

MEMORANDUM

DATE: December 18, 2023

TO: City Council

FROM: Eric Homes, City Manager

RE: **Critical Areas Ordinance**

CC: Dominique Martinelli, Senior Long Range Planner; Keith Jones, Senior Land Use Planner; Rebecca Kennedy, Deputy Director; Greg Turner, Land Use Manager, Community Development Department

Intent

Provide Council with a high-level overview of the key issues and regulatory concepts to be addressed in the Critical Areas Ordinance (CAO) update, and summary of stakeholder engagement received to date on the draft regulatory concepts.

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 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 reducing risks with additional measures.

The City first adopted its Critical Area Ordinance under Vancouver Municipal Code (VMC) 20.740 in 2005, and completed its 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
Habitats of Local Importance	2005 (Ord M-3962) – The City currently has not designated any specific habitats of local importance.
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 key aspects of the CAO that need to be updated in response to recently gathered BAS and input from local, state and federal regulatory agencies, in order to remain in regulatory compliance. Each section will include an overview of the regulatory concept and associated policy considerations.

Key Regulatory Concepts

Habitats of Local Importance: Washington Administrative Code Section 365-190-030 allows Cities and Counties the authority to classify and designate areas where endangered, threatened, and sensitive species are present (that are not already designated priority habitats by the State) and require additional protections to be implemented. VMC Section 20.740.110 outlines the criteria and designation process for such areas. The City has not designated any Habitats of Local Importance since the original adoption of its CAO in 2005, and as part of the review of Best Available Science and scoping process for the update, it was determined that there is not currently a need to designate any new areas that aren't already covered under state designations.

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. In these regulations, the City designates a wetlands rating system that categorizes the relative function, value, and uniqueness of various wetlands in the City. 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.

Wetland regulations were the focus of the last major update to the Critical Areas Ordinance, which accounted for an updated wetlands rating system from the Washington Department of Ecology. In October 2022, the department of Ecology released new guidance offering three different approaches to establishing protective buffers, and modifying rating systems that need to be incorporated into the update. These three options are summarized below, including an additional hybrid option (#4):

- **Option 1(a&b):** Use a combination of the wetland quality category and the habitat score of the wetland based on the Washington State Wetland Rating System (most flexible option).
- **Option 2:** Use a combination of wetland quality category and the adjacent land use (moderate flexibility).
- **Option 3:** Use the wetland quality category only (least flexibility)
- **Option 4:** An alternate or hybrid of the above approaches.

The table below shows the proposed buffer distances for each of the three options in comparison to the existing buffer within VMC Title 20. All proposed options would represent an increase in the buffer widths for all categories of wetlands regulated by the City.

Wetland Quality	Required Buffer (feet)				
	Current Buffer	Option 1		Option 2	Option 3
		A*	B*		
Category I	50 – 300	75 – 225	100 – 300	150 – 300	300
Category II	50 – 300	75 – 225	100 – 300	150 – 300	300
Category III	40 – 150	60 – 225	80 – 300	75 – 150	150
Category IV	25 – 50	40	50	25 – 50	50

**Option 1 A buffer widths can be provided if a habitat corridor and impact minimization measures are implemented with a development. If neither a habitat corridor nor impact minimization measures are provided, a developer/applicant must comply with the buffers of Option 1 B.*

For the purposes of the proposed table above, adjacent land uses are defined under the low intensity, medium intensity, and high intensity categories.

- High: All Residential, Commercial or Industrial Zones
- Moderate: Open Space Park or Open Space Greenway: General
- Low: Open Space Greenway – Lettuce Fields or Vancouver Lowlands; or Open Space Natural

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.

Aside from the updated wetland rating system, other minor changes proposed for the wetland regulations include updating definitions for State compliance, establishing wetlands as a means of combatting climate change, adding clarity to habitat corridor requirements and minimization measures when developing next to a wetland and wetland buffer, and exempting certain small types of wetlands from permitting.

Critical Aquifer Recharge Areas (CARA's): CARA's are defined as areas that have a critical recharging effect on aquifers used for potable water. CARA regulations help to ensure the protection of municipal drinking water by reducing impacts from stormwater runoff and hazardous uses and chemicals. Aquifers also have a critical recharging effect on streams, lakes, and wetlands that have an impact on fish and wildlife habitats. Because the City is wholly located within the Troutdale sole-source aquifer, and there is a presence of well-draining hydric soils, site specific impacts from industrial uses have a greater chance to affect community wide water quality outcomes, than other Cities that have a greater frequency of smaller, confined aquifers to utilize as drinking water sources. This means that in order to ensure continued water quality protection, the City should ensure greater overall regulation of wells that supply the municipal drinking water system generally. Updates to Critical Aquifer Recharge Areas regulations under VMC 14.26 will be conducted as part of a separate effort led by Public Works staff.

Frequently Flooded Areas: Frequently flooded areas are lands in the floodplain which have at least a 1 percent or greater chance of flooding in any given year, or are within areas that flood due to high groundwater. These areas can include streams, rivers, lakes, coastal areas, wetlands and areas where high groundwater forms ponds on the ground surface. Frequently flooded areas offer habitat that supports salmon and other wildlife species. Frequently flooded areas are regulated under both VMC 20.740.120 and 20.740.150.

On May 2, a letter of Final Determination was issued by the Federal Emergency Management Agency (FEMA), stating that an updated Flood Insurance Rate Map (FIRM) will go into effect starting on November 2. Each time FEMA provides a community with new or revised flood hazard data, local governments are required to update their regulations to remain compliance with the National Flood Insurance Program on the date that a new FIRM becomes effective.

Because the City is required to adopt relatively minor and technical FIRM changes to remain in federal compliance with the National Flood Insurance program by November 2 and the full scope of CAO changes will not be ready by that date, the project team included these changes as part of the 2023 Annual Code Update process (Note that these changes were approved on first reading at the December 4, 2023 Council meeting and are anticipated to be adopted at the December 18, 2023 Council meeting). A summary of the changes identified are as follows:

- Updating several definitions and defined terms.
- Modifications to the National Flood Insurance Program variance process for Historic Structures in a frequently flooded area.
- Adding language to incorporate future updates to Flood Insurance Rate Maps by reference.

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. Relatively minor changes are needed to the existing code to comply with Best Available Science and policy direction from the Department of Ecology. Recommended 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* – increase the areas in the City where development is restricted: from 25% grade or higher, to restricting some areas between 15% - 25% slopes under certain conditions.
 - *Seismic Hazard* – include areas that are likely to become unstable during a seismic event, such as steep slopes, bluffs, and areas with unstable soils.
- Given that geotechnical reports typically assess the risk of geological hazards with newly proposed development, the extent of the regulatory impact of these modified definition changes will be relatively minor, but the proposed changes will ensure alignment and compliance with State definitions.

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.

FHWCA'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.

The City has identified three possible options to regulate riparian area buffers as part of this update:

- Use WDFW science without modification – this may mean more difficulty in interpreting and implementing regulations and will represent the greatest increase in buffer widths in some circumstances, and less consistency of application on a property-by-property basis.
- Averaging riparian area tree heights along streams for more consistent buffer widths (see table below).
- Hybrid riparian area widths based on site specific review and local conditions.

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	140	-35
U (un-typed)	125	176	+51

Stakeholder Input

In early September, the City held focus groups on each of the regulatory areas where there will be substantive changes. Key stakeholders coming from a variety of perspectives and backgrounds were included in these conversations. The stakeholder entities that participated in the first round of stakeholder conversations are as follows:

- Columbia River Economic Development Council
- Port of Vancouver
- Washington State Departments of Fish & Wildlife, Ecology, Commerce, Natural Resources and Health
- Clark County Public Works
- Watershed Alliance of Southwest Washington
- Fourth Plain Forward
- Columbia River Neighborhood Association
- Loo Wit Group
- Southcliff Neighborhood Association

Some of the key takeaways from these conversations are as follows:

- Participants desire clear, concise, and consistent code language, and consistency and flexibility with federal and State requirements.
- There needs to be improved informational materials (i.e., worksheets, checklists) and early awareness of the CAO and critical areas in general, especially for small developers and individual property owners.
- Participants desire improved predictability and reliability of the permitting process for developers, especially early in the process, such as at the City-required pre-application meeting.
- Critical areas on properties are expensive to accommodate for permitting and impact mitigation and have disproportionate impacts to small property owners.
- The City should consider more direct engagement with underrepresented groups to better consider equity and environmental justice issues related to the CAO update.

Participants stated they would like to see flexibility built into the CAO to accommodate evolving Best Available Science (BAS), which will help streamline the update process. Participants also stated that the City should consider presenting riparian buffers as a tool to combat climate change at the local and regional levels. Participants also expressed that the mitigation sequencing process should be made clearer to developers as they typically become aware too late in the process and may end up impacting critical areas more than warranted or applicants experience delays in permitting when they are unaware of critical area requirements. Participants also mentioned a preference towards on site mitigation of impacts, rather than the City allowing for offsite mitigation measures. Other feedback included increasing public access opportunities and amenities with on-site critical area protections (especially in equity priority communities), simplifying code language generally to make regulatory requirements easier to understand, and the need for specific protection around Oregon White Oaks, which are under pressure from development.

Timeline + Next Steps

The City is required to adopt its revised CAO as part of the GMA Periodic review process by June 30, 2025, which is the same timeframe for updating the Comprehensive Plan and implementing development regulations. The proposed updates responding to the Key Regulatory

Concepts are technical in nature, needed to comply with updated regulatory guidance from state level agencies, and respond to recently gathered BAS. Following the initial work sessions with Planning Commission and City Council, staff will further engage stakeholders, and begin to develop draft regulations in response to the feedback received. The draft regulations will be reviewed with Planning Commission and City Council and released for a public comment period prior to finalization and adoption. CAO updates are occurring in advance of the full Title 20 overhaul occurring as part of the Comprehensive Plan update due to the importance of critical areas, the long time frame since the last full update, and direction from state agencies. Given the technical nature of these updates, feedback received during the CAO process will also be integrated into overall environmental land use policy intended to be addressed holistically as part of the Comprehensive Plan Update process.

Attachments

Presentation
Best Available Science Report
Summary of Key Updates

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