

**REPORT AND RECOMMENDATION -  
Channel Migration Zone Sub-Committee**  
January 4, 2007

Findings:

1} There is no direct mandate in the Growth Management Act or its implementing rules that requires the County to designate channel migration zones (CMZs) as critical areas. In particular:

- . The Growth Management Act (that is, RCW 16.10A) contains no direct reference to CMZs nor
- Is there any direct reference to CMZs in the implementing rules for the GMA (that is, WAC 365-190.)

2) It has been suggested that CMZs might be part of the Geological Hazards Area. However, Geological Hazard Areas are defined in detail in WAC 365-190-080 (4) and, although, some of the types of areas described, therein, can be found within CMZs, the entire CMZ is not indicated.

In particular, WAC 365-190-080 4a states that:

- Areas that are subject to one or more of the following types of hazards shall be classified as geological hazard areas:
- (i) Erosion hazard;
  - (ii) Landslide hazard;
  - (iii) Seismic hazard; or
  - (iv) Areas subject to other geological events. such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rockfalls, and differential settlement.

It, then, goes into detail, to clarify the meaning of each of those categories. None of them are applicable to CMZs.

3.) WAC 365-190-080 gives no recognition to habitat functions and values of geological hazard areas.

4) Nevertheless, CMZs are mentioned extensively in WAC 111-26 provisions for the update of Shoreline Master Programs, particularly 113-26-221 (2) (iv) but WAC 113-26-221 does not mention CMZs as geological hazard areas but as a component of Critical Freshwater Habitats. Therefore, it would appear that CMZs are intended to be addressed and, if necessary, regulated under the Shoreline Master Program.

5) A material question remains as to what extent CMZs can and should be regulated either by statutory mandate or the exercise of police power discretion.

The Growth Management Act through Critical Areas Ordinance does not appear to be the proper venue.

6) Nevertheless, the second settlement agreement with the WEC provides, at least, a contractual reason for including the CMZs in the Critical Areas Code. In particular, its Section 1 appears to bind Jefferson County to enact regulations that preserve the integrity of identified CMSs and establish buffers to be measured from the outer edge of these CMSs. This section does not indicate how far into the CMS a riparian habitat function may extend, but if it is less than the entire CMZ, measuring buffers from the outside edge of the CMZ clearly appears to be overzealous and without justification. Nor does this section appear to recognize the "hazard" versus the "habitat" analysis mention above.

7) The Subcommittee has, to our recollection, indicated that it is unwilling to be bound to the strict terms of the settlement agreement, but that it will consider the issues it raises. - This attempt to designate CMZs as critical areas appears to be more properly a consideration of the SMP update.

8) Nevertheless, if the County chooses to regulate the CMZs as geological hazard areas, they should consider the guidance provided in WAC 365-190-080 (4) (a):

Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard. Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided. This distinction should be considered by counties and cities that do not now classify geological hazards as they develop their classification scheme.

9) The rich bottom lands of river valleys are widely recognized as being valuable agricultural land. Washington State history provides a local example: In particular, there was an Indian War in Washington State over the possession of these lands. The Indian Tribes' stated cause was that the reservations granted to them by the Stevens' Treaties. had predominately been uplands, instead. After the war had concluded, the US President resolved the problem by changing the boundaries of their reservations to include bottom land. -- It was not necessary to renegotiate the Steven's Treaties, as they granted the President the authority to make such alterations to them --- Any regulation of the CMZs should recognize the high value of the CMZs for human uses including farming but not limited only to that.

10) The current attempt to regulate CMZ's raises concerns among the public, including some members of the CMZ sub-committee, that this may lead to over-regulation that would prevent the continued human use of those areas or would inhibit their ability to respond to the movement of the river channels.