







## **INFORMATIONAL MEMORANDUM**

**TO:** Community Development and Neighborhoods  
**FROM:** Jack Pace, DCD Director  
**BY:** Minnie Dhaliwal, Planning Supervisor  
**CC:** Mayor Ekberg  
**DATE:** September 4, 2019  
**SUBJECT:** Critical Areas Code Update

### **ISSUE**

The City of Tukwila is required to periodically review and update its Critical Areas regulations to reflect current best available science (BAS) as required by the Growth Management Act.

### **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 critical area regulations were adopted nine 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.

### **PUBLIC OUTREACH**

Outreach to affected property owners throughout the City included mailings, webpage updates, stormwater bill inserts, eHazelnut newsletter and an open house. A public open house was held on October 9, 2018 at the Tukwila Community Center. The notice of the open house and the Planning Commission hearing was mailed to all property owners and tenants in Tukwila along with email notices to interested parties and agencies with jurisdiction. Additionally, a website page ([www.tukwilawa.gov/criticalareas](http://www.tukwilawa.gov/criticalareas)) was maintained where general members of the public can keep up with the update process.

Subsequent to the open house, staff developed a set of policy options and had a work session with the Planning Commission on this item on November 8, 2018. The second work session was held on February 28, 2019. The Planning Commission (PC) held a public hearing on April 11, 2019. The PC started their deliberations on May 23, 2019 and finalized their recommendations to the City Council on June 27, 2019. All background reports including the Gaps Analysis Report prepared by the The Watershed Company and the five staff reports to the Planning Commission are available online. Here is the link to the [website](#).

## **DISCUSSION**

The Planning Commission's recommended draft is included in a separate binder. 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. See table below for the current buffer width requirements and the proposed changes required based on habitat score.

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"> <li>Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>Locate activity that generates noise away from wetland</li> <li>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>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</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>Establish covenants limiting use of pesticides within 150 feet of wetland</li> <li>Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>Prevent channelized flow from lawns that directly enters the buffer</li> <li>Use Low Intensity Development (LID) techniques where appropriate (for more information refer to the drainage ordinance and manual)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and Human Disturbance	<ul style="list-style-type: none"> <li>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>Use best management practices to control dust</li> </ul>

**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.

**9. Wetlands buffers associated with restoration projects that include creation of an off-channel habitat projects.**

For shoreline restoration projects that result in a change in the location of the ordinary high water mark and associated shoreline jurisdiction on the subject property and/or adjacent properties, relief may be granted from Shoreline Master Program standards and use regulations. However, the relief for restoration projects is limited to ordinary high water mark and not buffers of any associated critical areas such as wetlands. Therefore, a new subsection is recommended by the Planning Commission:

*TMC 18.45.90 Wetlands Uses, Alterations and Mitigation (D) Wetland and Buffer Mitigation Location:*

*7. Wetland creation for restoration projects may only be approved if the applicant can show (1) that the adjoining property owners are amenable to having wetland buffers extend onto or across their property; or (2) that the on-site wetland buffers are sufficient to protect the functions and values of the wetland and the project as a whole results in net environmental benefit.*

**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<sub>P</sub> (Non-fish bearing perennial), N<sub>S</sub> (Non-fish bearing seasonal). No change in the buffers of S, F, N<sub>S</sub>. The standard buffers of N<sub>P</sub> 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 <sub>P</sub>	Standard buffer 80 Alternate buffer in the range of 50-65 with buffer enhancement
N <sub>S</sub>	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 ¾ 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 five years 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 Management in the Tree, Landscape, Critical Areas and Shoreline Chapter**

The purpose of these proposed amendments is to provide consistency between the four chapters and address lessons learned during implementation of the newly adopted Tree and Landscape Code. Additionally, applicability sections are added to explain which Chapter applies when there is an overlap. These include regulations pertaining to tree retention, removal and replacement requirements.

**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

**FINANCIAL IMPACT**

No direct impacts are expected due to these changes.

**RECOMMENDATION**

The Council is being asked to hold a public hearing on the proposed changes at the September 23, 2019, Committee of the Whole meeting. Staff will then return with a comment matrix for the City Council to review at subsequent meetings.

**ATTACHMENT**

The separately distributed binders contain:

1. Chapter 18.45 (Critical Areas Chapter) showing the bulk of the proposed changes- strikeout/underline version
2. Chapter 18.70 (Non-Conforming regulations)- strikeout/underline version
3. Chapter 18.54 (Tree Chapter)- strikeout/underline version
4. Chapter 18.52 (Landscape Chapter)- strikeout/underline version
5. Chapter 18.06 (Definitions Chapter)- strikeout/underline version
6. Chapter 18.45 (Critical Areas)- clean version
7. Public Comments received at the Planning Commission hearing
8. A matrix of staff responses to the public comments
9. Planning Commission meeting minutes





### COMMUNITY DEVELOPMENT & NEIGHBORHOODS COMMITTEE

Meeting Minutes

September 10, 2019 – 5:30 p.m. – Hazelnut Conference Room, City Hall

Councilmembers: De'Sean Quinn, Chair; Dennis Robertson, Verna Seal

Staff: David Cline, Minnie Dhaliwal, Andrea Cummins, Laurel Humphrey

Guest: Nicole De Leon, Cairncross & Hemplemann

**CALL TO ORDER:** Chair Quinn called the meeting to order at 5:30 p.m.

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#### I. PRESENTATIONS

#### II. BUSINESS AGENDA

##### A. Board & Commission Appointments

As follow up to previous Committee discussions on the process for appointments to the City's Boards & Commissions, staff presented updated documents that reflect the Committee's input. The application form is now available to be completed online and includes a new statement of interest section as well as an optional personal/demographic section. Those interested in additional terms must now submit a reapplication form, which is also available online. The "City of Tukwila Advisory Boards, Commissions and Committees Handbook" has been updated, and there is a new Administrative Policy to formalize processes. Committee members expressed support for the updates. Chair Quinn suggested that when interviews occur the Council President should be invited, and this should be added to the written procedure where applicable. **UNANIMOUS APPROVAL.**

##### B. Ordinances: Critical Areas Code Update

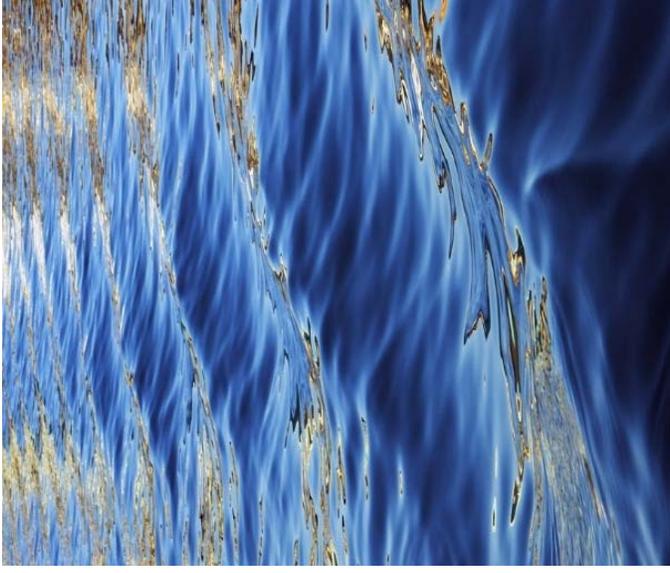
 Staff provided an overview of draft legislation to update the Critical Areas regulations to reflect current best available science as required by the Growth Management Act. The Planning Commission held several work sessions and a public hearing on this topic and finalized their recommendations in June. Staff reviewed the Planning Commission's recommendations and answered clarifying questions. Committee members asked for hard copies of all five staff reports to the Planning Commission. The draft legislation will return to Committee following the September 23 Public Hearing. **FORWARD TO SEPTEMBER 23, 2019 COMMITTEE OF THE WHOLE FOR PUBLIC HEARING**





# Tukwila Critical Areas Code Update

September 23, 2019



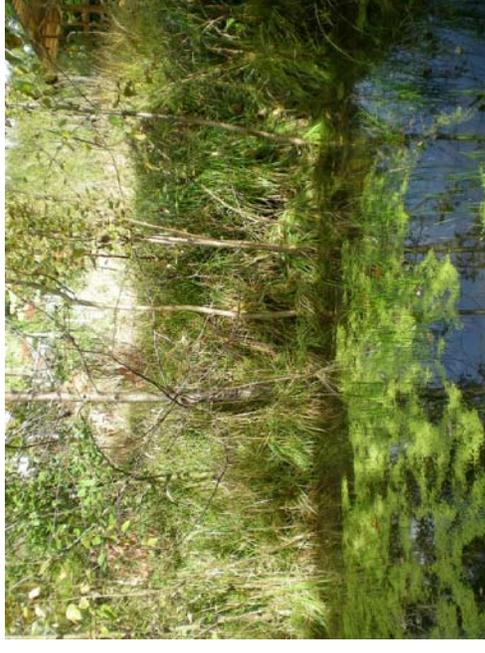
# What is regulated under the Critical Area Ordinance?

- Wetlands and their Buffers
- Streams and their Buffers
- Steep slopes and Geologically Hazardous Areas
- Fish and Wildlife Habitat Areas



## Tukwila is updating its Critical Areas Regulations:

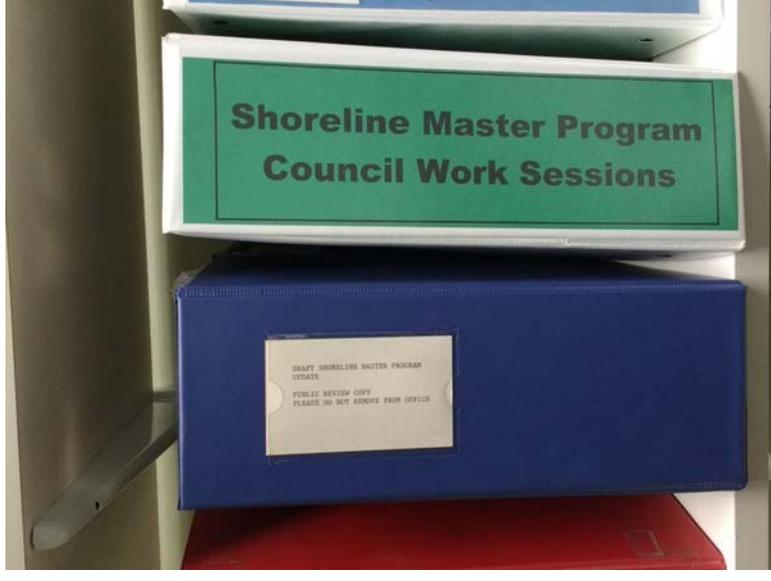
- Critical Areas Regulations for wetlands, watercourses and steep slopes
- The following regulations in the Zoning Code are being updated:
  - Critical Areas Chapter 18.45
  - Tree Chapter 18.54
  - Landscape Chapter 18.52
  - Non-conforming Chapter 18.70



## Why now?

Periodic updates are required by Washington State to ensure that local regulations:

- Keep up with changes to State Law
- Reflect Best Available Science (BAS)
- Critical Areas Regulations were last updated in 2010

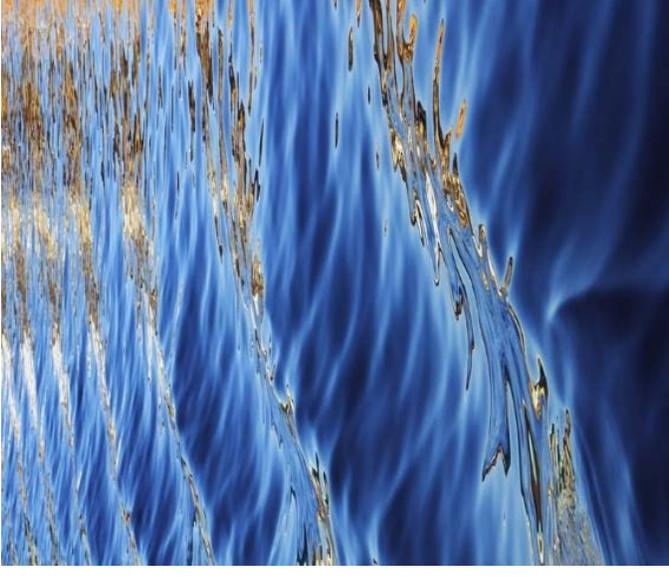


# Public Outreach

- Mailings
- Webpage updates
- Stormwater bill inserts
- eHazelnut newsletter
- Open house
- Interested parties email list
- Planning Commission –work sessions &Public hearing



# Proposed Updates



## Wetlands:

- **Wetland assessment protocol**  
Approved Federal Delineation Manual

Current Ecology rating system will be incorporated into the new code

Five-year term limit on reports

- **Wetland buffer width**

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.

Buffer averaging replaces buffer reduction.

Interrupted buffer provisions added



## Wetlands:

- **Alterations:** No change to exemption size of 1000 sf
- **Mitigation Standards-** buffer mitigation at 1:1
- **Wetland and buffer mitigation location-** fee in lieu and mitigation banking added
- **Wetlands buffers associated with restoration projects that include creation of an off-channel habitat projects-adjacent** property owner permission required or on-site wetland buffers sufficient to protect functions and values of the wetland.

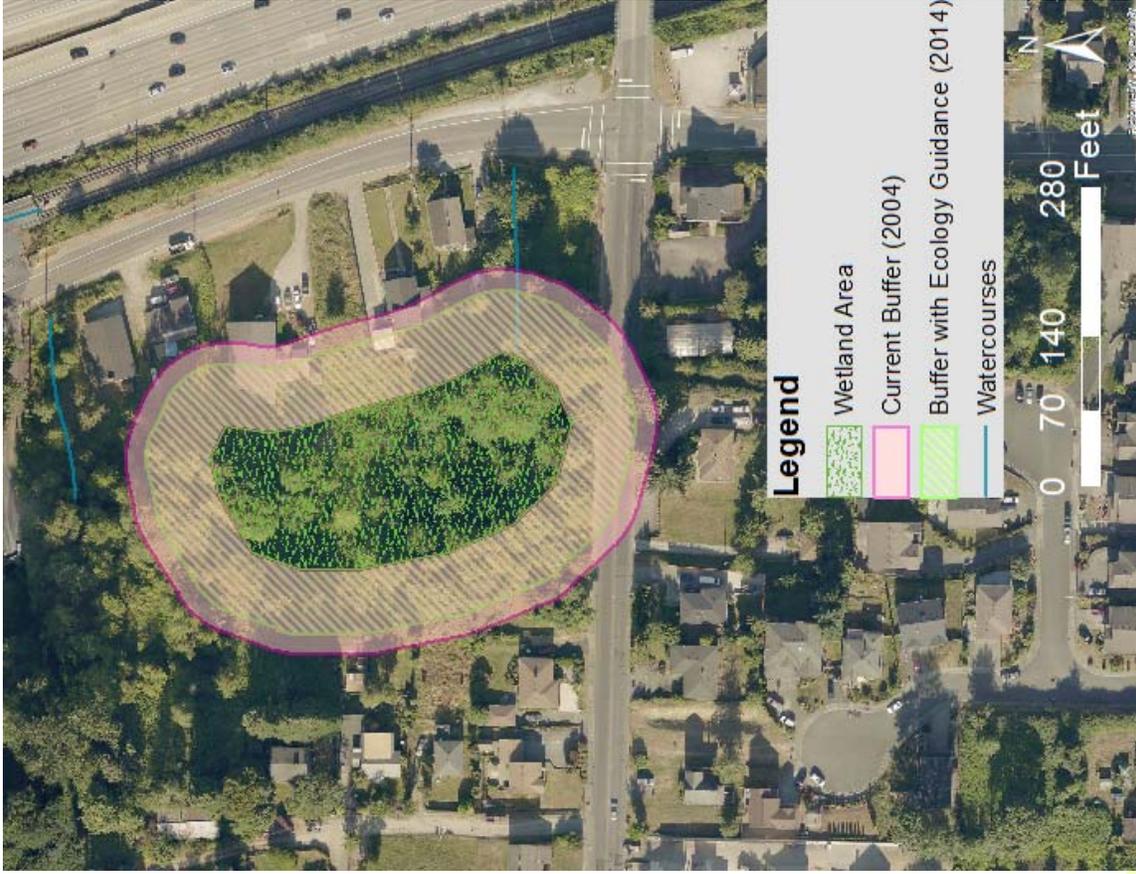
Wetland buffer width (ft), Ecology 2014, high-intensity land use impact							
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II	100	100	75	150	110	300	225
III	80	80	60	150	110	300	225
IV	50	50	40	50	40	50	40

Add a footer

# Example

Wetland # 37

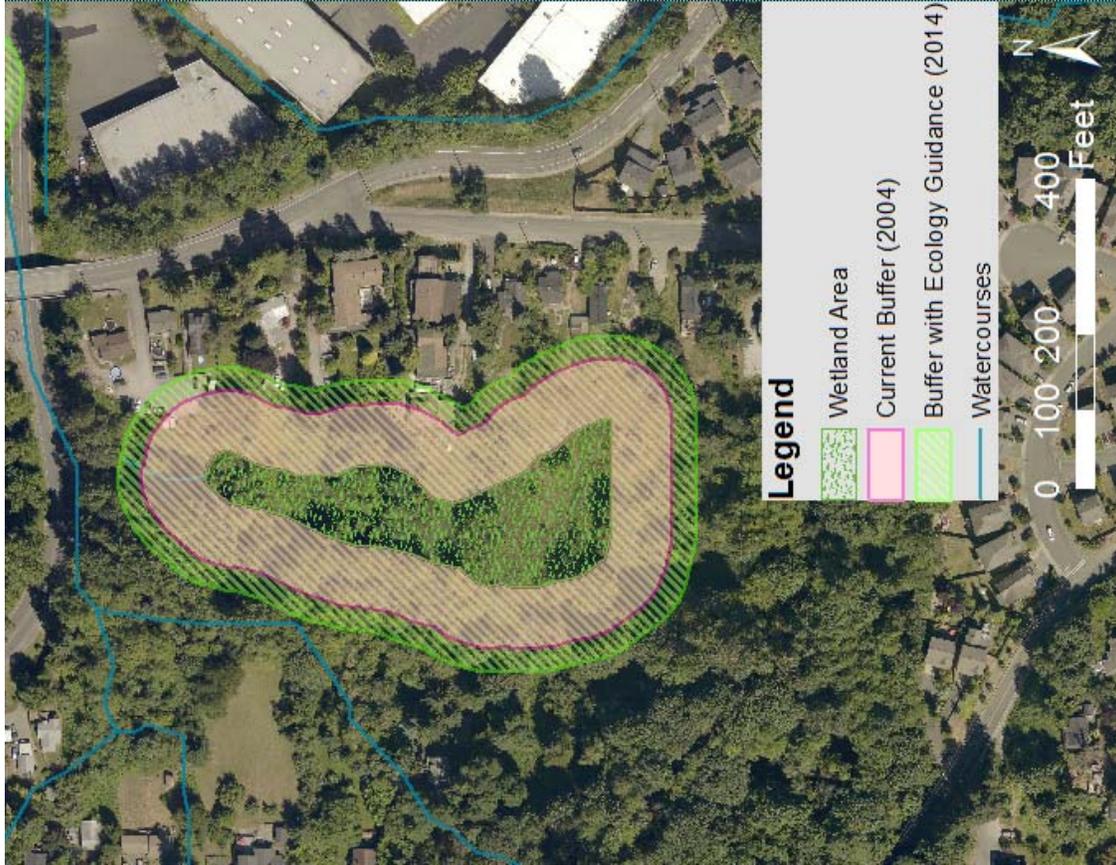
- Category III Wetland (2004)
  - Current buffer of 80 feet
- Category III Wetland (2014) with habitat score of 5 (moderate)
  - Buffer of 60 feet with minimization measures per Ecology guidance



# Example

Wetland # 31

- Category III Wetland (2004)
  - Current buffer of 80 feet
- Category II Wetland (2014) with habitat score of 6 (moderate)
  - Buffer of 110 feet with minimization measures per Ecology guidance



## Streams:

- Stream typing designation update  
City typing will be updated to correspond with that of WDFW
- Stream buffer width-no change

Stream Type	Watercourse Buffer (ft)
<b>S</b> Shoreline	Regulated under Shoreline Master Program 100
<b>F</b> Fish bearing	
<b>Np</b> Non-fish perennial	Standard buffer 80 Alternate buffer in the range of 50-65 with buffer enhancement
<b>Ns</b> Non-fish seasonal	50



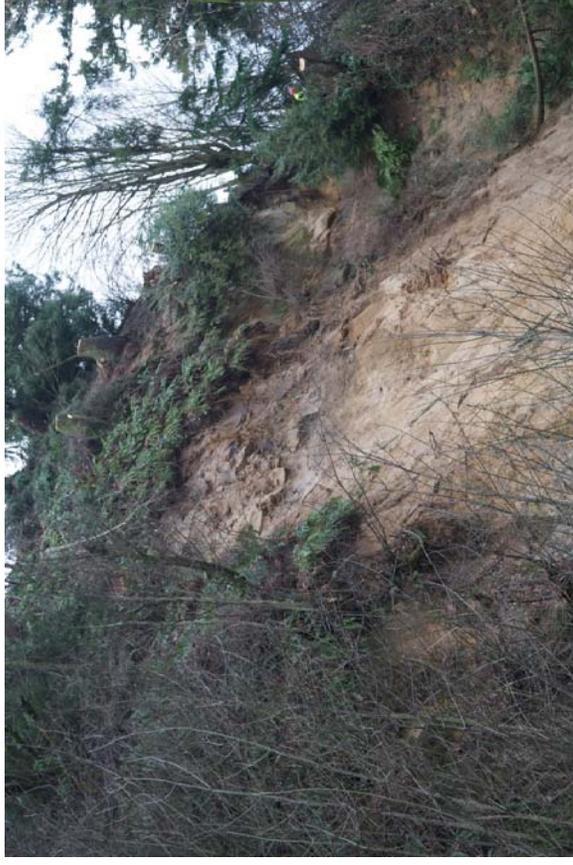
Buffer averaging substitutes for buffer reductions

Interrupted buffer

## Steep Slopes

- Geologically Hazardous Areas clarifications

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



- **Fish and Wildlife Habitat Conservation Areas**

The city's list of fish and wildlife habitat conservation areas made consistent with GMA definition

Reference to mapping sources added.

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.

- **Special Hazard Flood Areas**

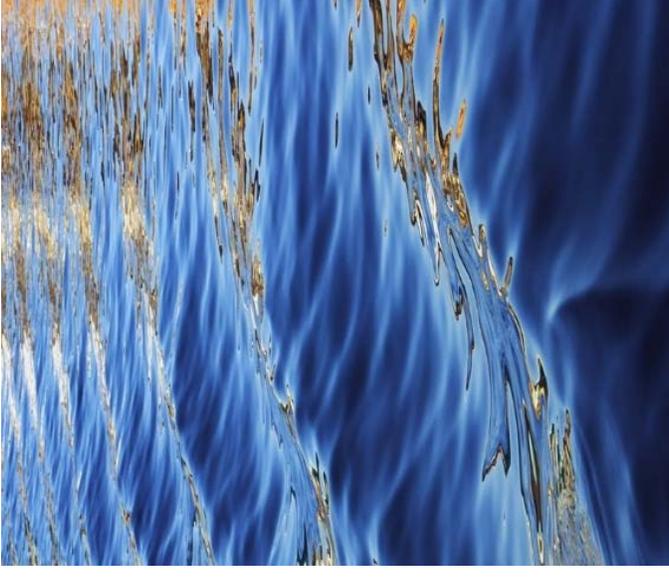
Reference added to Special Hazard Flood Areas TMC Chapter 16.52; and floodplain habitat assessment requirements included.

## Housekeeping Amendments

1. Vesting.
2. Expiration of decisions related to critical areas: Five years
3. Permitted uses changed to permitted activities section
4. Vegetation Management in the Tree, Landscape, Critical Areas and Shoreline Chapter
5. Reorganization: 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
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.
  - Vertical expansion
  - Lateral expansion opposite side
  - Lateral expansion along sides
8. Inventory update: Add requirement for the applicant to provide surveyed data for maintenance of the City's Critical Areas inventory map



# Process and Timeline

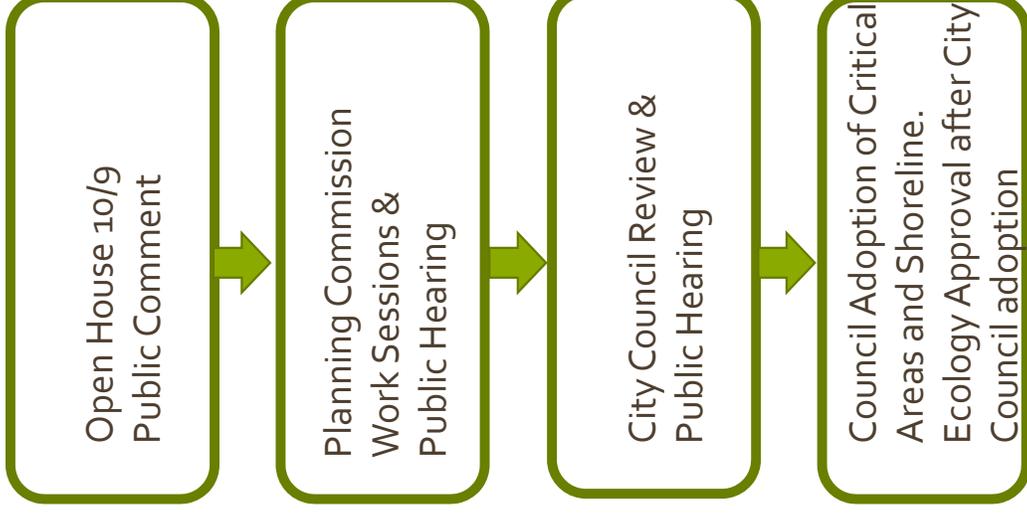


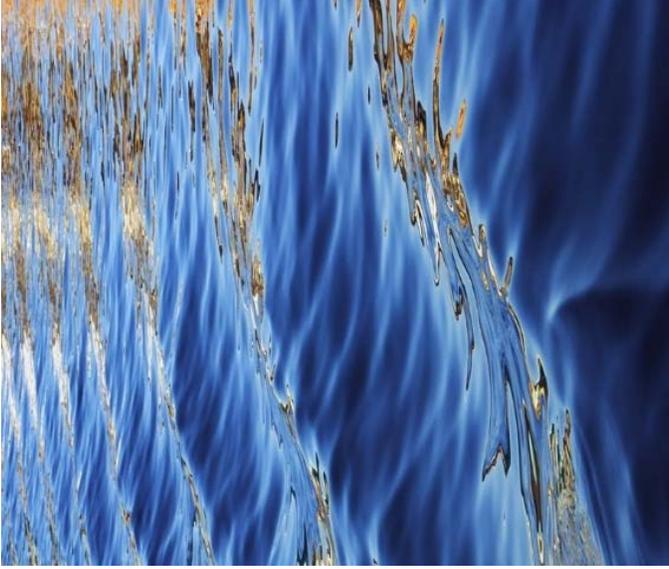
# Update Process

Project documents, meeting announcements, and other resources posted to the City's website at:

<http://www.tukwilawa.gov/criticalareas>

Staff will return with a summary of all public comments for CC final action.





# Questions

