

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO CRITICAL AREAS
AND ADDING A NEW SECTION IN CHAPTER 18.32 ESTABLISHING PERFORMANCE
STANDARDS FOR GREAT BLUE HERON ROOKERIES AS LOCALLY IMPORTANT HABITATS**

WHEREAS, OMC 18.32 contains the City's development regulations pertaining to the protection of critical areas located within the City; and

WHEREAS, the City contracted with a consultant who 1) performed research on the standards and requirements for regulating critical areas, including protection of locally important habitat and species, 2) considered guidance available from state agencies including the Departments of Ecology and Fish and Wildlife, and 3) consulted with experts in the disciplines covered by these regulations; and

WHEREAS, the environmental impacts of the amendments to the critical areas regulations resulted in the issuance of a Determination of Non-Significance (DNS) on January 10, 2017; and

WHEREAS, the City of Olympia Planning Commission (the Planning Commission) considered the proposed Critical Areas Regulations amendments at a properly noticed public hearing on January 23, 2017, so as to receive public testimony; and

WHEREAS, at its October 2, 2017, meeting, the Planning Commission voted to recommend approval of the amendments to the critical areas regulations; and

WHEREAS, on December 5, 2017, the City Council discussed the proposed Critical Areas and Shoreline Master Program Regulations amendments at a properly noticed open public meeting; and

WHEREAS, pursuant to RCW 36.70A.370, the City used the process established by the Washington State Attorney General to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on January 11, 2017, the City provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendment(s) to its Unified Development Code; and

WHEREAS, the City Council considered the entire public record, public comments, written and oral, and the Planning Commission's recommendation; and

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, including documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance; and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

WHEREAS, the City Council determined that the proposed amendments are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens and property owners of the City; and

WHEREAS, the City Council determined that the proposed amendments are consistent with the goals and requirements of the Growth Management Act; and

WHEREAS, it is the Council expectation that this Ordinance will not be published as required by law until it is approved by the Washington State Department of Ecology; and

WHEREAS, once the Department of Ecology approves the Ordinance, then it may be published as required by law; and

WHEREAS, this Ordinance meets the goals and requirements of the Growth Management Act; and

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 18.32.000. Olympia Municipal Code 18.32.000 is hereby amended to read as follows:

18.32.000 Chapter Contents

Sections:

- 18.32.100 General Provisions - Purpose and Intent.
- 18.32.105 General Provisions - Critical Area Development Regulations.
- 18.32.110 General Provisions - Application of Critical Area Regulations.
- 18.32.115 General Provisions - Applicant Requirements.
- 18.32.120 General Provisions - Application Form for Critical Areas Review.
- 18.32.125 General Provisions - Department Requirements.
- 18.32.130 General Provisions - Hearing Examiner Role.
- 18.32.135 General Provisions - Mitigation Priorities.
- 18.32.140 General Provisions - Critical Area Tracts.
- 18.32.145 General Provisions - Signs and Fencing.
- 18.32.150 General Provisions - Notice on Title.
- 18.32.155 General Provisions - Authorized Activity Time Period.
- 18.32.160 General Provisions - Application of Multiple Development Regulations.
- 18.32.165 General Provisions - Emergency Actions.
- 18.32.170 General Provisions - Critical Area Maps.
- 18.32.200 Drinking Water (Wellhead) Protection Areas - Purpose and Intent.
- 18.32.205 Drinking Water (Wellhead) Protection Areas - Applicability and Designation.
- 18.32.210 Drinking Water (Wellhead) Protection Areas - Exempt Uses and Activities.
- 18.32.215 Drinking Water (Wellhead) Protection Areas - Prohibited Uses.
- 18.32.220 Drinking Water (Wellhead) Protection Areas - Administratively Authorized Uses and Activities.
- 18.32.225 Drinking Water (Wellhead) Protection Areas - Minimum Mitigation Standards.
- 18.32.230 Drinking Water (Wellhead) Protection Areas - Hydrogeological Report.

- 18.32.235 Drinking Water (Wellhead) Protection Areas - Existing Uses.
- 18.32.240 Drinking Water (Wellhead) Protection Areas - Farm Conservation Plan.
- 18.32.300 Important Habitats and Species - Purpose and Intent.
- 18.32.305 Important Habitats and Species - Applicability and Definition.
- 18.32.310 Important Habitats and Species - Exempt, Prohibited, Administratively Authorized Uses, and Hearing Examiner Authorized Uses and Activities.
- 18.32.315 Important Habitats and Species - Authority.
- 18.32.320 Important Habitats and Species - Buffers.
- 18.32.325 Important Habitats and Species - Special Reports.
- 18.32.327 Process to Identify Additional Locally Important Habitat and Species.
- 18.32.328 Locally Important Habitat and Species – Definitions and Performance Standards
- 18.32.330 Important Habitats and Species - Management Plan.
- 18.32.400 Streams and Important Riparian Areas - Purpose and Intent.
- 18.32.405 Streams and Important Riparian Areas - Applicability and Definition.
- 18.32.410 Streams and Important Riparian Areas - Typing System.
- 18.32.415 Streams and Important Riparian Areas - Prohibited Alterations.
- 18.32.420 Streams and Important Riparian Areas - Exempt Uses and Activities.
- 18.32.425 Streams and Important Riparian Areas - Administratively Authorized Uses and Activities.
- 18.32.430 Streams and Important Riparian Areas - Hearing Examiner Authorized Uses and Activities.
- 18.32.435 Streams and Important Riparian Areas - Buffers.
- 18.32.440 Streams and Important Riparian Areas - Special Reports.
- 18.32.445 Streams and Important Riparian Areas - Biological Assessment.
- 18.32.500 Wetlands and Small Lakes - Purpose and Intent.
- 18.32.505 Wetlands and Small Lakes - Definition.
- 18.32.510 Wetlands and Small Lakes - Rating System.
- 18.32.515 Wetlands - Small Wetlands.
- 18.32.518 Wetlands and Small Lakes - Prohibited Alterations.
- 18.32.520 Wetlands and Small Lakes - Exempt Uses and Activities.
- 18.32.525 Wetlands and Small Lakes - Administratively Authorized Uses and Activities.
- 18.32.530 Wetlands and Small Lakes - Hearing Examiner Authorized Uses and Activities.
- 18.32.535 Wetlands and Small Lakes - Wetland Buffers.
- 18.32.540 Wetlands and Small Lakes - Compensating for Loss or Affected Functions.
- 18.32.545 Wetlands and Small Lakes - Compensation Projects.
- 18.32.550 Wetlands and Small Lakes - Replacement Ratios.
- 18.32.555 Wetlands and Small Lakes - Increase and Reduction to Replacement Ratios
- 18.32.560 Wetlands and Small Lakes - Type and Location of Compensation Mitigation.
- 18.32.565 Wetlands and Small Lakes - Mitigation Timing.
- 18.32.570 Wetlands and Small Lakes - Wetland Mitigation Banks.

- 18.32.575 Wetlands and Small Lakes - Special Reports.
- 18.32.580 Wetlands and Small Lakes - Wetland Boundary Delineation.
- 18.32.585 Wetlands and Small Lakes - Wetland Rating Report.
- 18.32.587 Wetlands and Ponds - Wetland Rating Report.
- 18.32.590 Wetlands and Small Lakes - Wetland Mitigation Report.
- 18.32.595 Wetlands and Small Lakes - Wetland Compensation Mitigation Report.
- 18.32.600 Landslide Hazard Areas - Purpose and Intent.
- 18.32.605 Landslide Hazard Areas - Applicability and Definition.
- 18.32.610 Landslide Hazard Areas - Prohibited Alterations.
- 18.32.615 Landslide Hazard Areas - Exempt Uses and Activities.
- 18.32.620 Landslide Hazard Areas - Administratively Authorized Uses and Activities.
- 18.32.625 Landslide Hazard Areas - Hearing Examiner Authorized Uses and Activities.
- 18.32.630 Landslide Hazard Areas - Buffers.
- 18.32.635 Landslide Hazard Areas - Special Reports.
- 18.32.640 Landslide Hazard Areas - Geotechnical Report.
- 18.32.645 Landslide Hazard Areas - Covenant.

Section 2. Amendment of OMC 18.32. A new Section 18.32.328 is hereby added to the Olympia Municipal Code to read as follows.

18.32.328 Locally Important Habitat and Species – Definitions and Performance Standards

Great Blue Heron Rookeries

A. Definitions

1. Great Blue Heron Nesting Season means February 15 through August 31.
2. Great Blue Heron Nesting Colony means the area inside the line created when the outermost nesting trees are connected. This line is the nesting colony boundary of two or more nests.
3. Great Blue Heron Core Zone means the area consisting of the great blue heron nesting colony and the year-round buffer.
4. Great Blue Heron Management Area means the area consisting of a great blue heron nesting colony, the year-round buffer, and the seasonal buffer.
5. Screening Tree means a tree that is within a direct line of sight between structures or development and the nesting area, and/or a tree that blocks the visibility of the nesting colony from structures or development during any part of the year, and within the great blue heron management area.

B. Buffers and Measurements

1. The year-round buffer is 200 feet, measured from the nesting colony boundary, subject to the reasonable use exception provisions of OMC 18.66.040.
2. The seasonal buffer is an additional 300 feet, measured from the great blue heron core zone boundary.
3. Great Blue Heron Pre-nesting Area means an area less than 1 kilometer (.62 miles) from a great blue heron nesting colony where male birds congregate prior to occupying the nests.

C. Development Conditions Within the Great Blue Heron Core Zone

1. No development shall occur in the great blue heron nesting colony.
2. Any development or other activity that requires a permit within the year-round buffer is subject to the provisions of OMC 18.32.330 and shall use mitigation sequencing as provided in OMC 18.32.135 to:
 - a. maintain baseline development conditions and ambient noise levels;
 - b. maintain great blue heron habitat features and processes and provide mitigation for any loss of heron habitat features and processes; and
 - c. include an implementation plan for both the development and any required mitigation with maps, as-built drawings, vegetation removal and planting, timing, and an operation and maintenance plan for businesses that include outside operations.
3. If no herons have congregated or nested in any year by April 15, as certified by a report submitted by the developer from a qualified professional, the City may allow development within the year-round buffer April 16 through January 31, subject to the provisions of OMC 18.32.328(C)(2).
4. If a nesting colony has been abandoned by a great blue heron colony, the great blue heron core zone for this colony shall be protected under the provisions of this subsection C for a period of six years from the last known active nesting season.

D. Development Conditions Within the Great Blue Heron Management Area

1. Development may occur at any time in the seasonal buffer, subject to the following: When herons are present, any clearing, grading, outside construction or other activity in the seasonal buffer that causes loud noise (exceeding 92 decibels at the outer boundary of a nesting colony) above ambient noise levels at the site shall not be performed during the great blue heron nesting season. The nesting season is February 15 through August 31, unless a different nesting season for that year is certified by a written report from a qualified professional.
2. Unless determined to be hazardous by the Urban Forester, all 6 inch diameter breast height (dbh) trees or larger outside of developed areas shall be retained. Any required new or

replacement trees shall be provided in conformance with the City's Urban Forestry Manual replacement rates and shall be strategically placed to ensure effective screening of new development from the colony. When possible, use the same species as nest trees. Removal and planting should take place in the non-breeding season.

Section 3. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber
CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: