



**AGENDA  
PLANNING COMMISSION  
SPECIAL MEETING  
August 11, 2022, 5:00 PM**

**COMMISSION ATTENDANCE IN PERSON  
PUBLIC MAY ATTEND IN PERSON OR REMOTELY VIA ZOOM**

Join Zoom Meeting:

<https://us06web.zoom.us/j/83060726464?pwd=R2taZEc0bXVDcXo4RXkvSnpmdkU4Zz09>

Meeting ID: 830 6072 6464

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**1) Call to Order, Pledge of Allegiance, and Roll Call**

a) Additions to Agenda

b) Excused Absences

**2) Interested Citizens: Audience Requests and Comments**

**3) Scheduled Items**

a) Work Session – Critical Areas Ordinance

**4) Interested Citizens: Audience Requests and Comments**

**5) Conclusion**

*\*Next regular Planning Commission meeting August 25, 2022, 5 pm.*

# Critical Areas Ordinance Draft (Sections 1-6)

## 1. Purpose.

- A. The purpose of this chapter is to designate and protect critical areas and their functions and values, while also allowing for reasonable use of property.
- B. As mandated by the Growth Management Act (GMA) (RCW 36.70A), this chapter provides protection for the critical areas of wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.
- C. This chapter implements the goals and policies of the Medical Lake Comprehensive Plan, under the Washington Growth Management Act and other related state and federal laws.

## 2. General Provisions.

A. *No Net Loss of Functions.* Activity shall result in no net loss of functions and values in the critical areas. Since values are difficult to measure no net loss of functions and values means no net loss of functions. The beneficial functions provided by critical areas include, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation of flood waters; ground water recharge and discharge; erosion control; and wave attenuation. These beneficial functions are not listed in order of priority. This chapter is also intended to protect residents from hazards and minimize risk of injury or property damage.

### B. *Relationship to Other Regulations.*

1. These critical areas regulations shall apply in addition to zoning and other regulations adopted by the city.
2. Any individual critical area that overlaps another type of critical area shall meet the requirements that provide the most protection to the critical areas involved.
3. When there is a conflict between any provisions of this chapter or any other regulations, that which provides the most protection to the subject critical area shall apply.
4. Conditions of approval of a project affecting critical areas may be supplemented by a review under the State Environmental Policy Act (SEPA), as locally adopted.
5. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements. The applicant is responsible for complying with other state and federal requirements in addition to the requirements of this chapter. Obtaining all applicable state and federal permits shall be made a condition of a Critical Areas Permit. Such permits shall be obtained prior to issuance of permits for development, construction or site disturbance.

C. *Jurisdiction.* All areas within the city meeting the definition of one or more critical areas, whether mapped or not, are hereby designated critical areas and with their buffers are subject to the provisions of this chapter.

D. *Abrogation and Greater Restrictions.* This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. *Severability.* This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

F. *Warning and Disclaimer of Liability.* The standards established herein are minimum standards. The standards are established for regulatory purposes only. Minimum compliance with these standards may not be sufficient protection from identified or unidentified hazards. City establishment of these minimum standards is not a representation that these standards are sufficient protection from any hazard. Critical areas development should be based on sound scientific and engineering considerations that may be more stringent than this chapter. The city assumes no liability if these established standards prove to be insufficient protection.

G. *Interpretation of Critical Area Boundaries.* The planning official shall be authorized to interpret the exact location of the mapped critical area boundary. Final designations shall be based on site conditions and other available data or information. A person who disagrees with the interpretation may appeal. **Process?**

### 3. Applicability and Exemptions from Requirement to Obtain Permit.

#### A. *Applicability.*

1. Unless exempted by this chapter the provisions of this chapter shall apply to all lands, all land uses, clearing and development activity, and all structures and facilities in the city located within a critical area or buffer or on a site containing a critical area or buffer including single-family residential lots platted before July 19, 1994, and developments such as play structures that require no other permits.
2. The provisions of this chapter shall apply whether or not a permit or authorization is required.
3. No person, company, agency, or applicant shall alter a critical area or buffer (including removal of downed woody vegetation or application of chemicals harmful to fish and wildlife within 25 feet of wetlands, ponds, lakes, streams or rivers) except as consistent with the requirements of this chapter.
4. The Critical Areas Permit required pursuant to this chapter shall be obtained prior to undertaking any activity or development regulated by this chapter, unless exempted by this chapter.

B. *Exemptions.* Reasonable methods shall be used to avoid potential impacts to critical areas. Any damage to, or alteration of, a critical area that is not a necessary outcome of the exempt activity shall be corrected at the property owner's expense.

The following activities are exempt from needing a Critical Areas Permit:

1. *Emergencies.* Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of property damage and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter, so long as all of the following apply:
  - a. The emergency action uses reasonable methods to address the emergency.
  - b. The emergency action must have the minimum possible impact to the critical area or its buffer.
  - c. The property owner, person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity.
  - d. Within 14 days the planning official shall determine if the action taken was within the scope of the emergency actions allowed in this section. If the planning official determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions shall apply.
  - e. After the emergency, the property owner, person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved Critical Areas Report and mitigation plan. The property owner, person or agency undertaking the action shall apply for review. The alteration, Critical Areas Report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained in this chapter.
  - f. Restoration and/or mitigation activities must be initiated within three months of the date of the emergency or as otherwise determined by the planning official, and completed in a timely manner.
2. *Valid Critical Areas Permit.* Any development proposed on property pursuant to a currently valid Critical Areas Permit, provided all conditions and requirements of the Critical Areas Permit are met and the proposed activity is within the scope of the original permit.
3. *Hazard Tree.* Emergency or hazard tree removal conducted so that critical area impacts are minimized.
4. *Landscape Maintenance.* Landscape maintenance (other than tree removal or use of pesticides, herbicides, fungicides or fertilizers applied into or within 25 feet of water bodies) consistent with accepted horticultural practices, such as those recommended by the Washington State University Extension Service, within the boundaries of an existing lawn, garden or landscaped area and not associated with development.

5. *Noxious or Invasive Plants*. Clearing of noxious or invasive plants using hand-held equipment such as a weed-whacker, provided (1) fueling and maintenance take place outside the critical area and buffer; (2) all cleared vegetation is taken away and disposed of properly; and (3) denuded soils are stabilized with native vegetation.
6. *Pesticides, Herbicides, Fungicides or Fertilizers 25 feet from Critical Area*. Application of pesticides, herbicides, fungicides or fertilizers farther than 25 feet from any wetland, pond, lake, or stream or in a manner specified in a valid permit.
7. *State or Federally Approved Conservation or Preservation*. State or federally approved conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing critical area or buffer.
8. *Harvesting Wild Crops*. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops or other native vegetation and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the critical area or buffer by changing existing topography, water conditions or water sources.
9. *Passive Activities*. Passive outdoor recreation, education, and scientific research activities such as fishing, hiking, and bird watching that do not degrade the critical area or buffer.
10. *Land surveys, soil sampling, percolation tests, and other related activities*. In every case, impacts to the critical area or buffer shall be minimized and disturbed areas shall be stabilized immediately.
11. *Navigational Aids and Boundary Markers*. Construction or modification of navigational aids and boundary markers. Impacts to the critical area or buffer shall be minimized and disturbed areas shall be restored within 72 hours.
12. *Agricultural Activities*. Existing and ongoing agricultural activities protected under the federal Food Security Act occurring in wetland areas.
13. *State or Federally Approved Restoration or Enhancement Project*. Implementation of a state or federally approved restoration or enhancement project not related to any development project.
14. *Operation, Repair and Maintenance*. Operation, repair, and maintenance of existing structures, infrastructure, roads, sidewalks, railroads, trails, water, sewer, stormwater, power, gas, telephone, cable, or fiber optic facilities if the activity does not further increase the impact to, or encroach farther within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, repair, or maintenance.
15. *Fence Repair*. Maintenance, repair, and in-kind replacement of existing fences.

#### 4. Approval Process.

A. *Critical Areas Permit Process.*

1. Consolidated reviews. Applications for more than one project on a site may be consolidated into a single application. When more than one review is requested and the reviews have different procedures, the application is processed using the most comprehensive review process.
2. Timeline. A final decision should be made within 120 days from the date the application was deemed complete or a written notice given to the applicant specifying the reasons why the time limits will not be met and an estimated date of issuance.
3. Application. The applicant must submit an application on a city form, to include the **minimum submittal requirements, the specific information required for the review requested**, and the correct fee.
4. Environmental checklist. A completed environmental checklist as specified in may be required with a land use application.
4. Completeness check. Upon receipt of an application it shall be routed to other departments as for a determination of completeness under RCW 36.70B.070. Within 28 days the city shall provide written notice that: (a) the application is complete or (b) additional information is required. Once the applicant supplies the additional information, the planning official has 14 days to determine if the application is complete or request further information. If the requested information is not received within 60 days of notice of an incomplete application, the application will be considered abandoned and the city will not refund the application fee.
5. Additional governmental authority. The planning official must notify the applicant of any other governmental authority that may have jurisdiction over some aspect of the proposed project within 28 days of submittal.
6. Notice of application. Following the determination of completeness, the city shall within 14 days provide the applicant and the public the notice of application. Once the applicant receives the notice of application, the applicant shall within 14 days of receipt notify the public of the proposal **specify**.
7. Public comment period. The public may provide written comment for a period of no fewer than 14 days and no greater than 30 days as specified in the public notice, provided public comment may be accepted prior to closing the record where there is an open record hearing or the decision.
8. Department responses. City department directors notified of the application must provide a written response to the planning official within 14 days of the notice.
- 9. Concurrency determination. The public works director will issue a transportation facility concurrency determination no more than 14 days after receiving the notice of application.**

10. SEPA threshold determination. The planning official will issue a SEPA threshold determination no fewer than 15 days prior to a hearing.

11. Review. The planning official must provide a single report stating the approval criteria, findings and a recommendation to the review body prior to the hearing.

12. Hearing. An open record hearing will be conducted by the planning commission. The planning commission may adopt the planning official's report and recommendation, modify or reject it based on information presented at the hearing and in the record.

13. Notice of decision. Within seven days of the decision the planning official will mail notice of the review body's decision (pending appeal) to the applicant, the owner and all recognized organizations or persons who responded in writing to the public notice, testified at the hearing, or requested a notice of decision.

14. Ability to appeal. **Process?**

15. Recording. All decisions of approval, including conditions, shall be recorded with Spokane County. The applicant is responsible for the recording the decision against the property and must provide a copy of the recorded decision to the community development department. The decision must be recorded before the approved use is permitted, permits are issued, but no later than 30 days from the final decision.

16. Effective date. The effective date is the day the decision is signed.

17. Expiration. The critical areas permit expires 5 years after the approval date.

B. *Notice on Title – Covenant and Tracts.*

1. *Covenants.* This section applies to all nonexempt projects that involve critical areas and buffers.

a. In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is approved shall file a covenant with the county records and elections division according to the direction of the city. The covenant shall state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The covenant shall “run with the land.”

b. The applicant shall submit proof that the covenant has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, binding site plans, and other developments that involve platting, at or before recording of the plat.

2. *Tracts.* This section applies in addition to subsection (B)(1) of this section to projects that involve platting on properties containing fish and wildlife habitat conservation areas, wetlands, and their buffers. The planning official may also apply this section to developments that involve platting on properties

containing geologic hazard areas and their buffers. The location of the tract, critical area(s), and buffer(s) shall be shown on the face of the plat. See subsection (B)(2)(b) of this section for exceptions.

- a. The property owner shall place the subject critical areas and buffers in one or more nondevelopable tracts except when:
  - i. Creation of a nonbuildable tract would result in violation of minimum lot depth standards; or
  - ii. The responsible official determines a tract is impractical.
- b. When an exception in subsection (B)(2)(a) of this section applies, residential lots may extend into the critical area(s) or buffer(s) provided:
  - i. The location of the outer perimeter of the critical area(s) and buffer(s) is marked in the field and approved by the planning official prior to the commencement of permitted activities and maintained throughout the duration of the permit.
  - ii. A permanent physical demarcation along the outer/upland boundary of the critical area buffer(s) is installed and thereafter maintained. Such demarcation may consist of fencing, hedging or other prominent physical marking that allows wildlife passage, blends with the critical area environment, and is approved by the planning official.
  - iii. Permanent signs are posted at an interval of one per lot for single-family residential uses or at a maximum interval of 200 feet, or as otherwise determined by the planning official, and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the planning official: "The area beyond this sign is a critical area or critical area buffer. Alteration or disturbance is prohibited by law. Please call the City of Medical Lake for more information."

*C. Financial Assurances.*

1. When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to provide security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall provide security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional (including but not limited to construction, maintenance, and monitoring).
2. The security shall be in the amount of 125 percent of the estimated cost of restoring the functions of the critical area that are at risk.
3. The security authorized by this section shall remain in effect until the city determines, in writing, that the standards for which the security is required have been met. Bonds or other security shall be held by



the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

4. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

5. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed in the project budget or capital improvement budget for mitigation, maintenance, monitoring, or restoration.

6. Failure to satisfy any critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.

7. Any funds recovered pursuant to this section shall be used to complete the required mitigation. Excess funds shall be returned to the applicant.

D. *Critical Area Inspections.* Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

E. *Reconsideration of planning official's determination.* If, within five days following the date of mailing of a Critical Areas Permit, new information relevant to the decision is made available, any party may request that the decision be reconsidered. If the new information is found to be substantial and relevant to the critical area review, the planning official may reopen the critical area review and make a new determination based on the revised report. The Critical Areas Permit shall not be considered final and subject to appeal until the decision on the request for reconsideration, if applied for, has been issued.

F. *Appeals.* Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to **What Process?**.

## 5. Submittal Requirements

A. *Preparation by Qualified Professional.* Any required Critical Areas Report shall be prepared by a qualified professional as defined herein.

B. *General Critical Areas Report Contents.* At a minimum, the Critical Areas 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. Proposed stormwater management and sediment control plan for the development including a description of any impacts to drainage alterations; and
  - c. A digital map of the geographic information required pursuant to the applicable provisions of this chapter for each critical area and buffer on site.
3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
4. *Identification and scientific characterization of all critical areas and buffers.* The scientific characterization shall include a detailed assessment of the functional characteristics of the critical areas;
5. An assessment of the probable impacts to critical areas and buffers and risk of injury or property damage including permanent, temporary, temporal, and indirect impacts resulting from development of the site and the operations of the proposed development;
6. A written response to each of the approval criteria in **section ### Approval Criteria**;
7. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with the Mitigation Plan Requirements below.

C. *Additional Information.* Any additional information required for the specific critical areas and buffers as specified in **Section ###**, Fish and Wildlife Habitat Conservation Area, **Section ###**, Frequently Flooded Areas, and **Section ###**, Wetlands.

D. *Other Reports or Studies.* Unless otherwise provided, a Critical Areas 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 planning official. Provided, the site conditions shall not have changed since the earlier report or study was completed.

E. *Critical Areas Report – Modifications to Requirements.* Modifications to Required Contents. The applicant may consult with the planning official prior to or during preparation of the Critical Areas Report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential impacts to any critical areas or buffers and the required mitigation. The planning official may also initiate a modification to the required report contents by requiring either additional or less information, when determined to be necessary to the review of the proposed activity in accordance with this chapter.

F. *Mitigation Plan Requirements.* When mitigation is required, the applicant shall submit a mitigation plan as part of the Critical Areas Report. The mitigation plan shall include:

1. *Detailed Construction Plans.* The mitigation plan shall include descriptions of the mitigation proposed, such as:

- a. The proposed construction sequence, timing, and duration;
- b. Grading and excavation details;
- c. Erosion and sediment control features;
- d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- e. Measures to protect and maintain plants until established.

These written descriptions shall be accompanied by detailed site diagrams, scaled cross sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

2. *Monitoring Program.* The mitigation plan shall include a program for monitoring construction of the mitigation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

When the applicant believes that the conditions of the monitoring plan are met, the applicant shall contact the City and request that the City verify and certify so in writing. The City shall conduct an on-site assessment as part of the verification process. The applicant shall provide reasonable access to the property as necessary for verification and certification.

When the City has verified and certified that the conditions of the monitoring plan have been met, the critical area shall no longer be considered as mitigation, but as a naturally-occurring critical area when processing a future development permit application(s).

3. *Adaptive Management.* The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

## 6. Approval Criteria.

Any activity or development subject to this chapter, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria. The city may condition the proposed activity as necessary to mitigate impacts to

critical areas and their buffers and to conform to the standards required by this chapter. Activities shall protect the functions of the critical areas and buffers on the site.

A. *Avoid Impacts.* The Applicant shall first seek to avoid all impacts that degrade the functions and values of (a) critical area(s). This may necessitate a redesign of the proposal.

B. *Minimize Impacts.* Where avoidance is not feasible, the applicant shall minimize the impact of the activity and mitigate to the extent necessary to achieve the activity's purpose and the purpose of this ordinance. The applicant shall seek to minimize the fragmentation of the resource to the greatest extent possible.

C. *Compensatory Mitigation.* The applicant shall compensate for the unavoidable impacts by replacing each of the affected functions to the extent feasible. The compensatory mitigation shall be designed to achieve the functions as soon as practicable. Compensatory mitigation shall be in-kind and on-site, when feasible, and sufficient to maintain the functions of the critical area, and to prevent risk from a hazard posed by a critical area to a development or by a development to a critical area.

D. *No Net Loss.* The proposal protects the critical area functions and values and results in no net loss of critical area functions and values.

E. *Consistency with General Purposes.* The proposal is consistent with the general purposes of this chapter and does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;

F. *Performance Standards.* **The proposal meets the specific performance standards of Fish and Wildlife Habitat Conservation Areas section ###, Frequently Flooded Areas section ###, and Wetlands section ###, as applicable.**