

DATE: July 8, 2024

TO: Mayor and Council

CC: Eric Holmes, City Manager

FROM: Dominique Martinelli, Senior Long-Range Planner, CDD

RE: Critical Areas Ordinance Update

Intent

Provide City Council with a high-level overview of the proposed updates to the Critical Areas Ordinance (CAO) and summarize next steps for receiving community input on the draft language, prior to returning for adoption hearings anticipated in fall 2024. The proposed updates are mostly technical and intended to comply with updated state agency guidance and recent science. These issues were previously reviewed by the Planning Commission and City Council on December 12 and December 18th, respectively.

Background

Critical areas act as valuable assets to our community, through enhancing environmental quality, providing critical ecological functions, and protecting the community and public and private property from threats resulting from natural hazards. The Growth Management Act (GMA) requires all cities and counties in the state of Washington to adopt development regulations that protect critical areas – which are further broken down into five categories: wetlands, critical aquifer recharge areas (CARA's), frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. The City regulates most Critical Areas under Vancouver Municipal Code Section 20.740, except for CARA's which are regulated in Section 14.26 under water resources protection.

The Growth Management Act requires Counties and Cities to ensure no net loss of ecological functions within their critical area regulations. Impacts to high-quality critical areas should be prohibited except in limited circumstances. Impacts to other critical areas must be avoided and minimized. When impacts cannot be avoided, new development must replace the lost functions and values through compensatory mitigation measures. The Growth Management Act also requires Counties and Cities to utilize Best Available Science (BAS) in the development of their critical area regulations to ensure new policies and regulations to designate and protect Critical Areas are based on reliable scientific information. As part of the CAO update, the City has documented BAS in a formalized report, based on findings from local, state and federal regulatory agencies. Non-scientific

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factors (legal, social, cultural, economic and political) used for the development of Critical Areas regulations are required to:

- Identify information on record that supports its decision in departing from science-based recommendations;
- Explain rationale for its departure from science-based recommendations; and
- Identify potential risks to a critical area or areas function and values, and any reduction in risks with additional measures.

The City first adopted its Critical Area Ordinance under Vancouver Municipal Code (VMC) 20.740 in 2005, and completed it’s most recent update in 2020, which was a minor technical update in response to a new model flood ordinance released from the Federal Emergency Management Agency (FEMA). More substantive changes occurred to the Wetlands rating systems during a 2019 update. Many components of the Critical Areas Ordinance have been updated or amended during various time periods as highlighted below:

Critical Area Ordinance Section	Year of Most Recent update
Geologic Hazard Areas	2007 (Ord M-3844)
Fish & Wildlife Habitat Conservation Areas	2009 (Ord M-3931)
Wetlands	2019 (Ord M-4289): Updated wetlands rating system
Frequently Flooded Areas	2020 (Ord M-4325): Minor updates in response to model flood ordinance
Critical Aquifer Recharge Areas	2009 (Ord M-3920)

The sections below highlight the proposed changes reflected in the current draft of the Critical Areas Ordinance.

Overall Summary of Changes:

- 20.150 Definitions
 - Modified definitions to comply with new state guidance and standards.
- 20.740.010 Purpose.
 - Minor text edits for language clarification
- 20.740.020 General Provisions.
 - Minor text edits for language clarification

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- 20.740.030 Applicability and Exemptions from Requirement to Obtain Permit.
 - Reduced process for applications where only Critical Area is Soil Erosion Hazard, defer to Erosion Control Section of VMC 14.24.
 - Minor exemptions for loss of single white oak on single family residence
- 20.740.040 Approval Process.
 - Minor text edits for language clarification
- 20.740.050 Submittal Requirements.
 - Minor text edits for language clarification
- 20.740.060 Approval Criteria.
 - Added language for rectifying and reducing impacts.
 - Clarification that mitigation must be provided to address anticipated loss of critical area functions – equal to no net loss.
- 20.740.070 Minor Exceptions.
 - Minor text edits for language clarification
- 20.740.080 Reasonable Economic Use Exceptions.
 - Title changed to *Economic Use Exception*
- 20.740.090 Unauthorized Critical Areas Alterations and Enforcement.
 - Removal of Critical Areas Restoration fund – outdated language to fund that was never established.
- 20.740.100 Designation Process for Habitats of Local Importance.
 - Re-titled as *Designation Process for Habitats of Local Importance*
 - Specifies designation process is intended to cover areas and habitats not otherwise protected under other critical area regulations.
- 20.740.110 Fish and Wildlife Habitat Conservation Areas.
 - Updated Graphics
 - Removal of former Table 20.740.110-1, Riparian Management Area (RMA) buffer set to 100', Riparian Buffer (RB) set to 85' for all stream type classifications, in response to Best Available Science.
 - Additional standards and requirements for Critical Area reports
- 20.740.120 Frequently Flooded Areas.
 - No changes proposed – last updated during 2023 annual updates to comply with new FEMA guidance.
- 20.740.130 Geologic Hazard Areas.

- Several text edits for language clarification
- 20.740.140 Wetlands.
 - Several text edits for language clarification
 - Revised wetland buffer tables – implementation of minimum requirements under Table 20.740.140-1, alternative options 1 & 2 allowed by providing 2 alternative site layout configurations demonstrating impacts cannot be avoided or reduced to result in less impact.
 - Criteria for habitat corridor requirements defined in order to use wetland buffers listed under Table 20.740.140-2.
 - Impact minimization measures for implementing a habitat corridor (Table 20.740.140-3).
 - Expanded options for compensatory mitigation actions
 - Consolidated mitigation replacement ratio table
 - Updated graphics

Scope of Changes

The proposed updates will not have an impact on the way that Critical Area permits are currently processed. The City typically identifies during the pre-application process whether or not a particular property may be covered under Critical Area regulations. Aside from the minor exemptions circumstances under 20.740.070, if the applicant proceeds forward with development within a Critical Area, they would be required to obtain a Critical Area permit consistent with the requirements of VMC 20.740.

The changes outlined above will generally increase the amount of land that is covered under Critical Area regulations in the City and increase protections and impose additional site-specific best management practices where issues are identified in a Critical Areas Report. The greatest extent of changes will come from increased distances for wetland buffers, and for increased widths in the Riparian Management Area (RMA) and Riparian Buffer (RB) for lower order streams that have downstream impacts on fish habitat and quality. Exhibit E provides a full City-wide map of Critical areas in the City, and the extent that potential areas will be affected by new regulations. The following aspects are mapped within this exhibit:

- Fish and Wildlife Habitat Conservation Areas
- Geohazards
- Soil Types and Ground shaking Amplification Risk
- Riparian Management Zones
- Wetland Buffers

Wetlands: Wetlands are areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are fragile ecosystems that serve a number of important beneficial functions. Wetlands reduce the impacts of erosion, siltation, flooding, ground and surface water pollution, and provide habitats for wildlife, plant and fisheries. Wetlands destruction or impairment may result in increased habitat degradation and public and private costs or property losses from flooding or erosion.

Wetlands are currently regulated under VMC Section 20.740.140. Based on the significance of the wetland, a buffer is put in place from the edge of the wetland, where development activity is restricted (except for minor allowances defined under 20.740.140(c)(a)). Wetland buffers tend to be one of the most common aspects of review under the CAO permitting process and tend to have the greatest impact on the overall site planning process for development when a significant wetland is in place. The current regulatory system determines a buffer width based on the wetland category (see definitions below) and the intensity of the proposed land use, based on a score of low, medium or high.

The wetland quality categories are defined as follows:

- Category I – Highest Value, typically larger than one acre that are undisturbed having mature old growth and/or unique or rare wetland types
- Category II – wetlands that have a moderately high function and value
- Category III – moderate levels of function, adverse impacts can often be allowed with mitigation
- Category IV – heavily disturbed, lowest ecological value

Habitat scores are based on the [Washington State wetlands rating system](#). During the development review process, it is the responsibility of the proposed developer or landowner to hire a qualified wetlands specialist to assess and assign a wetland score using the Washington Department of Ecology Rating system.

In October 2022, the department of Ecology released [new guidance](#) offering three different approaches to establishing protective buffers, and modifying rating systems that cities can choose from while updating their Critical Areas regulations. Feedback from City Council, Planning Commission and the initial round of stakeholder engagement emphasized the need to put in the greatest buffer widths to provide protections, and ensuring flexibility and options are present in the code for applicants in an equitable manner. In response, the current approach in the draft ordinance establishes a minimum setback based on wetland rating system only (option #3 in the Department of Ecology Guidance document).

Table 20.740.140-1. WETLAND BUFFER WIDTH REQUIREMENTS

Wetland Category	Buffer Width (Feet)
I	300

II	300
III	225
IV	50

The draft provides two alternative options if applicants aren't able to implement the full buffer widths, and are able to demonstrate (by providing site plans for two additional site configurations) that impacts cannot be avoided or reduced. These alternative options determine setback distances by wetland category and habitat score and allow for lesser setbacks if the applicant provides a habitat corridor as a mitigation measure.

Category of Wetland	Habitat Score 3 to 5 Points	Habitat Score 6 to 7 Points	Habitat Score of 8 to 9 Points	Buffer width Based on Special Characteristics
Category I: Bogs and Wetlands of High Conservation Value	NA	NA	^a 225'	^a 190', ^b 250'
Category I: Forested	^a 75', ^b 100'	^a 110', ^b 150'	^a 225'	NA
Category I or II: Based on rating of wetland functions (and not listed above)	^a 75', ^b 100'	^a 110', ^b 150'	^a 225'	NA
Category III: All types	^a 60', ^b 80'	^a 110', ^b 150'	^a 225'	NA
Category IV: All Types	^a 40'	^a 40'	^a 40'	NA

* **a**: habitat corridor provided, **b**: no habitat corridor provided.

In order for applicants to use the reduced setbacks shown in the table above (values denoted with ^a only), they will be required to implement a habitat corridor at least 100' on the site, that includes impact minimization measures. Measures include best management practices (BMP's) to address

impacts from light, noise, toxic runoff, stormwater, runoff, disturbances from humans and pets, and dust impacts.

In addition, several edits have been made to the draft regarding mitigation options. Table 2740.140-5 has been simplified to remove unnecessary sections, with the mitigation ratios remaining generally unchanged. The updates also include prioritizing mitigation options in the following order:

- Mitigation Banking – allows applicants to compensate for loss by purchasing credits for a bank
- In-lieu fee credits – third party compensation to agency or organization tasked with enhancing, protecting, or creating new wetlands
- Permittee responsible mitigation – applicant-initiated mitigation efforts

Geologically Hazardous Areas: These are defined as areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns. This includes Erosion hazard areas, which contain soil types that are more prone to erosion, and landslide and seismic hazard areas, which are at high risk of mass movement, landslides and liquefaction during a seismic event. Geologically Hazardous areas are regulated under VMC 20.740.130, and haven't been substantially updated since 2007.

The majority of this section remains relatively unchanged, except for re-organization and language changes to align with recent guidance. Some relatively minor changes are included to comply with Best Available Science and policy direction from the Department of Ecology. Proposed changes are as follows:

- Updating the following definitions:
 - *Geologically Hazardous Area* – to include areas that are susceptible to other types of geological events.
 - *Landslide Hazards* – defining landslide hazard areas as areas with slopes that meet the following criteria:
 - Greater than 15% slope;
 - Hillside with permeable sediment overlying bedrock; and
 - Groundwater seepage

The current definition lists slopes greater than 25%, effectively increasing the number of slopes within the City that are defined as Critical Areas.

- *Seismic Hazard* – includes areas that are likely to become unstable during a seismic event, such as steep slopes, bluffs, and areas with unstable soils.
- A revised buffer width for landslide hazard areas of 2 times the height of the slope, or an amount determined by a qualified geotechnical engineer as part of the Critical Areas report, whichever is greater.

Fish and Wildlife Habitat Conservation Areas (FWHCA's)

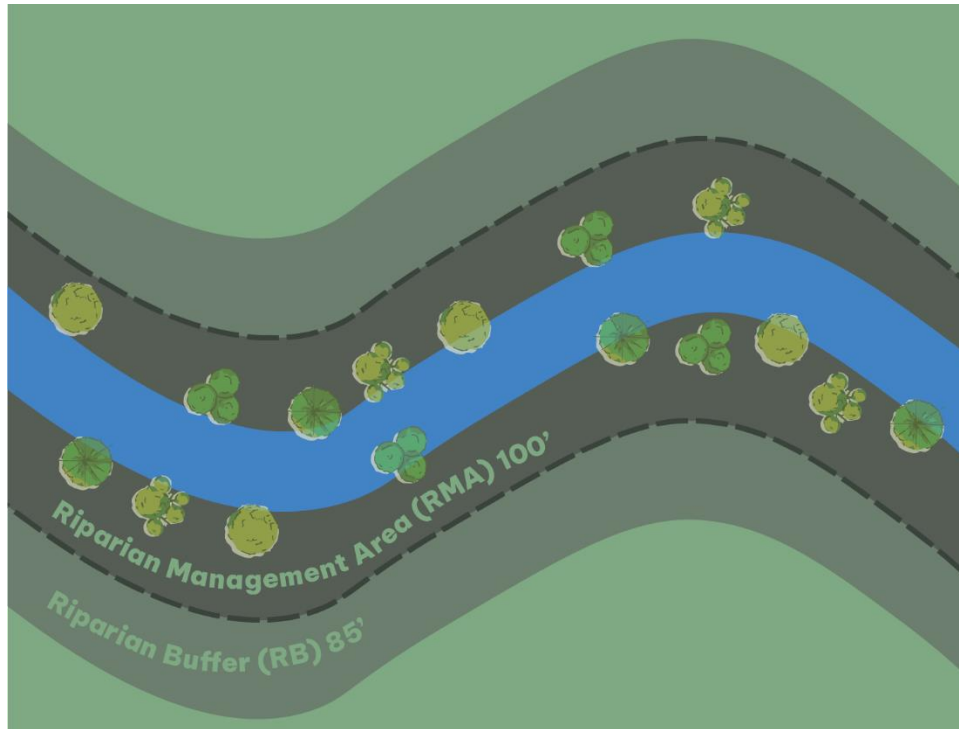
The Growth Management Act requires cities and counties across the state to address land use issues that directly and indirectly impact fish and wildlife habitat. Fish and wildlife habitat conservation is the management of land to ensure sufficient habitat quality, quantity, and connectivity to support long term, viable populations of fish and wildlife species and prevent the creation of isolated subpopulations within their natural geographic distribution.

FWHCA's are regulated under VMC 20.140.110, and last updated in 2009. The primary regulatory mechanism in this portion of the code to protect FWHCA's are through placing buffers from shorelines, lakes, streams, rivers, and riparian areas. In 2020, the Washington Department of Fish and Wildlife (WDFW) conducted new mapping of riparian area buffers based on best available science. This science recommends placing buffer widths based on preserving high functioning ecological areas and incentivizing restoration and basing the width of riparian management zone based on a measurement called *Site Potential Tree Height*, which is the average maximum height of the tallest dominant tree species in a riparian area. Ultimately, this will mean all stream order types will see an increase in buffer widths if implemented in accordance with WDFW guidance.

In the current ordinance, riparian buffers are regulated by stream type (F, N, S, U, see table below). In the new ordinance, to accommodate best available science and provide greater protections, all stream order classifications will be regulated with a Riparian Management Area (RMA) of 100', and a Riparian Buffer of 85', for a total combined setback of 185'. The table below shows the proposed increase in setbacks for all stream order types from the existing requirements.

Stream Type	Existing Requirement(ft)	Average of SPTH (ft)	Average % of Change (ft)
F (lakes, streams, and rivers that contain fish habitat)	175	185	+10
N (Streams and rivers that are not shorelines of the state, and do not contain fish habitat)	125	185	+60
S (Shorelines of the State)	175	185	+10
U (un-typed)	125	185	+60

Combined Riparian Management Area (RMA) and Riparian Buffer (RB)



In circumstances where the applicant is not able to implement the full buffer width of the combined RMA and RB, the applicant may defer to using WDFW's mapping tool for Site Potential Tree height, which may potentially result in a smaller width. Additional standards and requirements were added to the draft specifying that evaluation of habitat functions must be included in the Critical Areas report, specifications for a monitoring program when a mitigation plan is required, and requirements for detailing any clearing activities in the Critical Areas report.

Oregon White Oak (Regulated Under Fish and Wildlife Habitat Conservation Areas)

City staff received significant input from Planning Commission, City Council, and individuals engaged during the initial round of stakeholder engagement about the need to prioritize preservation of priority White Oak habitat. In January of 2024, the Washington Department of Fish and Wildlife issued [new guidance to Cities in Washington State for mitigating impacts to Oregon White Oak priority habitat](#). The new code adopts this guidance fully by reference and all subsequent amendments and requires that applicants demonstrate compliance within their Critical Areas reports if priority habitat is present on site, as well as demonstrating mitigation consistent with the guidance.

In the event that mitigation of impacts on site is not practicable, the applicant would be required to provide a minimum of two alternative site designs and layouts to demonstrate no other options are available to avoid or lessen impacts and demonstrate mitigation measures satisfactory to the guidance and demonstrate no net loss of ecological functions. Authority is given to the Planning Director to determine whether proposed mitigation efforts are satisfactory to address impacts, and may impose additional requirements as measures as needed to lessen impacts.

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An exemption has also been added under 20.740.030 to allow for situations where a single standalone white oak (not part of a larger grove) is removed on a property where the development or expansion of a single-family residence is allowed.

Timeline + Next Steps

The City is required to adopt its revised CAO as part of the GMA Periodic review process by December 30, 2025, which is the same timeframe for updating the Comprehensive Plan and implementing development regulations. It is anticipated the update process will conclude well before that deadline, by the end of 2024 at the latest. A 45-day public comment period on the draft ordinance was commenced on June 28, with a closing date of August 12 for community members to comment. Specific outreach will be conducted with the following groups to get input on the draft code language:

- Neighborhood associations in the City with a high Equity Index score and presence of Critical Areas (see below map).
- Regulatory agencies, including the Washington Department of Natural Resources, Department of Fish and Wildlife, Department of Health, Clark County Public Health, and Clark Conservation District
- Participants that are currently engaged as part of the Our Vancouver Climate Community working group. Invitations will be extended to residents currently subscribed to email lists on environmental related topics.

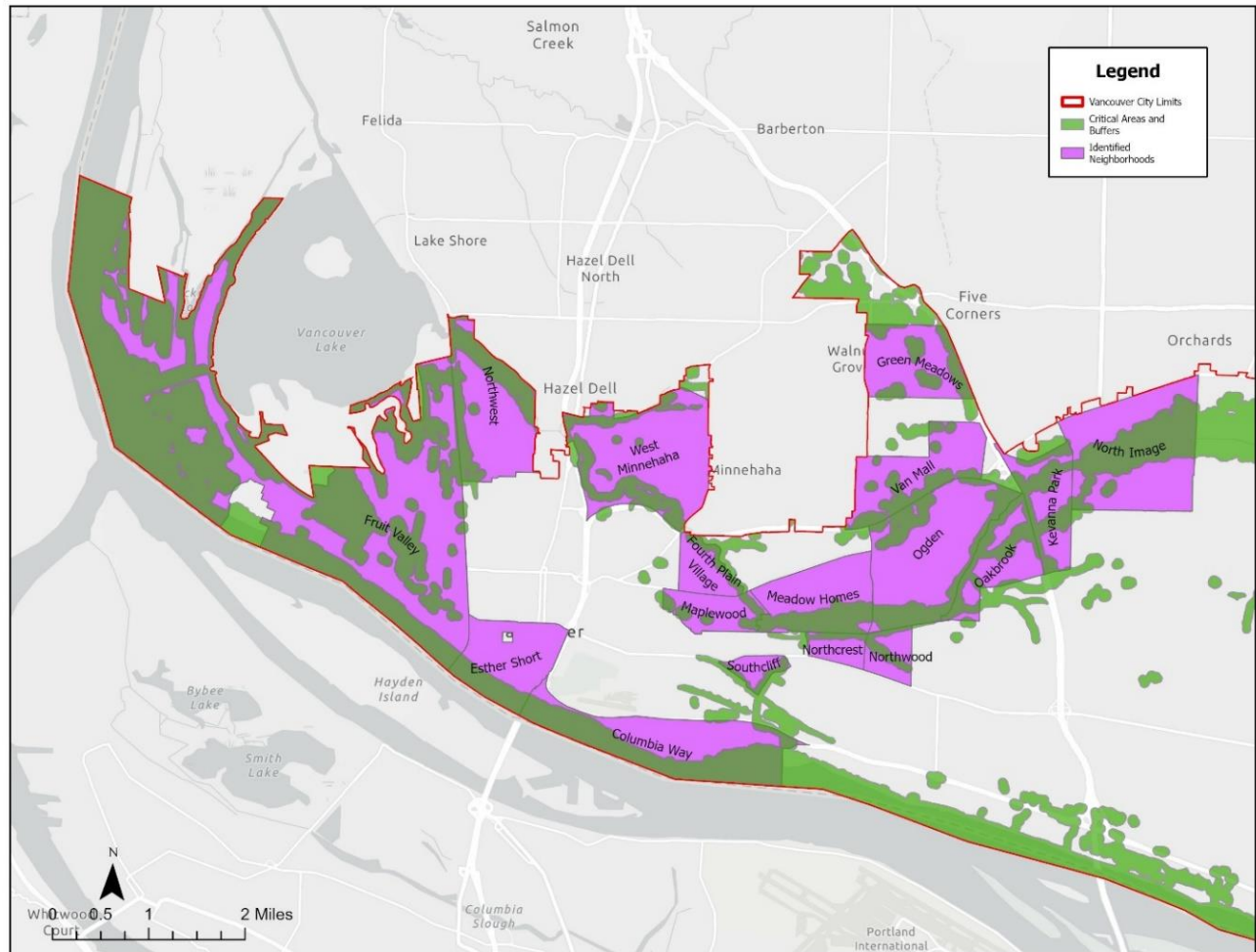
Two meetings open to the general public (held remotely) will be held during the public comment period. Additional meetings will be scheduled with each of the groups previously listed as needed. Feedback received during the public comment period will be integrated into overall environmental land use policy intended to be addressed holistically as part of the Comprehensive Plan Update process.

Following the closure of the public comment period, staff will return to Planning Commission and City Council in September with proposed edits to the draft ordinance based on input received. After these work sessions, adoption hearings will be scheduled with Planning Commission and City Council.

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Attachments

A: Presentation

B: Best Available Science Report

C: Updated Definitions (20.150) – clean and redline from existing code

D: Critical Areas Ordinance (20.740) – clean and redline from existing code

E: Critical Area Maps

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