

**Washington State Department of Health/Office of Drinking Water
COMMENTS – CITY OF AUBURN PROLOGIS HUNT PROJECT (#SEP19-0002)**

Critical Areas. The site lies within a wellhead protection area (WHPA) associated with a Logandale Water Association well. This is discussed further below. Leading into that, though, there is a broader issue relating to critical area review within Auburn’s municipal code that this project review has revealed.

It appears that when the City’s critical areas regulations were adopted in 2005 (Ord. 5894, as amended by Ord. 6287 in 2010), its prior environmentally sensitive area (ESA) regulations from 1996 (Ord. 4840) were not repealed; they remain codified within Ch. 16.06 ACC. Most local codes previously referred to ESAs under earlier SEPA rules, particularly WAC 197-11-748 which was repealed in 1995 as part of a rulemaking project to “integrat[e] SEPA requirements and GMA planning processes” that standardized the critical areas terminology used in GMA. (See [WSR 95-07-023](#).)

In this case, we believe there is a fundamental conflict between the terms of Ch. 16.06 & 16.10 ACC that could affect the City’s consideration of critical areas at the subject site. While code interpretation is fully up to the City, we feel there is a logic pathway within the code that would favor applying the critical aquifer recharge area (CARA) provisions in Ch. 16.06 ACC to this project.

ACC 16.10.060.A. states “[t]hese critical areas regulations shall apply...in addition to...other regulations established by the city of Auburn. In the event of any conflict between these regulations and any other regulations of the city, the regulations which provide greater protection to critical areas shall apply.” In short, we believe that the provisions in Ch. 16.06 provide the greater protection.

“Aquifer recharge” or “ground water protection” areas?

Under the GMA, critical areas include “areas with a critical recharging effect on aquifers used for potable water” [RCW 36.70A.030](#)(5).

“Aquifer recharge areas” are defined in ACC 16.06.030 as follows:

“...areas which recharge aquifers that are a source of drinking water vulnerable to contamination that would affect the portability of the water. These areas include: sole source aquifer recharge areas and wellhead protection areas designated pursuant to the Federal Safe Drinking Water Act; areas established for special protection pursuant to a ground water management program as described by Chapters [90.44](#), [90.48](#) and [90.54](#) RCW and Chapters [173-100](#) and [173-200](#) WAC; and any other area meeting the definition of ‘areas with a critical recharging effect on aquifers used for potable water’ as described in Chapter [365-190](#) WAC and the Auburn comprehensive plan.”

This is similar to the CARAs descriptions, definitions, or designations we see in many local codes.

Meanwhile, the critical areas regulations (Chapter 16.10 ACC) do *not* address CARAs but, instead, “ground water protection areas” (ACC 16.10.010.B.4). Ground water protection areas are characterized as “ground water protection zones 1-4” (ACC 16.10.080.F) which generally reference WHPAs as “capture zones” & “time of travel zones.” Ss. F.1-3 characterize the zones according to the times of travel for *only*

those wells or springs owned by the City.¹ Ss. 4 includes, within ground water protection zone 4, any other land within Auburn that does not fall under levels 1-3. This is accurately reflected in the SEPA checklist (Q. 3.9.H).

Numerous uses are prohibited in ground water protection areas 1-3 (ACC 16.10.100.D). Performance standards “for mitigation planning” for ground water protection areas 1-3 are included in ACC 16.10.120.E.1; for level 4, in ss. E.2 which is limited to BMPs by “business owners.” As a spec industrial developer, Prologis is unlikely to be the “business owner” & may not have a tenant at this point, so any BMPs relating to business activities on the site may not be identifiable at this time. Further, such actions require monitoring under ACC 16.10.130.

In addition to the reference to the City’s comp plan in the definition above, ACC 16.06.130.A adopts by reference & cites the comp plan as partial substantive authority. The comp plan itself (Vol. 1, p. LU-17) uses the GMA terminology “areas with a critical recharging effect on aquifers used for potable water” & the term “critical aquifer recharge areas” as the “implementing designation.” The City’s critical areas provisions in Ch. 16.10 ACC are not consistent with this language, while the old ESA provisions in Ch. 16.06 ACC are.

What is a wellhead protection area?

The establishment of WHPAs is part of the wellhead protection programs (WPPs) required by WAC 246-290-100(4)(g) & -135(3)², under the source water protection component of water system plans (WSPs) for Group A public water systems. Although locally adopted by individual water purveyors, Washington State Department of Health’s (DOH) Office of Drinking Water is responsible for reviewing and approving WSPs & the WPPs & WHPAs they contain.

A water system is responsible for controlling a sanitary control area (SCA) around wells in order to protect them from existing and potential sources of contamination. An SCA’s usual minimum radius is 100 feet. The water system should either own the SCA outright or enter into binding legal agreements (restrictive covenants) with the neighboring property owners to assure the SCA is kept free of contaminants. No one should build, store, dispose of, or apply any potential contaminant there without the water system’s permission.

Extending beyond the SCA, a WHPA is identified for each well. There are several different methods of delineating WHPAs. The more contemporary approach used by the City relies on modeling to indicate where groundwater tends to move within a given area associated with the wellhead location. Modeling results in the irregularly shaped, elongated blobs such as those mapped for the City of Auburn wells. Some water systems can afford to invest in this work, while others cannot. The most common approach is the “calculated fixed radius” (CFR) approach, which looks like a “bullseye” on the map with the wellhead at center. As mapped, the WHPAs visually depict the expected times of travel to the wellhead (6-month & 1-, 5-, and 10-year capture zones) if a contaminant is placed in that area. Logandale’s WHPA reflects the CFR approach. Unlike the SCA, where the water system must directly control contaminants, in the WHPA there will be properties owned and controlled by others.

¹ This may be the product of an effort to codify the WPP associated with the City’s own WSP. We’ve seen this type of limitation created in other local jurisdictions’ codes when doing so.

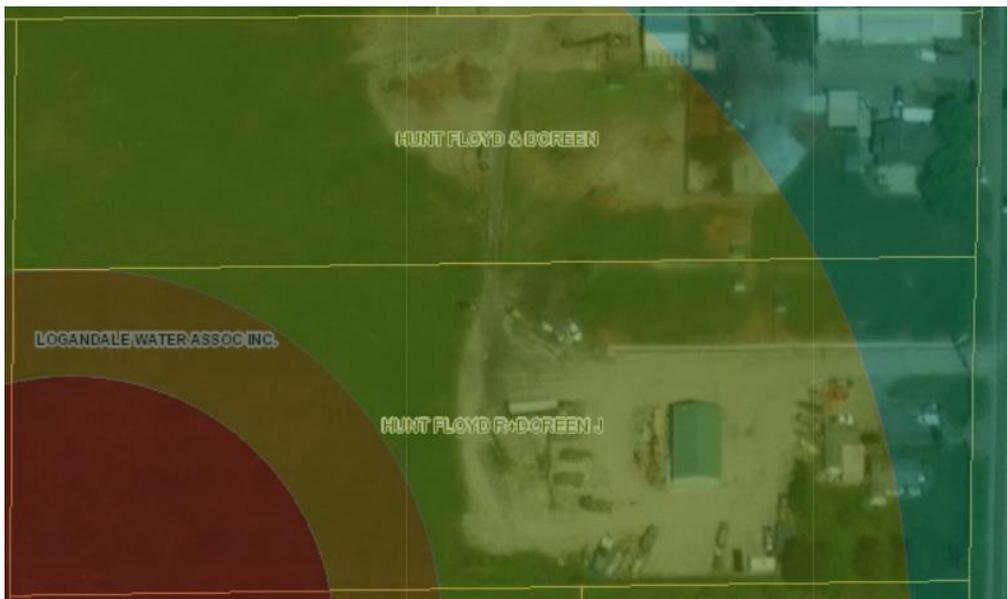
² Or, where applicable, certain systems may plan under WAC 246-290-105(4)(m) in lieu of a full water system plan.

“Public” water systems serve the general public, but they may be private in terms of ownership and serve a limited number of customers. It’s important to note that Group A public water systems include not only city systems but also numerous other types of purveyors, which may include “any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system [and their authorized agents]”³. Besides the WHPAs associated with City of Auburn-owned wells, there are 16 more Group A public water systems whose WHPAs are located either partially or fully within the Auburn city limits:

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|-----------------------------|----------------------------------|
| Auburn Park Community | Hazelwood Heights |
| Braunwood Estates | Lake Meridian Water District |
| City of Bonney Lake | Lakehaven Water & Sewer District |
| City of Pacific | Logandale Water Association |
| City of Sumner | Rocky Acres Water System |
| Crestview Tracts #3 | South Auburn Water Association |
| Crestview West Water System | Wells Water Association |
| Derbyshire Scenic Acres | Winchester Heights |

Some of these include multiple wells. You can view the WHPAs associated with these systems by clicking on the colored areas⁴ in [DOH's dynamic map](#), then the system information will pop up. Some, but not all, of these overlap or are contained within the City of Auburn WHPAs.

As shown below, the subject site is located within the Logandale SCA & is fully within the associated WHPA (all times of travel depending on portion of the property). The Hunt property takes up much of the NE quadrant of the WHPA. The Logandale well, which is noted in the SEPA checklist (Q. 3.B.1) is located south of the SW corner of the southernmost parcel, on TP# 3522049047 (Lalime).



³ [RCW 70.119A.020\(13\)](#)

⁴ The purple circles depicted on the map are an additional type of WHPA not discussed above.

How does this all tie together?

Notably, Logandale's is one of the WHPAs associated with non-City owned Group A public water systems. This means that the City's critical areas regulations in Ch. 16.10 would not apply to the proposed project, as they would if this were a City-owned well. However, if looked at through the lens of the preexisting ESA regulations within Ch. 16.06 ACC, the Logandale WHPA (as well as others listed above) would constitute "aquifer recharge areas" that are, under ACC 16.06.065, designated as ESAs⁵. From there, ss. B states that "the [SEPA] responsible official shall implement city codes, ordinances, resolutions, plans and policies to conserve these areas and to preclude land uses and development which cause significant adverse impacts to these areas." This is why we feel a greater degree of environmental protection would occur with application of Ch. 16.06 than 16.10 ACC, while allowing the development to proceed.

Potential mitigation actions

ACC 16.06.065 tasks the SEPA responsible official with implementing measures to conserve ESAs.

Although Logandale is a small system serving only 22 residential connections, its customers rely on it as their only source of safe & reliable drinking water. If their drinking water is put at risk, this also places their property values at risk. As of 2017, DOH staff inspecting the Logandale facilities questioned the system's future, noting that land-use changes from agriculture to commercial/industrial "are imminent" in the vicinity & that, at that time, City water was being extended into the Logandale service area. Although the SEPA checklist cites the intention to disconnect from the Logandale system & connect to City water, that doesn't sever the site's relationship with the well. The bottom line becomes whether the developer can ensure that the proposed project will not impact the well's integrity nor the quality & quantity of source water. As a risk management consideration & to mitigate the possibility of the well becoming inviable in the future due to or affected by development actions on the site, the applicants may find it cleaner to connect the remaining customers to City water concurrent with & work with the system to decommission the well at the time of development. We typically do not propose mitigation related to CARAs as even a small degree of degradation has the potential of rendering the source impotable, but in this situation, this type of off-site mitigation would permanently put the matter to rest as it would remove the ESA/CARA aspect entirely.

If the Logandale well remains in service, our chief concern is that light industrial development of the subject site will be deleterious to the system's continued viability, if not immediately then over time. At minimum, we would look for the following concerns to be addressed through the environmental/development review process:

1. Sanitary sewer & storm drains may not be located within an SCA. The preliminary water & sewer plans show the sanitary sewer line passing through the westerly portion of the SCA, a storm drain passing through the northerly portion, & a catch basin situated in the northerly portion. How will redesign accommodate the SCA restrictions?

⁵ We also note a King County sensitive area notice recorded on TP#3522049049 in 1997 (ref. KC recording #199712191094), but it doesn't specify what type of critical area(s).

2. It is unclear from the preliminary plans whether the portion of the parking lot that covers the northern portion of the WHPA will be gravel or concrete. Vehicle traffic, even parking, introduces petroleum-based contaminants. Parking & storm drainage should not be located within this area.
3. If the development impedes the water system's access to its facilities, an access easement is necessary. If not already established, the development should also be conditioned upon an easement/protective covenant on the SCA, which is shown on the site plan as "well radius."

Does the City anticipate handling this through the "optional notice" process under [WAC 197-11-355](#)? Because of the relationship between this project & the Logandale facilities, we encourage the City to directly notify all Logandale customers of the notice of application & threshold determination as provided in ACC 16.06.090.B, regardless of the property's distance from the subject site. Although the neighborhood review meeting set forth in ACC 18.02.130 doesn't appear to be applicable to this type of development (ss. B), it may be beneficial to conduct a targeted meeting to discuss this with the water system customers. DOH reserves the right to submit additional comments at the time a threshold determination is issued.

For the City's Future Consideration. The GMA does not differentiate between potable water (in general) & the potable water of a specific system owned by a city or town. A local government is responsible for protecting the quality & quantity of *all* potable water in its jurisdiction. There is no legal basis for distinguishing between water purveyors or jurisdictions served when protecting potable water supply. Perhaps the City will want to reconcile the standards in Ch. 16.06 & 16.10 ACC during its next critical areas update⁶. If the City chooses to protect only its own wells as critical areas, this could leave the non-City owned Group A public wells with a greater possibility of exposure to contaminants than the City wells; the City should be prepared to establish a best available science basis for doing so.

One minor item to additionally note is that it appears the City is using an outdated SEPA checklist. (Ironically, one of the changes is that "environmentally sensitive areas" has been changed to "critical areas.") See [WAC 197-11-960](#) for the current form.

⁶ For work planning purposes, please note that the ESA provisions in Ch. 16.06 ACC encompass *all* types of critical areas, not just CARAs; so any such work would be broader than just the water system/WHPA issue.