

To: Members of the Walla Walla City Council
From: James K. Hayner
Date: September 22, 2026
Re: Critical Area Ordinance

I have become quite interested and very concerned about the new proposed Critical Area Ordinance. I appeared and spoke at the public hearing at the Planning Commission. I also participated by zoom in the City Council's recent work session. It is clear to me that the City Planning Department has fully adopted the idea that Walla Walla must utilize 100-foot buffers. The staff has hired a consulting firm which has this same predilection. The city staff seems to have either ignored or avoided considering the significant economic impact that a 100-foot buffer zone would have on the city and its citizens. I believe that the city staff is making a decision more on an ideological basis than one based on what is best for the city, one anchored by the best local science and health of our city's riparian areas.

There are other cities which are refusing to adopt 100-foot buffers as the default, and are either completing their own studies, or making much more flexible methods of using smaller buffer areas. I understand that Bellevue and Kennewick are each adopting a critical ordinance with significant flexibility for landowners. I know that the city of College Place is taking the position that they are very happy with the riparian health around streams and they are not going to adopt a 100-foot buffer. I suspect that there are other cities around the state which are also challenging the 100-foot buffer as it applies to their local jurisdictions.

The Planning Commission recommendation did include a phrase that the city staff should explore the best available science for our local area. But, as was evident at the work session, the city staff paid no heed to the City Planning Commission recommendation and instead has resisted any change or modification from a full 100-foot buffer.

The magnitude of harm by adopting a 100-foot buffer zone in Walla Walla is significant. The city staff identified over 42 miles of riparian water rights. This relates to over 1,100 acres of land. One section of land consisting of 640 acres is one mile square. Now drop two parcels of 1 mile square each on any map of the city of Walla Walla and you will see the significant impact on the city. The study by the consultant indicated that the buffers adopted by the city should have no net loss of riparian area from any prior buffers. In fact, the consultant has opined that by adopting a 100-foot buffer in Walla Walla, there would be a 70% gain of riparian areas. This means that of the 1,100 acres affected by such a 100-foot buffer, 700 to 800 acres will be directly affected by the buffer such that development on those properties will be impaired or disallowed.

As Councilman Eskil explained, Walla Walla has been developing for over 150 years along riparian waterways. It has been the consensus of residents of the city that they have done so in an environmentally sensitive manner. Riparian buffers have provided adequate safeguards to our many streams. Expanding the riparian buffer significantly will have no tangible benefit, but will in fact produce significant harm to our citizens and their property. We do not believe that there has been any harm to the riparian waterways. Many houses are built close to streams.

The Walla Walla zoning code is primarily based upon R-96 zoning around the city. This means that the minimum lot size is 9,600 square feet. Many lots meet the minimum and are approximately 100x100. Thus, for any undeveloped lot in the R-96 zone that is 100x100 and that has a stream that touches any portion of that lot, it would now be undevelopable and unbuildable. The city's zoning policy expresses an interest of having at least 4 lots per acre. With the new 100-foot buffer that is going to be virtually impossible. Lot sizes are going to have to increase dramatically. Density is going to be reduced as opposed to increased. The Comprehensive Plan suggests that Walla Walla should reply upon infill and more density. These goals are absolutely impossible with a 100-foot buffer zone for the entire city.

Councilman Outlaw asked the question as to what would happen to existing homes if the owners want to build additions. I believe the answer he received was disingenuous. The obvious answer is that unless that house has the ability to adhere to a new 100-foot buffer and the new and larger setbacks, no change will be allowed. No extra room could be added, there would be no ADU allowed, there would be no new patio. Furthermore, there is a question as to what might happen if a house were to burn to the ground. I suspect that they would only be able to rebuild in exactly the same footprint as the original house, and they would be denied the right to utilize any different footprint that encroached closer to the water than the existing footprint. Furthermore, there is a question as to how long this grandfather right would exist. If a house were burnt to the ground and the residents were not capable of rebuilding within a relatively short period, is the grandfather right to rebuild forfeited?

The city staff continues to put emphasis on the best scientific evidence. The state has rolled out a very long report developed over a period of nine years. Remember that this report was developed under the direction of Governor Inslee who has been one of the most aggressive environmentally protective Governors in the country. If you remember, he ran for a short period of time for President on a very environmental protective platform. Even though this report took nine years, the conclusion was predetermined. However, the question is whether that report actually covers the best scientific evidence for every locale in the state. I do not believe it does. Furthermore, I do not believe that there is one best scientific conclusion. I offer as an example the decades of controversy over protecting salmon in the Columbia and Snake Rivers. There have been dozens of best scientific evidence reports which have come to diametrically opposed conclusions. If you go to several medical doctors and ask for the best scientific evidence as to treatment you will get a variety of opinions. I think it is both possible and important that the city develop its own best scientific evidence for purposes of the Critical Area Ordinance.

The city staff argues that developing its own ordinance will be a lot of work and will cost hundreds of thousands of dollars. They may be right. But by unilaterally adopting a 100-foot buffer they have chosen to ignore the millions of dollars of economic loss that the city will incur and landowners will incur in loss of property value.

At the Planning Commission hearing two different landowners testified that they had parcels of land of about 6 acres each. They plan to subdivide that land. Each one has a stream running through the property. Nevertheless, based upon current setbacks they could meet the city's goal of four houses per acre and each of the subdivisions would have about 25 lots. Both of those landowners indicated that with a 100-foot buffer, their property now becomes undevelopable for

housing. Just in those two parcels, the city will lose 50 lots. If those lots have a conservative value of \$100,000 each, that is \$5M taken out of the tax base. Now assume that those lots were all developed with average price level homes of \$500,000. You have now taken out of the tax base \$25M. Also assume that to develop those houses there is substantial sales tax being generated of several million dollars. Therefore, in just these two parcels of 12 acres the city will lose over \$30M in tax base and/or actual taxes paid during construction. That land will likely never be able to be developed and will become virtually useless. And this is only 12 to 13 acres of the 700 acres that will be adversely affected by a 100-foot buffer zone.

Every landowner who has land that is affected will have a legitimate claim that the value of their land has been significantly reduced for tax purposes. Furthermore, landowners are likely to assert claims and/or lawsuits on the basis that they have incurred actual damages by the inverse condemnation of their property by the city. The economic detrimental effect could be hundreds of millions of dollars as compared to a couple hundred thousand dollars in developing a local best scientific evidence report. The city could choose carefully to make sure that the consultant used is practical in nature and has a bias for smaller buffer areas.

I do not think it is out of the realm of possibility that many landowners, developers, realtors, and citizens would happily contribute to a fund to develop best science for our local area which proved that our riparian areas were healthy with a 35-foot setback and we do not need a 100-foot setback.

The proposed Critical Area Ordinance overrides all of the city's efforts for lot infill, higher density, and affordable housing.

City attorney Tim Donaldson argues that if the city does not adopt this mandated 100-foot buffer, that it may not be eligible for certain state grants. Assuming that Tim is correct, the city still has to weigh the loss of those grants against the significant economic impact of the 100-foot buffers. The city needs to study this more carefully, taking into account all of the various consequences and impacts before it unilaterally accepts a report that only reflects one view of the scientific evidence.