



CRITICAL AREAS CHECKLIST

A Technical Assistance Tool From Growth Management Services – updated June 2017

Name of city or county:	
Staff contact, phone, and e-mail address	
<p>INSTRUCTIONS</p> <p>This checklist is intended to help local governments update their development regulations, as required by RCW 36.70A.130(4) (updated in 2012). We strongly encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS), along with their updates. 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 Keeping your Comprehensive Plan and Development Regulations Current: A Guide to the Periodic Update Process under the Growth Management Act, August, 2016 and WAC 365-196-610 (updated in 2015)</p> <p>Bold items are a GMA requirement or may be related requirements of other state or federal laws.</p> <p>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 “...shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.” <u>Bold and underlined</u> items are links to Internet sites and may include best practices or other ideas to consider. If you have questions, call GMS at (360) 725-3066.</p> <p>Updates to Commerce WAC – Revisions to the Commerce WAC relating to critical areas have been provided in a table with dates of changes on the Growth Management Act Periodic Update web site. The table can be used with this checklist to determine what changes have been made since the last update of your critical areas regulations.</p> <p>How to fill out the checklist</p> <p>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:</p> <p>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.</p>	<p>Contents</p> <p>Instructions.....1</p> <p>Overall Requirements.....2</p> <p>Wetlands.....3</p> <p>Critical Aquifer Recharge Areas.....4</p> <p>Frequently Flooded Areas.....5</p> <p>Geologically Hazardous Areas.....6</p> <p>Fish and Wildlife Habitat Conservation Areas.....7</p> <p>Anadromous Fisheries.....8</p> <p>Reason Use Exceptions.....8</p> <p>Forest Practices Regulations.....8</p> <p>Stormwater Drainage and Water Quality.....9</p> <p>Regulations for Protecting Waters of the State.....9</p> <p>Good Ideas.....10</p>

CRITICAL AREAS

Regulations protecting critical areas are required by **RCW 36.70A.060(2)** and **RCW 36.70A.172(1)** and [WAC 365-195-900](#) through 925 provide guidelines. Guidance can also be found in Commerce’s [Critical Areas Assistance Handbook](#) (January, 2007, [currently being updated](#)); the Minimum Guidelines [WAC 365-190-080 – 130](#); Best Available Science, [Chapter 365-195 WAC](#); and Procedural Criteria, [WAC 365-196-485](#) and [WAC 365-196-830](#), and on Growth Management’s [Critical Areas and Best Available Science](#) 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) required 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 directed Commerce to adopt the Minimum Guidelines to classify critical areas. [WAC 365-190-080](#) through 130 (updated in 2010) provide guidance on defining or “designating” each of the five critical areas.

[WAC 365-190-040](#) (updated in 2010) outlines the process to classify and designate natural resource lands and critical areas.

2. Definition of Critical Areas

RCW 36.70A.030 provides definitions for each type of critical area. Sections (5) regarding fish and wildlife habitat conservation areas; (9) regarding geologically hazardous areas; and (21) regarding wetlands were updated in 2010.

[WAC 365-190-030](#) (updated 2010) provides definitions in the Minimum Guidelines.

3. Protection of Critical Areas

RCW 36.70A.060 (2) required 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.

4. Inclusion of Best Available Science

RCW 36.70A.172(1) requires inclusion of the best available science (BAS).

[Chapter 365-195 WAC](#) 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.

[WAC 365-195-915](#) provides criteria for including BAS in the record.

Was inclusion of BAS documented in the record for the review and any updates to the critical areas regulations?

Yes

No

Location in Text:

<p>WETLANDS DEFINITION</p> <p>The definition of wetlands is consistent with RCW 36.70A.030(21) (updated in 2012).</p>	<p>Is the wetland definition consistent with RCW 36.70A.030(21)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p>
<p>WETLANDS DELINEATION</p> <p>Wetlands are delineated using the 1987 Federal Wetland Delineation Manual and Regional Supplements in accordance with WAC 173-22-035 (updated in 2011).</p> <p>See Ecology’s Wetland Delineation page and WAC 365-190-090 (updated in 2010) for additional assistance.</p>	<p>Are wetlands delineated using the 1987 Federal Wetland Delineation Manual and Regional Supplements?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p>
<p>WETLANDS PROTECTION</p> <p>Policies and regulations protect the functions and values of wetlands. RCW 36.70A.172(1) 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.</p> <p>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, see:</p> <ul style="list-style-type: none"> • 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 <p>For other resources and guidance on protecting wetlands, go to Ecology’s Local wetland regulations: Growth Management Act technical assistance.</p>	<p>Do the regulations use a rating system to determine wetlands protection?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text</p>

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\(1\)\(d\)](#). (Required if groundwater is used for potable water.)

The following references also relate to protection of groundwater resources:

RCW 90.44 – Regulation of Public Groundwaters

RCW 90.48 – Water Pollution Control (1971)

RCW 90.54 – Water Resources Act of 1971

RCW 36.36.020 - Creation of aquifer protection area (1988)

[WAC 365-190-100](#) Critical Aquifer Recharge Areas (2010)

[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](#) (2005) 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 (updated in 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.
- See Stormwater Drainage and Water Quality on page 7 of this checklist for additional LID resources.

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](#) (updated in 2010) 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 [Federal Emergency Management Agency \(FEMA\)](#) requirements for the National Flood Insurance Program. See [Ecology's Floods & Floodplain Planning, 86.16 RCW, 173-158 WAC](#), and **44 CFR 60**.

Communities that are located on Puget Sound or the Strait of San Juan de Fuca, or have lakes, rivers or streams that directly or indirectly drain to those water bodies, are subject to the National Flood Insurance Program Biological Opinion (BiOp) for Puget Sound (<https://www.fema.gov/media-library/assets/documents/30021>). The biological opinion required changes to the implementation of the National Flood Insurance Program 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 (<https://www.fema.gov/media-library/assets/documents/85339>); 2) a programmatic Checklist (<https://www.fema.gov/media-library/assets/documents/85336>); or 3) on a permit by permit basis (<https://www.fema.gov/media-library/assets/documents/85343>) 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:

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

- Yes
 No
 N/A

Location in Text:

<p>DEFINITION OF GEOLOGICALLY HAZARDOUS AREAS</p> <p>The definition of geologically hazardous areas is consistent with RCW 36.70A.030(9) (updated 2012).</p> <p>“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.</p>	<p>Is the geologically hazardous areas definition consistent with RCW 36.70A.030(9)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p>
<p>PROTECTION OF GEOLOGICALLY HAZARDOUS AREAS</p> <p>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 (2010) 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.”</p> <p>Geologically hazardous areas are designated, and their use is regulated or limited consistent with public health and safety concerns. RCW 36.70A.030(9) provides a definition (updated in 2012) and WAC 365-190-120 describes the different types of hazardous areas (2010):</p> <ul style="list-style-type: none"> • Geologically hazardous areas include: <ul style="list-style-type: none"> • seismic hazards • tsunami hazards • landslide hazards, • areas prone to erosion hazards • volcanic hazards • channel migration zones • areas subject to differential settlement from coal mines or other subterranean voids. • Critical facilities, such as hospitals and emergency response centers, hazardous materials storage, etc. should be restricted in hazard zones. <p>The Department of Natural Resource’s Geologic Hazards and the Environment website includes information on earthquakes and faults, landslides, volcanoes and lahars, tsunamis, hazardous minerals, emergency preparedness and includes geologic hazard maps.</p>	<p>Are uses in geologically hazardous areas designated and regulated or limited consistent with public health and safety?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p>

<p>DEFINITION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</p> <p>The definition of fish and wildlife habitat conservation areas is consistent with RCW 36.70A.030(5) (updated 2012) and WAC 365-190-030 (updated in 2015). The definition of fish and wildlife habitat conservation areas was amended to state that they do not include: “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”.</p>	<p>Is the FWHCA definition consistent with RCW 36.70A.030(5)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p>
<p>PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</p> <p>Policies and regulations protect the functions and values of fish and wildlife habitat conservation areas. RCW 36.70A.172(1) and RCW 36.70A.030(5) (updated 2012). WAC 365-190-130(4) encourages to local jurisdictions consult WDFW’s Priority Habitat and Species web site. Recent updates include:</p> <ul style="list-style-type: none"> • Priority Habitat and Species maps (updated daily) • Priority Habitats and Species List (updated June 2016) <ul style="list-style-type: none"> • Mazama Pocket Gopher (2011, 2016) • Great Blue Heron (2012) • Western Gray Squirrel (2010) • Water Crossing Design Guidelines (2013) • Stream Habitat Restoration Guidelines (2012) • Shrub-Steppe (2011) • Land Use Planning for Salmon, Steelhead and Trout (2011) • Landscape Planning for Washington’s Wildlife (2009) • Aquatic Habitat Guidelines (2010, 2010, 2014) • Riparian Management recommendations (expected September 2017) <p>Areas “with a primary association with listed species” should be considered per WAC 365-190-130(2)(a). Recent uplistings and delistings are:</p> <ul style="list-style-type: none"> • Uplisting of marbled murrelet to State Endangered – February 4, 2017 • Uplisting of Canada lynx to State Endangered – February 4, 2017 • Peregrine falcon delisted from State Sensitive – February 4, 2017 <ul style="list-style-type: none"> a. The peregrine will remain classified as “protected wildlife” under state law (WAC 232-12-011) and will continue to be protected under the federal Migratory Bird Treaty Act. • Bald Eagle delisted from State Sensitive - February 4, 2017 <ul style="list-style-type: none"> a. 2011: Downlisted from State Threatened to Sensitive (this ended the requirement to develop Bald Eagle Protection Plans per WAC 232-12-292—a change which many CAOs still don’t reflect). b. 2007: Delisted from federal Threatened (but still covered by the federal Bald and Golden Eagle Protection Act) <p>Also see the Puget Sound Partnership’s Salmon Recovery web site for WRIA Plans in Puget Sound.</p>	<p>Have you reviewed your regulations regarding any applicable changes in management recommendations for priority habitats and species?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text</p> <p>Have you reviewed your regulations regarding any changes in species listings?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text</p>

<p>ANADROMOUS FISHERIES</p> <p>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 (updated in 2000) lists criteria involved. This requirement applies to all five types of critical areas.</p> <p>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).</p> <p>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.</p> <p>The Washington State Recreation and Conservation Office (RCO) website includes information on salmon recovery efforts.</p>	<p>Do your regulations give special consideration for anadromous fisheries?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text:</p>
<p>REASONABLE USE EXCEPTIONS</p> <p>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. RCW 36.70A.370 (1991). 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 Critical Areas Assistance Handbook, p. 37-38.</p>	<p>Do you have reasonable use provisions?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Location in Text:</p>
<p>AGRICULTURAL ACTIVITIES NOT UNDER VSP (COUNTIES ONLY)</p> <p>Critical areas regulations as they specifically apply to agricultural activities in counties or watersheds <u>not</u> participating in the Voluntary Stewardship Program (VSP) have been reviewed, and if needed, revised pursuant to RCW 36.70A.130. RCW 36.70A.710(6) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.</p>	<p>Did you review your regulations as they apply to agricultural activities?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>FOREST PRACTICES APPLICATION REGULATIONS</p> <p><i>If applicable</i>, regulations for forest practices have been adopted: RCW 36.70A.570 (adopted in 2007).</p> <p>RCW 76.09.240, amended in 2011, 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.</p>	<p>Have you adopted forest practices regulations?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Location in Text:</p>

<p>STORMWATER DRAINAGE AND WATER QUALITY</p> <p>Regulations protect water quality and implement actions to mitigate or cleanse drainage, flooding, and storm water run-off that pollute waters of the state, including Puget Sound or waters entering Puget Sound. RCW 36.70A.070(1)</p> <p>Regulations may include :</p> <ol style="list-style-type: none"> a) Adoption of a stormwater manual consistent with Ecology’s latest manuals for Eastern or Western Washington. b) Adoption of a clearing and grading ordinance – See Municipal Research and Services Center’s Erosion and Sediment Control: Land Clearing and Grading webpage. c) Adoption of a low impact development (LID) ordinance. Available LID resources include: <ul style="list-style-type: none"> • Ecology’s Stormwater Manual for Western Washington (updated in 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. • Puget Sound Partnership resource for Information on integrating LID into local codes, July 2012. • Ecology’s Stormwater Manual webpage has a number of manuals for stormwater management and design, including low impact development. • Washington Stormwater Center webpage: http://www.wastormwatercenter.org/low-impact/ includes additional suggestions and resources. d) Provisions for corrective action for failing septic systems that pollute waters of the state. RCW 36.70A.070(1) 	<p>Do you have regulations that protect water quality?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Location in Text</p> <p>If required, have you incorporated low impact development standards into your regulations?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in text:</p>
<p>REGULATIONS FOR PROTECTING WATERS OF THE STATE</p> <p>RCW 90.48.020 defines waters of the state. WAC 365-190-130(2) (updated in 2010) – recommends considering designation of all waters of the state, including naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat.</p> <p>Stream types are classified in WAC 222-16-030 (updated in 2006); with field verification, or an alternate system that considers factors listed in WAC 365-190-130(4)(f)(iii) (updated 2010). See http://www.dnr.wa.gov/forest-practices-water-typing to use Washington State Department of Natural Resources (DNR)’s stream typing system.</p> <p>Protect waters of the state by protecting riparian areas by establishing buffers to maintain no net loss of riparian ecosystem functions.</p> <p>Designating areas that risk contaminating or harming shoreline resources including tidelands and bedland suitable for shellfish harvest, kelp and eelgrass beds, forage fish spawning areas.</p>	<p>Do your regulations protect waters of the state?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Location in Text</p>

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

No net loss of critical area functions and values is a recommended approach for development regulations in [WAC 365-196-830\(4\)](#). If development regulations allow harm to critical areas, they should require compensatory mitigation of the harm.

Monitoring and adaptive management is encouraged in [WAC 365-195-905\(6\)](#) to improve implementation of your regulations. Commerce will have a Monitoring chapter in the update to the Critical Areas Assistance Handbook. A draft for public review was made available in June 2017. Go to the project web page at [Commerce Update to Critical Areas Guidance](#) to view the draft chapter.

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

Yes

No

Location in Text:

Do your regulations address no net loss and require compensatory mitigation?

Yes

No

Location in Text:

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

Yes

No

Location in Text: