



# Critical Area Review Process

PB-28

## Community Development Department

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### 15.610.060 General critical area review requirements.

- A. As part of this review, the city shall:
  1. Verify the information submitted by the applicant;
  2. Evaluate the project area and vicinity for critical areas;
  3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
  4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- B. If the proposed project is within or is likely to impact a critical area, the city shall:
  1. Require a critical area report from the applicant that has been prepared by a qualified professional;
  2. Review and evaluate the critical area report;
  3. Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in ECC 15.610.170, Review criteria;
  4. Assess the potential impacts to the critical area and determine if they can be avoided or minimized;
  5. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter; and
  6. Assess all residential and commercial redevelopment according to the following criteria and requirements. Standard buffer widths on legal lots or parcels recorded prior to the effective date of the ordinance codified in this chapter may be reduced by the director upon the receipt and consideration of a critical area report as required under ECC 15.610.100 and 15.610.110. In addition to the requirements of such critical area report, the report shall include recommendations for the buffer width and mitigation from the experienced, qualified professional who produced the critical area report, provided the applicant for a development permit or other city approval demonstrates:
    - a. The lot was improved with a legally constructed structure prior to the effective date of the ordinance codified in this chapter. Current or continued occupancy is not required to meet this standard.
    - b. The legally constructed structure is currently present on the lot or was removed pursuant to a demolition permit approved by the city prior to the effective date of the ordinance codified in this chapter.
    - c. The existing buffer or critical area has been degraded by past legal land uses and is currently in a degraded state.
    - d. The applicant mitigates for the proposed buffer to result in no net loss of buffer functions per best available science.
    - e. The applicant provides in the critical areas report a discussion comparing the functions provided by the existing buffer and the functions provided by the proposed buffer with mitigation demonstrating no net loss of function.
    - f. The applicant provides for the protection of the reestablished buffer and critical area in perpetuity through one or more of the following measures:
      - i. Major and minor subdivisions, commercial, and multifamily residential developments completed under this section shall dedicate all buffers and critical areas as a critical area tract recorded prior to the issuance of an occupancy permit or other final city approval.

- ii. Single-family development and boundary line adjustments shall record a notice on the title of affected properties identifying the presence and location of buffer widths and adjoining critical areas. Recording the notice on title shall occur prior to occupancy permits or other final city approvals and follow the procedure and requirements contained in ECC 15.610.250.

**15.610.070 Critical area preapplication consultation.**

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of this chapter shall comply with the preapplication process for the underlying permit as set forth in Chapter 15.220.010 ECC. At this meeting, the director shall discuss the requirements of this chapter; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.

**15.610.080 Critical area information form.**

- A. Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under ECC 15.610.020, Exemptions, or allowed pursuant to ECC 15.610.050, Allowed activities, the applicant shall submit to the department complete information regarding the critical area on the application for the underlying development, on forms provided by the city.
- B. Site inspection. Upon receipt of a project application and the necessary information regarding the critical area, the director shall conduct a site inspection to review critical area conditions on site. The director shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.
- C. Critical area information review process. The director and/or his/her designee shall review the critical area information form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.
  1. Decision indicators. The director may use the following indicators to assist in determining the need for a critical area report:
    - a. Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;
    - b. Information and scientific opinions from appropriate agencies, including but not limited to the Washington State Departments of Fish and Wildlife and Ecology;
    - c. Documentation, from a scientific or other reasonable source, of the possible presence of a critical area;
    - d. A finding by a qualified professional, or a reasonable belief by the director, that a critical area may exist on or adjacent to the site of the proposed activity; and
    - e. Critical areas map (once adopted).
- D. Decision on critical area.
  1. No critical areas present. If after a site visit the director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the director shall rule that the critical area review is complete and note on the underlying application the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.
  2. Critical areas present, but no impact – Waiver. If the director determines there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
    - a. There will be no alteration of the critical area or buffer;

- b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this chapter; and
  - c. The proposal is consistent with other applicable regulations and standards. A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.
2. Critical areas may be affected by proposal. If the director determines that a critical area or areas may be affected by the proposal, then the director shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.
- E. Effect of director's determination. A determination regarding the apparent absence of one or more critical areas by the director is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received. If the applicant wants greater assurance of the accuracy of the critical area review determination.

**15.610.090 Public notice of initial determination.**

The city shall notify the public of proposals in accordance with the procedure set forth in ECC 15.220.040 for the underlying permit type.

- A. If the director determines that no critical area report is necessary, the city shall state the reasons for this determination in the notice of application issued by the city for the proposal.
- B. If the director determines that there are critical areas on the site that the proposed project is unlikely to impact and the project meets the requirements for and has been granted a waiver from the requirement to complete a critical area report, a summary of the analysis and findings for this decision shall be stated in the notice of application for the proposal.
- C. If the director determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report(s) is required.

**15.61.100 Critical area report – Requirements.**

- A. Preparation by qualified professional. If required by the director in accordance with ECC 15.610.080(D)(3), the applicant shall submit a critical area report prepared by a qualified professional as defined herein.
- B. Incorporation of best available science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.
- C. Minimum report contents. At a minimum, the report shall contain the following:
  - 1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
  - 2. A copy of the site plan for the development proposal including:
    - a. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
    - b. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
  - 3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
  - 4. Identification and characterization of all critical areas, water bodies, and buffers adjacent to the proposed project area;
  - 5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
  - 6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;

7. A description of reasonable efforts made to apply mitigation sequencing pursuant to ECC 15.610.130, Mitigation sequencing, to avoid, minimize, and mitigate impacts to critical areas;
  8. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with ECC 15.610.140, Mitigation plan requirements, including, but not limited to:
    - a. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
    - b. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
  9. A discussion of the performance standards applicable to the critical area and proposed activity;
  10. Financial guarantees to ensure compliance; and
  11. Any additional information required for the critical area as specified in the corresponding chapter.
- D. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director.