



STAFF REPORT TO THE PLANNING COMMISSION FOR THE APRIL 11, 2019 HEARING

FILE NUMBERS: L18-0056 Critical Areas Code Update

REQUEST: Review and revise Tukwila’s Critical Areas regulations, hold a public hearing and make a recommendation to the City Council.

LOCATION: City Wide

PUBLIC NOTICE: Notice was published in the Seattle Times and a postcard was mailed to the owners and tenants of all Tukwila parcels on 3/28/19. Proposed amendments were posted on the website and an email notification was sent to the interested parties list on 3/22/19. Information about the update was included in the citywide Stormwater mailer and the September eHazel nut newsletter. An open house was held on 10/9/18.

STAFF: Minnie Dhaliwal, Planning Supervisor

ATTACHMENTS:

- A. Proposed TMC 18.45 Critical Areas Code and TMC 18.70 Non-conforming regulations pertaining to the critical areas.
- B. Edits in underline/strikeout version

BACKGROUND

All cities in Washington are required to adopt critical areas regulations by the Growth Management Act (GMA) (RCW 36.70A.060). Critical areas, as identified in the GMA include wetlands, frequently flooded areas, streams, geologically hazardous areas (steep slopes), and fish and wildlife habitat conservation areas. In addition, cities are to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

Cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas (RCW 36.70A.172). All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule provided per RCW 36.70A.130. Tukwila’s current sensitive area regulations were adopted eight years ago in 2010. Per GMA the City must periodically consider best available science (BAS) and update its critical areas ordinance. Any deviations from BAS recommendations should be identified, assessed, and explained (WAC 365-195-915). Washington State Department of Ecology oversees critical area updates and provides direction on BAS.

Staff had a work session with the Planning Commission on this item on November 8, 2019. The staff report for the November 8, 2018 meeting is available online. Here is the link to [staff report](#).

The second work session was held on February 28, 2019 and here is the link to the [staff report](#)

DISCUSSION

Based on the direction from the Planning Commission staff has prepared revisions to the critical areas regulations. See Attachment A and B for the proposed revisions. Summary of the key revisions is included below:

I. Wetlands

1. Designation:

- Reference to State delineation manual removed and replaced with language from WAC 173-22-035, that states identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements.
- Five year time limit on wetland reports/delineations established. Generally, any delineation done more than five years ago needs to be revisited as wetlands can change significantly in a five-year period due to changes in hydrology, land uses, and plant species composition. Additionally, approved jurisdictional determinations by the Corps expire after five years. Revisiting a wetland delineation that is five or more years old does not necessarily mean a new wetland delineation needs to be done. It means it may be necessary to revisit the site to determine whether the delineation is still accurate or needs to be redone based on current conditions.

2. Rating:

State rating system referenced, which is the *Washington State Wetland Rating System for Western Washington* (Hruby 2014, Ecology publication No. 14-06-029). To avoid the need for future updates related to rating system versions language added, "or as revised and approved by Ecology".

3. Buffer Widths: Adopt the standard buffer widths recommended by the Department of Ecology; but allow alternate buffer if impact minimization measures are taken AND buffer is replanted

Category	Wetland buffer width (ft), current TMC	Wetland buffer width (ft), Ecology 2014, high-intensity land use impact					
		Habitat score <6	Habitat score <6	Habitat score 6-7	Habitat score 6-7	Habitat score 8-9	Habitat score 8-9
		Standard Buffer	Alternate Buffer if impact minimization measures taken AND buffer is replanted	Standard Buffer	Alternate Buffer if impact minimization measures taken AND buffer is replanted. Also, 100 feet vegetated corridor between wetland and priority habitats is maintained.	Standard Buffer	Alternate Buffer if impact minimization measures taken AND buffer is replanted. Also, 100 feet vegetated corridor between wetland and priority habitats is maintained.
I	100	100	75	150	110	300	225
II	100	100	75	150	110	300	225
III	80	80	60	150	110	300	225
IV	50	50	40	50	40	50	40

Impact minimization measures to qualify for alternate buffers include the following:

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> Direct lights away from wetland
Noise	<ul style="list-style-type: none"> Locate activity that generates noise away from wetland If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered Establish covenants limiting use of pesticides within 150 feet of wetland Apply integrated pest management

Disturbance	Required Measures to Minimize Impacts
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development (LID) techniques where appropriate (for more information refer to the drainage ordinance and manual)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and Human Disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust

4. Interrupted Buffer: Establishes an administrative waiver process for an interrupted buffer.

- a) Defines what qualifies as interrupting the buffer: a public or private road; buildings; or parking lots. The criteria for waiver include:
 - i) The existing legal improvement creates a substantial barrier to the buffer function;
 - ii) The interrupted buffer does not provide additional protection of the critical area from the proposed development; and
 - iii) The interrupted buffer does not provide significant hydrological, water quality and wildlife buffer functions relating to the portion of the buffer adjacent to the critical area.

5. Buffer averaging instead of buffer reduction:

Replaces buffer reduction provision with buffer averaging. The total area of the buffer after averaging is equal to the area required without averaging and the buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

6. Alterations:

No changes to the exemption level. The existing code provides an exemption for certain wetlands that are under 1,000 square feet. The exemption is from sequencing (showing that the impact cannot be avoided or minimized). Mitigation of the impacts is still required per Ecology. Exempt wetlands have to meet the following criteria:

- a) habitat score under five;
- b) are not associated with a riparian habitat or Shorelines of the State;
- c) are not part of a wetland mosaic, and
- d) do not contain priority habitat.

7. Mitigation Standards: Mitigation ratio for buffer impacts is added at 1:1

8. Wetland and buffer mitigation location:

The current code prefers off-site mitigation be located within City of Tukwila's boundaries. However State and federal agencies advocate use of alternative mitigation methods such as mitigation banks or in-lieu-fee programs. In order to be consistent with regulations of these agencies the proposed changes allow for purchase of mitigation credit from an in-lieu fee program or bank, if that is the best choice ecologically for a project.

II. Watercourses

1. Rating and buffer widths:

Ratings nomenclature updated to reflect Washington Department of Fish and Wildlife ratings for simplicity. Type 1, 2, 3, 4 changed to S (Shoreline), F (Fish bearing), N_P (Non-fish bearing perennial), N_s (Non-fish bearing seasonal). No change in the buffers of S, F, N_s. The standard buffers of N_P could be lowered from 80 feet to 50-65 range with buffer enhancement.

Stream Type	Watercourse Buffer (ft), TMC
S	Regulated under Shoreline Master Program
F	100
N _P	Standard buffer 80 Alternate buffer in the range of 50-65 with buffer enhancement
N _s	50

2. Buffer averaging vs reduction:

Replaces buffer reduction provision with buffer averaging so long as the total area of the buffer after averaging is equal to the area required without averaging and the buffer at its narrowest point is never less than $\frac{3}{4}$ of the required width.

3. Interrupted buffer: Establishes an administrative waiver process for an interrupted buffer.

- a) Defines what qualifies as interrupting the buffer: a public or private road; buildings; or parking lots. The criteria for waiver include:
 - i) The existing legal improvement creates a substantial barrier to the buffer function;
 - ii) The interrupted buffer does not provide additional protection of the critical area from the proposed development; and

- iii) The interrupted buffer does not provide significant hydrological, water quality and wildlife buffer functions relating to the portion of the buffer adjacent to the critical area.

III. Geologically Hazardous Areas

Reference to mapping sources added and protective provisions such as slope vegetation protection and guidelines on erosion control and best management practices included.

IV. Fish and Wildlife Habitat Conservation Areas

- a) The city's list of fish and wildlife habitat conservation areas made consistent with GMA definition
- b) Reference to mapping sources added.
- c) A requirement for a habitat assessment prepared by a qualified professional to better reflect BAS so that buffers could be based on site specific conditions.

V. Special Hazard Flood Areas

Reference added to Special Hazard Flood Areas TMC Chapter 16.52; and floodplain habitat assessment requirements included.

VI. Housekeeping Code Amendments

1. Vesting:

Language added to clarify that only submittal of a complete building permit vests a project to critical areas code. For instance, if a short plat is approved but homes are not constructed and the code is updated, any future development is subject to the new updated code. An exception added for projects that currently have a preliminary approval but not final approval to be vested until the expiration of the preliminary approval; provided building permits are submitted within one year of the final approval.

2. Expiration of decisions related to critical areas:

Five years term limit established for any approvals to be consistent with time limits for permits obtained from the state and federal agencies.

3. Permitted uses changed to permitted activities section

4. Vegetation Protection section that includes tree retention, removal and replacement requirements included:

Currently the tree retention, removal and replacement requirements are part of TMC 18.54, the Tree Code. A section is added that covers these subjects so that tree removal, retention and protection in critical areas is all in one place and no cross-code reference is required.

Tree protection section is similar to that which exists in 18.54.070 as is applicable to critical areas.

Non-invasive vegetation retention (except in cases of defective trees) in sensitive areas is in current code. Only change that will be made is clarification that tree retention on steep slopes is also required.

Tree Replacement section is similar to what is required in the current shoreline code (TMC 18.44.080).

5. Reorganization:

In order to improve the organization and make it easy to implement the code it is reorganized to sequentially address 1. Mitigation sequencing; 2. What is allowed outright/what requires Special Permission approval; 3. Criteria for approving deviations; 4. Mitigation requirements; 5. Monitoring

6. Penalties for unauthorized alterations:

Penalties for illegal clearing in critical areas added.

7. Non-conforming provisions:

New non-conforming thresholds for development in the wetland and stream buffers established; and tied to incentives for improving the buffer.

- a) Allow existing buildings to expand vertically to add upper stories in exchange for buffer enhancement
- b) Allow lateral expansion to the building side that is opposite of critical area up to a maximum of 1000 sq. ft; in exchange for buffer enhancement. Further this option is limited to situations where the buffer width is at least 75 percent of the required buffer.
- c) Allow lateral expansion along the existing building lines in exchange for buffer enhancement; and limit the sq. ft. of new intrusion into the buffer to less than 50 percent of the current intrusion or 500 sq. ft, whichever is less. Further this option is limited to situations where the buffer width is at least 75 percent of the required buffer.
- d) Allow enclosing within existing footprint in exchange for buffer enhancement.

8. Inventory update:

Add requirement for the applicant to provide surveyed data for maintenance of the City's Critical Areas inventory map

RECOMMENDATION

Hold the public hearing on the proposed changes and determine whether any additional changes should be added based on public testimony. Staff will return with a comment matrix and revised drafts for the Planning Commission to review and forward to the City Council.