



**BUREAU  
VERITAS**

**Berryman & Henigar**

# MEMO

**Date:** January 18, 2006  
**To:** Sultan City Council  
**From:** Paul Inghram, AICP  
**Subject:** Critical Areas Regulations

## **Introduction**

In addition to this cover memo, the following documents are being submitted for your review:

- Draft Critical Areas Regulations
- Draft Best Available Science Review

At the meeting on January 25<sup>th</sup> we plan to provide a brief overview of the first draft of critical areas regulations revisions. While comments on the draft regulations may be provided at the meeting, it may be more convenient for Council to provide written comments (such as marked up copies of the draft) at or following the meeting. We'll plan to respond to those comments at a meeting in February.

**Action Required:** None, comments are welcome.

## **Critical Areas Protection**

At the Council meeting in November, we provided an overview of critical areas protection, including the Growth Management Act (GMA) requirement to review and update critical areas regulations. The protection of critical areas is essential to preserving our natural environment and protecting the public's health and safety. Critical areas provide a variety of benefits: enhanced water quality, fish and wildlife habitat, and surface water management, to name a few, and may be associated with risks, such as landslides or flooding. Protection of critical areas is necessary to preserve these benefits and to reduce the hazards associated with some critical areas. The functions and values of critical areas, once lost, can be costly or even impossible to replace.

The five critical areas identified in the Growth Management Act (GMA) are:<sup>1</sup>

- 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

Each city and county in Washington state is required by GMA to identify, designate, and protect those critical areas found in their local environment. GMA also requires cities to include the best available science (BAS) in the development of policies and regulations to protect critical areas. There is a

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<sup>1</sup> See RCW 36.70A.030(5).

wide range of opinion as to what best available science is and how it should be reviewed in the update process. Our objective is to present a summary of the science that is most relevant to critical areas in the City of Sultan.

### **Draft Critical Areas Regulations Update**

A first draft of changes to the critical areas regulations are attached for discussion. Changes are shown in track changes (legislative) format where proposed additions are underlined and words to be deleted are struck out. Page numbers shown below reference where the discussed code sections begin in the draft code.

The Sultan code currently includes five chapters that regulate critical areas:

- Hillside Development and Geologically Hazardous Areas – 16.68
- Streams and Wetlands – 16.80
- Fish and Wildlife Habitat – 16.84
- Wellfield/Groundwater Protection Regulations – 16.88
- Flood Damage Prevention – 17.08

No changes are planned for the Flood Damage Prevention chapter, which must closely follow FEMA standards to comply with the City's flood insurance program. Also, no changes are anticipated for the Wellfield/Groundwater Protection chapter. The current wellfield regulations appear to be sufficient, considering the location of the City's primary water source north of the City.

To clarify the applicability of the other three chapters, to include exemptions, and to address other general provisions, we propose several new code sections. These sections, and the existing reasonable use section in SMC 16.80.110, can apply to each of these types of critical areas: streams and wetlands, hillsides, and habitat. Rather than repeat general provisions in each of these chapters, we propose consolidating the three chapters into one single critical areas chapter to address streams and wetlands, hillsides, and habitat. A description of the changes proposed for the individual sections is further described below.

### **Definitions (page 1)**

New definitions are proposed for "erosion hazard areas" and "landslide hazard areas," as part of the review of hillside development and geologic hazards.

### **General Provisions (page 2)**

New sections are proposed to be added to Chapter 16.80 SMC addressing applicability; appeals; exemptions; markers, signs and fencing; notice on title; critical areas tracts; and building setbacks. These new sections would apply to streams, wetlands, habitat and geologic hazards and are not fully addressed by the current code. The exemptions proposed include emergency actions; limited utility actions; and maintenance, operation, repair and replacement of streets, parks, and trails.

### **Wetlands (page 4)**

The proposed changes would update the wetland classification system to match the state rating system. This continues to provide four wetland categories with category 1 being the most valuable, and updates the methodology used for the wetland rating process.

The current exception for small wetlands is proposed to be replaced with a new 16.80.110 that would provide additional criteria for what wetlands could be exempted.

Wetland buffers are proposed to increase from a current range of 25-100 feet to 50-150 feet. While this is a significant increase in protection, it would continue to be less than the recommended buffers of the Department of Ecology, which range from 50 to 300 feet (depending on wetland classification, land use, and habitat values). The proposed increases would make Sultan’s buffers more consistent with some other Snohomish County jurisdictions.

Science shows that larger buffers would provide greater protection and the Council could choose larger buffers to provide a greater degree of protection. Similarly, a reduction of buffer widths would reduce the level of protection provided to wetlands. Reducing buffer widths would only be recommended in specific situations where it is shown the buffers would be ineffective or if the City provided alternative means of protection. Below is a table comparing the buffer widths of other Snohomish County jurisdictions.

Wetland Categories	Sultan Proposed	Monroe	City of Snohomish	Marysville	Draft Snohomish County
Category 1	150	200	150	125/100	75-225
Category 2	100	100	100	100	75-110
Category 3	50	75	50	75	60-110
Category 4	50	50	50	35	40

**Streams (page 6)**

Similar to wetlands, larger stream buffer widths would provide increased stream habitat protection. The current code requires a buffer width of 25 to 100 feet from streams, which compares with the Department of Fish and Wildlife recommended buffers of 150 to 250 feet. Tri-County (the local response to the Endangered Species Act listing of Chinook salmon as threatened) suggests a minimum primary buffer of 115 feet is needed for salmon protection, and advises an outer management zone beyond that. Other sources recommend salmon stream buffers that are related to tree height, or between 100-150 feet. The draft code proposes buffer increases that would be consistent with that proposed by Snohomish County. As with wetlands, the Council could choose to adopt larger buffers to provide a greater degree of protection.

Stream Categories	Sultan Proposed	Monroe	City of Snohomish	Marysville	Draft Snohomish County
Type 1	150	200	S – 100	S – 200/100	150
Type 2	150	200	N/A	N/A	150
Type 3	100	200	F – 75	F – 150	100
Type 4	50	150/75	Np – 50	Np – 100	50
Type 5	50	50	Ns - 35	Ns – 50	50

### Additional Stream and Wetland Updates

- Wetland replacement ratios have been updated.
- Mitigation requirements were changed to a preference for mitigation within the same drainage basin, rather than on-site mitigation.
- Items were added to the list of requirements for a mitigation plan, such as monitoring and contingency plans.
- The section on innovative development design is proposed to be deleted.
- A new section on performance standards was added.

### Hillside Development and Geologically Hazardous Areas

The hillside development code current requires any development on slopes over 20% to meet a series of sometimes ambiguous criteria. More typical of other jurisdictions, and more straightforward, is to prohibit development on slopes greater than 40% and to require buffers at the edges of steep slope areas. The draft code shows how new sections for geologically hazardous areas would be added to the critical areas regulations. The current chapter (16.68) would then be removed.

### Next Steps

At this stage, we are looking for initial comments on the direction of the proposed changes, recognizing that significant additional refinement may be necessary. We will take the Council's comments and direction provided at the January 25<sup>th</sup> meeting, make further edits to the draft code update, and re-review the draft critical areas regulations (and the Shoreline Master Program) at an upcoming Council meeting. We will be glad to research and respond at the next meeting to any questions you have about the draft code sections provided.