

Thurston County Planning Commission's Critical Areas Regulations Draft #1



Questions and Answers About The First Draft

March 2006

The Critical Areas Regulations Draft #1 is a product of the Planning Commission and has not been reviewed by the Board of County Commissioners. The Planning Commission is in the process of refining the draft in response to public comments. The commission will ultimately forward its recommendations to the Board of County Commissioners. Before taking any action on the Planning Commission's recommendations, however, the Board of Commissioners will hold one or more public hearings, and conduct work sessions to consider public testimony.

This publication answers questions about the first draft of revisions to the critical areas ordinance, which is now before the Thurston County Planning Commission and is subject to further revision. A second draft will be released in 2007. We encourage readers to visit www.co.thurston.wa.us/permitting/critical_areas_home.htm for regular updates.

Introduction

Thurston County's critical areas regulations govern how development and redevelopment can safely occur on environmentally sensitive lands and lands that affect our community's public health. The Washington State Growth Management Act requires Thurston County to review its critical areas regulations periodically to make sure they stay current with changes in state law. Thurston County's regulations were first adopted 10 years ago, and since then, the state has passed new mandates, most notably: local governments must now use the "best available science" when developing and evaluating regulations, and must protect anadromous (migrating between fresh and salt water) fish species and wildlife habitat areas. Thurston County is currently



examining its regulations and drafting amendments to bring them up to today's legal requirements. This publication answers questions most often asked by the public.

Q. What are "critical areas"?

The state Growth Management Act requires counties and cities to protect five types of critical areas.

- "Aquifer recharge areas" are areas of land that convey water into aquifers -- underground layers of course cobbles and gravel that contain space where water collects. Here in Thurston County, virtually all our drinking water comes from aquifers, so contamination in an aquifer recharge area will certainly harm drinking water supplies.
- "Frequently flooded areas" and "geologically hazardous areas" are locations in the county that are vulnerable to floods, earthquakes, landslides

and other geologic dangers. Development regulations help protect residents and property from these natural events.

- “Wetlands” are marshy areas that absorb water and send it slowly to rivers, streams and aquifers. Wetlands help prevent flooding and erosion, and provide a home for many species of native plants and wildlife. The plants and soils in wetlands also help filter out contaminants, such as fertilizers and herbicides, which would otherwise enter aquifers and our drinking water.
- “Important wildlife habitat” supports the diverse wildlife population in Thurston County. Some of our most valuable habitat – riparian habitat” – is found alongside rivers and streams. Riparian habitat refers to the transitional areas between the upland environment and water bodies, such as rivers, streams, wetlands, lakes, ponds and marine shorelines. Riparian habitats moderate water temperature, help prevent erosion, provide shelter for wildlife, preserve vegetation, and help protect stream habitat. Another important habitat is prairies. Prairies, once plentiful, are rapidly diminishing in Thurston County. As prairies disappear, the native plants and wildlife they support also disappear and are replaced by invasive, non-native plants and wildlife.

Q. Why is it important to protect critical areas?

Protecting critical areas helps preserve the natural resources that make Thurston County a healthy and beautiful place to live — the aquifers that supply drinking water, the streams that support fish populations, the wildlife habitat that balances our ecosystem, and the scenery that feeds our spirits. Critical areas regulations help ensure that our water supplies are free of contamination and that our lakes and rivers are safe places to swim and fish. They also protect people from physical and financial harm caused by natural disasters such as floods, earthquakes, and lahars.

Critical area regulations also shield environmentally sensitive areas of our county from the pressures of growth. Thurston County is one of the fastest growing counties in the state in large part because of the very beauty and health of our environment.

Q. Why change now?

The state Growth Management Act requires fast-growing counties to periodically review regulations to make sure they keep pace with changes in state law. The county’s 10-year-old regulations are outdated in two key ways: they are not based on “best available science,” and they do not protect anadromous (migrating between fresh and salt water) fish and several types of habitat. (continued next column)

Some of our existing regulations fall short of measures that scientific literature indicates is necessary to adequately protect critical areas and prevent harm from natural hazards. Some of our regulations also fall below the minimum standards deemed appropriate by the Growth Management Hearings Boards and the Washington State courts to be compliant with state law. Moreover, the regulations fail to meet new mandates that require the protection of anadromous fish habitat.



Q. What is “Best Available Science”?

A 1995 amendment to the state Growth Management Act requires counties and cities to apply “best available science” when their developing critical areas regulations. Local governments must gather and evaluate available scientific information, and determine which information constitutes “best available science.” While local governments may accept or solicit scientific information from state and federal agencies, universities, tribes, and other experts, it’s ultimately up to the local governments to determine whether the information they have gathered constitutes the best available science. Local governments must also document their sources.

Local governments that choose to manage critical areas using regulatory approaches that are not supported by best available science must prove that their alternative approaches would succeed. The Growth Management Hearings Board and Washington State courts have struck down regulations that were not supported by best available science where the jurisdictions failed to demonstrate that their regulations would be as effective.

Q. What happens if we just keep the current regulations?

If Thurston County fails to update its critical areas regulations, the Western Washington Growth Management Hearings Board and the Washington State courts could intervene in local regulations -- and possibly impose stricter requirements. For example, the Board could make a “determination of invalidity,” which would prevent Thurston County from issuing any permits, including building permits.

The county could also lose eligibility for some grants and low-interest loans used to finance road projects and other public facilities.

Q. What scientific literature did Thurston County use?

Thurston County staff compiled a wealth of scientific literature, including information deemed best available science by the state, Growth Management Hearings Boards, courts, and other western Washington counties.



Workgroups composed of technical experts, affected parties, and members of the Thurston County Planning Commission reviewed the literature and determined its relevance to our region. The workgroups then drafted amendments aimed at bringing our existing critical areas

regulations in line with scientific data.

Q. Would the amendments increase the FEMA floodplain?

No. The county currently regulates the 100-year floodplain mapped by the Federal Emergency Management Administration. The draft does not alter FEMA boundaries.

FEMA is currently updating the flood plain boundaries using more recent elevation information. This may result in increasing and possibly decreasing the floodplains.

Q. Would the amendments affect development within high-groundwater areas?

Current regulations ban development altogether *within* high groundwater areas (i.e., areas that have already been known to flood) -- this prohibition would remain the same under the amendments.

The amendments would, however, ease development restrictions near high ground water areas to be consistent with best available science. Current regulations draw a 300-foot boundary around high groundwater flooding areas. Within the 300-foot area, the construction of impervious surfaces and the removal of trees are limited. Also within the 300-foot area, structures must be set back 50 feet from, and 2 feet above, the known flood elevation.

The amendments would remove restrictions on impervious surfaces and tree cutting within the 300 foot area. Instead, a more precise boundary would be drawn from the flood area outward until the land is two feet higher than the flood elevation. Buildings within that boundary would have to be constructed so that the lowest floor and all the mechanical systems would be 2 feet higher than the flood level.

Q. Are the regulations retroactive?

Under the proposed regulations, legally existing uses (agriculture, for example) and structures that are already located within proposed critical areas or buffers could continue at the same location. However, the County could require property owners to use Best Management Practices or other measures to mitigate

impacts on the critical areas. (“Best Management Practices” are practical, widely accepted methods of managing land to minimize harm to the environment.) For example, if sediment were running off a field into a stream, the county could require the property owner to plant a vegetative filter strip to catch the sediment.

Q. Why not focus on corporations rather than individuals?

Although individual property owners and farmers might pose only a small risk to the environment, all those small risks can, cumulatively, add up to significant danger to the environment (for example, a few leaking fuel tanks or a few farms spreading excessive amounts of manure can significantly contaminate drinking water sources). Local government attempts to exempt farms from critical areas regulations have been struck down by the Growth Management Hearings Board and Washington State courts. It’s important to note that corporations are also subject to these regulations. Treating corporations differently than individuals, without showing why they should be treated differently, could affect the legality of these regulations.

Q. Would buffers increase?

Generally yes. The Planning Commission’s Draft #1 would generally widen buffers around streams, lakes and marine shorelines as follows:

- Stream buffers would be set at 100 to 250 feet. (They are now between 25 and 100 feet.) The width of the buffer would vary, depending on the degree to which the buffer protects water quality and moderates temperatures, and on the fish and wildlife that rely on the buffer. Where maintaining water quality is the only concern, buffers would typically be 100 feet wide. If fish were present in the stream, or wildlife depended on the adjacent riparian area, the buffers would range from 200 to 250 feet wide.
- Wetland buffers would generally range from 50 feet to 300 feet. (They are now between 100 and 300 feet.) Some buffers would be narrower than they are now, and some may be larger, depending on the wetlands’ functions. Buffers would generally be 100 feet wide for wetlands that do

not provide significant wildlife habitat. (Scientific literature suggests that 100 feet of natural vegetation is generally adequate to filter pollutants and sediment to maintain water quality.)

Wider buffers would be required for wetlands providing wildlife habitat. (Scientific literature indicates that 100-foot-wide buffers are generally the minimum needed to support small mammals, reptiles and amphibians, waterfowl nesting and some disturbance-tolerant birds. More sensitive species, such as migratory birds which are common in Thurston County, and large animals, are reported to need buffers of roughly 200 to 328 feet wide.)

- The proposed wetland buffers could be decreased or increased based on site conditions. They could also be reduced in exchange for activities that enhance the wetland (for example, removing invasive plants or ditches that drain the wetland or deliver contaminants).
- The amendments would exempt wetlands that are 1,000 square feet or less in size. (Current regulations exempt wetlands less than 11,000 square feet in Urban Growth Areas, and less than 22,000 square feet in rural areas.) To view a map of wetlands, visit www.co.thurston.wa.us/permitting/critical_areas/critical_areas_home.htm.
- Buffers around lakes, ponds, and marine shorelines would double from about 50 feet to 100 feet to protect water quality.
- Important wildlife habitat area buffers are currently 600 feet from nesting sites of priority species and species of local concern. The amendments would reduce the buffers; however, the buffers would no longer be limited to only the nesting sites. Instead, areas of primary association -- such as feeding and mating areas for priority species -- are new protected areas.



Q. How would the amendments affect agriculture?

Agricultural landowners who already perform activities on proposed critical areas or buffers could continue to do so; however, they would need to mitigate negative impacts to the buffer or critical area. They would also have to fence-off livestock and use Best Management Practices.

New agriculture, on the other hand, could not encroach on wetlands and buffers, except in smaller, lower-value wetland areas. Property owners could undertake new agricultural activities on properties that contain wetlands, streams and buffers, as long as they submit a farm management plan, fence off livestock, and mitigate any negative impacts to the buffers or critical areas.

In aquifer recharge areas, no new agricultural activities would be allowed if contamination could reach a water supply within one year. (Referred to as the “one year time of travel.”) Activities that lead to nitrate levels beyond a certain threshold along property lines or nearby monitoring wells would not be allowed. For example, the county could lower manure-application rates and require monitoring to protect the quality of drinking water in neighbors’ wells.



Q. If a critical area/buffer is currently farmed (existing use) but the farm is sold to a new owner, is it then considered “new” agriculture?

No. However, if the existing use is causing harm to the critical area Best Management Practices or other measures to mitigate the impacts may be required.

Q. How would the amendments affect forestry?

Forestry conducted under a state Department of Natural Resources permit would not be subject to the existing or proposed critical areas regulations, unless it involves converting forest land to another use or a “conversion option harvest plan.”* The amendments *would* apply to situations where a landowner converts forest land (cutting and removing trees) to a non-forestry use.

* A conversion option harvest plan is a voluntary plan developed by the landowner and approved by Thurston County, indicating the limits and types of harvest areas, road locations, and open space.

Q. Could I mow and maintain my lawn and landscaping if it is located in a critical area or buffer?

Yes. All legally existing uses, including lawn mowing, are allowed in critical areas and buffers. The county could, however, require property owners to use Best Management Practices to avoid harmful impacts to the critical area. For example, property owners could be expected to apply pesticides and herbicides according to the federal and state rules listed on the label.

Q. Would the proposed amendments restrict access to my own land?

No. The current and proposed regulations state that the county will not restrict access unless such access would be detrimental to sensitive critical areas or dependent wildlife. In such a case, fencing could be required under both the current and proposed regulations.

Q. Can I rebuild my cabin or home if it burns down (more than 50%) and it is located in a critical area?

Under most circumstances, Draft #1 of the proposed Critical Areas regulations allows the replacement of

a structure that is damaged beyond repair, as long as it is a legally established, non-conforming structure, there are no alternatives outside the critical area, and it occurs within the existing footprint. The proposed Critical Areas regulations allow the structure to be relocated if it would reduce the risk from flooding or other hazard or reduce the impact of the critical area. However, the proposed regulations would not allow reconstruction of houses in the floodway of a river if cost of repairs exceeded 50% of the structure's market value.

However, the current Shoreline Master Program adopted in 1976 would not allow rebuilding greater than 50% if it is located within 50 horizontal feet from the ordinary high water mark in waters of state-wide significance for rural areas (more developed) and 100 feet for conservancy areas (less developed).

Q. The cumulative actions of individual homeowners can also harm critical areas. How do the proposed amendments address this issue?

Just like existing farms, existing residences are allowed to continue within critical areas and their buffers, and property owners may continue to maintain lawns and gardens at those existing residences. However, the draft amendments expect property owners to remove underground fuel tanks at residents and farms if the fuel tanks fail to meet current standards. This requirement helps prevent sub-standard fuel tanks from contaminating drinking water supplies. Also, the draft amendments enable the county to require landowners to use best management practices or other appropriate remedies if property is used in a way that damages a critical area or its buffer.

In the case of subdivisions, new subdivisions would be required to create lots with enough space outside of the critical area and buffer to accommodate the house and associated development. Access roads also could not encroach on critical areas unless there were no viable alternative. Also, all new subdivisions in critical aquifer recharge areas would be required to use integrated pest management for pest control and best management practices for

fertilization. Subdivisions of five or more units would also need to perform an analysis to demonstrate that nitrate from the development (from septic systems and fertilizers, for example) would not exceed the water quality standard.

Q Why should cities be given an allowance to pollute and rural residents penalized?

The county and the cities are all required to update their regulations to protect critical areas consistent with best available science. Recently adopted city and town critical area regulations are similar in many respects to the County's draft critical areas regulations.

Q If these items become law, who will pay for them and who will enforce them? How many county employees will it take to administer this program?

The county Development Services Department administers the critical areas regulations. The county is considering setting application fees at the level needed to administer development regulations, including the critical area regulations. The county will estimate staffing needs and application fees based on the Planning Commission's final recommendation.

Q Are the proposed buffers the smallest science will support? If not, why not?

The next draft of the proposed critical areas amendments will identify the range of buffer widths supported by scientific literature and the implications of the various alternatives.

Q. How can I voice my opinions?

At this point, we are between drafts. Public comment is closed for the draft dated July 20, 2005. When the revised draft is released in 2007, we hope you review it and share your comments and ideas for improvements.

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