

Critical Areas Ordinance Update

City Council Briefing/Adoption

Monday, May 24, 2021

Introductions

- ▶ **City of Cle Elum**
 - ▶ Lucy Temple, Planner - City CAO Update Lead
- ▶ **AHBL, Inc. (Consultant)**
 - ▶ Josh Kubitzka, AICP – Land Use Planner
 - ▶ Brittany Port, AICP – Land Use Planner

Growth Management Act

- ▶ As a City in Kittitas County, Cle Elum is required to plan under the Growth Management Act.
- ▶ The Growth Management Act requires that the City review its development regulations every eight years and make amendments necessary to ensure compliance with the GMA.
- ▶ WAC 365-195-900(2): Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries.
- ▶ The City complies with the GMA by enacting a Critical Areas Ordinance and updating it in accordance with the best available science.

Best Available Science

- ▶ “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC
- ▶ The Best Available Science (BAS) is a compilation of published studies, technical reports, GIS mapping, and aerial photography of critical areas within the City.
- ▶ A Best Available Science report has been prepared to ensure that the City’s CAO is based on the most current, accurate and complete science and technical information.
- ▶ Various State Agencies (Ecology, WDFW, etc.) review and comment on the BAS.



Best Available Science

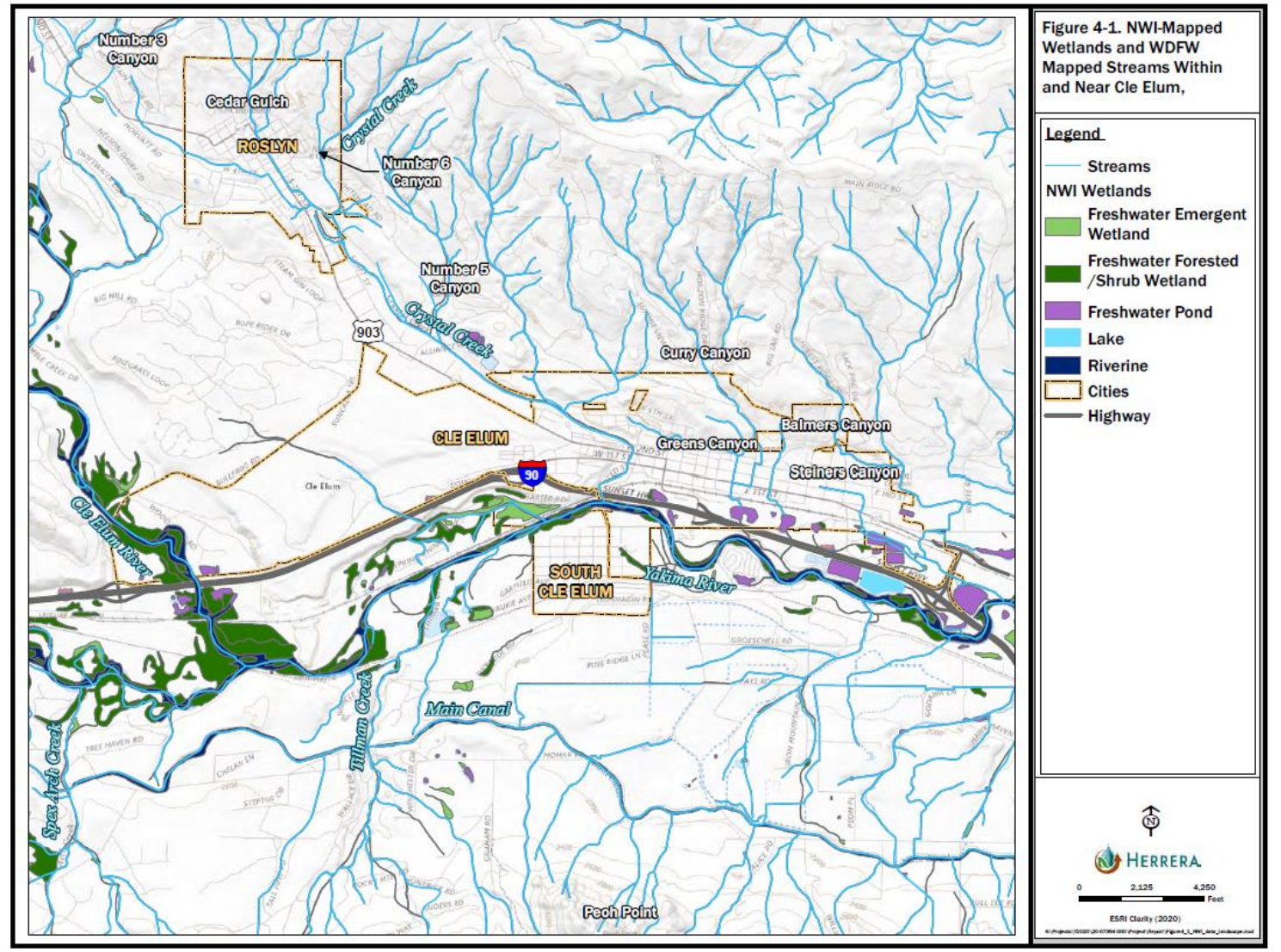
- ▶ The Best Available Science (BAS) Report was authored by Herrera Environmental Consultants
 - ▶ Herrera employs environmental Science and critical area experts who have completed numerous Washington Best Available Science Reports
 - ▶ These reports allow communities to comply with state law and make policy planning decisions for protecting the environment

Critical Areas Protection

- ▶ Critical Area Ordinances provides for the protection of sensitive areas for the benefit of the environment as well as protection of private property.
- ▶ Critical areas in the City of Cle Elum include:
 - ▶ Wetlands
 - ▶ Aquifer recharge areas
 - ▶ Fish and wildlife habitats
 - ▶ Frequently flooded areas
 - ▶ Geologically hazardous areas (erosion, landslide and seismic hazard areas)

Wetlands

- ▶ Wetlands are defined in accordance with state law, which requires the use of the “Federal Wetland Delineation Manual”. Wetland boundaries are delineated by a qualified professional, based on the presence of specific soils and plant types.
- ▶ Ecology requires that Wetlands are rated based on Ecology Eastern Washington State Wetland Rating System.
- ▶ “Buffers” are required by Ecology to protect wetlands.



Wetlands

- ▶ The City's current wetland buffers are not compliant with Ecology's best available science.
- ▶ The BAS Report recommends updating the wetland buffers to be compliant with Ecology standards.

2010 Wetland Buffers

Wetland Category	Standard Buffer Width
Category I: Based on total score	75 ft
Category I: Forested	75 ft
Category I: Bogs	190 ft
Category I: Alkali	150 ft
Category I: Natural Heritage Wetlands	190 ft
Category II: Based on total score	75 ft
Category II: Vernal Pool	150 ft
Category II: Forested	75 ft
Category III: (all)	60 ft
Category IV: (all)	40 ft

Wetlands

- ▶ Consistent with Ecology and the BAS, the proposed wetland buffers are determined by wetland category and habitat score.
- ▶ Ecology allows for reduced wetland buffers if mitigation measures are incorporated. The mitigation measures include directing lights away from wetland, how runoff is handled, etc.
- ▶ If the City determines that the mitigation measure have been incorporated than the following buffers apply:

Proposed Wetland Buffers (W/ Mitigation Measures)

Wetland Category	Buffer width (in feet) based on habitat score		
	3-5	6-7	8-9
Category I: Based on total score	75	110	150
Category I: Forested	75	110	150
Category I: Bogs and Wetlands of High Conservation Value	190 (buffer width not based on habitat scores)		
Category I: Alkali	150 (buffer width not based on habitat scores)		
Category II: Based on total score	75	110	150
Category II: Vernal pool	150 (buffer width not based on habitat scores)		
Category II: Forested	75	110	150
Category III (all)	60	110	150
Category IV (all)	40		

Wetlands

- ▶ If the City determines that the mitigation measures are not incorporated, then the following wetland buffers apply:

Proposed Wetland Buffers (Without Mitigation Measures)

Wetland Category	Buffer width (in feet) based on habitat score		
	3-5	6-7	8-9
Category I: Based on total score	100	150	200
Category I: Forested	100	150	200
Category I: Bogs and Wetlands of High Conservation Value	250 (buffer width not based on habitat scores)		
Category I: Alkali	200 (buffer width not based on habitat scores)		
Category II: Based on total score	100	150	200
Category II: Vernal pool	200 (buffer width not based on habitat scores)		
Category II: Forested	100	150	200
Category III (all)	80	150	200
Category IV (all)	50		

Fish and Wildlife Habitat Conservation Areas (FWHCA)

- ▶ FWHCA are defined as: Areas with which endangered, threatened and sensitive species have a primary association
 - ▶ Habitats and species of local importance
 - ▶ Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat;
 - ▶ Waters of the State;
 - ▶ State natural area preserves and natural resource conservation areas.

Fish and Wildlife Habitat Conservation Areas (FWHCA)

- ▶ The existing CAO does not require buffers for non-shoreline streams within the City and is not compliant with existing Washington Department of Fish and Wildlife (WDFW) best available science.
- ▶ The BAS Report recommended, based on the best available science as of October 2020, that stream buffers be incorporated based on existing WDFW guidelines.

Table 5-4. Ecology Recommended Riparian Buffers for City of Cle Elum.

Name of Stream and or Water Type	Ecology Recommended Buffer Width
Yakima River–(Type S)	200 feet
Cle Elum River–(Type S)	200 feet
Crystal Creek–(Type F)	50 feet
Non-fish bearing perennial, seasonal (ephemeral) streams–(Type Np and Ns)	25 feet

Fish and Wildlife Habitat Conservation Areas (FWHCA)

- ▶ On February 16, 2021, the WDFW requested that the City incorporate the new WDFW Riparian Ecosystems, Volume 2: Management Recommendations (2020 Stream Guidance) that was published in December 2020.
- ▶ The new guidance would require stream buffers be calculated based on the “Site-Potential-Tree-Height” which is the average maximum height of the tallest dominant trees at 200 years or more for a given site class.
- ▶ The average heights of dominant trees in Washington range from 100 feet to 240 feet.
- ▶ The stream buffers would also be applied from the edge of the Channel Migration Zone (CMZ), rather than the Ordinary High Water Mark (OHWM)

Fish and Wildlife Habitat Conservation Areas (FWHCA)

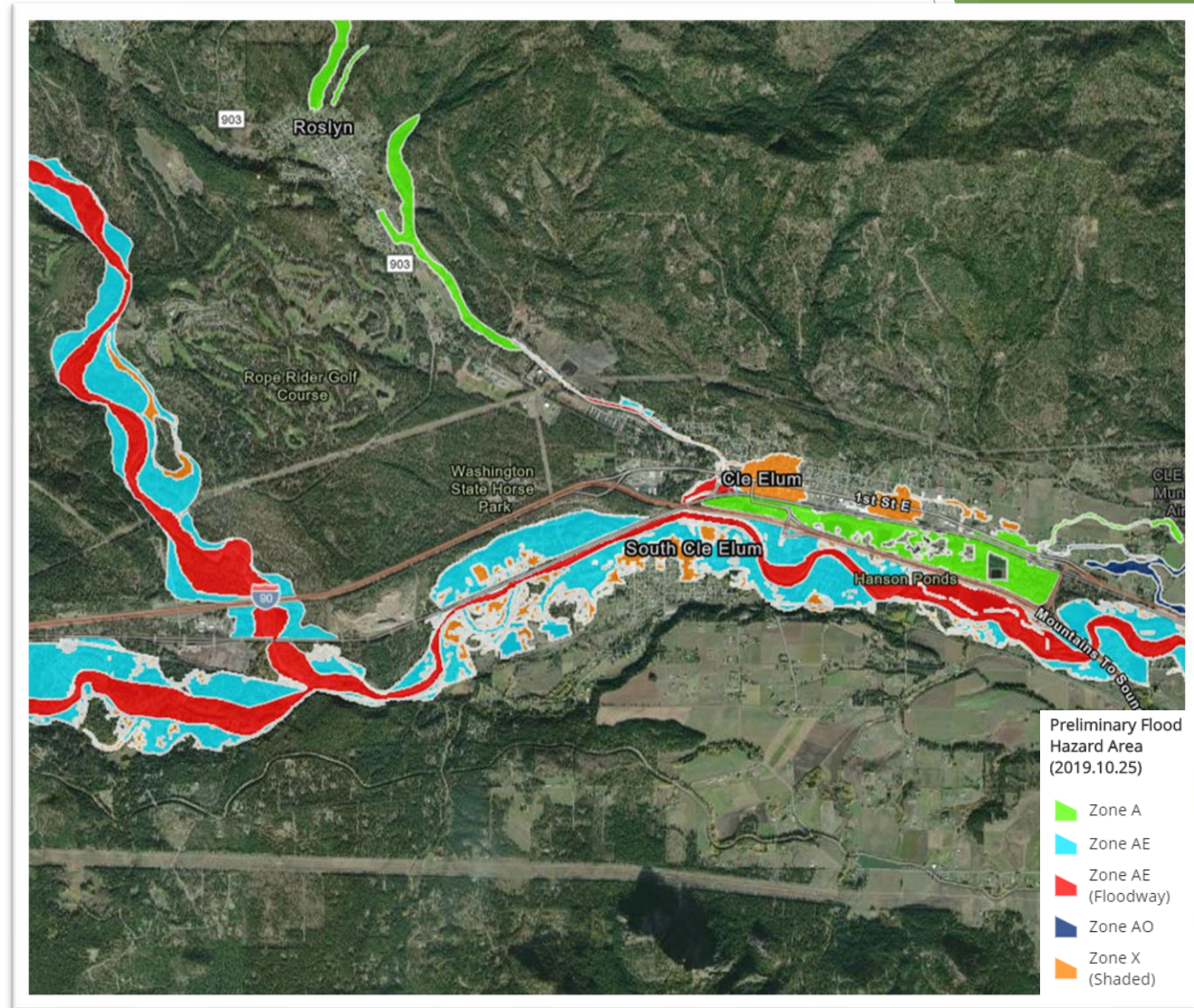
- ▶ On March 16, 2021, the Planning Commission requested that AHBL investigate how to incorporate the WDFW comments into the City of Cle Elum Critical Area Ordinance.
- ▶ On March 17, 2021, Lucy Temple from the City, AHBL, and Herrera Environmental staff met to discuss WDFW comments.
- ▶ AHBL, in consultation with Herrera Environmental, prepared the WDFW CAO Stream Buffer Response Memo and provided two options to address WDFW comments:
 - ▶ Option 1: Move forward the original CAO that was presented to the Planning Commission
 - ▶ Option 2: Compromise and adopt WDFW Site-Potential-Tree-Height buffers for Crystal Creek while retaining the standard buffer for all other non-fish bearing streams.
- ▶ On May 5, 2021, the Planning Commission recommended to City Council the adoption of “Option 2”

Critical Aquifer Recharge Areas (CARAs)

- ▶ Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).
- ▶ The BAS found that while CEMC 18.01.060 was compliant with the best available science, the Critical Area Ordinance language should be updated.
- ▶ The proposed CAO amendments provided language to clarify the entire city is presumed to be within a CARA unless determined by a site-specific scientific study, added language for classification and requirements of CARAs, and new development standards.

Frequently Flooded Areas

- ▶ Frequently flooded areas are those areas subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water.
- ▶ Frequently Flooded Areas are areas that are defined according to the Flood Insurance Rate Maps (FIRMs). These maps are currently in the process of being updated by FEMA.
- ▶ The BAS Report recommendations led to the proposed updates to the various flood definitions and clarifying language for development within floodways.



Geologically Hazardous Areas

- ▶ Geologically hazardous areas are defined in the City's code and include:
 - ▶ Erosion hazard areas
 - ▶ Landslide hazard areas
 - ▶ Seismic hazard areas
 - ▶ Mine hazard areas
 - ▶ Volcanic hazard areas
- ▶ Structures and improvements in geologically hazardous areas are required to minimize alterations to slopes, not result in risk to neighboring properties, and to minimize impervious surfaces.
- ▶ The existing CAO does not provide any standard setbacks or buffers from geologically hazardous area, which is not consistent with the best available science. The BAS Report recommended that buffers should be considered for known landslide and steep slope hazards.

Planning Commission Recommendation

- ▶ On March 16, 2021, and May 4, 2021, the Planning Commission considered, deliberated and recommended 4-0 approval to the City Council of the proposed amendments to the City's Critical Areas Ordinance.

Next Steps

- ▶ The City is currently out of compliance with GMA due to not having completed the 8-year periodic review of its development regulations and adopting amendments to its Critical Areas Ordinance consistent with best available science
- ▶ The City should at its earliest convenience adopt amendments to the CAO in order to avoid financial consequences such as not being eligible to receive funds from the Public Works Trust Fund or Centennial Clean Water fund or other state grants and loans. Without a completed 8-year periodic review the City may also be vulnerable to a “failure to act” petition for review to the Growth Management Hearings Board.

Discussion & Questions

