

**WAC 365-196-485 Critical areas.** (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and stormwater runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include, but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas must be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process; however, counties and cities must address the requirements to include the best available science in reviewing designations and developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process must take this information into account unless the jurisdiction provides a reasoned, science-based justification for departure.

(e) The department recommends counties and cities review plan, regulation and permit implementation monitoring results and, where applicable, incorporate adaptive management measures to ensure regulations are efficient and effective at protecting critical area functions and values.

(f) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the 100-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated. RCW 36.70.110(8) prohibits expansion of the urban growth area into the 100-year flood plain in some cases. See WAC 365-196-310.

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 23-08-037, § 365-196-485, filed 3/29/23, effective 4/29/23; WSR 10-22-103, §

365-196-485, filed 11/2/10, effective 12/3/10; WSR 10-03-085, §  
365-196-485, filed 1/19/10, effective 2/19/10.]