do you have a monitoring and adaptive management program for your CAO?

- ☐ Yes
☒ No

Location in Text: