

Planning Commission Public Hearing for Critical Areas Ordinance Update Held June 6, 2016 – Comments Received by June 10, 2016	
--	--

Pages 1-3	Daniel Einstein, Olympia Coalition for Ecosystems Preservation
Pages 4-7	Jamie Glasgow, Wild Fish Conservancy
Pages 8-11	Elizabeth Rodrick, Black Hills Audubon Society

ESA Memo

1. Bibliography does not include cited reference: Semlitsch and Jensen, 2001

CAO Updates:

1. **18.32.100**: Please add: To “protect” critical areas means to maintain their values and functions, this requires no net loss of critical areas values and functions." RCW 36.70A.172(1); WAC 365-195-825(2)(b); Tulalip Tribes of Wash. v. Snohomish Cy., CPSGMHB No. 96-3-0029 (Final Decision & Order, Jan. 8, 1997); Pilchuck Audubon Soc’y v. Snohomish Cy., CPSGMHB No. 95-3-0047 (Final Decision & Order, Dec. 6, 1995).
2. **18.32.110**: Previous item **C** eliminated. Matrix states that it is covered by item **A**, but item **A** includes no specific buffers.
3. **18.32.111** Exceptions: Item **D** allows development within the footprint of existing paved surfaces that were previously approved. Olympia is an old city. In some cases, there are paved surfaces and indeed structures on City ROW that never underwent a process of approval under an existing City CAO. Must clarify that grandfathering does not extend to these areas. An example, park of the Rotary Park at West Bay includes “historic” paving.
4. **18.32.111** Exceptions: Item **G** indicates that manual invasive species removal is allowed. This is a sensible exception given the prevalence of English Ivy in our neighborhoods. However, there are places where Ivy, for example, prevents erosion on steep slopes. While removal should be encouraged, it is important to require that erosion control and native species replanting accompany ivy removal.
5. **18.32.112** General Provisions: Item **D** allows a utility exception where no other alternatives exist. Here we need to make a distinction between *public* utility and *private* utility. For example, if a geographically isolated parcel falls in a critical area or can only be reached via an access driveway through a critical area, it should be required that the access and accompanying utility meets the criteria in the CAO. If it cannot, no exception should be granted and the development should be deemed unworkable.
6. **18.32.300** Important Habitats and Species: New Item **A** removes specific buffers and refers to guidelines under **18:32.305-18.32:330**. **18.32.315** asserts that no development will be allowed in important habitats without WDFW approval. However, WDFW has no regulatory authority. It simply makes recommendations. In the CAO, cities may opt to adopt those recommendations. This should be clarified. It is recommended that the City explicitly adopt those recommendations in the CAO in order to avoid a legal limbo that would benefit neither the intent of protection nor the certainty of the developer. **18.32.320** further adds to the uncertainty by invoking a case-by-case standard in consultation with WDFW. It is not clear with whom in the City that final decision rests.
7. **18.32.330** Management Plan: First sentence is grammatically faulty, resulting in lack of clarity, and should be revised. Please consider making this two sentences.
8. **18.32.330**: If some impacts are unavoidable, what steps will be taken to minimize them and how will the impacts be mitigated?
9. **18.32.330**: WAC -365-190-130 (3) does not appear to provide mitigation guidelines but is rather a list of potential critical areas.

10. **18.32.405** Priority Riparian Areas: Item **B**, sub-item 2 determines which areas of the western shore of Budd Inlet fall under this jurisdiction. This sentence is structurally ambiguous. It is not clear if the “not included” modifier is limited to the BNSF causeway and trestle or if the “not included” modifier also operates on “West Bay Drive NW, Olympic Way NW, and parcels west of the rights-of-ways of West Bay Drive NW and Olympic Way NW;” The sentence needs to be revised.

Moreover, if West Bay Drive NW, Olympic Way NW, and parcels west of the rights-of-ways of West Bay Drive NW and Olympic Way NW are indeed exempted then a justification needs to be given *based on sound science*. As compromised as they are, parcels east of WBD are critical habitat for both juvenile and adult salmon, including endangered species. If excepted, this would contradict the City’s own habitat assessment for WBD and would be viewed negatively by numerous stakeholders, including non-governmental organizations, tribes and state agencies. Moreover, the parcels west of WBD include the mouth and former pocket estuary at Schneider Creek. This is a fish bearing creek and historically a salmon bearing creek. The City’s own data shows that even today an odd few salmon make it through the disjointed, fish-blocking culvert at Smyth Landing. Exempting this area, and again the language is not clear, could set the City up for possible litigation under the Endangered Species Act and should be avoided.

11. **18.32.410** Streams and Priority Riparian Areas – Typing: Re-write type definitions based on WAC 222-16-031. Reference this WAC and Section 13 of the Forest Practices Board Manual (Guidelines for water typing) which is incorporated via the WAC.

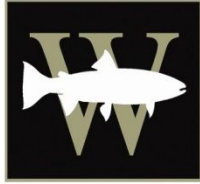
Specify:

(i) Waters having any of the following characteristics are presumed to have fish use:
(A) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; and having a gradient of 16 percent or less; (B) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size based on hydrographic boundaries; (C) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream; (D) Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.

12. **18.32.430 Streams and Priority Riparian Areas - Hearing Examiner Authorized Uses and Activities**: Item **C**, sub-item 2 states that “Streams may be relocated under a mitigation plan...” Please revise to “Streams may be relocated under a mitigation **or restoration** plan ...”
13. **18.32.435** Streams and Priority Riparian Areas – Buffers: Item **C** Standard Buffer Width Range lists buffers. Please specify what determines the required buffer within the range?

14. **18.32.435** Sub-item 1, page 36: “Stream buffers shall be measured on a horizontal plane, outward from the ordinary high water mark (OHWM) on each side of the stream. (See Figure X)”. Please use the bankfull width as per the table.
15. **18.32.435**. Figure X shows OHWM but code refers to bankfull width. Be consistent. Change schematic to show OHWM (or BFW) above wetted width. Add perennial vegetation and/or scour to demonstrate demarcation of OHWM or BFW. And/or reference DoE handbook on identifying BFW, etc.
16. **18.32.435**: Item F, sub-item 7 change “considered” to “implemented”, as in “Other types of mitigation measures as provided in “Land Use Planning for Salmon, Steelhead and Trout: A land planner’s guide to salmonid habitat protection and recovery,” Washington Department of Fish and Wildlife, 2009, have been implemented.”
17. **18.32.525** Wetlands: Item H, sub-item 4 specifies that crossings using culverts shall use super-span or oversize culverts. At a minimum, the minimum diameter needs to be specified and a maximum length should also be specified. Culverts prevent critical biological processes that are inversely affected by residence time and thus length. Please consult the best-available science here¹. Excessive length also limits migration of anadromous fish. Olympia also currently has intertidal culverts. There should be a separate specification for such culverts to assure that the culverts work at both high and low tides.
18. **18.32.655** Erosion Hazard Areas: Should specify that licensed geotechnical surveys should be cleared with the City before the work is actually done. There have been cases where such surveys were done within the City’s seasonal moratorium on excavation, resulting in erosion within City recognized critical areas. Call before you dig.

¹ Beaulieu JJ, Golden HE, Knightes CD, et al. Urban Stream Burial Increases Watershed-Scale Nitrate Export. Singer AC, ed. *PLoS ONE*. 2015;10(7):e0132256. doi:10.1371/journal.pone.0132256.



Wild Fish Conservancy
N O R T H W E S T

Linda Bentley
City of Olympia
PO Box 1967
Olympia, WA 98507

June 9, 2016

Re. Comments to Olympia Critical Areas Ordinance Update

Ms. Bentley,

Thank you for the opportunity to submit these comments on the City staff proposed amendments to OMC 18.32. With a few exceptions (notably, the potential reduction in buffer widths proposed in 18.32.435), we feel the proposed amendments move the CAO in the right direction - providing more consistency and clarity – especially in terms of addressing the conflicting classification information currently provided in 18.42.410 (Typing System). I hope you and your team will consider the following comments and I encourage you to contact me for clarification if you have any questions about them.

As an aside, I am curious to understand the City’s code revision process. I presume City staff worked with the contracted consultant (ESA) to prepare the proposed code revisions, but I wonder which City staff from which departments. Specifically, were Environmental Services or Water Resources staff actively engaged in the drafting or review of the proposed revisions? Their first-hand professional experience with Olympia’s surface waters and the ability of existing regulations to meet “no net loss” goals would be invaluable to informing this important process.

18.32.100.

To provide some important context for the CAO goals, add: *“To “protect” critical areas means to maintain their values and functions. This requires no net loss of critical areas values and functions.”*

RCW 36.70A.172(1); WAC 365-195-825(2)(b); Tulalip Tribes of Wash. v. Snohomish Cy., CPSGMHB No. 96-3-0029 (Final Decision & Order, Jan. 8, 1997); Pilchuck Audubon Soc’y v. Snohomish Cy., CPSGMHB No. 95-3-0047 (Final Decision & Order, Dec. 6, 1995).

18.32.330 (A)

Replace ‘mitigated’ with ‘*avoided*.’

Add “*If some impacts to critical areas are unavoidable, what steps will be taken to minimize them and how will the impacts be mitigated to ensure no net loss of critical area values and functions?*”

WAC 365-190-130 (3) is identified for guidance. Is there mitigation guidance there? It appears to be a list of items counties and cities should consider when classifying and designating critical areas.

18.32.410

Here (and throughout), reference WAC 222-16-031 instead of 030. 031 is the WAC the state is currently operating under and will be doing so for the foreseeable future (WA DNR will confirm) as the modeled maps described in first paragraph of 030 and 031 have not been (and likely will not be) developed. I know it is confusing as 030 uses the S,F,N, and U nomenclature; but the current rule is provided in 031. WA DNR uses the 031 rule and the 030 nomenclature via the crosswalk table provided at the top of 031.

For clarity and consistency OMC should reference WAC 222-16-031 and Section 13 of the Forest Practices Board Manual (Guidelines for water typing) which is incorporated via the WAC.

Specifically, OMC 18.32.410 should state (verbatim from WAC 222-16-031):

- (i) *Waters having any of the following characteristics are presumed to have fish use:*
 - (A) *Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; and having a gradient of 16 percent or less;*
 - (B) *Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size based on hydrographic boundaries;*
 - (C) *Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream;*
 - (D) *Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.*

18.32.430 (C) (2)

“Streams may be relocated under a mitigation *or habitat restoration* plan for the...”

18.32.435 (C) (Table)

Remove the buffer width ranges and provide one required width. Otherwise, there is the potential for a reduction in the width of required riparian buffers compared to the current code. We do not believe the best available science supports any reduction in the width of the current buffers. To the contrary, we believe the BAS supports removing the low end of each of the ranges provided:

S = 250ft

F>5ft = 250ft

F<5ft = 200ft

Np and Ns with mass wasting potential = 225ft

Np and Ns without mass wasting potential = 150ft

18.32.435 (C) (Table)

Additional Comments

1. The proposed table provides no buffer width requirement for Type N tributaries to Type N streams. The BAS supports buffering them as they often comprise the headwaters of our watersheds, are sensitive to disturbance, and can have the greatest downstream impact by distance. OMC currently provides 150ft buffers on them, while the proposed code provides nothing.
 - a. Remove “draining to Type S or F streams or directly to Puget Sound” from the two Type N definitions in the table.
2. Who is determining mass wasting potential, at what scale, and using what criteria? This should be clearly identified.

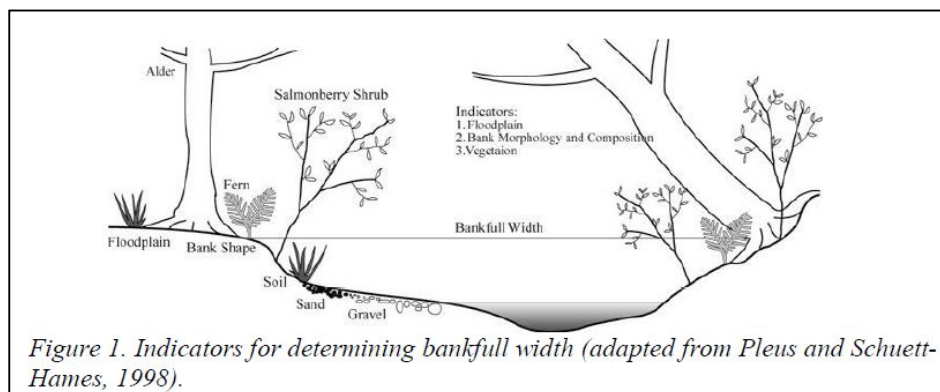
18.32.435 (C) (1)

Replace “ordinary high water mark (OHWM)” with “*bankfull width (BFW)*” to be consistent with the WAC referenced in 18.32.410 and the table provided in 18.32.435. BFW is defined by WA DNR in Section 2 of the Forest Practices Board Manual: http://file.dnr.wa.gov/publications/fp_board_manual_section02.pdf

18.32.435 (C) (Figure X on p.37)

Redraw this figure to show BFW instead of OHWM, for consistency.

Also, show BFW above the wetted width (it almost always is), and provide a more meaningful figure (see below from WA DNR FPBM Section 2 referenced above).



18.32.435 (E)

See edit below. If vegetation and buffer elements are inadequate, they should not be used to determine the density of the replanting.

“If the vegetation and other buffer elements are inadequate, then the buffer shall be planted with native trees ~~to~~ with a density and species composition ~~common in the specific buffer area and with an understory of native plants~~ commonly found in comparable but healthy riparian areas of Thurston County and as approved by the City of Olympia Urban Forester.”

18.32.435 (F) (1)

Remove #1. Are these not the very places we need to protect and restore riparian function?

18.32.435 (F) (7)

Rewrite: ~~Other types of~~ Alternative mitigation measures as provided in “Land Use Planning for Salmon, Steelhead and Trout: A land planner’s guide to salmonid habitat protection and recovery,” Washington Department of Fish and Wildlife, 2009, have been ~~considered~~ proposed by the applicant and approved by the Department.

Thank you for your efforts to prevent net loss of critical areas values and functions in Olympia,

Jamie Glasgow, Director of Science
Wild Fish Conservancy
206.310.9302
Jamie@wildfishconservancy.org

Cc: Leonard Bauer, Olympia Planning Commission, City Council Liaison



A Washington State Chapter of the National Audubon Society
P.O. Box 2524, Olympia, WA 98507
(360) 352-7299 www.blackhills-audubon.org

Black Hills Audubon Society is a volunteer, non-profit organization of more than 1,300 members in Thurston, Mason, and Lewis Counties whose goals are to promote environmental education and protect our ecosystems for future generations.

June 10, 2016

Olympia Community Planning and Development Department
PO Box 1967
Olympia, WA 98507-1967

Dear Sir or Madam:

The purpose of this letter is to place in the record that Black Hills Audubon Society supports including "Habitats and Species of Local Importance" in the update of the Olympia Critical Areas Ordinance (CAO).

The CAO Gap Analysis Matrix (rev. May 2016) section 18.32.300 indicates that Species and Habitats of Local Importance" is a gap in the code that will be addressed in Phase 2. However, the March 28, 2016 technical memo on the CAO Gap Analysis and Best Available Science Consistency Review (on pages 3 and 8) should also acknowledge this inconsistency with the Growth Management Act.

Please keep me informed of when Phase 2 of the CAO Update will occur so that BHAS may participate.

For your information, I am attaching the section of the Thurston County Critical Areas Ordinance that addresses this topic, with 24.25.065 (C) highlighted.

Respectfully submitted,

Elizabeth Rodrick
Vice President

24.25.065 Fish and wildlife habitat conservation areas – Important habitats and species. Important animal and plant species, their habitats of primary association, and other important habitats protected under this chapter are:

A. Federally Listed Species and Associated Habitats. Animal and plant species listed under the federal Endangered Species Act (64 FR 14307) as endangered, threatened, or candidates for listing and their habitats of primary association. (Consult the U.S. Fish and Wildlife Service and National Marine Fisheries Service for current listings.)

B. State Listed Species and Associated Habitats.

1. Priority species and their habitats of primary association. Priority species identified on the WDFW Priority Habitats and Species (PHS) List and their habitats of primary association. (Consult the State Department of Fish and Wildlife for the current PHS list).

2. Priority habitats. Priority habitats identified on the WDFW Priority Habitats and Species (PHS) List. (Consult the State Department of Fish and Wildlife for the current PHS list).

3. Prairies meeting the following criteria are priority habitats:

- a. Prairie habitat, as defined in chapter 24.03 and Table 24.25-4 TCC;
- b. Areas less than one acre in size with characteristics meeting the definition of prairie habitat which are functionally connected to another prairie habitat located within one-half (0.5) mile of the subject area.

4. Oregon white oak (*Quercus garryana*) woodlands, stands, and individual trees meeting the following criteria are subject to this section:

- a. Oak woodlands, as defined in chapter 24.03 TCC.
- b. Oak Savanna, as defined in chapter 24.03 TCC.
- c. Individual oak trees and stands of oak or oak conifer associations less than one acre in size that are located within one-half (0.5) mile of a stand meeting the criteria in this subparagraph.

5. State listed plant species, such as those occurring on the Department of Natural Resources' List of Known Occurrences of Rare Plants.

C. Habitats and Species of Local Importance.

1. Habitats of local importance. Habitats of local importance in Thurston County are listed in Table 24.25-4 in Appendix 24.25-1.

2. Species of local importance. Wildlife species of local importance are listed in Table 24.25-5 in Appendix 24.25-1.

3. In addition to requirements of chapter 24.91 TCC, adding or removing habitats and species of local importance is subject to the following:

- a. Submission requirements. This chapter must be amended to add or remove a habitat or species of local importance. Any request to add or remove a habitat or species shall be submitted, in writing, to the Resource Stewardship Department and must include the following information:
- i. The nominator's name, address, and contact information;
 - ii. The common and scientific names of the nominated species or habitat;
 - iii. Reasons, supported by best available science, why the habitat or species should be added or removed for the list of locally important habitats or species.
 - iv. Maps or inventories of known occurrences of the nominated habitat or species within the county, dates of observation of the species and contact information for observers;
 - v. Habitat management recommendations, based upon best available science, including potential uses and restrictions of the habitat; seasonally sensitive areas and other measures necessary for the protection of dependent species; and
 - vi. Other supporting documentation that the approval authority determines is necessary to make a decision regarding the request.
- b. The approval authority shall evaluate the request and supporting data, with consideration of this subsection, in consultation with a professional biologist knowledgeable regarding the subject species or habitat. Staff will forward their recommendation about the requested addition or removal to the Board of County Commissioners as part of the proposed docket of code amendments. The County evaluation of the request will, at a minimum, consider:
- i. The scientific validity of the information submitted;
 - ii. The sufficiency of the habitat to sustain the species over time; and
 - iii. The versatility of the habitat to sustain species other than the one being nominated for designation.