

2024 CRITICAL AREAS UPDATE SCOPING AND BUDGET

June 16, 2022
Planning Commission Meeting



CRITICAL AREAS – REQUIRED REGULATIONS

- State Law/Growth Management Act (RCW 36.70A.060 and RCW 36.70A.170)
- PSRC Vision 2050 (MPP-EN-11, CC-Action-4, and MPP-DP-40)
- King County Countywide Planning Policies (Vision, EN-7, EN-8, DP-1)
- City Comprehensive Plan Policies (Environment and Conservation Element)

BEST AVAILABLE SCIENCE REQUIRED

RCW 36.70A.172

Citations of Recommended Sources of Best Available Science



For Designating and
Protecting Critical Areas



DRAFT Wetland Guidance for Critical Areas Ordinance (CAO) Updates

Western and Eastern Washington

Shorelands and Environmental Assistance Program
Washington State Department of Ecology
Olympia, Washington

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CRITICAL AREAS – HISTORY AND CONTROVERSY

King County Council approves controversial Critical Areas Ordinance on October 25, 2004.

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By Kit Oldham | Posted 9/16/2006 | HistoryLink.org Essay 7949

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On October 25, 2004, the King County Council approves three controversial ordinances, known collectively as the Critical Areas Ordinance or CAO, that limit rural development, in an effort to protect the environment and comply with the state Growth Management Act's requirement that regulations be based on the "best available science." The Critical Areas Ordinance itself enlarges already-required buffers, where development is limited, around streams, wetlands, and steep slopes. The surface water management ordinance increases restrictions on stormwater runoff from development. Both are contested, but the greatest outrage is generated by the clearing and grading ordinance, which requires that 50 to 65 percent of land that has not been cleared be left in natural vegetation. Unlike earlier environmental regulations that, even when controversial, were passed by large bipartisan majorities, the CAO ordinances are approved on 7 to 6 party line votes with Democrats in favor and Republicans opposed. The approval triggers demonstrations and a host of legal challenges.

CRITICAL AREAS DEFINED - STATE

[RCW 36.70A.030\(5\)](#) defines five types of critical areas:

- Wetlands.
- Areas with a critical recharging effect on aquifers used for potable water.
- Frequently flooded areas.
- Geologically hazardous areas.
- Fish and wildlife habitat conservation areas.

CRITICAL AREAS DEFINED - LOCAL

SDC 21.04.040(71)

71. Critical areas. Those areas in the City that are erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, streams, and fish and wildlife habitat conservation areas.

CRITICAL AREAS - MAPS VS. DEFINITIONS

SDC 21.03.020(1)

I. Critical areas maps and inventories

Not all of the critical areas in the City of Sammamish are fully mapped. Field verification and, if appropriate, evaluation and mapping by a qualified professional of the location of critical areas will be required. The distribution of many environmentally critical areas in the City of Sammamish is displayed in the City's critical areas map folio, as amended. Additionally, the following maps are referenced and/or maintained by the City:

All maps are deemed advisory with the exception of the critical aquifer recharge area, flood insurance study for King County, wetland management area and erosion hazard near sensitive water bodies overlay maps. If there is a conflict among the advisory maps, inventory and/or site-specific features, the department of community development shall verify the actual presence or absence of the features defined in this title as environmentally critical areas. The determination may be challenged by the property owner pursuant to [Chapter 21.01 SDC](#).

CRITICAL AREAS REGULATIONS

- Defined Areas (regulated features)
- Buffers (in addition to regulated features)
- Structure Setbacks (in addition to buffers)
- Limitation on Activities (restricts use of property)
- Applied in response to proposed actions (e.g. alteration of land or proposed development)
- Not Retroactive (existing conditions allowances)

REGULATORY TAKINGS – LIMITATIONS ON AUTHORITY

- [Article 11](#), section 11 of the Washington State constitution grants cities and counties the police power authority to protect the public health, safety, and welfare.
- Both the federal and Washington State constitutions provide that the government may not take private property unless it is for a public use and just compensation is paid.
- The U.S. Supreme Court first recognized such regulatory takings in 1922. See [Pennsylvania Coal Co. v. Mahon](#) (1922).

■ AREAS OF FLEXIBILITY

- Buffer adjustments (based on criteria)
- TDRs (sell development rights to export to more appropriate location)
- Exceptions (allowances for specific activities)

REASONABLE USE EXCEPTION

SDC 21.03.020(H)(2)

2. Reasonable Use Exception. If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection:

CAO UPDATE PROCESS – TWO COMPONENTS

Required by State Law

- Required review of the City's critical areas policies and regulations for the five critical area types defined in RCW 36.70A.030(6) using BAS as prescribed by RCW 36.70A.172.
- **MUST BE COMPLETED BY DECEMBER 31, 2024.**

Optional Areas of Special Focus

- Create or update optional protections for areas of special focus
- Areas identified by the community
- Regulations developed to protect these areas must adhere to BAS and City policies

CRITICAL AREAS UPDATE PROCESS

- Deadline set by State Law
- Happens in parallel with Comprehensive Plan periodic review/update
- Comprehensive Plan and Critical Areas Regulations must be harmonized
- Follows State Department of Commerce 'checklist'
- Must demonstrate use of current BAS
- Reviewed by State Department of Ecology and Department of Commerce

OPTIONAL AREAS OF SPECIAL FOCUS

1. Habitat Corridors
2. Fish-bearing streams (subset of FWHCA)
3. Geologic hazards (subset of Geologically Hazardous Areas)
4. Climate Change
5. Preservation: Protection of high ecological value property through incentives such as conservation futures, internal TDR programs, and City funded restoration.
6. Grant funding - restoration: Identify policy changes necessary to support use of grant funds on private properties for public benefit.

**This is a consultant
supported effort.**

QUESTIONS

1. It will be very valuable to the PC to provide some description of what the 5 'defined' critical areas encompass. What included?
2. Similarly, I think more detailed description of each of the listed 'optional' areas of special focus will be helpful, especially providing differentiation where there is overlap between the 5 defined categories and the various optional categories.
3. Does the scope of work include a review of what similar cities are doing? I would think Issaquah, Redmond, Snoqualmie would be potentially good comparisons. Maybe others.
4. How are noise and light evaluated as part of this process? Are these included? Not considered?
5. Do steep slopes fit into 'Geologic Hazards'? What about areas of highly erosive soil?

QUESTIONS

6. Are there any culturally significant (Native American or even just other historic) sites in Sammamish? Is this part of the CAO evaluation process?
7. Are buffers (buffers next to streams or habitat areas) considered as part of this? Is there good science on this or is it just based on best practice?
8. What about the creation of new Critical Areas? If a large development 'creates' a new wetland, does the CAO apply to this new wetland?
9. Are wildlife corridors part of the evaluation of protected habitat areas even if the corridors aren't technically a habitat?
10. Is restoration of salmon bearing streams part of this? Like the Zackuse Creek project? This was recently a communication splash from King County about their identification of these in their King County Fish Barrier Assessment, which identified several high priorities in Sammamish.

QUESTIONS

11. How are existing bodies of water incorporated into this process? I'm thinking of Pine Lake and Beaver Lake.
12. How does the CAO tie to the shoreline regulations?
13. Will the consultant or the staff provide some level of evaluation regarding how any changes under consideration may limit 'reasonable use' from what is currently in place? This seems like a critical issue to acknowledge for both PC and Council.