

Okanogan County Regional Planning Commission
Okanogan County, WASHINGTON

Resolution No. 2013-01

A resolution to recommend Adoption of the Okanogan County Critical Areas Ordinance to the Okanogan County Board of Commissioners by the Planning Commission and to adopt Attachment A, the findings of fact and Attachment B, conclusions of law.

WHEREAS, RCW 36.70A.170 requires critical areas to be designated; and

WHEREAS, RCW 36.70A.060(2) requires the development of regulations to protect critical areas that are required to be designated under RCW 36.70A.170; and

WHEREAS, RCW 36.70A.050 authorizes the creation of guidelines to be used by all jurisdictions with allowance for regional differences that exist in Washington State; and

WHEREAS, The updated critical area regulations are consistent with the minimum guidelines for the protection of critical areas under WAC 365-190; and

WHEREAS, The Legislature passed Engrossed House Substitute Bill 1886 creating a voluntary stewardship program to allow Counties to create local programs to regulate agricultural activities within critical areas.

WHEREAS, Counties are not required to create a Voluntary Stewardship Program until the State Conservation Commission provides funding and the funding has not been provided to date.

WHEREAS, a SEPA Determination of Significance was issued on January 14, 2009 and an EIS is being prepared concurrent with public review of the Critical Areas Ordinance.

WHEREAS, notice of all public hearings and public meetings on this matter have been published according to law.

WHEREAS, after consideration of all comments and exhibits the Planning Commission has determined the critical areas ordinance is compliant with RCW 36.70A, WAC 365-190 and protects the public health and safety of citizens in Okanogan County.

BE IT THEREFORE RESOLVED, that the Okanogan County Regional Planning Commission recommends adoption of the Okanogan County Critical Areas Ordinance (Attachment A) to the Okanogan Board of County Commissioners.

BE IT FURTHER, resolved that the Okanogan County Regional Planning Commission hereby adopts Attachment B, the Findings of Fact and Attachment C, the Conclusions of Law.

Dated this 6th day of May 2013 in Okanogan, Washington.

Planning Commission Members



Albert Roberts, Chair

ATTEST:



Sharon McKenzie, Clerk of the Planning Commission

Attachment A
Okanogan County Proposed Critical Areas Ordinance

Attachment B Findings of Fact

The following are findings of fact which support the Planning Commissions recommendation of adoption for the Okanogan County Critical Areas Ordinance to the Okanogan Board of County Commissioners:

1. Pursuant to RCW 36.70A, the Washington State Growth Management Act, Okanogan County is required to adopt development regulations protecting Critical Areas, which are designated pursuant to RCW 36.70A.170. The Critical Areas Ordinance is necessary to assure continued protection of wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.
2. The critical areas guidelines (WAC 365-190) are the minimum standards and guidance that have been adopted by the Department of Commerce which local governments must consider in drafting their local critical areas ordinance.
3. The Okanogan County critical areas ordinance was adopted on February 02, 1994.
4. Pursuant to RCW 36.70A.060 and RCW 36.70A.170, the CAO designates Critical Areas, which include wetlands, areas with critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. The CAO incorporates by reference Critical Areas Maps which delineates those critical areas.
5. On January 14, 2009 Notice of threshold SEPA determination published in Omak-Okanogan County Chronicle initiating the scoping period ending on February 20, 2009. (Okanogan County's periodical of record)
6. On March 11, 2009 the Okanogan County SEPA Official issued a Draft Environmental Impact Statement in accordance with WAC 197-11-455 & 510 and WAC 173-26-100. Final Environmental Impact Statement will be issued prior to adoption of the Critical Areas Ordinance by the Board of County Commissioners.
7. A Draft Critical Areas Ordinance was released for public review and comment on October 1, 2009 and the public was invited to submit comments and /or recommend changes.
8. On October 1, 2009, public notice of the proposed Critical Areas Ordinance and public hearing was published in the Gazette Tribune, Okanogan County's legal periodical of record.
9. On October 26, 2009, the Okanogan County Regional Planning Commission conducted a public hearing for the proposed Critical Areas Ordinance.
10. On November 30, 2009 the Okanogan County Regional Planning Commission conducted a public hearing and heard verbal testimony for the proposed Critical Areas Ordinance.

11. On September 1, 2010 interested parties and agencies were emailed and mailed notices of the revised Draft Critical Areas Ordinance available for comment and notice of the public hearing scheduled on September 27, 2010.
12. On September 1, 2010 a revised Draft Okanogan County Critical Areas Ordinance was released for public review and comment and the public was invited to submit comments and /or recommend changes.
13. On September 2, 2010 public notice of the proposed Okanogan County Critical Areas Ordinance and public hearing was published in the Gazette Tribune, Okanogan County's legal periodical of record and the Methow Valley Newspaper.
14. The Planning Commission reviewed and applied best available science including publications and data from the following:
 - a. Wetlands in Washington - Volume 1: A Synthesis of the Science (March 2005, Publication #05-06-006)Wetlands in Washington - Volume 2: Guidance for Protecting and Managing Wetlands (April 2005, Publication #05-06-008). National Wetland Inventory: U.S Fish and Wildlife.
 - b. Priority habitat and species publications and data published by Washington State Fish and Wildlife.
 - c. Channel Migration studies done on Upper Okanogan Similkameen and the Methow River.
 - d. Landslide Inventory from Washington Department of Natural Resources.
 - e. Water Type data from Washington Department of Natural Resources.
 - f. Washington Department of Natural Resources Heritage maps and data.
 - g. Natural Resource Conservation Service soil survey for Okanogan County.
 - h. Flood Insurance Rate Maps
 - i. FEMA Floodway maps
 - j. U.S.G.S. 7.5 Minute Series Topographic Quadrangle Maps;
15. The floodplain ordinance is now included in the critical areas ordinance. This will ensure consistency during permit review for frequently flooded areas.
16. On November 29, 2010 the Okanogan County Regional Planning Commission conducted a public hearing and took public testimony for the proposed Critical Areas Ordinance.
17. Administrative appeals section was updated for consistency with the zone code.
18. Maps and Inventories were amended to reflect the updated maps and data based on best available science to be used during the review process.
19. The definitions were updated to be consistent with RCW 36.70A and WAC 365-190 and OCC 17.
20. Updated the water type system to remain consistent with WAC 222-16-030.

21. Channel Migration Studies were conducted on the Methow in 2005, the Okanogan and Lower Similkameen rivers in 2007. Information from the studies has been incorporated into the critical areas ordinance including a new section under geologically hazardous areas creating designation criteria and regulations for the severe and moderate hazard areas. The study was funded by a grant from the Department of Ecology. The Department of Ecology can withhold grant funding for flood control maintenance projects if the CMZ Studies are not adopted. (WAC 173-145-040) This document serves as best available science created specifically for the Methow, Okanogan, and Lower Similkameen rivers. A new section was also added to Administration for the specific requirements when a special study or map amendment is provided for Channel Migration Zones.
22. In 2011 Washington State Legislature passed Engrossed Substitute House Bill 1886 implementing recommendations developed in the report submitted by the William D. Ruckelshaus Center to the legislature as required by chapter 353, Laws of 2007 and chapter 203, Laws of 2010. This bill created the authority for local governments to create the Voluntary Stewardship Program which will promote plans to protect critical areas within the area where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington and reducing the conversion of farmland to other uses. Okanogan County Commissioners signed resolution 10-2012 opting into the Voluntary Stewardship Program
23. On April 05, 2012 a revised Draft Okanogan County Critical Areas Ordinance was released for public review and comment and the public was invited to submit comments and /or recommend changes.
24. On April 23, 2012 the Okanogan County Regional Planning Commission conducted a public hearing and took public testimony on the revised draft critical areas ordinance released on April 05, 2012.
25. Based on comments received the Planning Commission revised the wetland section in order to update the correct manual used to delineate wetlands as well as the updated Eastern Washington Rating System used to categorize wetlands.
26. Based on comments as well as best available science for wetlands the Planning Commission removed the exemption for small wetlands recognizing that small wetlands provide habitat and water quality functions that need to be protected.
27. Based on comments from the Department of Ecology regarding frequently flooded areas the Planning Commission made changes to the section in order to remain consistent with Federal regulations.
28. On August 27, 2012 the Okanogan County Regional Planning Commission conducted a public hearing to deliberate and make a recommendation to the county commissioners on the proposed Okanogan County Critical Areas Ordinance.
29. The Planning Commission finds that fencing would be addressed in the critical areas report if necessary depending on the site specific proposal and/or specific type of habitat being impacted.

30. Fish and Wildlife habitat section was amended to cross reference the Open Space tax program and Performance based rating system included in the cluster subdivision process. The Planning Commission found that best available science supports preserving open space and by creating a link to these programs will offer an incentive to potential applicants while protecting the critical areas from any adverse impacts.
31. Fish and Wildlife habitat riparian buffers section was amended to reflect a site specific alternative to applicants. The Planning Commission finds blanket standard buffer widths are not necessary for the protection of critical areas. The alternate approach provides flexibility to the landowner while protecting aquatic fish and wildlife habitat conservation areas. This approach establishes buffers based on a site specific riparian assessment which the Planning Commission finds is an appropriate option that should be available to landowners. Site specific approach provides a better interrelationship between the regulations, best available science, and site conditions so that regulations are adequate to protect the critical area but are not too excessive.
32. On November 05, 2012 the Okanogan Regional Planning Commission conducted a public hearing to deliberate changes to the Draft Critical Areas Ordinance.
33. The Planning commission finds that exemptions to critical areas regulations are necessary to ensure reasonable administration of the regulations. Some activities are exempt because they are not expected to have an adverse impact on critical areas; other activities are exempt but require mitigation. Best available science indicates that mitigation is an option under certain circumstances for protecting critical areas. The changes to general exemptions include: (a) Operation and maintenance or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impact to, or encroach further within the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. (This was changed from the current which allowed public agencies to maintain or repair if the County Commissioners determine no alternative exists.) (b) Added recreation, and scientific research to general exemptions. (c) Added the removal of hazard trees that pose a threat to public safety, or posing an imminent risk of damage to private property. (c) Added forest practices in accordance with RCW 76.09. Changes to Wetland exemptions include: (a) Removal of exemption for existing and ongoing agriculture. Pursuant to RCW 36.70A.700 Voluntary stewardship program will protect critical areas for agricultural activities. Okanogan County has opted into the voluntary stewardship program therefore, references to agricultural activities have been removed from the ordinance.(b) Changed modification of existing serviceable structures to include legal non-conforming structures and removed the allowance to encroach further on the buffer or adversely impact wetland functions.
34. On December 03, 2012 the Okanogan Regional Planning Commission conducted a public hearing to discuss comments received during November 05, 2012 hearing.

35. On January 28, 2013 the Okanogan Regional Planning Commission conducted a public hearing and took public testimony on the revised draft critical areas ordinance draft dated October 22, 2012 released on December 12, 2012.
36. On March 25, 2013 the Okanogan Regional Planning Commission conducted a public hearing to deliberate changes to the draft Critical Areas Ordinance.
37. Based on comments received the Planning Commission finds where the previously existing built environment completely functionally isolates the buffer from the water body the buffer should extend from the ordinary high water mark to the waterward edge of the previously existing built environment.
38. The Planning Commission finds that the use of buffers as adequate protection for wetlands and other riparian areas is supported by best available science and meets the minimum guidelines. The option of the landowner to create site specific buffer/mitigation plans when the standard buffers are excessive avoids conflict with RCW 82.02.020.
39. The Planning Commission finds that aquifer recharge areas cannot be designated at this time as no detailed analysis of aquifer recharge areas exist. The Planning commission believes the reliance on public health regulation regarding well head protection and onsite sewage treatment are sufficient until resources for detailed aquifer studies are available.
40. During consideration of the proposed Critical Areas Ordinance amendment the Planning Commission considered all of the comments and reports received from agencies and all public testimony and written comments received regarding the proposed amendment.

Attachment C
Conclusions of Law

The following are conclusions of law, which support the Planning Commission's recommendation to the Okanogan Board of County Commissioners adoption of Okanogan County Critical Areas Ordinance:

1. The proposed goals, objectives, policies, regulations, and procedures set forth in this Critical Areas Ordinance are essential to the protection of the public health, safety and general welfare of the people of Okanogan County.
2. The proposed revisions to the critical areas ordinance applies to all property designated under the "Okanogan County Comprehensive Plan", the "Methow Valley Addendum to the Okanogan County Comprehensive Plan", and the "Upper Methow Valley Comprehensive Plan". The proposed code amendment is consistent with the goals and policies of these plans.
3. The Planning Commission revisions comply with RCW 36.70A and WAC 365-190 including that the regulations are designed to protect critical areas.
4. The proposed Okanogan County Critical Areas Ordinance (Attachment A) is consistent with and implements the goals, policies, and requirements of the Washington State Growth Management Act, Washington State Guidelines, and Okanogan County Comprehensive Plan
5. Okanogan County provided an extensive process for public input on the proposed Critical Areas Ordinance, including public meetings and public hearings before the Okanogan County Regional Planning Commission.
6. The Planning Commission held a public hearing to deliberate and make a recommendation to the Board of County Commissioners on the proposed Okanogan County Critical Areas Ordinance.
7. The Planning Commission considered all testimony, exhibits, and best available science when revising the Critical Areas Ordinance.
8. The Planning Commission adopted Resolution 2013-01 including the findings of fact and conclusions of law within attachments B and C.