

## City of Walla Walla - 2026 Critical Areas Ordinance Update

# Technical, Legal, and Policy Concerns Raised by Walla Walla's Draft Critical Areas Ordinance

Questions the record should answer before adoption.

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Technical, legal, and policy review of the proposed replacement of the City's differentiated riparian buffers with a uniform 100-foot minimum standard and the supporting record.

**SUBMITTED TO**

City of Walla Walla City Council

**MATTER**

2026 Critical Areas Ordinance Update  
File PLN5-26-0001

**SUPPORTING RECORD**

Planning Commission and 2026 CAO  
proceedings

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## Purpose

These concerns relate primarily to the proposed replacement of Walla Walla's existing differentiated 35-foot and 50-foot riparian buffers with a uniform 100-foot minimum buffer for most open streams regulated under the City's Critical Areas Ordinance.

There is no dispute that Walla Walla must protect critical areas. There is no dispute that the City must include Best Available Science, or BAS, when developing its regulations. There is also no dispute that WDFW recommends substantial riparian protection and generally recommends a 100-foot minimum RMZ in dryland settings when the pollution-removal function controls.

### The questions are different:

Has the specific choice of a uniform 100-foot standard been accurately represented as legally required? Has the City adequately examined Walla Walla's local conditions? Has it evaluated reasonable alternatives? Has it demonstrated why the existing differentiated system is inadequate? Has it reconciled the proposed regulation with other GMA and Comprehensive Plan obligations? Does the City understand the ramifications of the proposed 100-foot buffer? And has it created a sufficiently complete record to support the policy choice it is asking elected officials to make?

The available record raises substantial concerns on each of those questions.

On September 14, 2026, the Planning Commission declined to recommend the draft CAO as presented and instead unanimously recommended that City Council direct staff to revise the ordinance to better align with the Comprehensive Plan and local needs. This review is submitted to inform the Council's consideration of that recommendation.

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## 01 Washington law does not mandate a 100-foot riparian buffer

RCW 36.70A.172 requires cities and counties to include Best Available Science when developing policies and development regulations protecting the functions and values of critical areas. It also requires special consideration of measures necessary to preserve or enhance anadromous fisheries.

RCW 36.70A.060 requires adoption of development regulations protecting critical areas.

Neither statute prescribes a 100-foot buffer.

WAC 365-195-915 further recognizes that a jurisdiction may depart from a science-based recommendation when the record identifies the information relied upon, explains the rationale, identifies the risks associated with the departure, and explains measures used to address those risks.

### CONTENTION

**The state mandates a result - protection of critical-area functions through regulations developed using BAS. It does not mandate WDFW's preferred 100-foot regulatory response.**

## 02 Labeling the proposal 'State Mandated' obscures an important distinction between state law and local policy choice

The City's staff materials repeatedly categorize significant CAO amendments as 'State Mandated' under RCW 36.70A.172.

The staff report explains the BAS requirement and then states:

**"To this end, the riparian buffer zones on either side of the City's creeks and streams are proposed to increase from 35 or 50 feet...to 100 feet."**

That presentation collapses two separate decisions:

- the Legislature's requirement that the City include BAS and protect critical-area functions; and
- the City's decision about which local regulation to adopt after applying that science.

### CONTENTION

**Decision-makers should be expressly told that 100 feet is a City policy choice informed by a WDFW recommendation, not a buffer width imposed by RCW 36.70A.172.**

That distinction matters because elected officials may reasonably evaluate a supposed state mandate differently than a local legislative choice.

## 03 WDFW expressly distinguishes its science from its policy recommendations

This distinction is not an interpretation offered by opponents of the ordinance. WDFW says it itself.

Volume 1 states that Volume 2's management guidance is:

**"not in and of itself 'best available science.'"**

Instead, Volume 2 represents WDFW's recommendations for how local governments could incorporate BAS into policies, plans, and regulations.

Volume 2 repeats the point even more directly:

**"The information presented in this management recommendation document is not, in and of itself, science. Rather, it consists of policy recommendations which are informed by the best available science..."**

Volume 2 also describes WDFW's role in Washington land-use decision-making as that of 'advisor,' working with decision-makers and landowners to accommodate both human needs and fish and wildlife needs.

This distinction is especially important because City staff itself has acknowledged Volume 1 as the BAS source and Volume 2 as management guidance.

### CONTENTION

**The City should not treat WDFW's recommended implementation policy as though the recommendation itself were synonymous with BAS or a statutory mandate.**

## 04 WDFW expressly recommends site-specific RMZ determinations and warns against one-size-fits-all widths

Volume 2 contains one of the clearest statements relevant to Walla Walla's proposal:

**"Establish RMZ widths based on site-specific conditions."**

WDFW explains that riparian ecosystem width varies with ecological conditions and states that the most efficient protection recognizes those differences rather than adopting uniform-width, one-size-fits-all RMZs, because uniform standards can produce over-protection in some locations and under-protection in others.

WDFW also cautions that Volume 2 contains statewide recommendations and does not address unusual site-scale environmental conditions or issues specific to particular ecological communities. It strongly encourages those issues to be addressed locally with WDFW regional habitat biologists, technical experts, tribes and other stakeholders.

WDFW's comments on Walla Walla are consistent with that guidance: although it stated that 100 feet 'may be compliant,' it also indicated that site evaluation would be preferable for determining the correct width.

### CONTENTION

**WDFW's own management guidance does not support treating statewide guidance as a substitute for evaluating materially different local stream conditions.**

## 05 The City has not performed the alternatives analysis that would demonstrate why other approaches are inadequate

The July 1 Facet memorandum compares the mapped footprint of only two regulatory scenarios:

- Walla Walla's existing 35/50-foot framework; and
- WDFW's 100-foot dryland RMZ scenario.

It does not evaluate the ecological performance of the existing buffers, nor does it evaluate:

- 60-foot buffers;
- 75-foot buffers;
- revised reach-specific standards;
- different treatment of different stream types;
- narrower buffers combined with native vegetation enhancement;
- stormwater treatment;
- low-impact development;
- habitat connectivity improvements;
- differentiated treatment of heavily developed or functionally disconnected reaches; or
- packages combining multiple protective measures.

Facet therefore does not establish that reasonable alternatives fail to protect required functions.

### CONTENTION

**Comparing the mapped footprint of the existing ordinance with one preferred regulatory alternative is not the same as evaluating the existing ordinance or modeling meaningful alternatives and demonstrating why they are insufficient.**

## 06 The Facet memorandum is a GIS planning analysis, not an ecological efficacy study

Facet's work is valuable for understanding the geographical consequences of changing the ordinance.

It identifies streams, overlays buffer scenarios, examines impervious surfaces, and estimates functionally disconnected areas.

But Facet expressly states that its analysis is appropriate for broad-scale planning and 'should not be used for site-level determinations.'

It therefore answers:

**"How much land will fall inside the regulatory area if the City adopts 100 feet?"**

It does not answer:

"What width is necessary on each Walla Walla stream or reach to protect the functions actually present there?"

#### CONTENTION

The City's principal technical study quantifies the footprint of the proposed policy. It does not establish the ecological necessity of that policy.

## 07 The City has not demonstrated that its existing differentiated system is failing

Walla Walla already regulates these waterways.

The existing ordinance identifies specific streams and reaches, their characteristics, targeted ecological functions, existing riparian widths and different regulatory buffers.

For example, the existing record distinguishes Yellowhawk Creek from Russell Creek and Reser Creek based upon fish use, downstream influence, shade, woody debris, vegetation and other characteristics.

Volume 2 makes the absence of a performance analysis more significant. WDFW specifically recommends implementation and effectiveness monitoring to determine whether existing regulations are actually producing intended environmental outcomes such as shade and bank stability.

The current record does not appear to identify:

- which functions are presently being lost under Walla Walla's existing buffers;
- on which reaches those losses occur;
- whether existing permit implementation is failing;
- whether violations rather than buffer width are causing failures; or
- what monitoring demonstrates that the existing standards cannot protect those functions.

#### CONTENTION

Before replacing an existing BAS-derived differentiated system with a dramatically more restrictive system, the City should identify what is failing and demonstrate how the proposed regulation corrects that failure.

## 08 Walla Walla's own evidence demonstrates materially different conditions, yet the proposed ordinance imposes the same answer

The City's existing information identifies average riparian widths of approximately:

- Yellowhawk: 31 feet
- Russell: 21 feet
- Reser: 23 feet
- Stone: 20 feet
- Garrison: 24 feet
- Bryant: 14 feet
- Titus: 25 feet

Those waterways also differ in fish use, channelization, vegetation, surrounding development, hydrology, downstream influence and existing ecological function.

The City's existing reach-based table itself reflects those differences. Yellowhawk is identified for summer steelhead migration and limited rearing habitat, while other reaches are identified for differing combinations of downstream influence, stormwater and pollutant control, wildlife habitat, shade, woody debris and existing riparian conditions.

Nevertheless, the proposed Table 6 places nearly all open streams into the same 100-foot minimum category.

#### CONTENTION

The City's own evidence demonstrates ecological heterogeneity. WDFW says site-specific differences matter. A uniform regulatory answer therefore requires a persuasive local explanation that does not presently appear in the record.

## 09 WDFW selected a policy target for pollutant removal, but the City has not demonstrated that it independently selected that target for Walla Walla

This is an important distinction.

Volume 1 states:

**"Riparian buffer width recommendations depend on the particular pollutant to be removed and the desired removal efficacy. Policy makers must choose the desired removal efficacy."**

WDFW's Volume 2 then makes its management recommendation. Where SPTH or riparian vegetation is less than 100 feet, WDFW recommends a 100-foot minimum intended to achieve approximately 95% removal for most pollutants, although it notes approximately 85% for surface nitrogen.

Those are two different propositions:

- The science describes how performance changes with width.
- WDFW then recommends a particular policy target.

The Jacobs memorandum for Enumclaw illustrates this directly. It reproduces the WDFW/Quinn pollutant-removal data at different performance levels and states that the amount of pollutant removal desired is a community choice.

### CONTENTION

**WDFW has made its policy recommendation. The City's record should demonstrate why Walla Walla independently concluded that WDFW's selected performance target is appropriate for every regulated urban stream.**

## 10 The proposal expands regulated land dramatically without quantifying the corresponding incremental ecological benefit

Facet estimates that the current buffer system encompasses approximately 268.8 acres.

Under the 100-foot scenario, that becomes approximately 757.4 acres.

The mapped buffer footprint therefore increases by approximately 489 acres, nearly tripling the regulated area and increasing it from roughly 2.1% to 5.8% of the study area.

What the analysis does not calculate is the corresponding incremental ecological gain. For example:

- How much additional sediment removal occurs?
- How much additional nitrogen removal occurs?
- How much additional shade results?
- Which reaches gain meaningful habitat connectivity?
- Which additional acreage contributes woody debris?
- Which acreage performs little or no present riparian function?
- How much of the approximately 489-acre expansion is already developed private property?
- What incremental habitat or water-quality improvement is expected on already-developed parcels if existing lawful development remains in place?

### CONTENTION

**A large regulatory expansion should be supported by analysis of what additional ecological performance the additional regulated acreage actually purchases.**

## 11 The City's own analysis shows that a substantial portion of the proposed buffer is developed, impervious, or functionally disconnected

Under the 100-foot scenario, Facet finds approximately 30.4% of the mapped area to be impervious or functionally disconnected.

Facet also acknowledges that the expanded buffers reach developed parcels, roads and other land uses that may not presently provide riparian function.

Even Facet's 'vegetated' category includes lawns, parks, fields and managed open space, rather than only functioning native riparian vegetation.

The record does not separately quantify how much of the approximately 489-acre expansion consists of already-developed parcels, nor how much additional ecological function the ordinance is expected to produce on those parcels. Workshop discussion also indicated that existing developed property owners would not simply be required to restore habitat because the regulatory line moved.

Volume 2 adds important nuance. WDFW warns that impervious surfaces and untreated stormwater can themselves alter peak flows, channel form and pollutant removal. That supports a broader regulatory analysis rather than simply treating impervious land as irrelevant.

#### CONTENTION

**In developed urban watersheds, the appropriate question is not merely 'How wide is the line?' The City should evaluate whether combinations of buffer protection, stormwater treatment, infiltration and pollutant removal, low-impact development, vegetation enhancement and other measures more effectively address the actual functions and impairments present.**

## 12 The proposal blurs the distinction between mandatory protection and desired restoration

WDFW strongly favors both protection and restoration.

Volume 2 acknowledges that historical development has degraded riparian systems and states that WDFW believes remaining intact habitat alone is insufficient to provide the full functions fish and wildlife need. WDFW consequently recommends restoration where possible.

But WDFW also distinguishes restoration from protection. Volume 2 describes voluntary restoration actions, and Volume 1 expressly notes that the planning, regulatory and legal contexts governing protection and restoration differ.

Washington's Swinomish decision likewise recognizes that the GMA's duty to protect existing critical-area functions is not automatically equivalent to a mandate to restore historically lost functions.

#### CONTENTION

**Where the proposed 100-foot area extends across developed urban land that no longer provides full riparian function, the City should identify whether the regulation is protecting existing function, preventing a new loss, mitigating a proposed impact, or attempting to restore a function that is presently absent. Those purposes may support different regulatory tools and different legal analyses.**

## 13 The supporting record does not demonstrate how the City balanced environmental protection with other GMA and Comprehensive Plan objectives

The GMA contains multiple planning goals, including environmental protection, housing, property rights, urban growth, economic development, permit predictability and citizen participation.

Those goals are not ranked by RCW 36.70A.020.

Walla Walla's own 2046 Comprehensive Plan calls for:

- infill development;
- housing choice;
- accessory dwelling units;
- efficient use of existing infrastructure;
- additional residential development; and
- evaluation of the effects of development regulations.

WDFW itself recognizes this balancing process. Volume 1 states that natural-resource and land-use policies must often balance ecological, economic and social goals, and that determining an acceptable balance requires a political process involving stakeholders, local governments, tribes and state agencies.

Volume 2 likewise acknowledges that human needs must be incorporated into land-use decision-making.

#### CONTENTION

**The City should demonstrate the balancing exercise the GMA, the Comprehensive Plan and WDFW's own framework contemplate. The existing record fails to do this.**

## 14 Housing-capacity and infill consequences have not been quantified

Facet establishes that the proposed 100-foot standard expands the mapped buffer footprint by nearly 489 acres.

The available record does not appear to quantify:

- affected buildable acreage;
- housing units potentially foregone;
- infill parcels constrained;
- redevelopment capacity affected;
- reductions in building envelopes;
- interaction with the City's housing-capacity analysis;
- impacts on the assumptions underlying Walla Walla 2046; or
- economic effects on affected property.

The concern was independently raised in public comments, including Howard Boggs' observation that many stream-adjacent areas are already developed and that substantially larger buffers could reduce future infill opportunities.

### CONTENTION

**The City should know whether a regulation affecting hundreds of additional urban acres conflicts with the growth and housing assumptions on which its newly adopted Comprehensive Plan depends.**

## 15 The consequences for existing lawful homes and lots remain insufficiently defined

Many affected properties were developed before the adoption of current critical-area setback requirements or under substantially different regulatory standards. The proposed 100-foot standard will place many of those existing homes and lots inside a newly expanded regulatory area.

Questions raised in the public record include:

- Can an existing home be rebuilt after a fire?
- Can an owner build a second story?
- Can a garage be added?
- Can a deck or patio be constructed?
- What happens to an undeveloped legal lot?
- What rights attach to recorded plats?
- What happens to pending applications?
- How are additions treated?

### A practical question for existing owners

How does any new nonconforming status affect resale, insurance, financing or marketability?

These are not abstract issues. They determine the practical effect of the ordinance on existing lawful property owners.

### CONTENTION

**A major citywide regulatory amendment should clearly establish the rights retained by existing owners rather than requiring those answers to emerge later through individual administrative interpretations.**

## 16 Discretionary relief does not erase the burden created by the underlying regulation

The draft contains several mechanisms that may modify the standard buffer in particular circumstances. Those provisions are important, but they are not equivalent to an unaffected property right.

**Functionally disconnected areas.** Where impervious surfaces or lawfully established structures disconnect the buffer from the stream, the Director may approve a complete or partial modification to exclude non-functional areas.

**Buffer averaging.** The draft allows portions of a buffer to be narrowed, but the total area after averaging must equal the area required without averaging and the narrowest point may not be less than 75% of the standard width. On small, already-developed parcels, there may be little or no practical room to move the displaced buffer elsewhere.

**Decreased buffer widths.** A separate case-by-case provision allows the Director to approve a reduction when specified criteria are satisfied. For a 100-foot standard, Table 7 identifies a potential reduction to 75 feet with approved habitat enhancement or water-quality treatment.

To obtain relief, a property owner may still be required to:

- retain a qualified professional;
- prepare a critical-area report;
- establish existing ecological conditions;
- demonstrate satisfaction of regulatory criteria;
- prepare habitat enhancement;
- address water quality;
- conduct monitoring; and
- obtain discretionary Director approval.

The applicant bears the cost of the professional studies, documentation, enhancement planning, monitoring and administrative process necessary to establish eligibility for relief.

The required enhancement plan must identify existing conditions, demonstrate improved riparian function and include a five-year monitoring program.

#### CONTENTION

The existence of discretionary modification or relief mechanisms does not mean a property is unaffected. Cost, delay, uncertainty, professional studies and administrative discretion are regulatory impacts themselves, and those burdens are borne by the property owner.

## 17 The SEPA record should be revisited in light of the scale of the regulatory change now documented

The City's SEPA materials state that the proposed amendments are not expected to create significant adverse impacts.

However, the available SEPA discussion does not appear to analyze the approximately 489 additional acres subsequently identified by Facet, nor does it quantify effects on housing capacity, infill, redevelopment or existing lawful development.

This does not establish that the City's SEPA determination is invalid. It does create a legitimate record question:

**"Did the environmental review adequately consider the probable land-use consequences of the specific regulatory proposal ultimately advanced?"**

#### CONTENTION

Before final adoption, the City should determine whether the Facet acreage findings and resulting development consequences warrant supplemental or additional SEPA consideration.

## 18 Other Washington jurisdictions demonstrate that BAS can support a documented, differentiated local approach

Enumclaw provides a useful example, but it should be described accurately.

Jacobs' BAS memorandum did not recommend that Enumclaw simply disregard WDFW's guidance.

At the time of the Jacobs analysis, Enumclaw had:

- Type S: 100 feet
- Type F: 75 feet

- Type Np: 50 feet
- Type Ns: 25 feet

Jacobs concluded that Type S was consistent with WDFW's local SPTH analysis, recommended considering an increase in Type F to 100-105 feet, and recommended reconsideration of Np and Ns widths. Significantly, Jacobs did not simply recommend converting every stream to 100 feet. For Type Ns, it specifically discussed increasing the width enough to achieve at least 80% pollutant removal, depending on adjacent land uses and buffer quality.

Jacobs also recommended evaluating baseline conditions, protecting remaining functions, enhancing degraded areas, maintaining connectivity and using complementary management practices.

Enumclaw ultimately adopted differentiated stream standards in 2025:

- Type S: 100 feet
- Type F: 100 feet
- Type Np: 60 feet
- Type Ns: 30 feet

WDFW objected during that process that the Np and Ns widths remained below its recommended 100-foot minimum.

The value of Enumclaw as an example is therefore not that its numbers should be copied by Walla Walla, nor that its ordinance has somehow been judicially declared valid. The lesson is that another Washington city commissioned a signed BAS analysis, examined local conditions and functions, received WDFW's 100-foot recommendation, considered it, and nevertheless adopted a differentiated local regulatory framework.

**Kennewick provides an eastern Washington example.** Kennewick's 2026 BAS review, prepared with Parametrix, identified WDFW's 100-foot dryland RMZ recommendation and recommended considering at least 100 feet for non-fish-bearing streams. Kennewick nevertheless retained a differentiated local framework, including 75-foot Type F and 50-foot Type N stream buffers, together with habitat assessment, buffer-averaging and functionally disconnected-area provisions.

#### CONTENTION

**Walla Walla can engage the same science without treating one statewide recommendation as the only legally available outcome. What matters is the quality of the local record supporting the choice.**

## 19 The City's description of a 'separate analysis' is materially inconsistent with the technical record produced in response to the public-records request

Deputy Director Emily Arteche advised that the City had completed a separate analysis outside the ordinance work and that the results demonstrated alternative setback buffers 'could not provide better protection for the riparian management zone.'

That statement indicated that alternatives had actually been evaluated and rejected based on technical analysis.

A public-records request was therefore submitted seeking:

- that analysis;
- supporting consultant work;
- technical reports;
- GIS information;
- maps; and
- related supporting records.

The City closed the request after producing the July 1 Facet memorandum, the September Planning Commission PowerPoint and directing the requester to the August 3 Facet presentation.

The Facet memorandum does not contain the finding described. It compares the mapped footprint of the existing 35/50-foot regulatory framework with the 100-foot WDFW scenario. It does not evaluate the ecological performance of the existing buffers, analyze 60 feet or 75 feet as alternatives, evaluate revised reach-specific standards, or test combinations of narrower buffers and complementary measures. It does not conclude that those alternatives fail. It does not conclude that alternative setbacks 'could not provide better protection.'

The discrepancy therefore leaves two possibilities:

Either additional responsive analysis exists and was not produced, or the analysis was characterized to the requester as materially more extensive and conclusive than the record actually demonstrates.

#### CONTENTION

**Before elected officials rely upon the assertion that alternatives were studied and rejected, the City should identify the specific analysis supporting that statement and place it in the legislative record.**

## 20 Recommended Corrective Action

There are a number of lawful approaches the City could take to address these concerns. The following is one recommended path, not the only solution. The goal is not to substitute another arbitrary number for 100 feet, but to complete the analysis necessary to determine the appropriate regulation for Walla Walla.

The City should consider:

1. Pause final adoption of the uniform 100-foot riparian-buffer amendments.
2. Request written guidance from the Washington Department of Commerce regarding the December 31 periodic-update deadline, procedural options available to the City, and application of the statutory substantial-progress provisions.
3. Commission qualified ecological professionals to perform a reach-by-reach analysis of Walla Walla's streams.
4. Establish baseline existing conditions and identify the ecological functions presently occurring on each reach.
5. Evaluate meaningful candidate buffer widths and their expected performance.
6. Evaluate complementary measures including native vegetation enhancement, stormwater treatment, infiltration and pollutant removal, low-impact development, connectivity improvements and other mitigation.
7. Distinguish protection of existing ecological function from restoration of degraded or absent functions.
8. Quantify housing, infill, redevelopment and existing-property impacts, and clearly establish owners' rights, nonconforming-property treatment and administrative standards.
9. Build the written BAS record necessary to explain the City's eventual decision, including the risks associated with any departure from a scientific recommendation and the measures used to address those risks.
10. Incorporate monitoring and adaptive management, consistent with WDFW's own recommendation that local governments measure whether regulatory requirements are actually producing intended ecological outcomes.
11. Return the completed analysis to the Planning Commission, City Council and public before final adoption.

The Association recognizes that this work may require additional funding, staff capacity and time. Those practical constraints should be identified and weighed openly as part of the legislative decision rather than substituted for the technical and policy analysis itself.

Walla Walla does not appear to qualify for the GMA's automatic 24-month small-jurisdiction extension. However, RCW 36.70A.130 provides limited treatment for jurisdictions fewer than 12 months out of compliance with the periodic-update deadline for critical-area development regulations as making substantial progress toward compliance for specified state financial-eligibility purposes.

That provision is not an extension of the legal deadline and does not eliminate litigation risk.

It does demonstrate that state law contemplates circumstances in which a jurisdiction may continue completing critical-area regulations after the periodic-update date rather than treating December 31 as justification for adopting an inadequately developed regulatory record.

The City should therefore obtain written Commerce guidance before deciding that schedule pressure requires immediate adoption.

THE STANDARD FOR COMPLETING THIS WORK IS STRAIGHTFORWARD

## Show the work.

If a reach-specific analysis demonstrates that a 100-foot buffer is necessary to protect the required functions of Yellowhawk Creek or another waterway, the City should have a defensible basis for adopting 100 feet there. If another reach can protect its required functions using a narrower buffer combined with stormwater treatment, native vegetation enhancement, mitigation or other protective measures, the City should have the scientific and legal record necessary to support that decision as well.

The objective should not be the largest buffer. It should not be the smallest buffer. The objective should be the locally appropriate, scientifically supportable and legally defensible buffer.

Respectfully submitted,

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