

## 2017/18 CRITICAL AREAS ORDINANCE UPDATE

### SUMMARY OF HIGHLIGHTED REVISIONS IN FEBRUARY 27, 2018 DRAFT

The following table provides a summary of the highlighted changes shown in the February 27, 2018 Revised Public Hearing Draft CAO. *Staff comments are provided in italics, as needed.*

	BIMC Citation	Proposed Revision
<b>Yellow highlighted changes (Council requested additional time to consider at January 30, 2018 study session)</b>		
1	16.20.040 Exemptions	<p>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></p> <p><i>The installation/construction of <u>new</u> composting/manure management was brought up as something that could be allowed as part of existing and ongoing agriculture. Staff from Kitsap Conservation District provided the following input: “...preventing people from building a livestock manure bin may increase the potential of manure laden runoff due to poor manure management. It would need to be properly placed though.”</i></p>
2	16.20.040 Exemptions	<p><b>Development, uses or activities within critical aquifer recharge areas that do not have the potential to generate a pollutant identified as a potential source of drinking water contamination pursuant to BIMC 16.20.100.A.1.a and are outside an Aquifer Recharge Protection Area (ARPA) if one has been designated pursuant to BIMC 16.20.100.E.</b></p> <p><i>This is a new exemption that was added by staff to provide clarification that the critical areas ordinance does not apply on all properties, even though the entire island is considered a critical aquifer recharge area. The exemption was included in the last draft, but Council requested wording that better stated the intent. (Note: a similar exemption is included in the existing CAO.)</i></p>
3	16.20.110.G.5 Fish and Wildlife Habitat Conservation Areas	<p>Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches, interpretive centers, and viewing platforms, <b>may be <u>are</u> allowed in fish and wildlife conservation area or their buffers 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 <u>when</u></b> the following standards are met.</p> <ul style="list-style-type: none"> <li>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 <b>applicant’s</b> trail planning objectives.</li> <li>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;</li> <li>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;</li> <li><b>d.</b> 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. <b>Trails and trail-related facilities are allowed in fish and wildlife conservation area or their</b></li> </ul>

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		<p>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 <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>
4	BIMC 16.20.G.4 Wetlands	<p>Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, <b>are may be</b> 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 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>
5	BIMC 16.20.150.B Winslow Ravine	<p>No development, uses or activities are allowed within the buffer <b>other than public access meeting the standards of BIMC 16.20.110.G.6.a through e</b>. If the buffer has previously been disturbed, the disturbed buffer area shall be revegetated pursuant to an approved Buffer Enhancement Plan meeting the requirements of BIMC 16.20.D. Refuse, including but not limited to household trash, yard waste and commercial/industrial refuse, shall not be located in the buffer and shall be removed if present.</p>
<p><b>Blue highlighted changes (New revisions for Council consideration)</b>            Note: Items 6-9, 11, and 12 are for clarification/reorganization only. Items 10 and 13-17 (highlighted in gray in left column) include more substantive revisions.</p>		
6	16.20.040.1 Exemptions	<p>After the emergency, the <b>person or agency undertaking the action landowner</b> shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical areas report and mitigation plan. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency and completed in a timely manner.</p> <p><i>This revision is proposed at the request of Bainbridge Island Fire District (BIFD) to clarify that emergency responders, or other agencies, would not be responsible for restoration and/or mitigation on private property.</i></p>
7	16.20.090.A Trees and Vegetation	<p>This Section applies to any tree and vegetation activity within <b>critical areas and their buffers or setbacks except for exempt activities described in BIMC 16.20.040, 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></p> <p><i>Clarification only.</i></p>

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8	16.20.090.B.2.b Trees and Vegetation	<p><del>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 and the trees are not located within another type of critical area;</del></p> <p><i>Deleted because new section addressing tree and vegetation activities in Aquifer Recharge Protection Area (formerly NVPA) added.</i></p>
9	16.20.090.B.4 Trees and Vegetation	<p><del>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.</del></p> <p><i>Deleted because new section addressing tree and vegetation activities in Aquifer Recharge Protection Area (formerly NVPA) added.</i></p>
10	16.20.090.B.4 Trees and Vegetation (new section)	<p><u>4. Tree and vegetation activities within Aquifer Recharge Protection Areas designated pursuant to BIMC 16.20.100.E, as follows:</u></p> <p><u>a. Notwithstanding any other provisions of this Chapter, the tree and vegetation activities listed in i. through iv., below, are allowed without city review and pre-approval provided the proposed activity is not located within (i) a critical area other than an Aquifer Recharge Protection Area or (ii) the buffers or setbacks of a critical area other than an Aquifer Recharge Protection Area;</u></p> <ul style="list-style-type: none"> <li>i. <u>Hazard tree removal in accordance with tree removal provisions set forth in BIMC 16.18;</u></li> <li>ii. <u>Invasive species removal;</u></li> <li>iii. <u>Maintenance pruning of trees, shrubs, and hedges without the restrictions in B.1.a through c. above, provided the structural integrity and long-term health of the vegetation is preserved;</u></li> <li>iv. <u>Wildfire mitigation activities, other than tree removal, within a 30-foot defensible space around a primary structure, in accordance with the Bainbridge Island Community Wildfire Protection Plan and as described by Section 603 of the International Wildland Urban Interface Code; and</u></li> </ul> <p><u>b. Removal of one or more significant trees, as defined in BIMC 16.20.180 and not including hazardous trees, requires City review and pre-approval of an Aquifer Recharge Protection Area stewardship plan prepared in accordance with BIMC 16.20.180.H.</u></p> <p><i>This new section is added to list specifically what is allowed without City review and pre-approval in the ARPA and addresses BIFD's concern regarding the allowance of wildfire mitigation activities. The non-highlighted items were allowed within the ARPA (formerly NVPA) in previous drafts.</i></p>

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11	16.20.100.A Aquifer recharge areas	<p>Applicability. <u>Aquifer recharge areas are areas that have a critical recharging effect on groundwater used for potable water supplies and/or that demonstrate a high level of susceptibility or vulnerability to groundwater contamination from land use activities. In accordance with WAC 365-190-100, the entirety of Bainbridge Island is classified as an aquifer recharge area to preserve the volume of recharge available to the aquifer system and to protect groundwater from contamination. This section applies to:</u></p> <p><u>1. This Section applies to:</u></p> <ol style="list-style-type: none"> <li>Any development, use or activity not associated with permitted principal and accessory residential uses pursuant to BIMC 18.09.020 that has the potential to generate a pollutant identified 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</li> <li><u>Any development, use or activity within designated critical aquifer recharge areas, which include all parcels within the R-0.4, R-1 and R-2 zoning districts, that qualifies as a regulated use or allowed activity pursuant to BIMC 15.20.040 in accordance with the thresholds in BIMC 15.20.060—Table 1. Any proposed development or activity requiring a site assessment review (SAR) pursuant to BIMC 15.19 and 15.20 located within the R-0.4, R-1 or R-2 zoning designations unless excluded by subsection BIMC 16.20.100.E.1.</u></li> </ol> <p><i>Clarification only.</i></p>
12	16.20.100.B Aquifer recharge areas	<p>Permit review and procedures</p> <p>c. <u>Proposals described in BIMC 16.20.100.A.2 shall require submittal of a site assessment review application.</u></p> <p><i>Clarification only.</i></p>
13	16.20.100.D Aquifer recharge areas	<p>D. Development standards <u>— general</u></p> <p><u>1. All proposals for new development or redevelopment shall incorporate low impact development techniques or other best management practices into the site design in order to disperse and/or infiltrate stormwater runoff to ensure that there is no net loss of infiltration as a result of the development or redevelopment.</u></p> <ol style="list-style-type: none"> <li>No development, use or activity may exceed water <u>quality</u> standards <u>or sediment quality standards</u> or otherwise violate the anti-degradation requirements specified in WAC Chapters 173-200, <u>173-201A, and 173-204.</u></li> <li><u>Any development or activity that is not exempt or excluded by subsection BIMC 16.20.100.E.1 shall ensure sufficient groundwater recharge, defined as maintaining 100 percent of the annual average pre-construction groundwater recharge volume for the site. The primary means to ensure sufficient groundwater recharge shall be through the designation of an Aquifer Recharge Protection Area in accordance with BIMC 16.20.100.E.</u></li> </ol> <p><i>Largely for clarification to better state that the overall development standard for all development is to maintain groundwater recharge, provide a definition for what that means, and state that the primary means of achieving the standard is through designation of an Aquifer Recharge Protection Area.</i></p> <p><i>Native Vegetation Protection Area (NVPA) name changed to Aquifer Recharge Protection Area (ARPA) to better reflect intent of standard.</i></p>

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14	16.20.100.E Aquifer recharge areas	<p>E. <u>Development standards – Aquifer Recharge Protection Area (ARPA). Native Vegetation Protection Area (NVPA) requirements. Native vegetation retention is a fundamental method for critical aquifer recharge area protection. Sixty-five percent or more of the development site should be protected for the purposes of retaining or enhancing existing native forest and vegetation cover to maximize aquifer recharge opportunities.</u></p> <ol style="list-style-type: none"> <li>1. <u>Any proposed development or activity requiring a site assessment review (SAR) pursuant to BIMC 15.19 and 15.20 located within the R-0.4, R-1 or R-2 zoning designations requires designation of an ARPA; except, designation of an ARPA is not required for the following:</u> <ol style="list-style-type: none"> <li>a. <u>Removal of invasive species;</u></li> <li>b. <u>Construction of public trails provided the standards set forth in BIMC 16.20.110.G.1.a through e. are met;</u></li> <li>c. <u>Replacement of hard surfaces; and</u></li> <li>d. <u>Development and activities located on properties protected in perpetuity by a legal instrument acceptable to the City Attorney wherein at least 65 percent of the site meets the development standards for aquifer recharge protection areas of this section.</u></li> </ol> </li> </ol> <p><i>Largely for clarification. Two new exclusions from ARPA requirement: <u>replacement of hard surfaces and development on “already protected” properties. Not requiring an ARPA on already protected properties addresses concerns raised by the Park District and other organizations that own/manage properties within existing protective covenants on which the ARPA would be redundant.</u></i></p>
15	16.20.100.E.3.d Aquifer recharge areas	<p>The <u>NVPA ARPA</u> may include landscaping or open space requirements pursuant to BIMC 18.15.010.D and E and BIMC 17.12, respectively, and other critical areas and their buffers <u>or setbacks</u> pursuant to other sections of this chapter <u>if they contain native vegetation.</u></p> <p><i>Three revisions are proposed:</i></p> <ul style="list-style-type: none"> <li>• <i>Referencing BIMC 18.15.010.D and E that are specific to roadside and perimeter landscaping requirements (not entire subsection, which would include other landscaping requirements like parking lot landscaping)</i></li> <li>• <i>Including setbacks, which is what the “buffer” is called for geologically hazardous areas. It would also include the building and structure setback for wetlands and streams.</i></li> <li>• <i>Allowing other critical areas and their buffers or setbacks to be included in the ARPA even if they <u>do not</u> contain native vegetation. It is not uncommon for critical areas and their buffers to not contain native vegetation, but there is still value in protecting them.</i></li> </ul>
16	16.20.100.E.4 Aquifer recharge areas	<p>4. <u>ARPA use standards. The following developments and activities are allowed within a designated ARPA:</u></p> <ol style="list-style-type: none"> <li>a. <u>Any structure or activity as long as the new structure or activity is shown to not negatively impact the amount of groundwater recharge on the site. Specifically, any structure or activity is allowed as long as the structure or activity (including mitigation measures, if any are needed) maintains 100 percent of the annual average groundwater recharge volume that existed on the site prior to the structure or activity as demonstrated by the 2012 Western Washington Hydrology Model (WWHM2012) recharge module, as amended, or other methodology acceptable to the City Engineer.</u></li> <li>b. Tree and vegetation activities specified in BIMC 16.20.090.</li> <li>c. Installation of native plants.</li> <li>d. Removal of invasive plant species.</li> <li>e. Passive recreation, including pervious trails.</li> <li>f. Potable water wells and well houses.</li> <li>g. Low impact fencing or signs marking the <u>NVPA ARPA</u> boundary.</li> <li>h. On-site sewage drainfield facilities, <u>if the applicant can demonstrate that (a) the proposed facility will not adversely affect the function or characteristics of the NVPA;</u></li> </ol>

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		<p>and (b) construction of the system will not require the use of heavy equipment or removal of vegetation, including significant trees.</p> <p>i. Storm drainage facilities if the applicant can demonstrate that (a) the proposed use will not adversely affect the function or characteristics of the NVPA, (a) the system meets the low impact design (LID) standards of BIMC 15.20, and (b) construction of the system will not require the use of heavy equipment or removal of vegetation, including significant trees.</p> <p>j. Accessory solar panels, small wind energy generators, composting bins, rainwater harvesting barrels, and cisterns, as defined in BIMC 18.36.</p> <p>k. Other structures or hard surfaces with a total footprint of no greater than 200 square feet.</p> <p>l. Driveways may be allowed to pass through the NVPA if (a) siting of the driveway within the NVPA is determined by the director to be necessary to achieve greater native vegetation retention and use of non-structural low impact design practices, (b) site utilities are installed within the footprint of the driveway, (c) siting of the driveway avoids removal of significant trees to the maximum extent feasible and (d) the total area required pursuant to BIMC 16.20.100.E.1 is achieved, which may require replanting of areas comprised of non-native vegetation.</p> <p>m. <u>Removal of any significant tree, other than hazard tree removal, with City review and pre-approval of an Aquifer Recharge Protection Area stewardship plan prepared in accordance with BIMC 16.20.180.H.</u></p> <p><i>Slight revisions proposed largely for clarification:</i></p> <ul style="list-style-type: none"> <li>• Allowance for any structure or activity with demonstration of maintaining aquifer recharge, and method for doing so, moved to top of list</li> <li>• Sewage and storm drainage facilities language revised to lower burden on applicant; allow for vegetation removal other than significant trees, since not allowing any vegetation removal would likely preclude installation of these facilities</li> <li>• Added allowance for removal of significant trees with a stewardship plan (same language included in 16.20.090.B.4 – trees and vegetation section)</li> </ul>
17	16.20.180 Definitions	<p><u>“Aquifer recharge protection area” means a portion of a development site comprised of native or equivalent vegetation in which existing vegetation, topography and supporting soils are free of development, uses or activities detrimental to the aquifer recharge of the total site area.</u></p> <p><u>“Native vegetation protection area (NVPA)” means a portion of a development site comprised of native vegetation in which existing vegetation, topography and supporting soils are free of development, uses or activities detrimental to the infiltration capacity and critical area functions and values of the total site area.</u></p> <p><i>Definitions changed to reflect change in name. Note “native vegetation” changed to “native or equivalent” vegetation in new definition. “Native or equivalent” is defined in the CAO.</i></p>