

CHAPTER 13.00

GENERAL PROVISIONS

13.00.010 TITLE AND AUTHORITY

This document shall be known as Title 13, the Critical Areas Ordinance (CAO) of Stevens County, Washington, and is adopted under the authority of RCW Chapter 36.70A.

13.00.020 PURPOSE AND INTRODUCTION

The purpose of this Title is to comply with the mandate of RCW Chapter 36.70A, the Growth Management Act, and to the extent required by said chapter, to protect the public health, safety and general welfare by providing reasonable and effective regulations to 1) conserve, protect and maintain the functions and values of regulated critical areas, 2) to prevent harm to the public health, safety and general welfare from potential hazards associated with certain critical areas and 3) to support the overall goal of Washington State to assure the protection of wetlands.

Critical areas, as defined in WAC 365-190-080, include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Wetlands, aquifer recharge and fish and wildlife habitat areas are considered "critical" due to their value as a public resource. Frequently flooded and geologically hazardous areas are considered "critical" due to the potential hazards they present to public health, safety and general welfare.¹

The purpose of this Title is to:

- Classify, designate and protect critical areas,
- Promote innovative, efficient design of proposed land use and development activities,
- Assist in orderly development, limit incompatible uses, and when appropriate, guide development to more suitable areas.

“Classifying and designating critical areas” does not necessarily imply a change in a landowner’s right to use his or her land. “Limiting incompatible uses” does not mean a prohibition of all development, but means governing new development(s) that could adversely affect designated critical areas.

This Title provides specific protection requirements for each category of critical areas. While preservation and protection of critical areas is of paramount importance, it is not the intent of this Title to totally prohibit alteration or impacts to critical areas or associated buffers. Rather, this Title defines a process and protection requirements intended as a framework to manage the County's critical area lands responsibly, while providing for reasonable and economically viable uses of private property.

¹ WAC 365-190-020.

13.00.030 APPLICABILITY AND INTENT

This Title shall be consistently applied to development proposals, unless specifically exempted, under County jurisdiction within the unincorporated areas of Stevens County. The regulations shall be liberally construed to serve intended purposes. It is the intent that these regulations shall be interpreted to respect constitutionally protected rights of private property to the full extent recognized by the law of the United States of America and the State of Washington.

Any development proposal as defined herein shall require, unless specifically exempted, review under this Title. The Stevens County Planning Department and the Stevens County Building Department shall have responsibility for enforcement of this Title, as specified in Chapter 13.40, Enforcement.

13.00.032 BEST AVAILABLE SCIENCE

In designating and protecting critical areas, RCW 36.70A.172 requires cities and counties to include best available science in development regulations. WAC 365-195-900 outlines the procedural criteria for including best available science in Comprehensive Plans and development regulations.

In order to demonstrate that best available science has been included in the critical area regulations, counties are encouraged to address the following (WAC 365-195-915):

- a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.
- b) The relevant sources of best available scientific information included in the decision making.
- c) Any nonscientific information—including legal, social, cultural, economic and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should (i) identify the information in the record that supports its decision to depart from science-based recommendations; (ii) explain its rationale for departing from science-based recommendation; and (iii) identify potential risks to the functions and values of the critical area(s) at issue and any additional measures chosen to limit such risks.

To aid counties and cities in the process of developing regulations reflecting best available science, the Department of Community Trade and Economic Development (CTED) prepared *Citations of Recommended Sources of Best Available Science*, in March 2002. This document references numerous pieces of literature recognized as best available science.

Counties and cities were encouraged to consult with a qualified expert or team of experts to help identify and determine the applicability of the information to their jurisdiction.² To that end, Stevens County has consulted with Bernard L. Kovalchik, a retired US Forest Service Ecologist employee with over 20 years of experience as a wetland/riparian ecologist.

13.00.034 USE OF QUALIFIED PROFESSIONALS (Amended by BOCC Res. #80-2004, July 6, 2004)

(1) In order to adequately assess potential impacts of proposed development to critical areas, the County may require an applicant to submit special reports, studies, surveys, mitigation and management plans, or tests. The reports will provide environmental information and may

² CTED, *Citations of Recommended Sources of Best Available Science*, 2002

contain strategies and recommendations for maintaining critical areas and mitigating unavoidable impacts. Any such report shall be prepared by a qualified professional with documented expertise, as defined in this Title, in the specified field.

(2) Each report shall include the resume of the person or persons preparing the report, including education and a list of any other relevant qualifications that document expertise in the requisite field. Where licensing, registration, or certification is required or available from the state, a federal agency, or a professional organization, such licensing, registration or certification shall be accepted as demonstrating the required expertise. The criteria set forth in WAC 365-195-905(4) shall inform the determination of whether a person is a qualified professional within the meaning of this Title.

(3) The applicant shall pay the costs incurred in the preparation of special reports, studies, surveys, plans or tests. The applicant shall also pay the costs incurred by the County when the County finds it necessary to engage technical consultants or staff for peer review and interpretation of data and findings submitted by or on behalf of the applicant.

(4) When the County determines that a special report or peer review or other technical assistance is required in order to appropriately review and assess impacts to critical areas, the applicant shall be notified and may be required to submit a monetary deposit to cover costs and/or sign a letter agreement ensuring payment of County costs. The County shall withhold issuance of permits or approvals until payment has been made.

(5) An applicant may choose to fund the hiring of a qualified professional by the County to prepare necessary field studies and recommendations regarding an application, rather than submitting a report that must then be peer reviewed at additional cost.

(6) When an applicant submits information or a report prepared by a technical expert employed by a local, state or federal agency, peer review of the report or recommendations for the project shall not be required.

13.00.040 CONFLICT OF REGULATIONS

If more than one Stevens County development regulation applies to any development proposal or land use activity identified in this Title, then the most restrictive regulation shall apply.³

All statutory references to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) within this Title are taken from the September 2001 editions. If any referenced RCW or WAC is amended after adoption of this Title, the most current language or intent shall apply.

13.00.050 DEFINITIONS

Words not defined herein shall have their ordinary and common meanings as defined in Webster's 9th New Collegiate Dictionary, copyright 1998. For purposes of this Title, the following definitions shall apply:

Administrator means the Stevens County Planning Director or designee.

Agricultural Land means land primarily devoted to the production of horticultural, viticultural, floricultural, aquacultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, cultivated wood or fiber crops, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and those lands that have long-term commercial significance for agricultural production.⁴

³ WAC 365-190-020

⁴ WAC 365-190-030

Applicant means a person(s) who file(s) an application for a development proposal and who is either the owner of the land on which the proposed activity would be located, a contract purchaser, a lessee, the person who would control and direct the proposed activity or the authorized agent of such person.

Common-line setback is the average of setback from the OHWM for existing dwelling units within 300 feet of the side property lines of the subject parcel. This is accomplished by an incremental increase of the setback from the OHWM. A minimum setback of 50 feet from the OHWM applies when adjoining residences are not within 300 feet.⁵

Compensatory Mitigation⁶ means replacing project-induced critical area losses or impacts. It is the last step of the preferred mitigation sequence. It shall only be implemented when all other mitigation steps in the preferred sequence have been analyzed and determined not feasible. Compensatory Mitigation shall be implemented in the following sequence:

1. "**Restoration**"- actions performed to reestablish wetland or other critical area functional characteristics and processes.
2. "**Creation**" - Actions performed to intentionally establish a sensitive area/critical area at a site where it did not formerly exist.
3. "**Enhancement**" - Actions performed to improve the condition of existing, degraded, critical areas so that the functions they provide are of a higher quality. Enhancement shall be considered only where "Restoration" and "Creation" are not feasible mitigation solutions.

Critical Aquifer Recharge Area see Chapter 13.10.040 Protection Regulations.

Delineation means the determination of an area's boundaries in the field according to the application of specific methodology by an agency(ies) or qualified professional.

Development proposal includes proposals that require approval under existing or subsequently adopted Stevens County regulations. This includes the following permits: Building, On-site sewage disposal system, Flood plain, Shoreline exemption or substantial development, Conditional use permit, Variance, Rezone, Short Plat or Long Plat.

Documented Expertise refers to the criteria by which a person or agency is considered to be a qualified scientific expert with expertise appropriate to the relevant critical area. This definition shall be interpreted as being applicable to a person, professional, or agency meeting the criteria specified in WAC 365-195-905(4).

Endangered Species means any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state.⁷ These are designated under WAC 232-12-014.

Erosion Hazard Areas (EHA) see Chapter 13.10.061 Protection Regulations.

Evapotranspiration is the loss of water from the soil both by evaporation and transpiration from the plants growing thereon.

Existing and Ongoing Agriculture includes activities involved in the preparation, cultivation and production of crops, animal or fiber products, land registered in a federal or state conservation program and lands which have been approved by the County as Open Space Farm and Agricultural Conservation Land pursuant to RCW Chapter 84.34. Existing and

⁵ Stevens County SMP 6.34

⁶ DOE Model Wetland Ordinance

⁷ WAC 232-12-297

ongoing activities include the operation and maintenance of farm and stock ponds, drainage ditches, irrigation ditches or systems including laterals or canals, changes between agricultural activities and the normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. An operation or activity ceases to be ongoing when the area on which it was conducted is converted to a nonagricultural use. Agriculture includes orchard or Christmas tree operations. Forest practice activities are not included in this definition.

Fish & Wildlife Habitat Conservation Areas see Chapter 13.10.030 Protection Regulations.

Flood means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.⁸

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood”.

Floodplain means a land area adjoining a river, stream, watercourse or lake, which is likely to be inundated by a base flood. The extent of a base flood may vary during flood events.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.⁹

Forest Practice means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting or processing timber, including, but not limited to: 1) road and trail construction; 2) harvesting, final and intermediate; 3) precommercial thinning; 4) reforestation; 5) fertilization; 6) prevention and suppression of disease and insects; 7) salvage of trees and 8) brush control. Forest Practice activities do not include orchard or Christmas tree operations.¹⁰

Frequently Flooded Areas see Chapter 13.10.050 Protection Regulations.

Geologically Hazardous Areas see Chapter 13.10.060 Protection Regulations. They include Erosion Hazard Areas, Landslide Hazard Areas, Mine Hazard Areas, Seismic Hazard Areas and Volcanic Hazard Areas.

Habitats of Local Importance include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus (a sloping pile of rock fragments at the base of a cliff), and wetlands.

Mitigation refers to a dialogue between the applicant, the Planning Department and an agency(ies) or qualified professional whereby potential impacts to a critical area and associated buffer are discussed and solutions proposed. Mitigation solutions in the order of preference include (1) avoiding, (2) minimizing, (3) restoring, (4) reducing or (5) compensating for adverse impacts.

⁸ FEMA Model Ordinance

⁹ FEMA Model Ordinance

¹⁰ WAC 222-16-010

Ordinary High Water Mark (OHWM) means that mark on lakes and streams that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil, a character distinct from that of the abutting upland, in respect to vegetation. Provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.¹¹

Priority Habitat and Species (PHS) means a habitat type with unique or significant value to many species or a fish and wildlife species requiring protective measures and/or management guidelines to ensure their perpetuation.

RCW is an acronym for the Revised Code of Washington which is the codification and sectionalization of state legislative actions that have been signed into law by the governor.

Riparian refers to lands adjacent to a natural watercourse, such as a stream bank or lake shore.

Sensitive Species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened within the foreseeable future through a significant portion of their range within the state without cooperative management or removal of threats. They are designated under WAC 232-12-011.

Species of Local Importance are those species that have been designated as locally significant by Stevens County pursuant to the nomination process outlined in Appendix 'B'.

Threatened Species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future through a significant portion of their range within the state without cooperative management or removal of threats. They are designated as under WAC 232-12-011.

Vadose: of, relating to, or being water and solutions in the earth's crust above the permanent groundwater level.

WAC is an acronym for the Washington Administrative Code which is the codification of procedural criteria used to implement the RCWs. The criteria are developed by state agencies at the administrative level in a rule making process. A WAC is not a legislative action.

Wetlands see Chapter 13.10.020 Protection Regulations.

13.00.060 MAPS AND RESOURCE INFORMATION

GMA does not specifically require critical areas to be mapped.¹² Performance standards are preferred since attempts to map critical areas will be too inexact for regulatory purposes.

Stevens County recognizes the necessity for accurate geographic information. As new information becomes available on critical areas, resource maps will be updated, as often as resources permit. Stevens County will strive to obtain the most current version of resource maps as distributed by the agency responsible for maintaining the resource.

Resource maps are available for public review at the Stevens County Planning Department, during regular County business hours. Some restrictions apply to the redistributing and

¹¹ RCW 90.58.039 2(b)

¹² WAC 365-190-040(2d)

display of sensitive fish and wildlife information in order to protect fish and wildlife from inadvertent or malicious harm.

13.00.061 REGULATORY MAPS

Stevens County currently has no adopted regulatory maps designating critical areas as defined in this Title. Protection requirements have been designed to be applied upon submittal of an application for land use and development activities.

13.00.062 NON-REGULATORY - RESOURCE MAPS

The following maps are used as a guide to evaluate the potential presence of critical areas:

- Department of Fish & Wildlife (WDFW) Priority Habitat and Species (PHS)
- WDFW Wildlife Heritage Point Observations
- Department of Natural Resources (DNR) Water Type
- Federal Emergency Management Agency Flood Insurance Rate Maps (FEMA FIRM)
- USGS Quadrangle Topographical maps
- USDA Natural Resource Conservation Service (NRCS) soils maps
- National Wetland Inventory (NWI) (1987, USFWS)
- Eastern Washington University Wetland Inventory maps

These maps provide only approximate boundaries and locations. Due to their scale and content, the maps are not considered a regulatory standard or substitute for site-specific assessment. The actual location and boundary(ies) of a critical area shall be based upon the presence of the features applicable to each critical area element.¹³

13.00.063 OTHER RESOURCE INFORMATION

The following publications are available for review at the Stevens County Planning Department. Stevens County will utilize this information whenever applicable. *Stevens County Critical Aquifer Recharge Study*, 1993. This study did not come to a conclusion as to location of aquifers within the County. A variety of information regarding soils, water table depths, etc., was gathered and may be able to be utilized in determining likely aquifer locations.

The Washington Lake Book, 1997- Department of Ecology, publication # 97-10. This book identifies guidelines for shoreline and lake management practices that can be implemented by individuals, organizations, or agencies to achieve healthy and usable waters.

13.00.070 SEVERABILITY

If any provisions of these regulations, or its application to any person, or legal entity, or parcel of land or circumstance is held invalid, the remainder of these regulations or application of the provisions to other persons or legal entities or parcels of land or circumstance, shall not be affected.

¹³ WAC 365-190-040(2D)

