

2017 CRITICAL AREAS ORDINANCE UPDATE

PUBLIC COMMENTS RECEIVED**

** Comments received during City Council review between August 2, 2017 – present.

	Date	Name	Topic(s)	Comment	Staff Response
1	10/12/17	Ian Bentryn	Trees and vegetation	Limits on tree maintenance without permit or pre-approval do not recognize a specialty niche in arboriculture for Japanese ornamental specimens.	Pruning of noninvasive ornamental vegetation is included as normal yard and garden activities in BIMC 16.20.040, Exemptions.
2	10/3/17	Peter Bang-Knudsen, Ed.D. Superintendent Bainbridge Island School District	CAO – general	Requests the City consider balancing protection of critical areas with the ability for public entities to build essential buildings (e.g., schools, pools, parks, etc.).	The current draft of the CAO includes two provisions for public projects: • BIMC 16.20.100.E, Native Vegetation Protection Area, a reduction in the NVPA area is provided for public projects; and • BIMC 16.20.140, Wetlands, buffers for high intensity land uses (e.g., schools) can be reduced to the buffer required for moderate intensity land uses.
3	10/4/17	Jeff Kanter	CARA Heating oil tanks	There are many older heating oil tanks at risk of leaking/failure. One or more leaks could make the drinking water source (groundwater) unusable. Periodic testing or monitoring of underground tanks is not being discussed.	Comment noted.
4	10/3/17	Charlotte Rovelstad	CARA/NVPA	Encourages Council to support the CAO and the new NVPA requirement.	Comment noted.
5	10/3/17	Helen Pitts	CARA/NVPA	Offers support for the NVPA requirements. States there is no “work around” or engineered, human-created solution that substitutes for the protection of native vegetation.	Comment noted.
6	10/3/17	J.D. Stahl	CARA/NVPA	Thinks deeming 65% of everyone’s property undevelopable on “aquifer recharge” grounds is a tremendous over-reach by the City. States the science on this is very complicated and also very site specific. Thinks it will defeat any pretext of the City being supportive of affordable housing due to dramatically more expensive permitting costs.	The area of NVPA will be determined on a site-specific basis through completion of the site assessment review (SAR) process. The NVPA is not “undevelopable,” as it is included in the area used to determine allowable density and may include development, uses and activities either as listed in BIMC 16.20.100.E.2 or through a NVPA stewardship plan. The NVPA does not require dramatically more expensive permitting costs. Projects requiring a NVPA are project already required to go through the SAR process.

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7	10/3/17	Mike Juneau	Trees and vegetation	• Modify coppicing language to allow pruning <6-inch diameter sprouts from a larger than 6-inch stump. • Extend work season to allow late-winter-dormant season pruning of trees, including coppicing. • Raise limit for invasive species control outside geologically hazardous areas to 5,000 sf. • Modify list of coppicing to include only strongly-regenerative species. • Differentiate minor and major offenses in enforcement of tree and vegetation section.	• Coppicing is allowed on any size truck, sprout size limited to 6-inch diameter. • Extended work season not recommended due to slope stability and erosion/sedimentation concerns. • Higher limited for invasive species control not recommended due to erosion/sedimentation concerns, misidentification of plants, need to review replanting plan. • Coppicing species revised. • Major and minor violations included in BIMC 16.20.170.F.
8	10/3/17	Robert Dashiell	Mitigation requirements	Council should perhaps include a consideration of public benefit vs. proposed buffer infringement mitigation costs when other public taxing districts projects are being considered.	See response to comment 2, above.
9	10/2/17	Gloria Saylor	General	The CAO as written is very dense and difficult to understand. Suggests making a 1-3 page charge summarizing the impact of the ordinance.	Staff anticipates developing public education and outreach materials to summarize and explain major topics prior to the effective date of the ordinance (anticipated March 1, 2018).
10	10/3/17	David Graf	CARA	States the proposed restrictions have a disproportionate impact to individual (residential) property owners, and seem extreme.	The low-density residential zones (R-0.4, R-1 and R-2) are areas of existing high recharge rates and low land use intensity (impervious surface area). These areas have the greatest potential for aquifer recharge protection.
11	9/28/17	Phedra Elliot Housing Resources Board	CARA	Updating ordinance as proposed would make the difficulty of creating more housing that is affordable even harder.	Staff does not anticipate the update will limit affordable housing opportunities. Underlying densities are not changing; however, home site area or home size may be reduced, which may actually lead to more affordable housing. See also response to comment 6, above.
12	9/27/17	Charlie Wenzlau	CARA	• Expresses concern the implementation of the proposed update will have adverse impacts to our island diversity. • Proposed analysis will require more consultants at an added cost to landowners.	See response to comment 6, 10 and 11, above. Applicants wishing to build an ADU would need to designate a NVPA and could locate the ADU within the 12,500 sf allowed development area or establish the NVPA through a NVPA stewardship plan.

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			- The 800 sf limit on impervious surfaces would likely forestall the construction of ADUs, recommends exempting ADUs. - Recommends the CAO is limited to the non-sewered areas for the island where it has the greatest benefit. - Asks why the need for environmental protections always seem to trump affordability?	
13	10/3/17 Ernie and Ellen Williams	CAO – general CARA	Expresses full support for the rules that restrict development in critical areas including greater restrictions on land that's considered critical aquifer recharge areas.	Comment noted.
14	10/2/17 Robert Dashiell	Salmon streams	States that information provided by water quality program staff, taken from the City's WQFMP's Sampling and Analysis Plan, is inaccurate with regard to the number of salmon-bearing streams (28). States the island has five, maybe two salmon streams.	The number of fish-bearing streams is not specified in the CAO.
15	10/2/17 Robert Dashiell	Wetland buffers	Asks for clarification that the City is using Ecology guidance to establish buffer widths and confirmation that buffer widths are not changing.	The City is using Ecology's 2014 guidance. Buffer widths are not changing.
16	9/30/17 J.D. Stahl	CARA/NVPA	Expresses concern that proposed NVPA requirements will largely undermine planned short plat.	Parcels will maintain their allowable density and be allowed a 12,500 sf development area.
17	9/30/17 Robert Dashiell	CARA	Asks if the entire island will be a critical area. States that USGS/Aspect studies on rainfall and water consumption suggests that the City should not be concerned with aquifer recharge rates.	Critical aquifer recharge areas are limited to the R-0.4, R-1 and R-2 zoning designations. The City's Comprehensive Plan guiding principals, goals and policies provide that the City's plans and regulations shall employ the precautionary principal, recognize the island's natural resources are finite, and reflect the uncertainty of climate change impacts.
18	9/29/17 Adam Wheeler, PE Browne Wheeler Engineers, Inc.	CARA	- Points out difference between shallow wells and aquifers vulnerable to contamination and water resources in deeper aquifers. - Asks about costs and availability of professionals to complete hydrogeological site assessment.	Ecology's guidance provides that jurisdictions should protect both deep and shallow groundwater resources for both water quality and quantity.

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			- Suggests other methods to ensure that recharge occurs (vs. 65% NVPA) are available and NVPA may affect ability to fully mitigate stormwater on site. - Refers to Aspect's groundwater assessment that did not indicate any trends over the last 10 years that would trigger EWL for safe yield and asks why increased regulation is needed when there does not appear to be a significant drop in water levels.	- The City does not maintain information about the costs and availability of professionals to complete hydrogeological site assessments. - Research and LID technical guidance provides that native vegetation retention should be the highest priority in site design to mimic natural hydrology. Other, structural methods to achieve recharge are regulated through the City's stormwater code which offers a LID performance standard option. The NVPA may include stormwater facilities and other uses and activities to achieve better site design through use of non-structural low impact design practices. - See response to comment 17, above.
19	Douglas Schoemaker	Tree coppicing	Suggests that coppicing of trees should be allowed; otherwise, management of trees is limited to 6-inch caliper trees which is incredibly small.	Coppicing is allowed in BIMC 16.20.090.
20	Jeff Kanter	Geologically hazardous areas	- Appreciates effort to exempt from permitting nominal pruning, but exceptions are overly restrictive. - Suggests big leaf maple and alders (deciduous trees) should be treated differently than conifers. - Suggests big leaf maples are cut 1/3 per year over a 3-year period. - Required indemnity agreement for tree professionals not found in other trades (e.g.; excavators and other construction professionals) and is overreaching.	- Comment noted. - Big leaf maples are allowed to be coppiced, conifers are not. - Canopy removal is currently limited to 2,500 square feet without review. - Comment noted.
21	Ken DeWitt, Chair Terry Lande, Executive Director BI Metro Park and Recreation District	CAO – general	- Invasive species removal: Introducing an additional review by City may be a disincentive for volunteers. Should be an exempt activity similar to yard and garden maintenance. - Hazard trees: Removal/pruning should be allowed on park property without City review or approval. Responsibility should be delegated to Park District due to staff and mission statement.	- Volunteers are allowed to remove invasive species without review up to 2,500 square feet. See response to comment 7, above. - The City's critical areas ordinance applies to all parcels and property owners. - Boardwalks may be allowed through review and approval of a critical areas permit. - See response to comment 9, above.

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The following comments were provided in person at the October 3, 2017 public hearing. Additional detail and exact comments are available in the official minutes.				
22	J.D. Stahl	CARA	- Trails: Boardwalks should be allowed. - General: CAO requires numerous studies prior to decisions. Suggest a decision-making tree.	See response to comment 10, above. Staff is finalizing a review of best available science to support revisions to the CAO that will be available prior to the November 14, 2017 public hearing.
23	Charlie Wenzlau	CARA	Shared a primary concern that the NPVA will affect affordability strategies including ADUs, conservation villages and tiny homes; CAO regulations should not preclude affordable housing.	See response to comment 12, above.
24	Lisa Neal	CARA	Stated lower income people need clean water and air, current regulations do not require analysis of water impact of development, water studies are uncertain and do not show that current drawdown is okay.	Comment noted.
25	Robert Dashiell	Trees and vegetation	Need for permit to manage trees for forest health/safety within a critical area is ridiculous and absurd.	BIMC 16.20.090.B allows for a number of tree and vegetation activities without City review or approval.
26	Jonathan Davis	NPVA	Stated there are alternatives to preservation of 65% native vegetation that can achieve desired results for aquifer protection (recharge/dispersion).	See response to comment 18, above.
27	Piper Thornberg	CAO – general	Encouraged Council to extend public comment, stated professional services required will add significant financial cost to local development (vs. off-site developers), hazard tree management regulations need to reflect effects of storm events.	Public hearing extended to November 14, 2017; two additional Council meetings held (October 17 and 24, 2017). Hazard tree regulations allow for work to be done if immediate threat is present (e.g., after a storm). See also response to comment 12, above.
28	Julie Smith	NPVA CAO – general	Supports NPVA and CAO as good first step to forest/native vegetation protection	Comment noted.
29	Michael Pollack	NPVA Mitigation requirements	Stated native soils are as important as native vegetation; 65% rule is good, there is good	Comments noted.

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			science to support it but applies on watershed scale. Difficult to require mitigation for recharge or carbon; provide protection in perpetuity of native vegetation if you remove trees.	
30	Patty Dusbabek	CAO – general	Sees consequences of overdevelopment, current development is irresponsible	Comment noted.
31	Erica Shriner	CARA	Applauds more stringent regulations for trees/water protection.	Comment noted.
32	Mike Juneau	Trees and vegetation	- Clarify 10/25% pruning applies to an individual tree - Extend work season for pruning-only activities January – March - Increase invasive species removal threshold with no review to 5,000 sf - Revise species allowed to be coppiced to strongly regenerative species; remove alder - Differentiate minor vs. major offense since \$2500 fine is significant	- Clarified. - See response to comment 7, above.
33	Robert Long	CAO – general	Recommends that solutions/regulations should address more than one system (e.g., wildlife and water)	Comment noted.
Additional written comments received after the October 3, 2017 public hearing				
10/18/17	Olaf Ribeiro	Trees and vegetation	- Thinks the tree committee has come up with a workable tree ordinance. - Would like to see better guidance on pruning in critical areas. Poor pruning will eventually result in the loss of the tree – defeating the purpose of tree retention in a critical area. - The Tree committee needs to consult with an independent arborist rather than a tree removal arborist on tree structure and mechanics. - Would like to see better enforcement of landscaping and mitigation requirements so fewer newly planted trees die.	- Comment noted. - The City may develop pruning guidelines for home owners and tree service providers outside of the municipal code. - Tree Committee meetings are open to the public. Citizens, arborists and tree professionals are invited and encouraged to provide input. - Comment noted.
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	Date	Name	Topic(s)	Comment	Staff Response
35	10/20/17	Mike Juneau	Trees and vegetation	Please see attached comments.	Staff has not reviewed these comments but can address at October 24, 2017 Council meeting, as needed.
36	10/20/17	Kellie Eickmeyer	CAO – CARA	Disagrees with NVPA requirement and states that this ordinance does nothing but limit personal freedom to develop and utilize private property.	The commenter's property currently has less than 65% native vegetation; therefore, the NVPA requirement on this property would be less than 65% (the area of existing native vegetation). The property is not subdividable. Any additional development/expansion of existing structures would likely not be limited by the NVPA, if required, since a large portion of the property is currently non-native vegetation (lawn and hard surfaces) that is not required to be retained.
37	10/20/17	Robert Dashiell	CAO – stream crossings	States that the requirement for bridges or bottomless culverts over fish-bearing streams is a very expensive regulation.	BIMC 16.20.110.F.1.a allows alternatives: Bridges or bottomless culverts shall be required for all Type F streams. <u>Other alternatives may be allowed upon</u> (i) submittal of a Habitat Management Plan which demonstrates that other alternatives would not result in significant impacts to the fish and wildlife conservation area and (ii) as determined through the Hydraulic Project Approval (HPA) process administered by the Washington Department of Fish and Wildlife. The plan must demonstrate that fish habitat will not be reduced in area or function.

Christy Carr

From: Mike Juneau <haztree@yahoo.com>
Sent: Friday, October 20, 2017 9:45 AM
To: Christy Carr
Cc: Mike Juneau
Subject: Language, red alders, etc. + your council draft?

- i. Language we discussed yesterday, referenced to your draft:
- ii.

1. (Your new B.1.c?) Pruning operations maintain **natural pruning system** form and characteristic growth pattern of trees as **defined by ANSI A300 (Part 1 – 2017)**.
2. (Your new B.2.b?) **Intensive** maintenance pruning systems of fruit trees, Japanese-style or similarly maintained specimens, espalier, hedges and shrubs, including shrubs and trees under 6 inches in diameter at 4-1/2 feet above root flare within erosion and landslide hazard areas setback, is allowed without the restrictions in a, and b, and d. above, provided that structural integrity and the long-term health of the vegetation is preserved.
3. (Your new B.2.e) **Dead trees or dead parts of trees that pose a significant risk may be shortened as necessary to avoid falling into lawfully developed areas or operations.**
4. **Coppicing of native trees is limited to strongly regenerative species including bigleaf maple (*Acer macrophyllum*), willows (*Salix* species), cottonwoods (*Populus* species), hazelnut (*Corylus* species), vine maple (*Acer vitaceum*), and non-native species that can be demonstrated to reliably regenerate from large stumps,** provided:
 - i. Tree **stems** are less than 6 inches in diameter at 4-1/2 feet high **above root flare or top of stump;**
 - ii. **Canopy removal does not exceed 2,500 square feet in total area,**
 - iii. **Coppicing may only occur once every three years; a three year pruning cycle is suggested per ANSI A300 (Part 1 – 2017) Pollarding,**
 - iv. No ground or root disturbance occurs as part of the cutting;
 - v. **Bigleaf maple coppiced on erosion and landslide hazard slopes must retain a minimum stump height equal or greater than previous live stump height or 16 inches above root flare, whichever is greater;**
 - vi. Coppicing of **native trees** is not allowed in wetlands or fish and wildlife habitat conservation areas or their associated buffers, without city review.

b. Red alder (*Alnus rubra*) may be pruned, provided:

- i. **Coppicing of red alder (*Alnus rubra*) trees is limited to young trees less than six inches diameter at 4-1/2 feet above root flare and is prohibited on erosion hazard slopes without city review.**
- ii. **Avoid pruning of red alders in April, May and June to reduce bark beetle damage.**

Add Definitions:

Pollarding (use ANSI def).

Natural pruning system. A pruning system intended to maintain a tree's characteristic growth pattern and adaptations while allowing for some changes in appearance to achieve certain specified objectives as discussed in ANSI A300 (Part 1 – 2017) Annex D.

Coppicing (tweak it for natives)

Crown (Use ANSI def).

On enforcement:

Unauthorized tree removals should be treated more harshly than minor offenses such as exceeding the square feet for invasives removal, or exceeding "10 percent per 3 years rule" for do-it-yourselfers...

Differentiate between Major and Minor Offenses?

exceeding the 10 percent rule...

Exceeding the 2500 square foot rule for invasives removal is a \$2500.00 fine?
Allow Planner discretion during enforcement...

Hi Christy,

So thats what I've got.

1. Can I get copy of your draft to review real quick when you get that roughed out?
2. Can I also get the final draft when you send to City Council later today?

Thanks!



16.20.090 Trees and vegetation

A primary goal of the city's comprehensive plan is protecting the Island's natural environment. The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level. Standards and review procedures for trees and vegetation within critical areas and their buffers are necessary to maintain or improve the functions and values of critical areas, implement the city's comprehensive plan, provide for reasonable maintenance or enhancement of views, and allow for appropriate vegetation maintenance and hazard tree removal. Tree or vegetation removal, coppicing or pruning is prohibited within critical areas and their buffers unless allowed pursuant to BIMC 16.20.090 (A) through (D) or approved by the director as provided in BIMC 16.20.090.F.

A. Applicability.

1. This Section applies to any tree and vegetation activity within geologically hazardous areas and their setbacks and wetlands and fish and wildlife habitat conservation areas and their buffers, and Native Vegetation Protection Areas as described in BIMC 16.20.100.E.

B. The following tree and vegetation activities do not require city review or pre-approval:

1. General pruning. Pruning of trees and shrubs provided:

- a. Pruning operations of trees do not remove more than 10 percent of living material (branches, stems and leaves) of an individual tree within any three-year period, provided that up to 25 percent may be removed with an ISA-certified arborist on site.
- b. ~~No portion of a live branch or stem of a tree more than 6 inches in diameter is removed from any tree. No live branch or stem or portion of live branch or stem of a tree more than 6 inches in diameter is removed.~~
- c. ~~Within Native Vegetation Protection Areas delineated pursuant to BIMC 16.20.100.E, maintenance pruning of trees is allowed without the restrictions in a. and b. above, provided the structural integrity and long-term health of the trees is preserved.~~
- d. ~~Maintenance pruning of hedges and shrubs without the restrictions in a. and b. above, provided that structural integrity and the long-term health of the vegetation is preserved.~~
- e. ~~Pruning activities conform to applicable practices of ANSI A300 (Part 1 - 2017) Tree, Shrub and Other Woody Plant Management - Standard Practices (Pruning), as amended for City of Bainbridge Island pruning standards (hyperlink).~~
- f. ~~Trees and shrubs are not located in or overhanging a Type F stream.~~
- g. ~~The practice known as topping - the reduction of tree size by cutting live branches and leaders to stubs, without regard to long-term tree health or structural integrity is prohibited.~~
- h. ~~Pruning operations maintain natural form and characteristic growth pattern of trees and shrubs as defined by pruning system.~~

Exceptions.

2. Specific pruning. The following pruning activities are allowed without the restrictions in B.1.a. and b. above, provided that the structural integrity and long-term health of the vegetation is preserved.

- a. (NUPA maintenance pruning)
- b. "Intensive Maintenance pruning systems"
- c. coppicing & pollarding
- d. Red alders
- e. Dead trees or dead parts of trees that pose a significant threat

e. Coppicing and pollarding. The coppicing or pollarding of big leaf maple (*Acer macrophyllum*), cottonwood (*Populus balsamifera* ssp. *trichocarpa*), willow (*Salix* sp.), hazelnut (*Corylus cornuta*) and vine maple (*Acer circinatum*) red alder (*Alnus rubra*) and any species listed in BIMC 16.20.090.B(3) is allowed, provided:

- i. No ground or root disturbance occurs as part of the cutting;
- ii. Trees or shrubs are less than 6 inches in diameter at 4-1/2 feet high;
- iii. Coppicing may only occur once every three years; and
- iv. Coppicing of ^{native trees} big leaf maple and red alder is not allowed in wetlands or fish and wildlife habitat conservation areas or their associated buffers.

3. Invasive species removal. The removal of the following vegetation with hand labor or hand held equipment provided: (a) the area of work is under 2,500 square feet in area and (b) any area of bare ground is planted with native species within the first appropriate growing season or otherwise protected by acceptable temporary erosion and sedimentation control strategies:

- a. Plants on the Kitsap County or Washington State Noxious Weed Control Board list of noxious weeds;
- b. English ivy (*Hedera helix*) from tree trunks or ground surface;
- c. Himalayan blackberry (*Rubus discolor*, *R. procerus*);
- d. Evergreen blackberry (*Rubus laciniatus*);
- e. English/Portuguese laurel (*Prunus laurocerasus/lusitana*);
- f. English holly (*Ilex aquifolium*);
- g. Scotch broom (*Cytisus scoparius*);
- h. English hawthorne (*Crataegus laevigata*); and
- i. Poison oak (*Toxicodendron diversilobum*).

C. The following tree and vegetation activities require city review and pre-approval of a local area permit:

1. Any tree or vegetation activity not included in BIMC 16.20.090.B.

2. Hazard trees.

a. Hazard tree removal or wildlife snag creation not within erosion and landslide hazard areas or a landslide hazard area setback at the top of slope is allowed provided that it shall comply with the following standards and submittal requirements:

- i. A report from an International Society of Arboriculture (ISA) Tree Risk Assessment Qualified (TRAQ) arborist that documents the hazard and provides a replanting plan for replacement trees;
- ii. Land owners are encouraged, but not required, to retain all or portions of removed hazard trees on site to provide wildlife habitat;
- iii. The land owner shall replace any trees that are removed with new trees at a minimum ratio of two replacement trees for each tree removed (2:1) within the first appropriate growing season in accordance with an approved planting plan. Replacement trees may be planted at a nearby location. Replacement trees shall be species that are native