

## 2017-18 Critical Areas Ordinance Update

January 30, 2018 Revised Public Hearing Draft

Summary of Changes to November 14, 2017 Draft

The following table summarizes proposed changes to the November 14, 2017 Revised Public Hearing Draft. These changes are provided for Council consideration prior to adoption of Ordinance 2018-01 and are also highlighted in the January 30, 2018 Revised Public Hearing Draft full text.

A summary of all public comments received during City Council review is provided in a separate document. The comment on which the proposed change is based is listed in the “Comment Number” column. Only those comments listed in the table below resulted in staff recommendations for changes to the draft. Council is welcome to propose additional changes based on review of all public comments received.

**Yellow** highlighted changes are based on public comments received through November 20, 2017.

**Green** highlighted changes are based on public comments received between November 21, 2017 – January 14, 2018.

**Blue** highlighted changes are based on staff input.

Items for **clarification only** are highlighted in gray in the Discussion column.

Number	Comment Number	Citation	Topic	Existing and Proposed Language	Discussion
1	45	16.20.040.A.2	Exemptions -- Existing agriculture	Existing and ongoing agricultural activities. For the purpose of this chapter, “existing and ongoing” means the activity has been conducted and/or maintained within the past five years under a farm management plan or other best management practices not resulting in a net loss of critical area functions and values. <b>New or expanded agricultural uses, activities, and accessory structures are not considered “existing and ongoing.” Existing, ongoing agricultural activities shall comply with applicable water quality regulations set forth in BIMC 15.20 and utilize best management practices to protect and enhance water quality.</b>	See Number 20 and 25, below. Existing and ongoing agriculture is an activity that is allowed to continue; however, it cannot result in a degradation of water quality. Requiring either a farm management plan or fencing for all existing and ongoing agriculture would be challenging to implement and is an after-the-fact regulation on an exempt activity. Proposed new language is intended to prohibit degradation of water quality and require use of best management practices, while not requiring fencing or a farm plan.
2	--	16.20.040.A.5	Exemptions	Normal and routine repair, maintenance and operation of existing retention/detention facilities, biofilters and other stormwater management facilities, irrigation and drainage ditches, and fish ponds; provided, that such activities shall not involve conversion of any wetland not currently being used for such activity. Any maintenance of ponds located in <b>stream habitat fish and wildlife habitat conservation</b>	Clarification only to include all FWHCAs, not just streams.

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				areas shall require approval from the Washington Department of Fish and Wildlife.	
3	--	16.20.040.A.10	Exemptions	The <u>construction installation</u> of low impact fencing within critical area buffers provided the location does not result in restricting wildlife movement, the location and installation is the least impactful to the critical area and buffer as possible, and there is no alternative to fencing to achieve the purpose of the fence.	Clarification only.
4	--	16.20.040.B.3	Exemptions – NVPA	<u>Development, uses or activities within critical aquifer recharge areas that do not meet the applicability criteria of BIMC 16.20.110.A.</u>	New language proposed to clarify that global critical areas regulations (e.g., standards for existing development, trees and vegetation) do not apply within the R-0.4, R-1 and R-2 zoning designations unless the applicability criteria are met (the hard surfaces and land disturbing activity thresholds) and designation of a NVPA is required.
5	--	16.20.050.C.1	Standards for Existing Development	<u>There is no change in the location of the improvement Any alteration is in substantially the same location as the original property improvement;</u>	Revised language to clarify that an alteration may not be in the exact location as the existing structure (e.g., an allowed addition). Clarification intended not to allow for strict reading of the language, which may preclude any alteration not in the same footprint.
6	64	16.20.090.B.1.a and b	Trees and vegetation – general pruning	a. Pruning operations of trees <u>that</u> do not remove more than 10 percent of living material (branches, stems and leaves) of an individual tree within any three-year period;  b. <u>Pruning operations conducted with an ISA-certified arborist on site that remove from 10 percent to 25 percent of living material within any three-year period;</u>	Clarification only.
7	--	16.20.090.B.2.b	Trees and vegetation – specific pruning	Within Native Vegetation Protection Areas delineated pursuant to BIMC 16.20.100.E, maintenance pruning of trees is allowed without the restrictions in B.1.a through c. above, provided the structural integrity and long-term health of the trees is preserved <u>and the trees are not located within another type of critical area;</u>	Language added to avoid loophole of allowing pruning within a critical area (e.g., wetland) that would otherwise not be allowed. Thresholds not intended to apply within the NVPA.
8	58	16.20.090.B.3	Trees and vegetation – invasive species removal	<u>a. Plants on the Kitsap County or Washington State Noxious Weed Control Board list of noxious weeds;</u> b. English ivy ( <i>Hedera helix</i> ) from tree trunks or ground surface; c. Himalayan blackberry ( <i>Rubus discolor</i> , <i>R. procerus</i> ); d. Evergreen blackberry ( <i>Rubus laciniatus</i> ); e. English/Portuguese laurel ( <i>Prunus laurocerasus/lusitanica</i> ) f. English holly ( <i>Ilex aquifolium</i> ); g. Scotch broom ( <i>Cytisus scoparius</i> );	Revised language intended to highlight certain species of concern while recognizing they are already on the noxious weed lists.

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				h. English hawthorne ( <i>Crataegus laevigata</i> ); and i. Poison oak ( <i>Toxicodendron diversilobum</i> ); and j. Any plant on the Kitsap County or Washington State Noxious Weed Control Board list of noxious weeds, as amended, whether or not listed above.	
9	43	16.20.090.B.4	Trees and vegetation – hazard tree removal	Hazard tree removal within Native Vegetation Protection Areas delineated pursuant to BIMC 16.20.100.E in accordance with tree removal provisions set forth in BIMC 16.18 provided the tree(s) is not located within another type of critical area.	New language proposed to clarify that hazardous tree removal is allowed without City review and approval within NVPAs.
10	43	16.20.100.A.1.a	CARA – Applicability	Any development, use or activity not associated with permitted principal and accessory residential uses pursuant to BIMC 18.09.020 with the potential to generate a pollutant identified by the U.S. EPA as a potential source of drinking water contamination (either in Appendix A of the Washington State Critical Aquifer Recharge Area Guidance Document or on the North American Industry Classification System as used by the city's Department of Public Works) or known to be deleterious to the environment or human health; and	Revised to exclude uses on EPA list that are commonly associated with single-family residential use and include the NAICS list currently used by the City's Public Works Department.
11	--	16.20.100.A.2	CARA -- Applicability	<del>This Section does not apply to areas located within the city's shoreline jurisdiction, which are regulated by the city's shoreline master program (BIMC 16.12).</del>	Language deleted per guidance from Ecology staff. Not needed since shoreline jurisdiction cannot be regulated by CAO.
12	43	16.20.100.B.3.b.i	CARA – Permit and review procedures	For proposals as described in BIMC 16.20.100.A.1.a:  Hydrogeological Site Assessment meeting the requirements of BIMC 16.20.180.A, Critical area reports. <u>If the applicant has completed a Site Assessment Review (SAR) in accordance with BIMC 15.19 that includes those sufficient information to address the elements listed in 16.20.180.A, the SAR will suffice to fulfill this requirement. Additional in-depth site assessment elements as detailed in 16.20.180.A may be required upon review of the SAR.</u>	Clarification only.
13	39, 67, 68, 69, 70, 72	16.20.100.E.1.b	CARA – NVPA	<u>Designation of a NVPA is not required for the following development, use or activity:</u>  <u>Removal of invasive species; and</u>  <u>Construction and use of public trails provided the standards set forth in BIMC 16.20.110.G.6.a through e. are met.</u>	Exemption provided for specific minor development/activities that would not have an adverse impact on aquifer recharge.
14	43	16.20.100.E.1.c	CARA -- NVPA	The location and configuration of the NVPA shall be determined through completion of a Site Assessment Review (SAR) in accordance with BIMC 15.19. The city may require a professional forester, ISA-certified arborist or landscape	New language provided to better define when a professional would be required.

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				architect to determine the location and configuration of the NVPA <b>if needed to ensure the NVPA design standards set forth in BIMC 16.20.100.E.2.a. through c. are met.</b>	
15	43	16.20.100.E.1.d	CARA – NVPA	The NVPA shall include all existing native vegetation on a site, up to a maximum of 65 percent of the total site area. A lower percentage <b>may be is</b> allowed if <b>needed necessary</b> to achieve a development area of at least 12,500 square feet on a parcel.	Clarification only.
16	--	16.20.100.E.1.g	CARA – NVPA	The total area required pursuant to c., above, shall be retained once established, although the location and configuration of the NVPA may change over time. Any alteration to the location or configuration of the NVPA shall be approved by the director and documented on a site plan included with a notice to title in accordance with BIMC 16.20.070.G. The city may require a NVPA stewardship plan prior to approving <b>a change to</b> the location and configuration of the NVPA.	Correction only.
17	39	16.20.100.E.2.e.iii	CARA – NVPA	<b>Removal of invasive plant species.</b>	Removal of invasive plant species added as an allowed activity in NVPA.
18	--	16.20.110.E.1 16.20.140.I.1	FWHCA – streams – buffers  Wetlands – buffers	All designated streams require a buffer pursuant to Table X. Buffers shall remain as undisturbed <b>native or enhanced</b> vegetation areas for the purpose of protecting the integrity, function, and value of stream resources. Any buffer modification proposed shall be through an approved Buffer Enhancement Plan. No uses or activities shall be allowed within the buffer unless allowed by this Section. If the buffer has previously been disturbed, the director may require the disturbed buffer area be <b>enhanced, including revegetated with native plant species, revegetated</b> pursuant to an approved Buffer Enhancement Plan meeting the requirements of BIMC 16.20.160.180. No refuse, including but not limited to household trash, yard waste and commercial/industrial refuse, shall be placed in the buffer.	Revised language to clarify that existing buffer may not be comprised of native vegetation.  <b>Same revisions proposed for wetland buffers.</b>
19	--	16.20.110.E.7 16.20.140.I.7	FWHCA – streams/structure setback  Wetlands – buffers	Structure or hard surface setback. A structure or hard surface setback line of fifteen feet is required from the edge of any stream buffer. Minor structural or impervious surface intrusions into the areas of the setback, such as but not limited to fire escapes, open/uncovered porches, landing places, outside walkways, outside stairways, retaining walls, fences and patios, may be permitted if the department determines upon review of an analysis of buffer functions submitted by the applicant, that <b>construction and/or maintenance of</b> such intrusions will not <b>encroach into the stream buffer or</b> adversely impact the stream. The functional analysis shall include a functional methodology	Revised language to clarify that construction of allowed intrusions shall not encroach into buffer itself.  <b>Same revisions proposed for wetland structure setback.</b>

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				supported by best available science. The setback shall be identified on a site plan and filed as an attachment to the notice on title as required by Section 16.20.070 (Notice on Title).	
20	45	16.20.110.G.5	FWHCA – Agriculture	<p><del>Agricultural Restrictions. New agricultural activities and new structures accessory to agriculture use are prohibited in fish and wildlife habitat conservation areas and their buffers. Existing, ongoing agricultural activities shall utilize best management practices so as not to result in a net loss of the functions and values of wetlands. Existing, ongoing agriculture shall avoid impacts to streams by either:</del></p> <p><del>Implementation of a farm resource conservation and management plan agreed upon by the Kitsap Conservation District and agriculture operator to protect and enhance water quality; or</del></p> <p><del>Installation of fencing no closer to the stream than the outer edge of its required buffer.</del></p>	See Number 1, above. Standards to do not need to be repeated.
21	58	16.20.110.G.8	FWHCA – Bank stabilization	Where bank stabilization is determined to be necessary, bioengineering or other non-structural methods should be the first option for protection. Structural methods, or hard stabilization, may only be utilized where it can be demonstrated <u>by a professional engineer licensed in the State of Washington</u> that an existing primary residential structure <u>or essential public facility</u> cannot be safely maintained without such measures, and that the resulting hard stabilization is the minimum length necessary to provide a stable building area for the structure. The director may require that bank stabilization be designed by a professional engineer licensed in the State of Washington with demonstrated expertise in hydraulic actions of shorelines. Bank stabilization projects may also require a City of Bainbridge Island clearing or grading permit and Hydraulic Project Approval from the Washington Department of Fish and Wildlife.	Language revised to required demonstration of need be completed by professional engineer and to allow bank stabilization for essential public utilities (e.g., roads).
22	--	16.20.120.B	FFA – Applicability	Development in frequently flooded areas shall be subject to the provisions in Chapter 15.16, Flood Damage Prevention. <u>Areas within the city's shoreline jurisdiction are regulated by the city's shoreline master program (Chapter 16.12).</u>	Language deleted per guidance from Ecology staff. Not needed since shoreline jurisdiction cannot be regulated by CAO.
23	--	16.20.130.A.2	Geologically hazardous areas – applicability	<u>This section does not apply to geologically hazardous areas located within the city's shoreline jurisdiction, which are regulated by the city's shoreline master program (BIMC 16.12).</u>	See Number 22, above.

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24	--	16.20.140.A.2	Wetlands – applicability	<del>This Section does not apply to wetlands located within the city’s shoreline jurisdiction, which are regulated by the city’s shoreline master program (BIMC 16.12).</del>	See Number 22, above.
25	45	16.20.140.H.1	Wetlands – agriculture	Agricultural restrictions. New agricultural activities and new structures accessory to agriculture use are prohibited in wetlands and their buffers. Existing, ongoing agricultural activities shall utilize best management practices so as not to result in a net loss of the functions or values of wetlands. Existing, ongoing agriculture uses other than those occurring in grazed wet meadows shall avoid impacts to wetlands by either:  Implementation of a farm resource conservation and management plan agreed upon by the Kitsap Conservation District and agriculture operator to protect and enhance water quality; or Installation of fencing no closer to the wetland than the outer edge of its required buffer.	See Number 1 and 20, above.
26	58	16.20.140.J	Wetlands – mitigation ratios	See revisions to Table 7.	Revisions to clarify/simplify and be more consistent with ratios provided in Ecology’s guidance document for CAO updates.
27	68	16.20.150.B	Winslow Ravine – Option B mitigated standards	No development, uses or activities are allowed within the buffer <u>other than public access meeting the standards of BIMC 16.20.110.G.6.a through e.</u>	Revised language proposed to allow for public access.
28	--	16.20.180.E.1.e	Geologically hazardous areas – report requirements	<u>A review of, and recommendations relating to, the low impact development (LID) infeasibility criteria in the 2014 Stormwater Management Manual for Western Washington, as amended, demonstrating reasonable consideration of all applicable LID practices.</u>	New language added to require review and consideration of LID practices.
29	57,58	16.20.190.A.72.a	Definitions – Type F stream	“Type F Stream” means a stream that has fish habitat. <del>If fish usage has not been determined, w</del> Water having the following characteristics are presumed to have fish use:	Revised language based on WDFW and Tribe input.
30	99	16.20.110.G	Standards for specific development – trails	Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches, interpretive centers, and viewing platforms, <del>may be are</del> allowed in fish and wildlife conservation area or their buffers <del>if there are no reasonable alternatives for meeting trail planning objectives and it is demonstrated through a Habitat Management Plan that the proposal will not result in a net loss of critical area functions and when</del> the following standards are met.  a. Trails and related facilities shall be placed on existing road grades, utility corridors, or any other previously disturbed	Revised language based on input from Bainbridge Parks Foundation. Major concern is that language stating trails “may be” allowed can be interpreted differently by different staff over time. The CAO anticipates that the specific development, uses and activities in BIMC 16.20.110.G and BIMC 16.20.140.H will occur within FHWCA’s and wetlands. If they are allowed if they meet the applicable standards, then the language should state they “are” allowed instead of they “may be” allowed.

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				<p>areas if present at the site and consistent with applicant's trail planning objectives.</p> <p>b. Trails and related facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat and disturbance to soil and existing hydrological characteristics;</p> <p>c. Viewing platforms, interpretive centers, benches and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected conservation area. Viewing platforms shall be limited to one hundred (100) square feet in size, unless demonstrated that a larger structure will not result in a net loss of fish and wildlife habitat functions;</p> <p>d. Trail planning shall utilize mitigation sequencing in BIMC 16.20.030 to first avoid siting trail and trail-related facilities within fish and wildlife habitat conservation areas and their required buffers. Trails and trail-related facilities are allowed in fish and wildlife conservation area or their buffers if there are no reasonable alternatives for meeting the applicant's trail planning objectives and it is demonstrated through a Habitat Management Plan that the proposal will not result in a net loss of critical area functions.</p> <p>e. Trails shall be limited to non-motorized use. Trail width shall not exceed six five feet unless there is a demonstrated need, subject to review and approval by the director. Trails shall be constructed with pervious materials unless otherwise approved by the director.</p>	<p>The word "applicant's" is added to clarify whose trail planning objectives will be considered.</p> <p>A six-foot wide trail width is thought to be needed to provide a safe clearing distance on either side of the trail bed itself. Regardless of the width, trail development is required to demonstrate no net loss of critical area functions and values.</p>
31	99	16.20.140.H.5	Standards for specific development – trails	<p>Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, are may be allowed in wetlands or wetland buffers only when the following standards are met:</p> <p>a. Trails and related facilities shall be placed on existing road grades, utility corridors, or any other previously disturbed areas if present at the site and consistent with trail planning objectives.</p> <p>b. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance, and maintain existing hydrological characteristics, shrubs, snags, and important wildlife habitat.</p> <p>c. Viewing platforms and benches, and access to them, shall be designed and located to minimize disturbance of</p>	See Number 30, above.

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				<p>wildlife habitat and/or critical characteristics of the affected wetland. Viewing platforms shall be limited to one hundred (100) square feet in size, unless demonstrated through a wetland critical areas report and mitigation plan that a larger structure will not result in a net loss of wetland functions.</p> <p>d. Trail planning shall utilize mitigation sequencing in BIMC 16.20.030 to first avoid siting trail and trail-related facilities within wetlands and their required buffers. Trails and trail-related facilities <b>are may be</b> allowed within wetlands or wetland buffers if there are no reasonable alternatives for meeting <b>applicant's</b> trail planning objectives and it is demonstrated through a wetland critical areas report and mitigation plan that the proposal will not result in a net loss of wetland functions.</p> <p>e. Trails shall be limited to non-motorized use. Trail width shall not exceed <b>six five</b> feet unless there is a demonstrated need, subject to review and approval by the director. Trails shall be constructed with pervious materials unless otherwise approved by the director.</p>	
32	101	16.20.090.C.3	Trees and vegetation	<p>Coppicing, <b>pollarding</b> and other or vegetation activities.</p> <p>a. The coppicing, <b>pollarding</b> or removal of any species listed in BIMC 16.20.090.B(2) and (3) in an area greater than 2,500 square feet shall:</p> <ul style="list-style-type: none"> <li>i. Include submittal of a replanting plan for city review and approval for any areas of bare ground; and</li> <li>ii. Demonstrate compliance with development standards in BIMC 16.20.130.D(1) as documented by a geotechnical engineer licensed in the State of Washington if located within erosion and landslide hazard areas and their buffers at the top of the slope.</li> </ul>	Pollarding should be included in the requirements for over 2,500 square feet since it is included in the under 2,500 square feet and a replanting plan would be needed.
33	102	Definitions	Invasive Species	<p>"Invasive/exotic species" means <b>opportunistic plant species (either native or nonnative) that colonize disturbed ecosystems and come to dominate the plant community in ways that are seen by us as reducing the values provided by the previous plant community. 1) non-native (or alien) to the ecosystem under consideration and 2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health, or as amended by the United States Department of Agriculture National Invasive Species Information Center (NISIC).</b></p>	A standard definition used by state and federal agencies is appropriate.