



## King County

### **Dow Constantine**

King County Executive

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December 5, 2024

The Honorable Dave Upthegrove  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

Dear Councilmember Upthegrove:

This letter transmits a proposed Ordinance that would, if approved, update King County's critical areas regulations, which were last comprehensively updated in 2004. King County began this update in 2022, consulting with Tribes, state and federal agencies, and community partners. As directed under the Revised Code of Washington 36.70A.060, the proposed updates to key elements of the Critical Areas Ordinance (CAO) would establish limits and requirements for development proposed to occur in and around critical areas.

Washington State's Growth Management Act (GMA) sets requirements for local governments when updating their critical areas regulations. Among these are requirements to use best available science (BAS) to protect the functions and values of critical areas and to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Where regulations depart from BAS, local governments must provide information and rationale to support the departures, assess the potential risks to critical areas functions and values, and use regulatory and non-regulatory actions to mitigate the risk.

In accordance with Washington Administrative Code 365-195-915, King County has documented our proposed departures from BAS. These departures will help King County to continue to meet the many, sometimes competing, planning goals of the GMA and the King County Comprehensive Plan, such as promoting equity, environmental protection, open space preservation, affordable housing, economic development, property rights, and agriculture.

In developing these proposed regulations, King County staff from the Department of Natural Resources and Parks and Department of Local Services conducted a review of state guidance documents, technical assistance tools, and scientific literature. Inclusion of BAS and an

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analysis of proposed departures is documented in the enclosed October 2024 Best Available Science Review and Updates to Critical Areas Protections report.

Key elements of the proposed Ordinance include:

- Increasing riparian area widths for all aquatic areas in rural and urban unincorporated King County.
- Enhancing protections for Category 1 (high conservation value) wetlands, estuarine wetlands, and coastal lagoons.
- Increasing the area required for mitigation when unavoidable impacts are proposed to wetlands, aquatic areas, and riparian areas.
- Establishing new alluvial fan standards that allow flood risk reduction actions in certain circumstances where material has been deposited by rivers.
- Allowing "climate-smart plants" to be used in mitigation and restoration projects, supporting climate resilience.
- Updating provisions for regulatory flexibility for agriculture such as farm field access drives, grazing, and farm-related structures, in portions of critical areas under certain conditions.

Please note that if the King County Council amends Critical Areas Ordinance (CAO) regulations that depart from BAS, the legislative record should be updated or supplemented to identify the departures from BAS, assess risks to critical areas, and provide rationale for departures as required by RCW 36.70A.172 and Washington Administrative Code 365-195-915.

In December 2024, King County completed its statutorily required comprehensive plan update via Proposed Ordinance 2023-0440. Under the reasonable progress exception in RCW 36.70.130(7)(b), the County has until December 2025 to complete the associated updates to critical areas regulations.

State Environmental Policy Act (SEPA) review of these proposals will be completed by the Executive branch in advance of final action by the King County Council, in coordination with Council central staff.

In 2008, the National Marine Fisheries Service issued a Biological Opinion (BiOp) that required changes to the implementation of the National Flood Insurance Program (NFIP) to meet the requirements of the Endangered Species Act in the Puget Sound watershed. The Federal Emergency Management Agency (FEMA) requires that King County demonstrate compliance with the BiOp in order to maintain eligibility of King County residents for the NFIP. Executive staff will stay in communication with FEMA Region 10 and Council staff about the process and schedule for the FEMA review of the CAO, including review of Council amendments, if any.

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Thank you for your careful consideration of these proposed critical areas policies and regulations. They will help to ensure that our region continues to manage growth effectively while protecting the environment and ensuring continued compliance with the GMA.

If your staff have questions, please contact Leon Richardson, Director, Department of Local Services, at 206-263-3332.

Sincerely,



for

Dow Constantine  
King County Executive

Enclosures

cc: King County Councilmembers  
ATTN: Stephanie Cirkovich, Chief of Staff, King County Council  
Melani Hay, Clerk of the Council  
Karan Gill, Chief of Staff, Office of the Executive  
Penny Lipsou, Council Relations Director, Office of the Executive  
Leon Richardson, Director, Department of Local Services  
John Taylor, Director, Department of Natural Resources and Parks  
Lauren Smith, Director, Regional Planning, Office of Performance, Strategy, and Budget