



Memorandum

DATE: August 18, 2015

TO: Shoreline Planning Commission

FROM: Juniper Nammi, AICP, Associate Planner

RE: Critical Areas Ordinance Implications for Shoreline Master Program

As part of the current critical areas ordinance (CAO) update project, staff is recommending that the City update the critical area regulations in the 2013 Shoreline Master Program (SMP). The Growth Management Act and Shoreline Management Act do not require that the critical areas regulations in the SMP be updated until the next SMP periodic review deadline of 2020. Staff is recommending this limited amendment to the SMP so that the properties within 200 feet of the Puget Sound shoreline (shoreline jurisdiction) benefit from regulations that incorporate best available science and have the same clear and up to date regulations for critical areas that apply in the rest of the City. Staff believes that incorporating the updated CAO into the SMP will result in better protection of critical areas and the safety of life and property, more accessible regulations, and more predictable permit review processing.

Planning Commission has received a number of public comments from property owners concerned about the potential impacts of these changes on their ability to maintain and improve their property within the shoreline jurisdiction. In response to these comments, Planning Commission requested a memorandum from staff listing the pros and cons of incorporating the CAO update into the SMP. As requested the following are the staff identified implications of updating or not updating the critical areas regulations in the SMP at this time.

CORRECTION: Staff previously indicated that there are currently two different applicable sets of regulations for flood hazard areas in the shoreline jurisdiction. In rereading the language incorporating the critical areas regulations, it is clear that the Critical Areas Ordinance 398 was incorporated without including any subsequent updates. The 2012 update to the flood hazard areas regulations in Chapter 20.80, Subchapter 5 does not currently apply within the shoreline jurisdiction.

Implications of no change to SMP:

- **Two Separate Critical Areas Codes.** Critical areas in the shoreline jurisdiction would be regulated by the critical area regulations in Ordinance 398 adopted February 27, 2006, except the sections of Ordinance 398 excluded in SMC 20.230.030(A)(1) General

Regulations and supplemented by additional regulations for Floodplain Management in SMC 20.230.030(B) and Wetlands in SMC 20.230.030(C). No updates to these regulations since February 27, 2006, apply until such a time as the SMP is updated.

- **Code Interpretation to Resolve Conflicts.** Submittal and permitting requirements for permits affecting critical areas in the shoreline jurisdiction would differ from those affecting critical areas in the rest of the City. Code interpretation would be needed where permit processing responsibility and required permit types have changed. In particular, the floodplain regulations were updated for compliance with the Endangered Species Act (ESA) and administrative code interpretation would be required to ensure that the SMP floodplain regulations together with the 2006 CAO floodplain regulations comply with the ESA.
- **Longer Review Time.** Additional time would be needed for staff and permit applicants to research and understand the applicable regulations since Ordinance 398 would not be regularly used by staff and conflicts with current permit processing.
- **Split Regulation of Critical Areas.** In critical areas other than wetlands, if the property in question is partially in and partially out of the shoreline jurisdiction, different regulations would apply to the critical areas within and outside of the shoreline jurisdiction.
- **Differing Standards Between Local and State/Federal Levels.** Where projects require both local and state approvals, the most recent version of the State Wetland Rating System must be used for the state approval process in addition to adopted local SMP regulations. This necessitates multiple ratings to be conducted by a qualified professional.
- **Incorporation of Current Science Required for Project Review.** Site specific review of projects within the shoreline jurisdiction should utilize the most current and relevant science on a project by project basis. This is easier to do when the regulations already incorporate the most current, accurate and complete scientific and technical information.

Implications of changing SMP:

- **Simplified Code Administration.** Staff, property owners, and applicants would not have to manage and understand two separate sets of critical areas regulations to determine what standards apply and how to administer them. Properties partially within the shoreline jurisdiction would not be subject to split critical area regulations dependent on the portion of the property proposed for alteration.
- **Consistency of Process.** Proposed changes to critical area report requirements, qualified professional qualification requirements, third party review thresholds, triggers for critical area reasonable use and special use permits, and decision criteria would apply to projects in the shoreline jurisdiction. These changes are proposed to provide clarity, facilitate better critical area report submittal, improve predictability in the review process, and reduce the likelihood of corrections being required.

- **Consistency of Standards Between Jurisdictions.** Critical area reports for projects that require state and/or federal approval would not have to conduct additional rating determinations to meet different local, state and federal regulations. One critical area delineation and rating approach would meet multiple jurisdictional standards.
- **Clear Adoption of Critical Area Maps.** The new CAO clearly lists maps and data sources for identifying critical areas making it easier to identify potential critical areas subject to these regulations.
- **Notice to Title.** Proposed changes to the notice to title provisions would be available in the shoreline jurisdiction allowing for better notification to property owners of the presence of regulated critical areas. These provisions allow greater flexibility in how limitation on title are administered to fit the critical area type and development proposal. Unintentional violations would be less likely with stronger notice to title requirements.
- **Code Enforcement Provisions.** The new code enforcement provisions for critical areas would apply. These include easier to calculate civil penalties and put into regulation current policy for restoration plan submittal to remediate critical areas violations.
- **Allowed Alteration of Short Landslide Hazards and Small, Isolated Wetlands.** The Exemptions (SMC 20.80.030) and Partial Exemptions/Allowed Activities (SMC 20.80.040) do not apply within the shoreline jurisdiction under the existing SMP or under the proposed changes. However, the proposed changes incorporate two of the exemptions into the critical areas regulations by redefining the classification of landslide hazard areas to exclude small steep slopes and by allowing modification of small, isolated wetlands when the impacts are mitigated. New allowed activities specific to each type of critical area would also apply within the shoreline jurisdiction.
- **Geologic Hazard Areas** – If the new geologic hazards regulations are incorporated the following changes would apply within the shoreline jurisdiction:
 - Slopes greater than 40 percent but less than 20 vertical feet would be defined as moderate to high hazard rather than very high hazard. This reclassification allows for alteration based on recommendations from a geotechnical engineer. While previously possible through an exemption outside of the shoreline jurisdiction, the exemptions in 20.80.030 do not apply within the shoreline jurisdiction.
 - New standards for determining landslide hazard areas are intended to provide clearer definition of the limits of the hazard areas to reduce the possibility of conflicting delineations of this hazard type.
 - Specific activities that do not require site specific analysis to determine that they do not increase the risk of the hazard would be permitted as allowed activities, where some of these activities were not allowable within the shoreline jurisdiction as exemptions in Ordinance 398.
 - Clear thresholds for requirement of third party review and shoreline variance procedures would apply.

- Increased flexibility in buffer requirements for moderate to high risk landslide hazard areas would apply.
 - Clear, predictable standards for critical area report submittals would be added.
 - Depending on the option recommended by Planning Commission for alteration of very high risk landslide hazard areas, staff will evaluate whether applying the same development standards to marine bluffs is allowable under the Shoreline Management Act. Staff may need to propose different standards for geologic hazard areas in the shoreline jurisdiction.
- **Fish and Wildlife Habitat Conservation Areas (FWHCAs)/Streams** – If the new fish and wildlife habitat conservation areas regulations are incorporated and replace the existing streams regulations the following changes would apply within the shoreline jurisdiction:
 - Streams subject to the SMA would not be regulated separately from FWHCAs. Improved protection of fish and wildlife habitat expected from integration of these subchapters.
 - The State Water Typing System for streams and changes to the standard buffer widths for streams with nonanadromous fish bearing streams and streams without fish habitat would apply. A 10-foot buffer increase is proposed for these two stream classifications to better protect fish habitat and water quality generally.
 - New standards for buffer averaging with enhancement instead of reduction of the buffer to a minimum width overall would apply.
 - New provision for alteration within physically separated and functionally isolated stream buffers could apply within the shoreline jurisdictions to separations caused by the railroad tracks or adjacent roadways like Richmond Beach Drive.
 - New allowed activities provisions would allow for activities that have no significant impact on the fish and wildlife habitat areas would apply in the shoreline jurisdiction.
 - Clear standards for when proposed alterations of FWHCAs or buffers will require mitigation, third party review, and shoreline variance procedures will apply.
 - Clear, predictable standards for critical area report submittals would be added.
- **Wetlands** – If the new wetland regulations are incorporated the following changes would apply within the shoreline jurisdiction:
 - Wetland rating system and standard for buffer widths and compensatory mitigation would be updated to use the 2014 version of the Wetland Rating System. This would eliminate differences between the local and state/federal rating standards simplifying projects that need approval at multiple jurisdictional levels.
 - New standards for alteration of small, hydrologically isolated Category IV wetlands with mitigation would be allowed within the shoreline jurisdiction, whereas the previous exemption for this type of wetland was not incorporated into the SMP.
 - Specific buffer widths and compensatory mitigation standards would not change.

- Clear standards for when proposed alterations of wetlands or buffer will require mitigation, third party review, and shoreline variance procedures will apply.
 - New provision for alteration within physically separated and functionally isolated wetland buffers could apply within the shoreline jurisdictions to separations caused by the railroad tracks or adjacent roadways like Richmond Beach Drive.
 - The option of mitigating through an approved mitigation bank, when onsite mitigation is not possible, would no longer be available.
- **Flood Hazard Areas** – Floodplain management regulations for Flood Hazard Areas were updated in 2012 for compliance with the Endangered Species Act and adoption of the updated CAO would incorporate these new standards and eliminate potential conflicts between the 2006 critical areas regulations and the Endangered Species Act.
 - **Aquifer Recharge Areas** – no substantive difference between current and proposed regulations. No aquifer recharges areas designated within the City of Shoreline.