

## **Pacific County Critical Areas and Resource Lands gap analysis**

This analysis intends to examine the Pacific County Critical Areas and Resource Lands (CARL) Ordinance for consistency with the Shoreline Management Act (RCW 90.58) and relevant rules and guidelines (WAC 173-22, 173-26, 173-27) pursuant to the County's upcoming comprehensive Shoreline Master Program (SMP) update.

Pacific County has options for transferring authority of Critical Areas protection to its SMP (required per RCW 36.70A.480). Included among them are: adoption by reference, incorporation of relevant sections into the updated SMP, or creation of a new Critical Areas section in the updated SMP.

The Pacific County CARL was adopted in 1999. It pre-dates many of the BAS documents produced by Ecology and WDFW that provide strategies for and the science behind protecting wetlands, fish and wildlife. It contains some obsolete or inaccurate definitions. It references and includes some documents that have been superseded or updated.

Generally, the document needs a number of revisions to become consistent with ensuring that permitting decisions will achieve No Net Loss of ecological functions. In certain sections, the CARL does not represent the most current, accurate and complete scientific and technical information available. An analysis follows.

### **CARL definitions: Section 2, p. 9 – 16.**

*Existing and ongoing agricultural activities* – This term needs to reflect the specific provisions and definitions in the Shoreline Management Act (RCW 90.58).

*Agricultural land* – The SMP definition needs to reflect RCW 90.58.065

*In-kind and out of kind mitigation* – preferred definition in EPA/Corps/Ecology joint agency guidance: <https://fortress.wa.gov/ecy/publications/publications/0606011a.pdf> is as follows:

*In-kind mitigation* is compensatory mitigation that involves the same wetland type and functions as the lost or degraded wetland, for example, the same hydrogeomorphic (HGM) subclass (e.g., riverine flow-through, depressional outflow, flats, etc.), plant community, and Cowardin class (e.g., palustrine emergent, palustrine forested or estuarine wetlands). *Out-of-kind mitigation* therefore refers to compensatory mitigation that involves wetland types and functions which are different from the lost or degraded wetland.

*Setback* – This needs clarification as to how setback relates to buffer. The terms are used interchangeably (see p. 18, p. 31, p. 62).

*Wetland enhancement, wetland restoration* - see Joint-agency mitigation guidance document (link provided above).

**General SMA consistency:**

- The CARL includes variance procedures (Section J & subsection 3.K) that will need to be made consistent with the SMA variance provisions.
- The CARL authorizes critical areas alteration via a “land development permit” (Section F). This permit is not consistent with SMA permitting framework. Incorporation in the SMP would require language revision to reflect shoreline exemption, SDP, CUP or Variance.
- General Exemptions (Section E, p. 17-19) – The CARL exemptions will not be applicable in SMP jurisdiction. Only WAC 173-27-040 exemptions can be used. Discrepancies with WAC are CARL exemption #'s 4, 5, 6 & 9.
- Land Subdivision (p. 8, Section F) – The CARL requires critical areas identification associated with land subdivision but does not prohibit subdivision into parcels that would require encroachment into critical areas or buffers. Need to check if this is prohibited elsewhere (in County subdivision code?). Creating lots encumbered by critical areas and/or buffers such that encroachment is necessary to develop is inconsistent with wetland protection science and SEPA mitigation sequencing.
- Forest Practices – Forest Practices are exempt from CARL provisions. Most forest practices (as defined in RCW 76.09) should be exempted from the provisions of the critical areas regulations. However, those forest practices that are Class IV general should be regulated. These activities constitute a conversion from forestry to some other use. As such, buffers and protections are appropriate.
- Grading less than 20 cubic yards is listed as exempt (Section 3.A. p. 17). This activity may trigger shoreline permitting (depending on cost, location, etc.) and cannot be exempted outright.
- The CARL includes a Viable Use exception (Section 3. K). This authorization is inconsistent with SMA permitting. A shoreline variance will likely be the relevant permit pathway.
- Penalties & Enforcement (Section H) – This section would not be applicable in shoreline jurisdiction. Need alignment with enforcement provision in SMP and SMA (WAC 173-27-240).
- Nonconforming activities (Section I) – compare with SMP language – consistent?

**Wetlands (Section C, p. 25):**

Wetland Delineation Manual – Ordinance 147-B references Ecology’s 1997 delineation manual. This manual has been superseded by the 1987 Corps Manual and Western Mountains, Valleys and Coast Region Supplement. The reference should be updated.

Wetland Ratings System – Ordinance 147-B references the 1993 wetland rating system. However, current practice (established by BOCC-adopted policy?) is to use the 2004 rating system. This should be clarified either as a CARL amendment or in the updated SMP. The 1993 ratings approach is no longer the most current, accurate and complete scientific or technical information available.

The 2004 revised rating system was developed through an analysis of wetland function, extensive field research, and scientific review by a team of about 35 planners and scientists. It is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. Also, in cases where state and federal permits are required, the use of this rating system benefits applicants by eliminating the need to rate wetlands according to a different local standard. Clark, Grays Harbor, Lewis, Cowlitz and Mason Counties and many of the cities within them have already adopted Ecology's updated wetland rating system.

Wetland Buffers (Section D, subsection #1) - The City's wetland and stream buffers are much smaller than those recommended by the most current, accurate and complete scientific or technical information available.

The buffers proposed in the draft ordinance do not relate specifically to existing functions or the intensity of proposed land uses, and therefore do not allow for consideration of variations in land use or wildlife habitat value. Wetlands with high habitat value may require larger buffers to protect existing habitat functions. On the other hand, many of the wetlands in highly urbanized areas are not providing high levels of habitat function and can be adequately protected with smaller buffers.

If the County wants to continue to use a simple approach to buffers, then substantially larger buffers than those now required are needed to ensure protection of the habitat functions and values of the higher-quality wetlands. For example, based on Ecology's review of the scientific literature, a Category III wetland with adjacent high-intensity land use that scores moderate for habitat function (using the 2004 rating system) needs a buffer of 150 feet. Applying the proposed CARLs standard buffer (50 feet) would pose a high risk to that wetland habitat function.

The Department of Ecology (Ecology), in collaboration with the Washington Department of Fish and Wildlife (WDFW), the Seattle District of the United States Army Corps of Engineers (Corps), and Region 10 of the United States Environmental Protection Agency (EPA), has developed a number of documents that update existing guidance or provide additional wetland guidance. These documents include the following publications:

- Wetlands in Washington State, Volume 1: A Synthesis of the Science (Sheldon et al., 2005);
- Wetlands in Washington State Volume 2: Guidance for Protecting and Managing Wetlands (Granger et al., 2005).

Alternative 3, in Volume 2, provides the most flexibility in determining buffer widths (Tables 4 through 7 in Appendix 8-C of Volume 2) with buffer widths based on the wetland category, adjacent land use, and the specific wetland functions that require protection. Alternative 3 buffer widths vary depending on:

- 1) the category of the wetland,

- 2) the intensity of the adjacent land use,
- 3) and the width needed to protect the existing functions and values of the wetland

The County should consider either adopting Alternative 3 into the CARL or incorporating it into the updated SMP.

Buffer averaging (subsection #2) – Averaging of buffer width down to 50% of the prescriptive buffer is allowed, but no critical areas report or other documentation is required to demonstrate need. Ecology’s guidance recommends reductions of no greater than 25%. In addition, some method of evaluation should be required whereby a qualified professional produces a report that supports and mitigates for the reduction.

Buffer barrier reduction (subsection #4)– This section can benefit from some language clarification. It allows for a buffer reduction of 50%. Site specific conditions may warrant greater or lesser reductions and language should accommodate circumstances.

Landward-residential addition – Critical areas report or other documentation that landward expansion (away from the critical area) would not result in reduction of buffer function should be required.

**Mitigation (Section E):**

\*Ratios are not consistent with Joint Agency guidance. See Table 8C-11 in Volume 2.

\*Mitigation sequence on p. 5-6 needs to add monitoring.

Wetland Mitigation Banks on p. 7 – disallows use of Preservation-only banks.

Small Wetlands (subsection 3) – The County exempts Class III and IV wetlands from regulation. Such an approach is not supported by the scientific literature.

It is not possible to conclude from size alone what functions and values a particular wetland is providing. Sections 5.3.3 and 5.3.4 of Wetlands in Washington State, Volume 1: A Synthesis of the Science (Publication #05-06-006, March 2005) emphasize that small wetlands and isolated wetlands provide many important functions. Many of these small and/or isolated wetlands are biologically unique systems that are critically important to amphibians.

Ecology can provide a strategy for exempting small wetlands that incorporates the most current, accurate and complete scientific or technical information available.

In addition, direct impacts to any associated wetland regardless of size may trigger the need for a shoreline permit.

Conversion to cranberry farming (subsection 4) – The CARL exempts conversion of wetland to cranberry farming from mitigation. This approach is not consistent with recent science regarding cranberry farming impacts to wetlands, especially wetland habitat function. Mitigation is required at state and federal level. Failure to require

mitigation may not achieve No Net Loss of ecological functions in permitting these activities.

Approval of banking language (Section H, subsection 2, 3, & 4) This section may need updating.

**Fisheries Habitat (Section 5):**

- Need coordination w/ WDFW on this section.
- The term “buffer” is not used; “setback” is used, implying that no vegetative buffer is required, only distance from proposed structure or development. However, subsection #2 lists some activities that are not allowed. Clarification needed.
- Setback distances are significantly smaller than WDFW recommendations.

**Shellfish, etc (Section 6):**

- This section focuses on protection of nearshore saltwater habitat from the effects of upland uses, especially septic systems and runoff.
- Definition of Section is somewhat confusing, since it specifies that it names “those...tidelands...devoted to ...growing, farming or cultivating shellfish”, but includes herring and smelt spawning. Redefine as critical saltwater habitats (CSWH), per WAC 173-26.
- The term “eelgrass” is used and broad protections are implied. “Eelgrass” is not defined; *Z. japonica* is significant issue in this County. Need clarification of this term.

**Wildlife Habitat (Section 7):**

- Section includes same species and areas in Section 6. Combine? Address all as CSWH.
- Need formal documentation (i.e. Habitat Management Plan) to address impacts and propose mitigation.

**Frequently Flooded Areas (Section 8):**

Ecology and the County will need to discuss updated flood maps and potential revisions to this section associated with the FEMA process.  
References SMP – check for adequacy in SMP.

**Aquifer Recharge Areas (Section 9):**

No comments – no Ecology guidance on this critical area.

**Geologically Hazardous Areas\* (Section 10):**

- Includes erosion hazard areas w/ 30 year horizon.
- Erosion hazards identified in Soil Survey.

\* Extensive information is available regarding erosion hazards on the outer coast of Pacific County. See Ecology’s Coastal Erosion study:

<http://www.ecy.wa.gov/programs/sea/coast/erosion/erosion.html> Coastal beaches areas are not identified as erosion hazards in the Soil Survey, but should be included and addressed as such.

**Agricultural Lands (Section 11):**

Review for conformity w/ RCW 90.58.065. Probably ok.

**Forest Land Regulations (Section 12):**

- See comment above under general exemptions.
- If this section is retained then it will need review of subsection #2, which allows many accessory uses that are not Forest Practices, per se.

**Mineral Lands (Section 13):**

No comments.

**Recommendations** - The document is outdated with respect to wetland and fish & wildlife habitat conservation area protections. Options include either amending the existing CARL it to reflect current science or create a specific section in the SMP addressing Critical Areas. This SMP section could cross reference to the CARL where no significant disparity exists. Several of the latter sections (#s 8-13) may be appropriate to reference in this way.

**References:**

*Wetlands & CAO Updates: Guidance for Small Cities. Department of Ecology Publication #10-06-002, January 2010, Revised July 2011 and October 2012.*

*Wetlands in Washington State, Volume 1: A Synthesis of the Science. Department of Ecology Publication #05-06-006, March 2005.*

*Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands. Department of Ecology Publication # 05-06-008, April 2005.*

*Selecting Wetland Mitigation Sites Using a Watershed Approach. Department of Ecology Publication #09-06-32, December 2009.*

*Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1), Publication #06-06-011a, March 2006.*

*Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1), Publication #06-06-011b, March 2006.*