
Planning Commission Meeting Date: August 20, 2015

Agenda Item

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Study of Critical Areas Ordinance Update – Subchapter 1-
General Provisions, related Title 20 changes, and follow-up
items

DEPARTMENT: Planning & Community Development

PRESENTED BY: Juniper Nammi, AICP, Associate Planner
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Public Hearing
 Discussion

Study Session
 Update

Recommendation Only
 Other

INTRODUCTION

The City of Shoreline began the State required periodic update of the Critical Areas Ordinance (CAO) in Shoreline Municipal Code (SMC) Chapter 20.80 in May. This meeting is the fifth of six scheduled meetings with Planning Commission for review of the draft changes to these regulations. All of the CAO subchapters and related changes will be refined based on the meetings to date and put together in a revised version for public review and comment next month. **The Public Hearing on the whole CAO and related Title 20 changes is scheduled for the September 17, 2015, Planning Commission Meeting.**

The August 20, 2015, study session will review regulations for Critical Area General Provisions, as well as minor amendments to other sections of Title 20 for clarity and consistency.

The purpose of this study session is to:

- Review staff recommended code amendments for the following subchapters of Chapter 20.80 SMC Critical Areas:
 - Subchapter 1-General Provisions (SMC 20.80.010 through 20.80.130);
 - Related changes in Title 20 (SMC Chapter 20.30, 20.40, and 20.50); and
 - Associated Definitions (SMC Chapter 20.20).
- Review alternate amendment options for alterations of landslide hazard areas, in Subchapter 2-Geologic Hazard Areas, liability and special inspection regulatory tools, and GIS slope and landslide hazard data update costs as requested by Planning Commission.

STAFF REPORT - Critical Areas Ordinance Update

- Review WA Department of Ecology information on alternatives for wetland compensatory mitigation in response to Planning Commission inquiry.
- Respond to questions.
- Receive feedback from the Commission on the proposed amendments.
- Determine what proposed changes may need more research or analysis.
- Develop recommended code amendments to the CAO General Provisions subchapter, related Title 20 changes, and associated definitions for the public hearing.

BACKGROUND

The Commission was introduced to the Critical Areas Ordinance periodic update requirements, as mandated by the Growth Management Act (GMA), on May 21, 2015. Proposed changes for subchapters for specific critical area types, critical areas regulations in the Shoreline Master Program, and related definitions and Title 20 code changes were presented at the June 4, June 18, and July 16, 2015, Planning Commission meetings. Information regarding these meetings can be found in the staff reports and agenda packets for those meeting dates.

The Planning Commission reviews and makes recommendations to Council on the critical area regulations because they are part of the Title 20 Development Code and include regulations that govern environmental protection, which is a stated purpose of the Planning Commission under SMC 2.20.010 and is a specific duty of the Planning Commission under SMC 2.20.060(B).

The decision criteria for Development Code amendments are found in SMC 20.30.350:

- B. Decision Criteria.*** *The City Council may approve or approve with modifications a proposal for the text of the Land Use Code if:*
- 1. The amendment is in accordance with the Comprehensive Plan; and*
 - 2. The amendment will not adversely affect the public health, safety or general welfare; and*
 - 3. The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.*

The City of Shoreline Comprehensive Plan was updated in December 2012 in compliance with the periodic update requirements of the Growth Management Act. The updated Comprehensive Plan added Element 6-Natural Environment as a new element specifically supporting the City's responsibility for protection of the natural environment. Many of the policies existed previously, but were deemed important enough to separate into their own element and expanded. The Comprehensive Plan goals and policies that support the regulation of land use to protect all types of critical areas can be found in the Element 6-Natural Environment of the Comprehensive Plan. Most of the relevant

goals and policies have been included for reference in previous CAO update staff reports to Planning Commission.

PROPOSAL & ANALYSIS

Proposal Summary

The focus of today's study session is the changes to Subchapter 1 - General Provisions of the Critical Areas Ordinance regulations, associated code changes to other chapters of Title 20 Development Code, and related definitions (**Attachment A**). Subchapter 1 applies general standards and provisions to all types of critical areas that are regulated. Minor revisions are also proposed to Chapters 20.30, 20.40, and 20.50 for accurate use of terms, cross references with the CAO, and update to decision criteria for development applications also in Attachment A. A few code sections and definitions that reference critical areas or are commonly used in the regulation of critical areas are included for reference, but no code changes are proposed at this time. These sections are highlighted grey in Attachment A, but will not be included in the revised draft for the September 17th public hearing.

The WA Department of Commerce (Commerce) provides guidance to cities for updating critical area regulations to integrate BAS. The Commerce guidance in *Critical Areas Assistance Handbook and Appendices (CTED, 2007)* includes Sample Code Provisions in Appendix A. This sample code appendix was included in the June 18th Planning Commission Agenda Packet as Attachment C and is being used by City staff for guidance in drafting updates to the critical area regulations. Sample code for general provisions can be found on Appendix pages A-1 through A-33 of that attachment.

Staff proposes the following changes and additions to the General Provisions, Subchapter 1, of the CAO:

- Reorganization of this subchapter to group related subsections together.
- Addition of subchapters to provide standards for:
 - preapplication meetings,
 - best available science,
 - mitigation plan requirements,
 - financial guarantee requirements, and
 - code enforcement for critical areas violations.
- Update of terms for consistency with changes to other subchapters, elimination of outdated terms, accuracy in responsibility, and correction of cross references.
- Changes to exemptions provisions to be clear on what is allowed without application of any of the Title 20 provisions in any type of critical area verses what is allowable without review of a critical area report but must still be reviewed for consistency with Chapter 20.80 Critical Areas.
- General provisions for critical area report and mitigation plan requirements added for clarity and predictability. Redundant draft regulations in other subchapters will be removed or edited to supplement these general requirements.

STAFF REPORT - Critical Areas Ordinance Update

- Notice to title provisions revised to apply more broadly and native growth protection easement provisions to allow for more flexibility when a separate tract for critical areas does not make sense because development is still allowable within those critical areas.
- Add definitions that are currently not included in the CAO or delete definitions that duplicate or conflict with habitat area regulations.

Staff proposes the following changes and additions to Chapter 20.30 Procedures and Administration, Chapter 20.40 Zoning and Use Provisions, and Chapter 20.50 General Development Standards in SMC Title 20 Development Code:

- Updated terms such as “steep slopes” and “sensitive areas” for accuracy.
- Added or updated code cross references for consistency with changes to critical area chapter for clarity and accuracy.
- Added decision criteria for Critical Area Special Use Permits and Critical Area Reasonable Use Permits based on model code and for better incorporation of BAS.
- Revision to code enforcement provisions modifying civil penalties that apply to critical areas code violations.
- Relocation of exemption for invasive species removal in parks from Clearing and Grading regulations in SMC 20.50.310 to exemptions from Chapter 20.80 in SMC 20.80.030 and added cross reference for clearing and grading permit exemption.
- Added reference to national standards for pruning of protected trees and to allow for pruning to enhance views without removing or topping the tree.

SMC 20.20 Definitions

The purpose of this code section is to define terms as they shall be applied throughout the City of Shoreline. The definitions reviewed here are relevant to the regulation of development in critical areas generally. Proposed definitions to be added, deleted, or edited include:

Alteration – added
Best Available Science – added
Bond – edited for accuracy
Certified Arborist – edited for consistency with national certifications
Conservation Easement – added
Excessive Pruning – edited for clarity/BAS
Protected Tree/Protected Vegetation – edited for accuracy
Qualified Professional – edited to include specific minimum qualifications
Remediation – edited for term accuracy
Site Development Permit – edited to include critical area projects
Site Plan – edited to include critical area information
Substantial Development – deleted, located in SMP definitions

If there are other terms used in the code that would benefit from being defined, please let staff know so they can look for example language for those terms. A few definitions are included for reference (highlighted with grey or noted in comments), but no changes

are proposed. They are included to inform the CAO update process, but will not be included in the final ordinance if no changes are proposed.

Proposed Critical Area General Provisions Revisions

SMC Chapter 20.80 Critical Areas

Subchapter 1. Critical Areas – General Provisions

The general provisions subchapter serves to set the purpose and standards for regulation of development that apply to all types of critical areas. All of the existing general provisions sections are proposed for revision and five new sections are proposed to be added. Throughout the subchapter terms were updated for accuracy or clarity and cross references to relevant sections in other chapters of Title 20 were added. The following provides an overview of the substantive changes proposed.

The subchapter was reorganized to group related sections together. The first four sections identify the purpose and applicability of Chapter 20.80 in relation to the rest of Title 20 Development Code. Exemptions and activities allowed without a critical area report are next so these are easy to find before the details of procedure and standards for alteration of critical areas are addressed. Following the expanded critical area report and mitigation plan requirements, are six sections that provide protections for critical areas through notification, protection measures, financial guarantees, and code enforcement.

The key changes proposed to the General Provisions subchapter, intended to incorporate BAS, are:

- 1) Exemptions and partial exemptions are proposed to be modified, relocated, or deleted to eliminate unmitigated impacts to critical areas. The changes are intended to clarify what activities are completely exempt or only exempt from critical area report requirements.
- 2) Standards for critical area reports and related mitigation plans that apply for all types of critical areas and explicit provisions for what constitutes best available science and how it must be used are proposed.

Other changes to this subchapter would add clarity, predictability, and serve to better protect critical areas by improving notification of their presence and strengthening provisions that discourage unauthorized modification or ensure that mitigation is successfully completed. The specific changes proposed are included in more detail in the following sections of this staff report.

SMC 20.80.010 Purpose.

This section lays out the basis for critical areas regulation in the GMA (Chapter 36.70A RCW) and Shoreline Comprehensive plan identifies why they are regulated, and states the City's goals for regulation of critical areas. This section also cross references the administrative procedures in Chapter 20.30 SMC as applying to the application of this Chapter. Revision to this section is proposed for consistency of terms and explicit statement of no net loss as required by the

GMA. A provision regarding how this chapter should be administered is also added to help guide decisions where discretion must be applied.

SMC 20.80.015 Applicability. (formerly 20.80.025)

This section identifies when and how this chapter is applicable. These provisions were relocated to the beginning of the subchapter to be grouped with other provisions that identify what is regulated and how it is regulated relative to other chapters in the development code. Wording changes are proposed for clarity.

SMC 20.80.020 Relationship to other regulations. (formerly 20.80.045)

In addition to moving it, the changes proposed include addition of two provisions that clarify how this chapter relates to the State Environmental Policy Act regulations as well as other state and federal regulations. This is not new, but clarifies that compliance with the City's critical areas regulations do not constitute compliance with state and federal regulations and that the applicant is responsible for complying with those regulations in addition to Chapter 20.80 when applicable.

SMC 20.80.025 Critical area maps. (formerly 20.80.020)

Critical area maps are identified in the general provision SMC 20.80.020, which indicates that critical area maps are adopted by this chapter. The current CAO does not specifically identify or list those maps. The new mapping provisions in each of the subchapters are intended to identify sources of information for each type of critical area. Cross references to those new mapping sections in other subchapters are proposed.

SMC 20.80.030 Exemptions

This section is proposed to be reorganized and updated for incorporation of BAS. The following changes are proposed:

- One provision that applies to all of the exemptions in this section was moved to the beginning of the section.
- Titles for each type of exemption were added for ease of finding information.
- Grammatical corrections proposed for consistency.
- Provision added (A) to require mitigation of impacts in an emergency to facilitate no net loss and no increased risk to life and property.
- Provision added to (B) allow for maintenance of private connections to public utilities and permitted, private stormwater management facilities allowed in critical areas.
- Provision (C) revised to clarify alterations which are not exempted under this section and to facilitate restoration.
- At the request of the Parks department the provision for public recreation areas (D) revised to include modification and replacement, in addition to operation, maintenance, and repair. This is similar to exemption for utilities. Compliance with best practices to prevent impacts is still required.
- Two provisions for wetland and geologic hazard specific exemptions, previously reviewed, are proposed for deletion and are replaced with revisions in the critical area specific subchapters.

STAFF REPORT - Critical Areas Ordinance Update

- Specific types of activities are proposed to be added to minor conservation and enhancement activities, now provision (E), to allow for invasive species removal and revegetation to a limited extent both on park property and on private property without requiring permit, critical area reports, monitoring and financial guarantees that can make this type of voluntary maintenance and restoration work cost prohibitive.
- Terms updated for non-imminent, hazard tree removal, now provision (G), for consistency with the forms, professionals, types of review, and replacement requirements. Tree replacement is proposed to be required to facilitate no net loss without requiring a mitigation plan prepared by a qualified professional.
- Tree pruning for health of tree and views that is not excessive, as allowed in 20.80.350(E), added as specifically being considered normal and routine maintenance, now provision (J), and exempt from 20.80.

SMC 20.80.040 Allowed activities. (formerly Partial exemptions)

This section is proposed to specifically exempt the listed activities from critical area reports and to require that best management practices be used to protect the critical areas. Previously, this section allowed revisions to nonconforming single family residences in existence prior to November 27, 1990, that could result in adverse impacts to critical areas without mitigation. The proposed revisions, previously reviewed with the wetlands and geologic hazards subchapters, eliminate allowance of adverse impacts without mitigation. This is in keeping with BAS and aligns with the provisions for legal nonconformance in SMC 20.30.280. Other allowed activities specific to each type of critical area were reviewed at previous meetings and would be in addition to these.

SMC 20.80.045 Critical areas preapplication meeting. (NEW)

SMC 20.30.080 requires a preapplication meeting for any project located within a critical area or its buffer. Historically, this requirement was sometimes missed because it is not cross referenced in the critical areas regulations. Clarification is proposed to when a preapplication meeting is required where critical areas might be impacted and this section is proposed to indicate what level of review and direction will be provided through this process by the City regarding critical area regulations and requirements.

The intention of these revisions is to ensure better customer service, advance notice to property owners and applicants of the limitations and requirements that apply to properties which have resources that are protected by the critical areas regulations, and better predictability in our permitting processes.

SMC 20.80.050 Alteration of critical areas. (formerly 20.80.070 and 20.80.080)

The current SMC 20.80.070 and 20.80.080 sections set standards for alteration of critical areas. These two sections are proposed to be combined into one as they are directly related. Clarification of how this section relates to required mitigation is proposed.

SMC 20.80.060 *Best available science. (NEW)*

The GMA requires that best available science be incorporated into critical areas regulations. Not only does this mean that the science used to shape the specific regulations be periodically reviewed, but the science used to identify and delineate critical areas, assess potential impacts and mitigate for them must meet the criteria of BAS. This new section is proposed to explicitly incorporate state language regarding what BAS is and is not and how to proceed when BAS is not available. By adding this directly to the City's regulations the requirements for the science to be used in critical area reports are laid out explicitly and applicants do not have to refer to state regulations to find this information.

SMC 20.80.070 *Classification and rating of critical areas. (formerly 20.80.100)*

This section is relocated to maintain proximity to critical area report requirements which are used to document the classification and rating of critical areas. One term change is proposed for consistency in this section.

SMC 20.80.080 *Critical area reports - Requirements. (formerly 20.80.110)*

Critical area reports are required under this section. Clarifying language is proposed to more accurately state when reports are required, who pays for them, and that more than one report may be required or allowed to meet the requirements of this section. The language proposed in this section comes directly from the Washington State Department of Commerce example code general provisions with adjustments to incorporate review processes unique to Shoreline.

The requirement that a critical area report be prepared by a qualified professional has been expanded and revised. Verification of qualifications will be handled at the time of review of a report (ideally at the preapplication meeting) rather than limiting qualified professionals to those who are pre-approved by the City. This expands the pool of professionals who can work in the City and eliminates an application step for professionals. This change is combined with adding the specific credentials and experience required for specific types of qualified professionals to the definition in SMC 20.20.042. These qualifications are added to the definition because qualified professionals are also required by other sections of the development code.

Clear thresholds for third party review of critical area reports by a City contracted or employed qualified professional are proposed for increased predictability of cost and time for most applications impacting critical areas. Director discretion is still available for unique circumstances but would rarely be needed.

This section adds the requirement that BAS consistent with the new section 20.80.060 shall be used. The proposed provisions then lay out what types of critical area reports or report sections may be required. Which sections/reports are required depends on the proximity and potential impacts of the proposed development to the critical area.

STAFF REPORT - Critical Areas Ordinance Update

Standards are proposed for general information that would be required in all critical area reports. These will be supplemented by the critical area type specific requirements. The previously discussed report requirements in other subchapters will be reviewed and edited to eliminate duplication prior to the public hearing.

Provisions are also proposed for use of existing reports and sets a five year validity period for previous reports. Additionally, provisions are proposed that provide flexibility on the scope and content of a report in specific circumstances.

By providing clear report standards, combined with clarification to the qualified professional and third party review standards, staff expects to receive better report submittals with less review time or revision requirements. Third party review by a qualified professional contracted by the City adds cost and time to project reviews.

SMC 20.80.082 *Mitigation plan requirements. (NEW)*

Ensuring that mitigation is successfully implemented is necessary for adequate protection of ecosystem functions and values and to ensure no increased risk of hazards to life and property. Currently, the mitigation performance standards are in multiple subchapters and it is often unclear which performance standards are relevant to projects impacting specific critical areas.

Mitigation plans are the component of critical area reports where compensating for impacts to the critical areas is addressed. This new section is added to lay out the purpose and content required in mitigation plans. The language is based on the Commerce example code and modified to incorporate current City policy for mitigation plan requirements. This section is intended to add clarity and predictability to the critical area review and permitting process and to reduce the need for correction letters and revisions that add time and cost to the permit.

This section includes provisions for:

1. Mitigation goals;
2. Performance standards for quantifying successful projects;
3. Plan content requirements for construction, monitoring and contingency steps; and
4. Cost estimate requirements for calculating financial guarantees.

The mitigation standards currently drafted for the other critical area subchapters will be reviewed by staff prior to the public hearing to add missing standards for specific critical area types, eliminate redundancy, and to clarify where the drafts are confusing.

SMC 20.80.085 *Pesticides, herbicides, and fertilizers on City-owned property.*

This section was adopted with the 2006 update to incorporate the City's pesticide free parks policy. The proposed change would allow more flexibility where use of pesticides and herbicides has been scientifically determined to be the best method for managing invasive species when applied properly for the specific

species and location. This provision was added at the request of the Parks, Recreation, and Cultural Services department.

SMC 20.80.090 *Buffer areas.*

This section sets the basic requirements for buffer areas. The proposed revisions update the language regarding buffer width for consistency with the proposed changes in other subchapters and for consistency of terms related to required plans.

SMC 20.80.100 *Notice to title. (formerly 20.80.050)*

This section facilitates informing current and future property owners of the presence of critical areas and buffers as well as protecting critical areas permanently where subdivision, binding site plans, or other similar agreements are proposed. Tools used to put notification on title include recording a notice on title, creation of separate critical area tract(s), or recording of restrictions or easements on title or in a development agreement.

Notices to title inform a new owner of the critical area restrictions on a property at the time of purchase. This notification is intended to reduce the occurrence of unauthorized critical area alterations due to lack of knowledge. Some owners perceive the notice on title as reducing the potential resale value of their property even though the notice does not change the regulations that apply to a property. When there is no notice on title, owners are sometimes surprised to learn of the critical area restrictions on their property well after a purchase is completed, plans for alterations that cannot be permitted are drawn up, or when clearing of vegetation is already completed in violation of these regulations.

The current threshold for this notice to be recorded is when development is permitted in a critical area or its buffer. This is actually relatively rare because the critical areas regulations do not permit alteration within these areas most of the time. As such many projects are permitted without a notice to title informing of the critical area restrictions on the property. The current proposed revision would require that a notice be required, if not already recorded, any time a development permit is granted on property where there is a critical area or critical area buffer on the property. The basis for this proposed change is that anytime there are critical areas on or near a property, the City reviews the proposal for compliance with the critical areas regulations.

Staff requests direction from the Planning Commission regarding this threshold. Alternate to the existing standard or the proposed change the threshold could be when a critical area report is required, when a delineation of a critical area is required, or limiting the development permit threshold to permits that alter the building footprint or hardscape, exempting interior only work and repair work.

Another form of notice to title is a native growth protection area (NGPA) easement. This tool restricts development permanently in critical areas where subdivision, or other binding land division agreement, is not applicable. NGPA easements would also be useful where the size of the critical area is really too

small to require a separate tract. The proposed language is adapted from the Commerce example code and is a common tool used by other jurisdictions.

Provisions are also proposed that allow for relaxing the NGPA easement restrictions where development in the critical areas (such as seismic and erosion hazard areas) that meets applicable critical area regulations may be permitted.

SMC 20.80.110 Permanent field marking. (formerly 20.80.060)

The proposed revisions to this relocated section would eliminate outdated department name and phone number references that change periodically. This was previously presented with the development code batch amendments on June 4, 2015. The revisions also eliminate the need to print different signs for every type of critical area. The thresholds for when this field marking is required are proposed for adjustment to include when recommended by a qualified professional to adequately protect the critical area.

SMC 20.80.120 Financial guarantee requirements. (NEW)

Financial guarantee requirements are currently included in all subchapters for specific critical area types. This section is adapted from City of Edmonds code to standardize this requirement for all critical area types. The new provisions correct the way the financial guarantee is calculated for consistency with the City's financial guarantee policy and clearly indicate when a performance agreement and guarantee is required and/or a maintenance/defect/monitoring agreement and guarantee. This proposed section incorporates current policy and procedure into the code for consistency and predictability. The intention of this section is not to required financial guarantees when the project is voluntary restoration or enhancement work rather than required to mitigate or remediate impacts to the critical area.

SMC 20.80.130 Unauthorized critical area alterations and enforcement. (NEW)

This new section is proposed to better facilitate enforcement of the critical areas regulations by supplementing the provisions of Chapter 20.30, Subchapter 9 – Code enforcement. The language is adapted from the Commerce example code and incorporates penalties based on the City of Edmonds current and proposed critical areas civil penalties.

Standards for a restoration plan and performance standards are proposed in (B) and (C) to codify current policies for remediating critical area violations. Provision (D) proposes new penalties to replace the current economic benefit based penalties in SMC 20.30.770(D) when the violation is in a critical area or buffer. The \$3.00 per square foot value and per tree penalty amounts are drawn from consultant recommendation in the City of Edmonds 2015 BAS Addendum prepared by Environmental Science Associates (ESA).

Future programmatic and regulatory options to consider for better code enforcement for critical areas include:

STAFF REPORT - Critical Areas Ordinance Update

- Establish a critical area remediation permit for review and approval of restoration when the original alterations were not allowable. Separate permit type and process would facilitate calculation and collection of penalties tied to the review of the corrective action. A remediation permit would make clear that the City does not permit the original unauthorized activities. Rather that review is required to ensure remediation adequately restores the impacted functions and values or mitigates for increased risk to life and property.
- Develop a program and fund for restoration of critical areas altered illegally or alternate replacement of functions and values that cannot be restored. The idea behind this type of program would be to use penalties specifically collected for critical area violations to facilitate remediation of violations where the property owner is not cooperative or the cost is prohibitive for the owner. Additionally, sometimes the impacts are too severe or the critical area of a type that cannot successfully be restored. In those instances, penalties could be collected for the value of the impacts and off-site replacement or restoration could be funded in identified locations within the same basin or a nearby basin.

These two projects are outside the scope and available time for the current CAO update process, however staff recommends that they be explored as future Comprehensive Plan and City work plan items.

Related Revisions to Other Title 20 Chapters

The City of Shoreline critical areas regulations are part of the SMC Title 20 Development Code rather than being a standalone title in the municipal code. As such there are provisions in other chapters of the Development Code that contribute to the administration of or provide standard for Chapter 20.80 Critical Areas. Compliance with the critical areas regulations in Chapter 20.80 is also a requirement of the Development Code in project review and decision making criteria.

A few code sections are included for reference only. These are provisions that apply to critical areas regulation but do not require revision at this time. These sections are included to inform the discussion about the existing and proposed changes to critical area related regulations, but they will not be included in the final proposed ordinances. References to critical areas in the sections included for information only are highlighted with grey in Attachment A and noted in the comments when no changes are proposed.

The following sections of SMC Title 20 Development code are proposed for revision in addition to the critical areas specific changes in Chapter 20.80. The majority of these changes are additions of or updates to code references or out-of-date terms.

SMC Chapter 20.30 Procedures and Administration

Subchapter 3. Permit Review Procedures

20.30.080 Preapplication meeting.

The proposed revision of this section adds reference to the new critical area preapplication meeting requirements in SMC 20.80.045. Submittal requirements are updated to reflect the type of critical area documents that should be provided for a preapplication meeting.

Subchapter 5. Nonconforming Uses, Lots, and Structures

20.30.280 Nonconformance

Reference added to 20.80.040 Exemptions to ensure that modifications of structures nonconforming with regard to critical areas are only modified as allowed by Chapter 20.80 and to make a clear connection between these general nonconformance provisions and the critical area regulations.

Subchapter 6. Review and/or Decision Criteria

20.30.290 Deviation from the engineering standards (Type A action).

20.30.295 Temporary use.

20.30.310 Zoning variance (Type B action).

20.30.330 Special use permit-SUP (Type C action).

20.30.333 Critical areas special use permit (Type C action).

20.30.336 Critical areas reasonable use permit (Type C action).

20.30.353 Master development plan.

20.30.355 Development agreement (Type L).

The references in all these review and decision criteria provisions to the critical areas regulations are proposed to be standardized, so these regulations are referenced in a consistent manner that makes it clear which code sections apply. Minor punctuation and grammar edits and corrections to outdated terms are also proposed.

SMC 20.30.333 Critical areas special use permit and SMC 20.30.336 Critical areas reasonable use permit allow for development on property so encumbered by critical areas regulations that reasonable use or special public use could not be undertaken with strict application of the critical areas regulations. In addition to updating critical area type and classification references, new provisions are proposed to specify that mitigation is required using best available science and no net loss attempted. This is inferred when you apply the critical area regulations, however it is not explicitly stated in the current regulations.

Subchapter 7. Subdivisions

20.30.370 Purpose

20.30.410 Preliminary subdivision review procedures and criteria.

The changes proposed for both of these subdivision sections update the reference to the critical areas regulations for consistency and change the types of critical areas listed to use current terminology.

Subchapter 8. Environmental Procedures

20.30.560 Categorical exemptions – Minor new construction.

This subchapter section is included for reference only; no changes are proposed. Unless the project triggers State Environmental Protection Act (SEPA) review for another reason, the only type of critical areas that could trigger SEPA if altered are wetlands and streams. Alterations to the buffers of these critical areas would not trigger SEPA. There is no public notice requirement for alteration of critical areas unless SEPA review is required or the project requires public notice under some other provision of the Development Code, such as a subdivision.

Subchapter 9. Code Enforcement

20.30.730 General provisions.

Cross reference added specifically to the new enforcement provisions in SMC 20.80.130 to ensure that both sections are applied when critical area violations occur.

20.30.770 Enforcement provisions.

New civil penalties for critical areas violations are proposed in SMC 20.80.130(E) so a corresponding change is proposed to the civil penalties language in the general code enforcement section. The new penalties are proposed instead of the economic benefit equivalency penalty that currently applies to critical areas. Economic valuation of impacts critical areas is challenging to calculate and is not standardized. It is also difficult to defend legally. Without a clear and predictable dollar value to the penalty it is not currently serving as a deterrent to the violations. The current penalties provisions are left intact for the non-critical area violations to which these provisions also apply.

SMC Chapter 20.40 Zoning and Use Provisions

Subchapter 3. Index of Supplemental Use Criteria

20.40.230 Affordable housing.

Standardized critical area regulations reference added to this provision.

SMC Chapter 20.50 General Development Standards

Subchapter 1. Dimensions and Density for Development

20.50.020 Dimensional requirements.

This subchapter section is included for reference only; no changes are proposed. Public comment at past meetings asked whether critical areas are included in density calculations. This is the section which regulates what portions of a parcel may be included when calculating density. Only submerged lands such as tidelands, streams, and some wetlands are excluded from base density calculations. This is consistent with state requirement to protect submerged lands. It is also consistent with the City's Comprehensive Plan policy NE2 to "balance the conditional right of private property owners to develop and alter their land with protection of native vegetation and critical areas." While the allowable base density cannot necessarily be built within the critical areas and their buffers, this allows for clustered development that provides economic value from the property while still protecting the critical area(s).

20.50.040 Setbacks – Designation and measurement.

Update of terms for accuracy by removing “steep slopes” which is no longer critical area classification.

Subchapter 5. Tree Conservation, Land Clearing and Site Grading Standards

20.50.290 Purpose.

This subchapter section is included for reference only; no changes are proposed. This section states that part of the purpose of the Tree Conservation, Land Clearing and Site Grading Standards is to protect critical areas from the potential impacts of these activities.

20.50.300 General requirements.

This subchapter section is included for reference only; no changes are proposed. This section clearly states that clearing and grading activities within critical areas are subject both to Subchapter 5 - Tree Conservation, Land Clearing and Site Grading Standards and the critical areas regulations and that the standards providing greater protection shall apply.

20.50.310 Exemptions from permit.

A provision was added in 2010 to allow for minor enhancement projects in critical areas located within City parks without a permit. This type of work was exempted from the critical areas regulations under 20.80.030 as minor conservation and enhancement. The proposed change moves this specific permit exemption to the critical areas exemption section in 20.80.030 and add an exemption from clearing and grading permit requirements for all minor conservation and enhancement activities as exempted in 20.80.030(G).

20.50.320 Specific activities subject to the provisions of this subchapter.

Clearing and grading are narrowly defined in SMC 20.20. Revisions to provision (E) of this section are proposed to clarify that any land disturbing activity not explicitly exempted are subject to the provisions of this subchapter.

20.50.330 Project review and approval.

Standardized critical area regulations reference added to this provision and correction of outdate terms. Explicit requirement for clearing limit protection of critical areas and buffers is proposed.

20.50.350 Development standards for clearing activities.

Some provisions of this section are highlighted grey where critical areas are referenced but no changes are proposed. Code reference to critical areas regulations and outdate and inconsistent terms corrected.

New standards are proposed in provision (E) that add nationally accepted standard for pruning of trees for the benefit of the tree. Additionally, specific language is proposed to allow for tree pruning to facilitate views that does not result in excessive pruning such as topping. The pruning allowed in this section proposed for explicit inclusion in the critical areas exemptions in 20.80.030 as one type of normal and routine landscaping maintenance.

20.50.360 Tree replacement and site restoration.

Some provisions of this section are highlighted grey where critical areas are referenced but no changes are proposed. Inconsistent terms corrected. The provisions for performance assurances in (K) are clarified to indicate that when tree replacement is required within critical areas or due to a clearing violation on a single family lot, the guarantee requirement will not be waived. This is intended to eliminate contradicting provisions related to financial guarantees for violation remediation and critical areas when tree replacement is required.

Additional Information

Geologic Hazard Areas follow-up

At previous Planning Commission meetings for the CAO update a few items that were discussed, related to geologic hazard areas, needed follow-up. For reference the items identified for follow-up include the following:

- Draft alternate amendment to proposed Geologic Hazards regulations for alteration of very high risk landslide hazard areas;
- Special inspection standards and special bonding requirement for contractors working in geologic/landslide hazard areas;
- Liability waiver to be recorded on title for projects in very high risk landslide hazard areas; and
- Example geologic hazard map updates and cost estimates that would improve the percent slope layer and create a new layer identifying areas of prior landslide activity.

Alternate Amendments – landslide hazard areas

Planning Commission requested that an alternate amendment be provided in response to public comment asking whether some slopes meeting the criteria of a very high risk landslide hazard area might actually be safe to alter or develop. Staff has drafted two alternate amendments to allow for alteration in very high risk landslide hazard areas based on language in the Commerce example code. These represent higher risk acceptance than the current and original draft changes to the geologic hazard area regulations.

Alternate Amendment 1- alteration of landslide hazard areas (**Attachment B**) proposes to allow any type of development activity in any classification of geologic hazard area if the specified factors of safety can be met. This approach relies entirely on accurate modeling of the slope stability before and after alteration and correct implementation of any mitigation measures necessary to meet the design criteria. This alternative allows the greatest flexibility to private property owners but a higher acceptance of risk that the design of the project may actually increase risk to life and property.

Alternate Amendment 2 – vegetation removal in very high risk landslide hazard areas (**Attachment C**) presents a more limited option for alteration of very high risk landslide hazard areas. This alternate amendment would allow for review and potential approval

STAFF REPORT - Critical Areas Ordinance Update

of vegetation removal and replacement projects where the specific factors of safety can be demonstrate. It limits the alteration to vegetative solutions to re-stabilize the slope that do not require structures or grading. This approach is lower risk than alternate amendment 1, but does accept a higher level of risk than the current/proposed regulations. Meeting the design criteria may be problematic as natural vegetated slopes may not meet the same factors of safety typically used for engineered solutions. According to the City's consultant, many natural slopes will not have a factor of safety as high as 1.5 (but engineered structures should be designed for at least 1.5). Natural slopes could be maintained at 1.3 for static and greater than 1.0 for seismic. Or the City could say no decrease in slope stability, but then an applicant could determine the existing slope is only at 1.1 and they will not cause a decrease, but the City may not want any disturbance to a 1.1 slope, or the City might want to see improvement to 1.3.

The level of risk the City chooses to accept is a political decision. Best available science is incorporated through the critical area report process and design criteria that apply to any proposed alteration. Direction is requested from Planning Commission on how they would like staff to proceed on this topic.

Special requirements for alterations of landslide hazard areas

If Planning Commission recommends that one of the alternate amendments is proposed then they may also want to consider adopting additional provisions to require a waiver of liability, special inspections, and special bonding requirements for projects that alter very high risk landslide hazard areas to address both the greater risk and the extra care that is needed to ensure that the plans are correctly implemented.

Seattle has had much development and litigation experience with this topic. As a result they have adopted provisions that provide some relief from their development prohibition on Very High Hazard steep slopes. An application for relief from the regulations is conditional based on staff geotechnical review for specific development proposals. The required geotechnical report must show that no adverse impact will result. In addition, the steep slope situations that are exempt from the prohibition in steep slope areas are:

1. Downtown or high-rise zones;
2. New development proposed where existing development is located if the impact on the slopes is not altered or increase;
3. Steep slopes that were created by previous legal grading activity if no adverse impact has resulted;
4. Right-of-Way improvements;
5. Steep slopes that are less than 20 vertical feet and are separate by 30 feet from other steep slope areas; or
6. The Director determines that the prohibition on development in steep slopes presents necessary stabilization.
7. These areas are still considered critical areas and must meet other regulations regarding vegetation, drainage control, etc.

Seattle requires that the property owner sign a covenant with the city that acknowledges and accepts risks, waives any rights to claims against the city, indemnifies and holds harmless the city against claims, losses and damages, duty to inform subsequent

successors of the property of the risks and the covenants, advisability of obtaining added insurance, and record the covenant on title.

Seattle also requires excavation and piling subcontractors to submit insurance documents that include coverage for subsidence and underground property damage, listing the City of Seattle as an additional insured because of the added risk during construction in vicinity of property lines within landslide areas, as well as geotechnical special inspections so that the owner's geotechnical engineer participates during the construction with significant ground-related hazards.

The City may also want to consider requiring neighborhood meetings when alteration of very high risk landslide hazard areas are proposed so that nearby property owners are aware of the proposed change and potential risks to adjacent properties and measures being taken to mitigate that risk.

Three additional best available science resources are included for reference with this packet and were used in the drafting of the geologic hazards alternate amendments and proposed tree pruning amendment in Chapter 20.50. An International Society of Arboriculture article on Tree Root Ecology in the Urban Environment is included as **Attachment D**, and addresses the role of tree roots in soil strength and stability. A King Conservation District paper on the geology of marine shorelines is included as **Attachment E**. A vegetation management guide for marine bluff property owners prepared by the Washington State Department of Ecology is included as **Attachment F**. Three informational handouts regarding vegetation and slope stability prepared by the Washington Coastal Training Program and Greenbelt Consulting are included as **Attachment G**.

Geologic hazard area map updates

Staff indicated at the June 18th Planning Commission meeting that update to the data layers used for identifying potential geologic hazard areas may be helpful to more accurately identify and protect these areas. There are three steps the City can take to improve these data layers:

1. Obtain new LiDAR layer for the City (~3,000 through consortium; ~13,000 independently) which is currently budgeted and underway for this year as part of the regional consortium.
2. Generate updated percent slope layer (estimated 40 hours of staff time or can be done by consultant).
3. Identification of areas of prior landslide activity through LiDAR interpretation (~8,000 to 10,000 by a qualified professional consultant).

Attachment H is an example of prior landslide activity mapping done for the City of Seattle. The City of Shoreline cannot accomplish the same level of detail and prediction of landslide probability because we do not have the same data source of historic landslide activity. With updated LiDAR a qualified professional could generate mapping of existing landforms that indicate prior landslide activity similar to the maps on pages 75 and 77 of the article by Schultz, et. al. (Schultz 2007).

Attachment I is an example of an updated percent slope map that can be generated from a Digital Elevation Modal (which is generated from LiDAR). This work can be done

by the City's GIS specialist or could be completed by a qualified professional through a contract and would take approximately 40 hours to complete.

Additional levels of study such as a detailed geologic survey of the city or landslide monitoring could be accomplished, but staff is uncertain as to how much additional certainty or detail would be provided for these much higher cost projects (\$25,000 to \$250,000 depending on level of detail and scale).

Wetlands Mitigation follow-up

At the June 4th Planning Commission meeting revisions to the Wetlands subchapter of the critical areas Chapter 20.80 were presented. Planning Commission inquired about whether provisions for mitigation through wetland mitigation banks or fee-in-lieu programs were included. The current draft of the wetlands subchapter changes does not include these options because known mitigation banks are located well outside of the WRIA 8 basin where Shoreline is located and would not benefit the sub-basins where impacts to wetlands could be proposed. Information from the WA Department of Ecology on these alternate wetland mitigation methods are included in **Attachment J** for reference. Staff does not currently recommend adding provisions for wetland mitigation banks or for fee-in-lieu programs because they would result in net loss of wetlands within the City of Shoreline.

Future consideration could be given to developing a locate wetland mitigation program which identifies projects within the City of Shoreline that could be undertaken for off-site or in-lieu mitigation when on site mitigation is not feasible. The City of Edmonds has developed a program and lists specific target sites for restoration that may be used when on site mitigation is not viable.

SMP Memo follow-up

At the July 16th Planning Commission meeting, staff was asked to provide a memo summarizing the pros and cons of updated the SMP to incorporate the revised critical areas regulations. This memo is still pending, but will be provided as soon as it is complete to Planning Commission.

Best Available Science

The following documents are included in the record by reference as the Best Available Science or analysis of BAS reviewed by the City to inform the update of the critical areas general provisions section of the CAO:

- CTED. (Washington State Department of Community, Trade, and Economic Development). 2007. Critical Areas Assistance Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act.
- Day, S.D., 2010. Tree Root Ecology in the Urban Environment and Implications for a Sustainable Rhizosphere. *Arboriculture & Urban Forestry, Scientific Journal of the International Society of Arboriculture*, 36(5):193-205, September 2010. Downloaded 7/29/2015 from http://www.isa-arbor.com/education/resources/educ_Portal_RootGrowth2_AUF.pdf.
- Ecology. 1993. Vegetation Management: A Guide for Puget Sound Bluff Property Owners. Prepared by Elliott Menashe, Greenbelt Consulting. Ecology Publication 93-31.

STAFF REPORT - Critical Areas Ordinance Update

- ESA. March 2015. Final City of Edmonds Critical Areas Ordinance Update: Best Available Science Addendum. Prepared by Environmental Science Associates.
- Landry. P., 2006. Conservation Topic – Marine Shorelines: Geological Processes, Land Use Impacts & Conservation Practices. King Conservation District, May 2006.
- Menashe, E. 1993. 4.4 Vegetation Management, excerpt from Shoreline Management and Stabilization Using Vegetation workshop materials, 1993. Prepared by Elliot Menashe of Greenbelt Consulting for the Washington Coastal Training Program.
- Menashe, E. 2004. Trees, Soils, Geology, and Slope Stability. Handout from a workshop on Shoreline Management and Stabilization Using Vegetation. Prepared by Elliott Menashe of Greenbelt Consulting for the Washington Coastal Training Program.
- Menashe, E. 2004. Value, Benefits and Limitations of Vegetation in Reducing Erosion. Handout from a workshop on Shoreline Management and Stabilization Using Vegetation. Prepared by Elliott Menashe of Greenbelt Consulting for the Washington Coastal Training Program.
- Schulz, W.H., 2007. Landslide susceptibility revealed by LIDAR imagery and historical records, Seattle, Washington. Engineering Geology, 89(2007):67-87, January 2007. Downloaded 8/13/2015 from http://landslides.usgs.gov/docs/schulz/lidar_enggeo.pdf.
- Thorsen, G.W. and Menashe, E. 2004. Tree Removal on Steep Slopes of Puget Sound Shorelines. Handout from a workshop on Shoreline Management and Stabilization Using Vegetation. Prepared by Gerald W. Thorsen, Consulting Geologist, and Elliott Menashe of Greenbelt Consulting for the Washington Coastal Training Program.

Public Comment

Comments to Planning Commission were received July 15 and July 16 from representatives of two neighborhood groups. The letter to Planning Commission from the Richmond Beach Preservation Association is included for the public record in **Attachment K**. The letter and attached geotechnical engineering review memo from Eglick Kiker Whited law firm (EKW Law), on behalf of the Innis Arden Club, is attached for the public record in **Attachment L**. Both letters requested additional time for public review of the proposed critical areas regulations update. Staff added four weeks to the project schedule in response to these requests for more time. The City is still reviewing the other comments and content of these letters and will take them into consideration as the draft regulations are revised by staff for the public hearing.

A second comment letter was sent to Planning Commission by EKW Law on behalf of the Innis Arden Club on August 13, 2015, and is included as **Attachment M**. This letter proposes modifications to the geologic hazards regulations and includes suggested edits as attachments as well as including example code language from Bothell and Edmonds.

STAFF REPORT - Critical Areas Ordinance Update

SCHEDULE

In response to public comment requesting more time for public review, staff extended the schedule for the Critical Areas Ordinance update by one month. The updated schedule for Planning Commission study sessions and public hearing is:

- *May 21 – Introduction and Overview*
- *June 4 – Wetlands and Shoreline Master Program*
- *June 18 – Geologic Hazard Areas*
- *July 16 – Fish & Wildlife Habitat, Flood Hazards, Aquifer Recharge Areas, and Streams (Current meeting)*
- **August 20 – General Critical Area Provisions (added meeting)**
- *September 17 – Public Hearing and Recommendation*

The draft subchapters of the CAO were developed separately. The final draft of the entire CAO may change to remove legal or internal conflicts between subchapters. The final draft will be provided as soon as feasible prior to the staff report for the Public Hearing, currently scheduled for the September 17, 2015, Planning Commission meeting.

City Council review and adoption is now scheduled for October-November 2015, with staff updates to handouts, forms, processes, and permitting tools to follow thereafter.

The current proposed schedule for City Council study and adoption of the CAO update is:

- *October 5 – Study Session 1*
- *October 12 – Study Session 2*
- *November 2 - Adoption*

Due to the complexity of the proposed CAO changes, staff is recommending a delayed effective date for this ordinance of January 1, 2016. This would allow time for staff training, update of forms and handouts, and adjustment of projects being planned but not yet submitted. Based on a preliminary inquiry to the Washington Department of Commerce, it seems that delayed implementation would be compatible with the GMA compliance requirements so long as the delay was not too long.

The State deadline for completing these updates was June 30, 2015. While there are no immediate ramifications for not meeting the deadline, a number of State grant programs are tied to compliance with the GMA and cannot be awarded if we are not in compliance. Shoreline would be considered to be in compliance if we are not more than twelve months past the deadline and demonstrate substantive progress towards compliance.

This legislative action is subject to the State Environmental Policy Act (SEPA) and notification of the proposed changes must go to Commerce and DOE. The SEPA Determination and noticing was published August 3, 2015.

RECOMMENDATION

No decision is required of the Planning Commission at this time. Questions and feedback from Planning Commission on the proposed critical area general provisions

STAFF REPORT - Critical Areas Ordinance Update

and related Title 20 amendments are requested at this time towards development of a recommended code update package for the public hearing on September 17, 2015. Direction is request from Planning Commission on how to proceed with the alternate amendments for landslide hazard areas presented today.

ATTACHMENTS

Attachment A – CAO 2015 Update_Subchapter 1-General Provisions and misc Title 20_August 2015

Attachment B – ALTERNATE AMENDMENT 1 - alteration of landslide hazard areas

Attachment C – ALTERNATE AMENDMENT 2 - vegetation removal in very high risk landslide hazard areas

Attachment D – Tree Root Ecology_Arboriculture & Urban Forestry 2010

Attachment E – Conservation Topic-Marine Shoreline Geological Processes

Attachment F – Vegetation Management Guide 1993

Attachment G – Coastal Training Program handouts 2004

Attachment H – Landslide Susceptibility Revealed by LIDAR in Seattle 2007

Attachment I – Example of Geohazard Map using Digital Elevation Models

Attachment J – Special Types of Compensatory Mitigation_Excerpts from Wetlands in WA Vol 2

Attachment K – RBPA comment letter, July 15, 2015

Attachment L – EKW Law comment letter and enclosure, July 16, 2015

Attachment M – EKW Law comment letter and enclosure, August 13, 2015