



INTEGRATING CRITICAL AREAS WITH SHORELINE AREAS

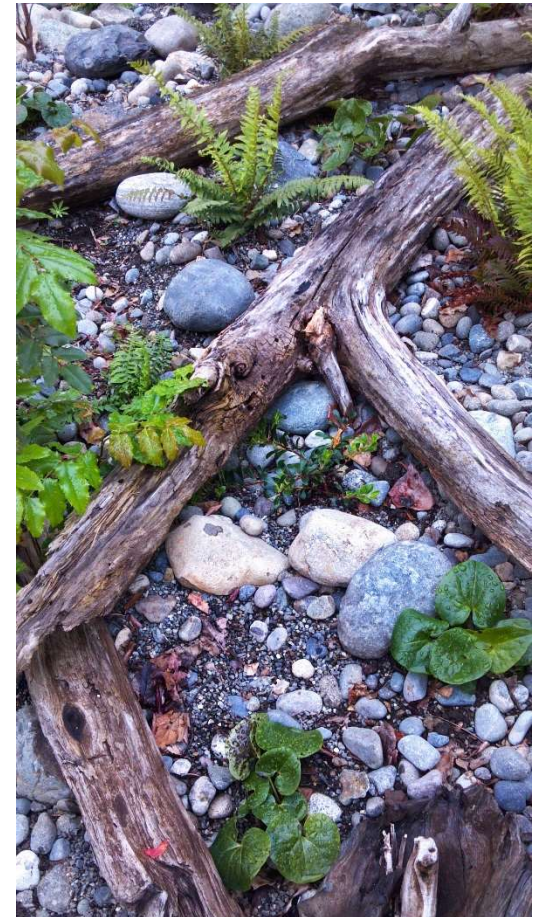
PAW LAND USE BOOT CAMP 2019

PRESENTED BY DAN NICKEL



AGENDA

- Introductions
- Brief history of GMA/SMA integration
- Breakdown of key issues / misconceptions
- Overview of jurisdictional approaches
- Discussion



WHAT? WHERE? WHEN? HOW?

The overlap between the **Shoreline Management Act (SMA)** and the **Growth Management Act (GMA)** is complicated and not easy to understand. The primary issue revolves around integration of **Critical Areas Ordinances (CAO)** into Shoreline Master Programs (SMP)

- What rules apply?
- Where do these rules apply?
- When do we apply one over the other?
- How to resolve any overlap?



BRIEF HISTORY OF GMA/SMA INTEGRATION

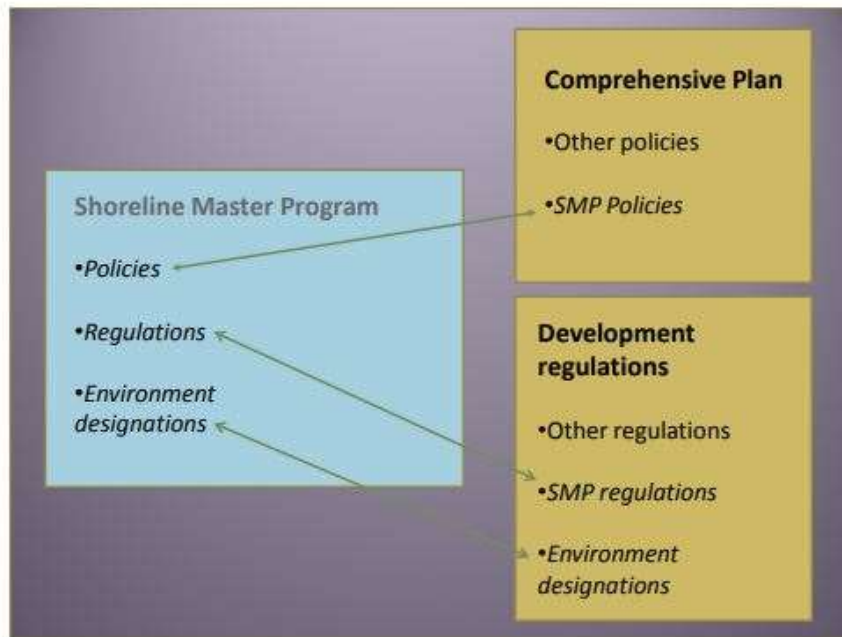


Figure 2-5 from the SMP Planners Handbook (Ecology, 2017)

In 1995, the State legislature acted to integrate SMPs with GMA:

- Goals and policies of an SMP are an **element of the local comprehensive plan**
- All other portions of an SMP, including use regulations, are a **part of the local development regulations**

The Legislature also amended the GMA goals in 2003 to incorporate shorelines:

- “For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals” [RCW 36.70A.480(1)].

BRIEF HISTORY OF GMA/SMA INTEGRATION

Clarity provided under the “Anacortes Decision”

- The 2003 law was not clear on when a local SMP would take precedence in regulating critical areas vs the CAO.
- “Futurewise v. City of Anacortes”
- Board and Court decisions issued between 2005 and 2009 attempted to address how critical areas are regulated under the SMA and GMA.
- A 2010 law finally clarified that **critical area regulations adopted under the GMA apply within shoreline areas until Ecology approves either a comprehensively updated SMP, or a SMP amendment specifically related to critical areas.**
- The 2010 law also addressed the status of legally existing structures and uses within critical area protection, specifically to consider them as conforming and to allow for redevelopment and modification.

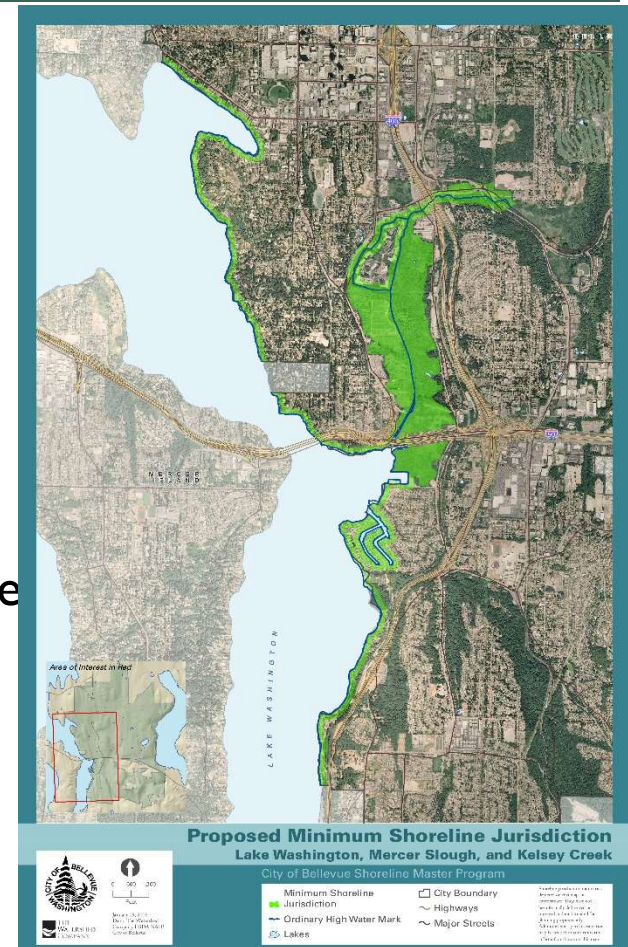


BRIEF HISTORY OF GMA/SMA INTEGRATION

- **When do CAOs apply within shoreline jurisdiction?**
 - Until the Department of Ecology approves one of the following:
 1. A comprehensive SMP update consistent with the 2003 SMP Guidelines
 2. A new master program (for new cities) consistent with the 2003 SMP Guidelines
 3. A limited SMP amendment that specifically addresses critical areas
- After Ecology approval, the SMP alone will provide protection for critical areas within shoreline jurisdiction
 - This transfer of authority **occurs immediately**
 - You will no longer use the CAO for critical areas planning or regulatory purposes within shoreline jurisdiction
- What is occurring now with **Periodic Updates?**

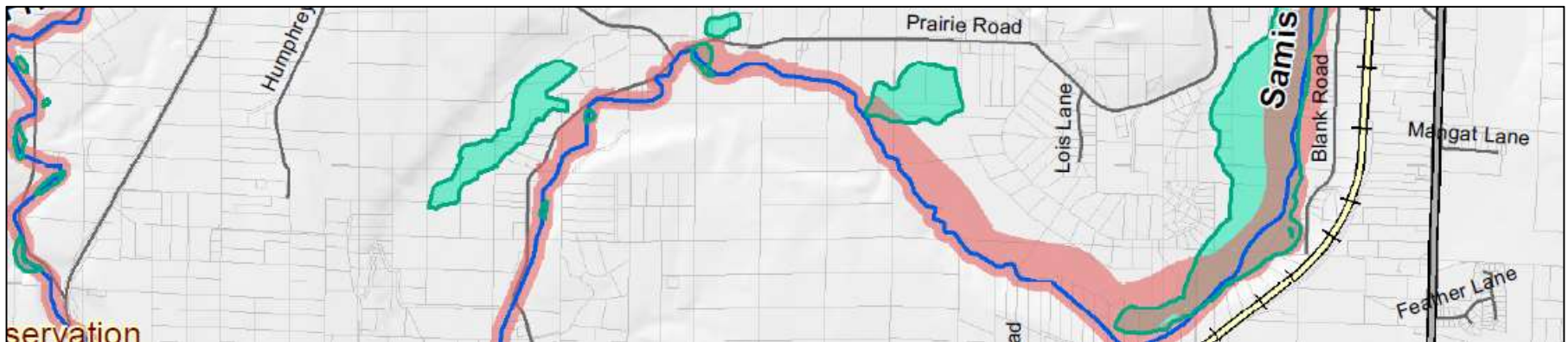
KEY ISSUES

- Shoreline jurisdiction and critical areas
- Critical area buffers
- Integration of critical area regulations
- Critical areas not applicable to SMPs
- CAO regulations not allowed under the shoreline guidelines

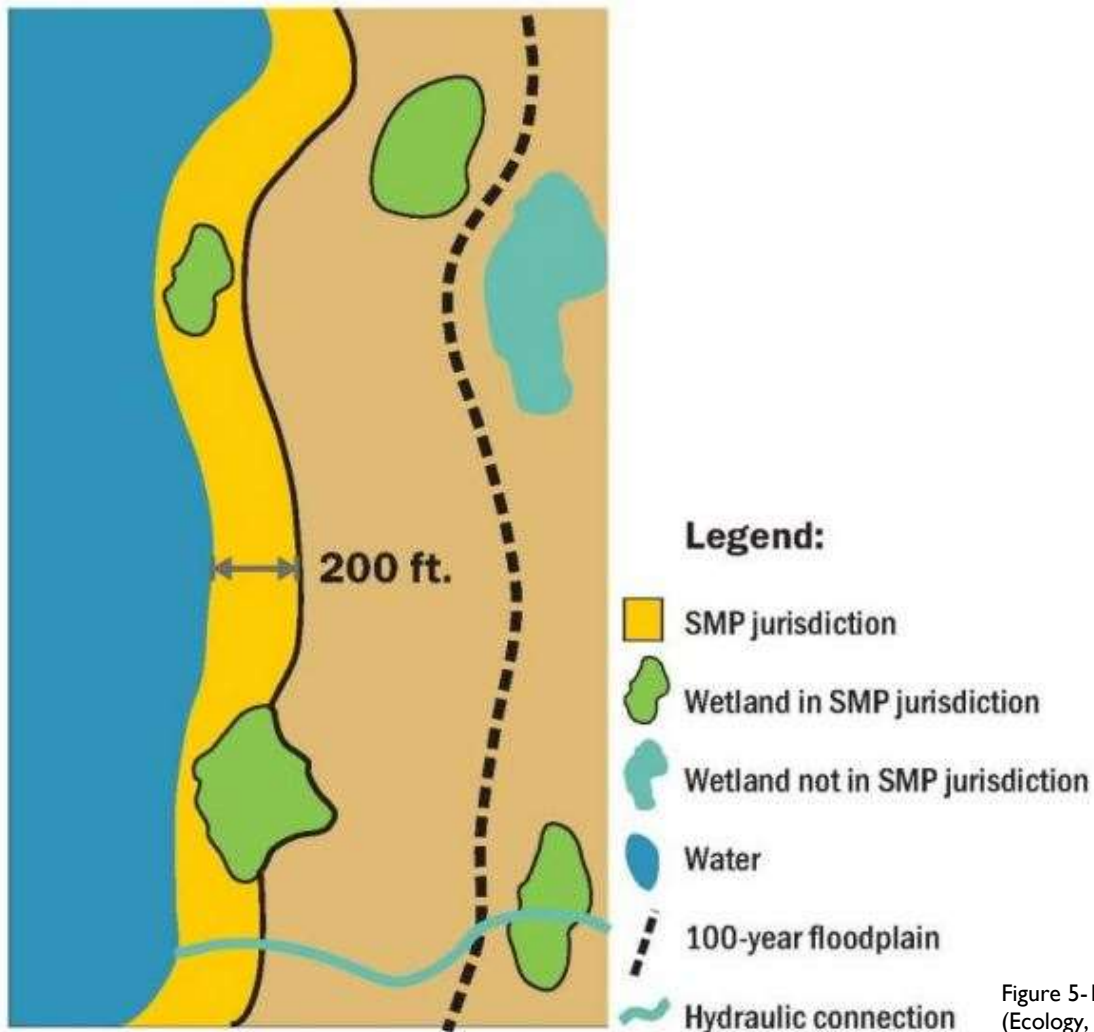


SHORELINE JURISDICTION AND CRITICAL AREAS

- In addition to the standard 200 feet landward of the ordinary high water mark, shorelines include:
 - Shoreline associated wetlands
 - Floodways
 - Up to 200 feet of the 100-year floodplain when in conjunction with a designated floodway
 - Buffers necessary to protect critical areas (optional)



SHORELINE JURISDICTION AND CRITICAL AREAS

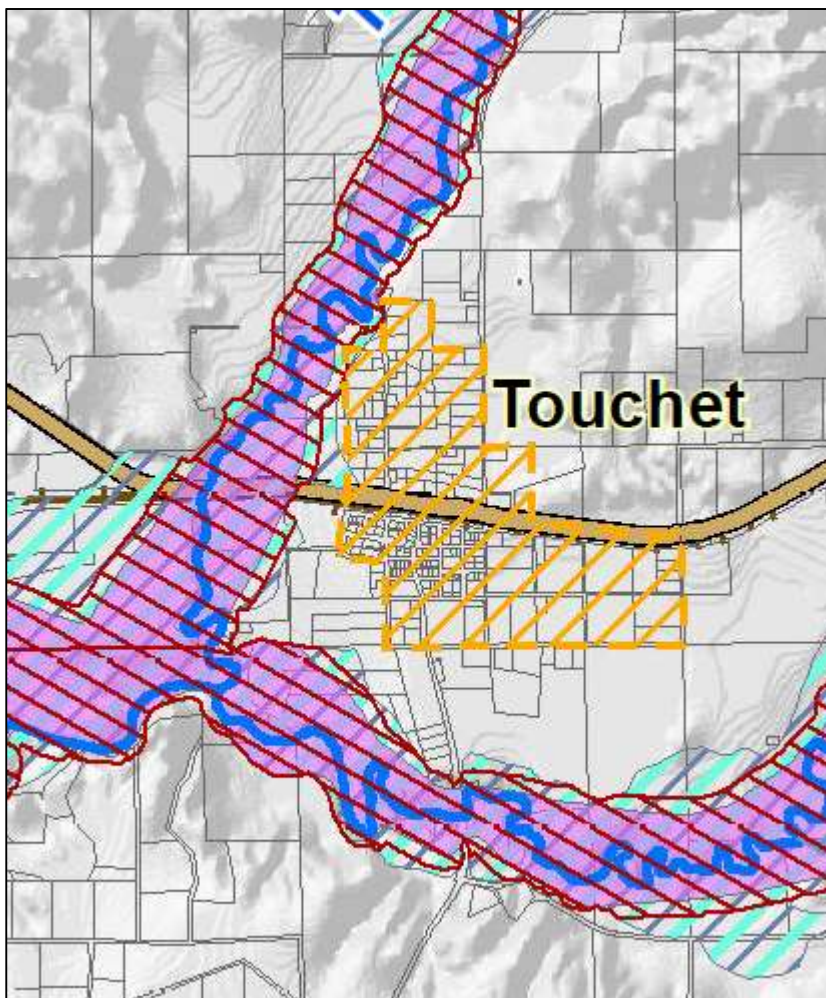


Shoreline associated wetlands

- Wetlands within 200 feet
- Wetlands within the floodplain
- Wetlands 200 feet landward of a floodway
- Wetlands with a hydraulic connection

Figure 5-17 from the SMP Planners Handbook (Ecology, 2017)

SHORELINE JURISDICTION AND CRITICAL AREAS



Mapping Floodplain/Floodway

- The entire FEMA floodway is considered part of shoreline jurisdiction
- Shoreline jurisdiction may extend up to 200 feet beyond the floodway if a 100-year floodplain is present

CRITICAL AREA BUFFERS

Buffers to protect critical areas outside of minimum shoreline jurisdiction

- Local governments have the option to extend shoreline jurisdiction to include critical area buffers
- This may reduce duplicative use of the CAO and SMP for development projects
- However, it would require shoreline review for any critical area buffer impacts which would otherwise be outside of shoreline jurisdiction

Optional expanded SMA jurisdiction (to include buffer), regulated by SMP only. If Jurisdiction is not expanded to include buffer, then buffer remains regulated exclusively by CAO (no dual coverage)

Minimum SMP jurisdiction for:
adjacent wetland ———
other critical areas ———

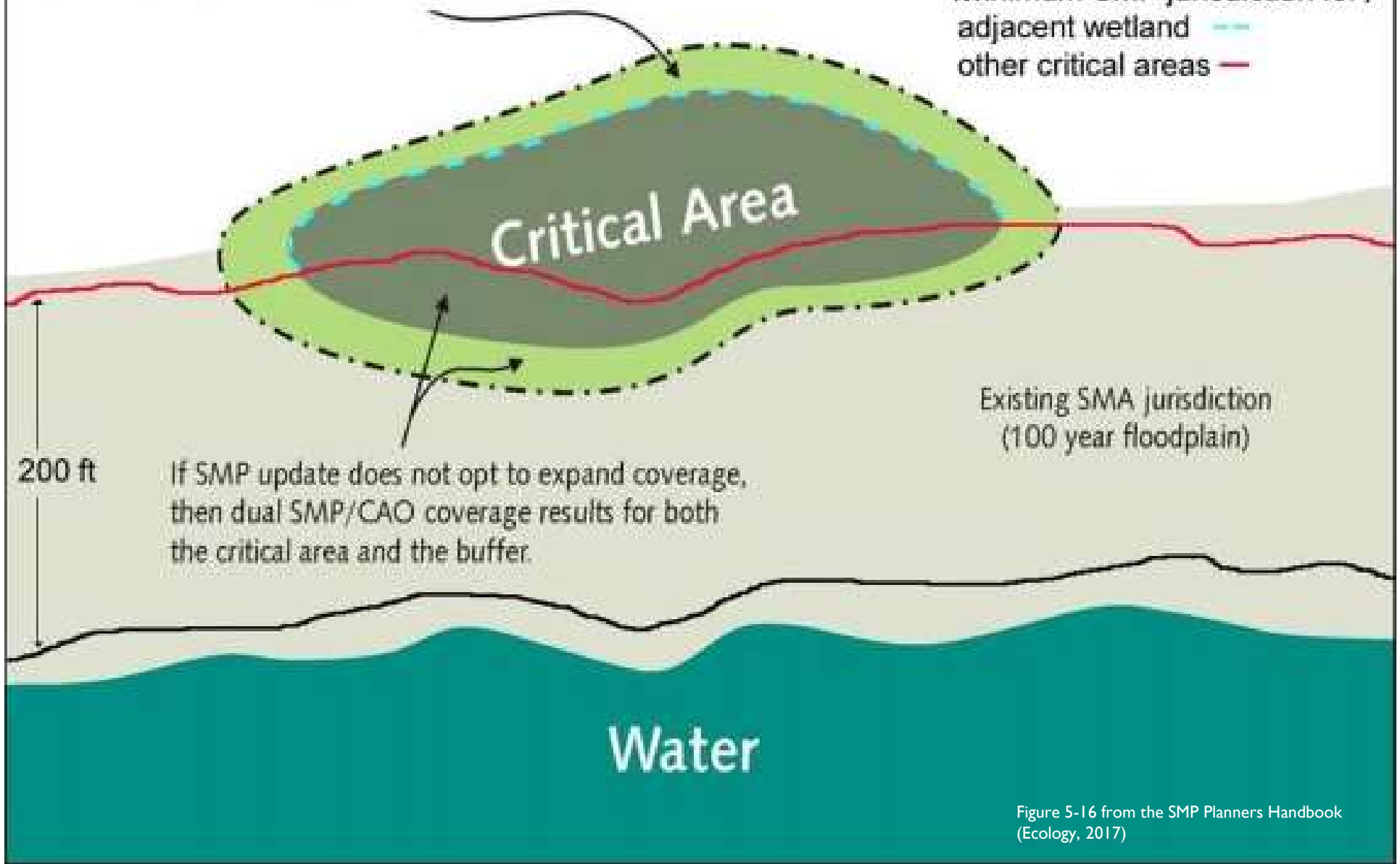


Figure 5-16 from the SMP Planners Handbook (Ecology, 2017)

INTEGRATION OF CRITICAL AREA REGULATIONS

Comprehensive and Periodic Updates

- Most jurisdictions addressed critical area integration during the Comprehensive Update (some are not yet complete)
- At the time of the Comprehensive Updates, most jurisdictions had not yet updated their CAOs
- Therefore, some modifications were made to the critical areas regulations
 - **Best Available Science (BAS) vs “the most current, accurate, and complete scientific and technical information available”**
- More recently, local jurisdictions are starting to conduct Periodic Updates to their SMPs and very similar issues are arising



INTEGRATION OF CRITICAL AREA REGULATIONS

Options to integrate CAO provisions into an SMP:

1. **Insertion.** Copy specific sections of the CAO directly into the SMP.
2. **By reference.** Reference a specific, dated version of the CAO in the SMP. In this case, the SMP will need to specifically note which CAO provisions do not apply.
3. **Appendix.** Include the CAO as an appendix to the SMP. In this case, the appendix should only include applicable provisions or the SMP would need to specifically note which CAO provisions do not apply.



Can you change your approach? Yes, but...

INTEGRATION OF CRITICAL AREA REGULATIONS

Considerations

- Review your approach to critical areas integration early – determine if a different approach is warranted
- When was the CAO last updated?
- Does the CAO meet current science and State guidelines?
- Note, there can be different standards between the CAO and the SMP (example). This decision may be very jurisdiction specific.



CRITICAL AREAS NOT APPLICABLE TO SMPS

- SMPs are **not required to address all critical areas** that may occur within shoreline jurisdiction
 - The SMA Guidelines are silent on Critical Aquifer Recharge Areas (**CARAs**)
 - Some geologically hazardous areas may not be applicable (e.g. lahar or mine hazards)

CARA regulations are required for public water supply wells, as per Department of Health and the RCW, but optional for groundwater recharge to local streams, rivers, and lakes

CAO REGULATIONS NOT ALLOWED UNDER THE SMA

CAO regulations may not be consistent with the SMA

- These include;
 - Reasonable use exceptions
 - Public agency and utility exceptions
 - Administrative exemptions and other provisions (e.g. appeals, permits, penalties, etc.)
 - Critical areas variances

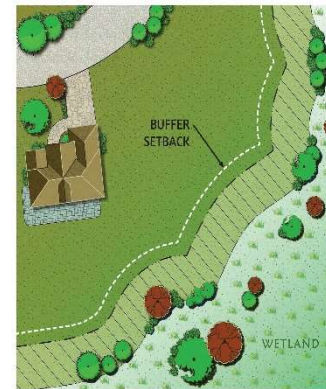
Ecology will not approve an SMP that contains CAO provisions inconsistent with the SMA and its procedural rules or the SMP Guidelines

CAO REGULATIONS NOT ALLOWED UNDER THE SMA

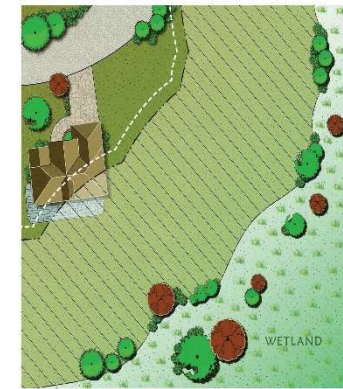
Specific areas of concern

- Incorporating the most recent BAS and State guidance
 - 2018 Ecology wetland buffer guidance
 - 2018 WDFW riparian buffer guidance
- Wetland and stream buffer reductions not typically allowed (averaging preferred)
- Buffer averaging limited to 25 percent of the standard buffer

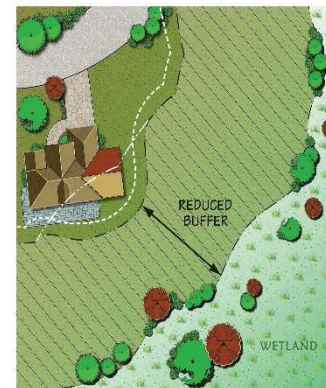
Current Buffer



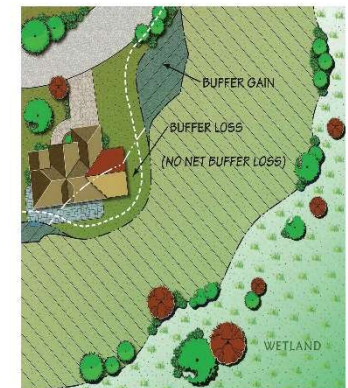
Proposed Buffer



Buffer Reduction



Buffer Averaging



OVERVIEW OF JURISDICTIONAL APPROACHES

I. CITY OF COVINGTON

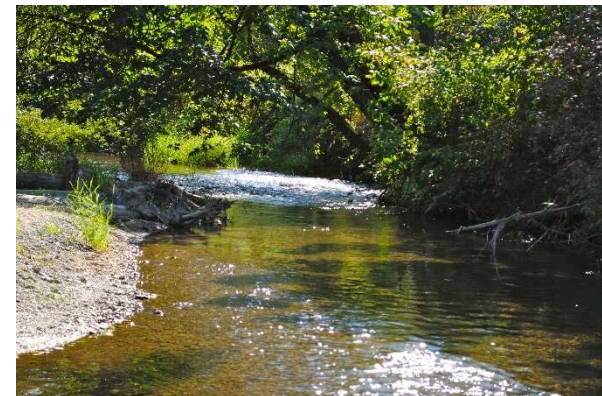
- Comprehensive SMP update completed in 2011
 - Included critical areas regulations as an appendix
- CAO was recently updated in 2017
- City's goal was to:
 - Update the CAO again with latest Ecology wetland guidance
 - Codify the SMP as part of the Periodic Update process
 - Reference the updated CAO, noting exclusions of the CAO that don't apply in shoreline jurisdiction



OVERVIEW OF JURISDICTIONAL APPROACHES

I. CITY OF WOODINVILLE

- Comprehensive SMP update completed in 2009
 - Integrated critical areas regulations within the body of the SMP
 - Based upon a 2004 version of the CAO
- CAO was recently updated in 2016
- City's goal was to:
 - Codify the SMP as part of the Periodic Update process
 - Keep with the original theme of having shoreline specific critical areas regulations independent of the CAO
 - Bring the shoreline critical areas regulations up to the latest standards



OVERVIEW OF JURISDICTIONAL APPROACHES

I. CITY OF TUKWILA

- Comprehensive SMP update completed in 2011
 - Integrated critical areas regulations within the body of the SMP
 - Includes both codified and stand-alone versions
- SAO has not been updated in 2010
- City's goal was to:
 - Update the SAO to be consistent with BAS
 - Update the SMP as part of the Periodic Update process and reference the newly updated SAO
 - Remove the duplicity of both a codified and stand-alone versions



DISCUSSION



Contact info:

Dan Nickel
The Watershed Company
(425) 822-5242
dnickel@watershedco.com