NOTICE OF REGULAR MEETING
PLANNING COMMISSION
George Gilbertson Boardroom
Snohomish School District Resource Center
1601 Avenue D

WEDNESDAY
June 5, 2019
6:00 p.m.

AGENDA

1. CALL TO ORDER
2. FLAG SALUTE
3. ROLL CALL
4. APPROVAL OF AGENDA ORDER
5. APPROVAL of the minutes of the May 1, 2019 regular meeting (P.3)
6. GENERAL PUBLIC COMMENTS on items not on the agenda
7. DISCUSSION ITEM – Wetland Regulations Update (P.5)
8. DIRECTOR’S REPORT
9. ADJOURNMENT

NEXT MEETINGS: A special Planning Commission meeting will be held Wednesday, June 26, 2019, at 6:00 p.m., in the Harvey Auditorium, Fire District No. 4 headquarters, 1525 Avenue D.

The next scheduled regular Planning Commission meeting for July 3, 2019 is cancelled.

The next regular Planning Commission meeting will be Wednesday, August 7, 2019, at 6:00 p.m., in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D.

The meeting room is ADA accessible. If required, specialized accommodations will be provided with 5 days advanced notice. Contact the City Clerk’s office at 360-568-3115. This organization is an Equal Opportunity Provider.
CITY OF SNOHOMISH
REGULAR MEETING OF THE PLANNING COMMISSION
MEETING MINUTES
May 1, 2019

1. CALL TO ORDER: The regular meeting of the Planning Commission was opened by Chair Terry Lippincott at 6:00 p.m. in the George Gilbertson Boardroom, 1601 Avenue D.

2. FLAG SALUTE

3. ROLL CALL

**COMMISSIONERS PRESENT:**
Christine Wakefield Nichols
Gordon Cole
Hank Eskridge
Laura Scott
Mitch Cornelison,
Terry Lippincott, Chair

**STAFF:**
Glen Pickus, Planning Director
Brooke Eidem, Planner
Katie Hoole, Permit Coordinator

**OTHERS PRESENT:**
Linda Redmon, Council Liaison
Steve Dana, Council Liaison
John Kartak, Mayor
1 audience member

**COMMISSIONERS ABSENT:**
Van Tormohlen

4. APPROVAL OF AGENDA ORDER

5. APPROVAL of the minutes of the March 6 and April 3, 2019 regular meetings

   Mr. Eskridge moved to approve the minutes of both meetings as written; Mr. Cole seconded. The motion passed 6-0.

6. GENERAL PUBLIC COMMENTS on items not on the agenda

   There were no comments on items not on the agenda.

7. DISCUSSION ITEM - Wetland Regulations Update

   This item follows the March briefing on the City’s proposed update to its wetland regulations. Copies of proposed changes to Snohomish Municipal Code Chapters 14.100, 14.260, and 14.255 were provided ahead of time to Commissioners, and would be discussed in that order. The conversation was expected to continue to the June meeting and possibly beyond.

   Planning Commissioners discussed the proposed update with Mr. Pickus and Ms. Eidem, provided language revisions for clarity, and suggested regulation modifications to hopefully prevent overburdening an applicant. The discussion included all of Chapter 14.100 and part of Chapter 14.260 through Section .050. Mr. Pickus said he will contact ESA, the City’s wetland consultant, and staff at the Department of Ecology to get answers to questions that neither he nor Ms. Eidem were able to answer.
8. **DIRECTOR’S REPORT**

The archaeological resources protection code ordinance will go before the City Council for adoption at their next meeting on May 7.

There will be no Planning Commission meeting on July 3; however, Mr. Pickus would still like to hold a July meeting. The possible dates are July 17, July 24, or possibly at the end of June.

9. **ADJOURNMENT**

The meeting adjourned at 7:47 p.m.

Approved this 5th day of June, 2019

By: ________________________________

Commissioner Terry Lippincott, Chair
SUMMARY: The purpose of this agenda item is to continue the discussion of proposed changes to the Snohomish Municipal Code necessary to update wetland regulations to meet current standards.

BACKGROUND: The Planning Commission has discussed the wetland code at two previous meetings:
• February 2019: Staff briefed the Commission on the need to update the City’s regulations that protect wetlands because they are virtually unchanged since their adoption in 2005. Also, the City’s on-call wetland consultant explained the results of their buffer analysis and in comparing current buffer requirements with updated requirements as recommended by the Washington State Department of Ecology (DOE); and
• May 2019: The Commission began to review draft regulations covering the proposed changes to SMC 14.100.020 – Definitions, and about two-thirds of the proposed changes to SMC 14.260 – Wetlands.

State regulations require wetland regulations to be reviewed periodically and updated if necessary. Protecting wetlands is a priority because of the many beneficial functions they provide.

Wetlands are protected first by avoiding impacting them with development as much as possible. Second, buffers are established around wetlands to protect them from adjacent land uses. Finally, if there are unavoidable impacts they must be compensated for by mitigation such as creating new wetland and/or buffer areas.

PROPOSAL: Three chapters in Title 14, Land Use Development Code, require updates:
• SMC 14.100, Definitions, needs to be amended to add several new definitions, deleting one out-of-date definition, and amending several others to be more readable and consistent with state definitions.
• SMC 14.255, Critical Areas – General, amended to make it easier to administer but also to make it consistent with changes to SMC 14.260, Wetlands.
• SMC 14.260, Wetlands, repeal and replace.

The most significant changes will occur in SMC 14.260. The new SMC 14.260 will be based on the model code drafted by the Washington State Department of Ecology, but modified to fit Snohomish. Staff’s goal in modifying the model code is to, as much as possible, keep the impact of the new code language at a level similar to how current regulations affect development.

Attachment A is the second draft for SMC 14.100 and includes the changes discussed at the May meeting as well as additional changes based on comments from ESA. The changes from the first draft are highlighted in yellow.
Attachment B is a second draft for SMC 14.255, with changes from the first draft that was handed out at the May meeting highlighted in yellow. Those changes are the result of DOE consultation, input from ESA, and further staff review.

Attachment C is the second draft for SMC 14.260. It includes the changes discussed at the May meeting plus changes made after consultation with the DOE (see above). Those changes are in red font with new language underlined and deleted language struck through.

FOLLOW-UP TO QUESTIONS AND COMMENTS FROM MAY PLANNING COMMISSION MEETING

Commissioners made some comments and asked several questions at the May meeting which staff could not respond to. We contacted Michael Muscari at ESA and DOE staff to help with the answers.

ESA – On-call Wetland Consultant

- The DOE wetland delineation manual was repealed several years ago and now requires use of the federal manual. (Rating wetlands is still through the DOE manual.) That’s why the draft language in SMC 14.260.020A refers to the federal wetland delineation manual.
- Shading in SMC 14.260.030(B)(7) refers to the impact created by elevated boardwalks and viewpoints that are constructed in a wetland or buffer. While they are allowed and it is not considered to be wetland fill, the wetland vegetation in the areas below the structures is altered because of the shade created and because trees and shrubs are prevented from growing.
- “Invasive” species is a subset on non-native plants. Not all non-natives are weedy or troublesome, and there are some natives that can be invasive in some rare situations. Removal of non-native invasive plant species is very specific so that the worst weeds are targeted, but at the same time focuses the enhancement effort so that not every non-native is required to be removed.
- While there are not any non-natives that are encouraged to be planted, there are many non-natives that have “naturalized” and are thought to not have a negative impact. Requiring removal of all non-natives would be prohibitively expensive and not likely achievable.
- In SMC 14.260.050(G), there is a statement that buffers must be fully vegetated in order to be included in buffer area calculations and that walkways, driveways, and other paved areas shall not be considered buffers or included in buffer area calculations. This language is applicable for adding buffer area during buffer averaging. If additional buffer area is added to replace reduced buffer, it needs to be fully vegetated and functional.

Department of Ecology

- Reference was made to the fact that establishing buffer widths is not precise so why not reduce the 110-foot DOE-recommended buffers to 100 feet. DOE said the buffers it recommends are already concessions to cities like Snohomish where most of the wetlands are surrounded by urban development. In fact, the BAS calls for much larger buffers. From DOE’s standpoint their recommended buffer widths are the minimum to support the necessary buffer functions and that they assume a well-vegetated buffer.
Since most of Snohomish’s buffers are not well-vegetated they should not be reduced below DOE recommendations.

- Buffer averaging is a compromise DOE recognizes is necessary so they are willing to accept that process. However, buffer reduction—where the total buffer area is reduced along with a buffer width reduction—is not recommended at all.

- DOE recommends if a city is going to allow buffer averaging (and even buffer reduction) they should have a vigorous buffer enhancement program with active monitoring, financial sureties, placement of buffers and wetlands into protected tracts, and an active city inspection program to ensure there is real enhancement and that enhancement survives.

- Buffer averaging (and reduction) should not be allowed in high-quality wetlands. It should only be allowed in wetlands with a low category and a low habitat score.

Commissioners should keep in mind that DOE’s role in updating wetland regulations is limited to making recommendations. It is not like the Shoreline Management Program (SMP) where DOE has to certify what the City does.

That’s why the SMP contains stand-alone regulations for wetlands within the shoreline jurisdiction that differ from the wetland regulations for the rest of the City. At the time the SMP was adopted, the thought was those stand-alone regulations could eventually be repealed after updated wetland regulations were adopted. However, because it appears the Planning Commission will be recommending regulations that differ from those recommended by DOE, the stand-alone shoreline regulations for wetlands will have to remain.

**RECOMMENDATION:** The Planning Commission should continue their discussion on the proposed drafts and provide direction to staff on revising the drafts. Staff would like to start the discussion by reviewing SMC 14.255 then go back to SMC 14.260 to go over the changes made to the already discussed SMC 14.260.010-.250, as well as to review the rest of SMC 14.260.

**NEXT STEPS:** The discussion of the proposed code changes will continue at the special meeting scheduled for June 26. A public hearing will likely then be scheduled for the August 7 Planning Commission meeting, assuming Commissioners are comfortable with doing so after the June 26 discussion. The City Council will then hold its own public hearing approximately one month after the Planning Commission’s.

**ATTACHMENTS**

A. SMC 14.100 (draft 2)
B. SMC 14.255 (draft 2)
C. SMC 14.260 (draft 2)

**REFERENCES**

- SMC 14.100, Definitions (current)
- SMC 14.255, Critical Areas - General (current)
- SMC 14.260, Wetlands (current)
Attachment A: SMC 14.100.020 – Definitions (draft 2)

**Alteration** means any human-induced change, modification, or addition in to an existing condition of a critical area or its buffer or to a building, site, or land use.

**Best Available Science** – Current scientific information used in the process to designate, protect, or restore critical areas; that is, derived from a valid scientific process as defined by WAC 365-195-900 through 925.


**Buffer or Buffer zone** means an area adjacent contiguous to a critical area that is established to maintain the functions and/or structural stability of the critical area, consisting of naturally occurring or re-established vegetation and having a width adequate to protect the critical area.

**Creation (Wetland)** means the manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical method for wetland creation includes, but is not necessarily limited to, the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

**Critical areas** refer to means environmentally sensitive areas of land, such as steep slopes, including wetlands, flood plains frequently flooded areas, fish and wildlife habitat conservation areas, unstable soils, erosion hazard areas, areas of geologically hazardous areas, and critical aquifer recharge areas, as defined in RCW 36.70A and in this Title, or other conditions needing protection or not suitable for intensive development.

**Degraded wetland buffer** means a buffer area which cannot adequately fully protect its adjacent wetland due to one or more of the following existing conditions:

A. Lack of vegetative cover or presence of bare soils (resulting from disturbance, fill, debris, or trash);

B. Significant cover (over 50 percent) in nonnative vegetation that does not contribute to the functionality of the wetland buffer;

C. Significant cover (over 50 percent) in invasive species or noxious weeds;

D. Presence of existing nonconforming structures or improvements.

**Development activity** means any construction, development, earth movement, clearing, demolition or other site disturbance, which either requires a permit, approval or authorization from the City or is proposed by a public agency.

**Development** means the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any project of a temporary or permanent nature which modifies structures, land, wetlands, or shorelines.

**Ecology** means the Washington State Department of Ecology unless specifically stated otherwise.
Enhancement, when applied to wildlife habitat, wetlands, or wetland buffers, means the manipulation of the physical, chemical, or biological characteristics of a critical area or its buffer to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present by means, including but not limited to improvement such as by increasing plant density or diversity, removing non-indigenous or noxious species, or controlling erosion.

Federal methodology means the methodology for identifying wetlands in the field as described in the Corps of Engineers Wetlands Delineation Manual (January 1987).

Functions and values mean those functions and values of a critical area or buffer, which are highly beneficial to the maintenance of the aquatic system and surrounding environment. As used in this title, “functions and values” for wetlands, streams and buffers are limited to the following elements:

1. Streams. Fish and wildlife habitat, water quality maintenance, water supply and water conveyance.

2. Wetlands. Fish and wildlife habitat, water quality maintenance, pollution assimilation, shore stabilization, sediment retention, runoff and floodwater storage and conveyance, runoff control, stream base-flow maintenance, and groundwater discharge/recharge.

3. Buffers. Fish and wildlife habitat, runoff absorption, pollution assimilation, stream bank stabilization, sediment entrapment, water quality maintenance, noise and visual screening, upland flood protection, recreation, and provision of nutrients and woody debris for streams.

Functions and Values – The services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

Hazardous Substances – Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

In-kind mitigation/compensation means replacement of wetlands with critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

Isolated Wetland – A wetland that is hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law.

Mature and Old-Growth Forested Wetland – A wetland having at least 1 contiguous acre of either old-growth forest or mature forest, as described in Washington State Planning Commission Meeting June 5, 2019.
Mitigation means a measure taken to reduce or eliminate impacts of development, including avoiding, minimizing, or compensating for adverse impacts on critical areas. Mitigation, in the following sequential order of preference is:

A. Avoiding the impact altogether by not taking the proposed action or parts of an action.
B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts.
C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project.
D. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action.
E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
F. Monitoring the impact or other required mitigation and taking appropriate corrective measures when necessary.

Mitigation for individual actions may include a combination of the above measures.

Native vegetation, when applied to vegetation, means plant species that were pre-existing on a site and are indigenous species that occur naturally in a particular region or environment to the area and were present before European colonization.

Ordinary high water mark means that mark on the bank of a lake, stream, or tidal water body, where the presence and action of water is as common and usual in all ordinary years as to make the soil distinct from that of the abutting upland with respect to the type of vegetation produced.

Ordinary High Water Mark – That mark which is found by examining the bed and banks of water bodies and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

Project Area means all areas, including those within fifty (50) feet of the area, proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

Qualified Wetland Professional means a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.

Reasonable use means the minimum economic use a property owner is entitled to by virtue of the due process and takings clauses of the state and federal constitutions.

Re-establishment (Wetland) means the manipulation of the physical, chemical, or...
biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Re-establishment results in a gain in wetland acres.

**Rehabilitation (Wetland)** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Activities to rehabilitate a wetland could involve breaching a dike to reconnect wetlands to a floodplain. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

**Repair or Maintenance** means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

**Restoration (Wetland)** means measures taken to restore an altered or damaged natural feature, including:

- Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

**Sequencing** means the seven-step method, as required by SMC 14.255.100E, used to protect critical areas from the negative impacts of development. The seven steps are:

1. Avoiding the impact.
2. Minimizing the impact.
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area.
5. Reducing or eliminating the impact or hazard by over time through preservation and maintenance operations.
6. Compensating for the impact.
7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

**Species, Listed** -- Any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists (see WAC 232-12-297 or page 6 of “Priority Habitat and Species List,” Washington Department of Fish and Wildlife, 2008, Olympia, Washington. 177 pp.)

**Stream** – An area where open surface water more than 2.5 meters deep produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at
least intermittent flow during years of normal rainfall.

**Unavoidable Impacts** – Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

**Wetlands** – Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

**Wetland of High Conservation Value** – A wetland that has been identified by scientists from the Washington Natural Heritage Program (WHNHP) as an important ecosystem for maintaining plant diversity in Washington State.

**Wetland Mitigation Bank** – A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources that typically are unknown at the time of certification to compensate for future, permitted impacts to similar resources. Impacts mitigated through wetland mitigation banks are not typically known at the time of bank certification.

**Wetland Mosaic** – An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.
Chapter 14.255
CRITICAL AREAS – GENERAL

Sections:
14.255.010 Findings
14.255.020 Purpose
14.255.030 Critical Areas Code
14.255.035 Best Available Science (BAS)
14.255.040 Fees
14.255.050 Applicability
14.255.060 Exemptions
14.255.070 Review Process
14.255.080 Critical Area Reports
14.255.090 Previous Studies
14.255.100 Mitigation Plan Requirements
14.255.120 Substantive Requirements
14.255.130 Critical Area Variances
14.255.120 Reasonable Use Variances
14.255.130 Enforcement and Inspections

14.255.010 Findings.
The City Council of Snohomish finds as follows:

A. Critical areas contain valuable natural resources, provide natural scenic qualities important to the character of the community, perform important ecological functions and processes, and/or present a hazard to life and property. Identification, management, and protection of these areas are, therefore, necessary to protect the public health, safety and general welfare of citizens.

B. Beneficial biological and physical functions that critical areas provide include, but are not limited to: water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; stormwater conveyance and attenuation; ground water recharge and discharge; erosion control; protection from hazards; historical and archaeological and aesthetic value protection; and recreation.

C. The City’s critical areas regulations, as set forth in the critical areas code, are designed to implement the comprehensive plan’s environmental protection element policies, regarding protecting functions and values of critical areas.

D. The critical areas code is based on the best available science as set forth in the Steward & Associates Study (May, 2004), prepared for the City by a team of qualified scientific professionals, as well as such state agency publications as the Example Code Provisions for Designating and Protecting Critical Areas, prepared by the Washington Department of Community, Trade, and Economic Development (CTED), and the Guidance Document for the Establishment of Critical Aquifer Recharge Areas Ordinances, prepared by the Washington Department of Ecology (DOE).
E. The City deems it particularly important for the critical areas code to give special consideration to preserve or enhance anadromous fisheries, as supported by the City’s best available science study.

F. In addition to the best available scientific information, the Growth Management Act (GMA) also requires the City to consider various growth management policies in promulgating development regulations such as the critical areas code. In the City of Snohomish, the availability of affordable, developable lots will be considerably diminished, if certain regulations in the CTED and DOE recommendations are not modified to be less restrictive in such matters as wetland or stream buffer widths. Accordingly, where the critical areas code’s buffer widths differ from those in the Example Code Provisions for Designating and Protecting Critical Areas or in the recommendations of the Department of Ecology, the City finds that such deviations are necessary in order to implement the GMA’s policies in support of encouraging economic development, protecting property rights, reducing urban sprawl, increasing affordable housing, and accommodating urban growth. Additionally, the City finds that the best available science identifies no substantial risk to critical areas in enacting these alternative substantive requirements.

14.255.020010 Purpose.

The City of Snohomish is required by the Washington State Growth Management Act (Chapter 36.70A RCW) to designate environmentally critical areas and to adopt development regulations to assure the conservation of such areas. In compliance with this mandate, the City finds that environmentally critical areas characterize certain portions of Snohomish and its urban growth area. These critical areas include wetlands, habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas, and frequently flooded areas. Accordingly, it is the purpose of the Critical Areas Code to:

A. Protect the functions and values of ecologically environmentally sensitive areas, while allowing for reasonable use of private property, through the application of the best available science.

B. Implement the Growth Management Act and the natural environment goals of the Comprehensive Plan.

C. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides, steep slope failures, erosion, seismic events, or flooding.

D. Protect citizens and the unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, and other fish and wildlife, and their habitats.

E. Prevent adverse and cumulative environmental impacts to critical areas, direct activities not dependent on critical area resources to less ecologically sensitive sites, and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas and requiring specific mitigation measures to compensate for unavoidable impacts.
F. Protect species listed as threatened or endangered under the Federal Endangered Species Act of 1973 (16 USC 1531 – 1534) and their habitats.

  F.G. In the City of Snohomish, the availability of affordable, developable lots will be considerably diminished, if certain regulations of the Washington State Departments of Commerce and Ecology recommendations are not modified to be less restrictive in such matters as wetland or stream buffer widths. One purpose of the Critical Areas Code is to allow such deviations as necessary in order to implement the GMA’s policies in support of encouraging economic development, protecting property rights, reducing urban sprawl, increasing affordable housing, and accommodating urban growth.


A. The City of Snohomish shall implement the use of best available science (BAS) in the application of the Critical Areas Code

B. “Best available science” means information from research, inventory, monitoring, surveys, modeling and an assessment, which are used to designate, protect, or restore critical areas.

C. As defined by WAC 365-195-900 through 365-195-925, best available science is derived from a process that includes peer-reviewed literature, standard methods, quantitative analysis and documented references to produce reliable information.

D. The use of best available science pursuant to the critical area code shall be consistent with the following:

1. Protection for functions and values and anadromous fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout.

2. Best available science to be used must be consistent with criteria. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, which is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925

3. Characteristics of a valid scientific process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government’s regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. The specific characteristics of a valid scientific process are as follows:
i. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline.

ii. **Methods.** The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

iii. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented.

iv. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

v. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

vi. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

E. **Nonscientific information.** Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information.

14.255.040 Fees.  The City shall establish fees to recover its cost of reviewing development proposals, including the cost of engineering review, planning review, inspections, and administration. In addition to the payment of said fees, the applicant shall be responsible for all required reports, assessments, studies, and plans.

14.255.050 Applicability.  Unless exempted in SMC 14.255.060, the Critical Areas Code shall apply to all developments within one or more of the following critical areas or their associated buffers or building setback areas, regardless of whether the site has been previously identified as a critical area:

A. Wetlands as designated in Chapter 14.260 SMC;
B. Critical aquifer recharge areas as designated in Chapter 14.265 SMC;
C. Floodplains as designated in Chapter 14.270 SMC;
D. Geologically hazardous areas as designated in Chapter 14.275 SMC; and
E. Habitat conservation areas as designated in Chapter 14.280 SMC.

14.255.060 Exemptions.  The following activities when occurring in critical areas shall be exempt from the Critical Areas Code, provided that the activity must first be reviewed by the City Planner/Planning Director to confirm that the exemption applies:
A. Emergency actions immediately necessary to prevent injury or property damage, provided that the action minimizes impact to critical areas and buffers. The person undertaking the action shall notify the City PlannerPlanning Director within one (1) working day following commencement of the emergency action. The City PlannerPlanning Director shall determine if the action was allowable under this subsection and commence enforcement if not. Within one year of the date of the emergency, the person undertaking the action shall fully mitigate any resulting impacts to the critical area and buffers in accordance with an approved critical area report and mitigation plan.

B. Normal operation, maintenance, or repair of existing structures, utilities, roads, levees, drainage systems, or similar improvements, including vegetation management, if the action does not alter or increase the impact to or encroach upon the critical area or buffer, and if the action accords with best management practices and maintenance and does not impact an endangered or threatened species.

C. Passive outdoor activities, such as recreation, education, and scientific research, that do not degrade the critical area.

D. Forest practices in accordance with Chapter 76.09 RCW and Title 222 WAC, other than forest practice conversions.

E. Structural modifications of, additions to, or replacements of, existing legal structures without increasing the impact to the critical area, provided that the City's regulations regarding legal non-conforming uses are complied with and such structural modifications shall not extend further into the critical area or buffer.

F. Within improved public rights-of-way or private street easements, construction, replacement, or modification of streets, utilities, lines, mains, equipment, or appurtenances, excluding electrical substations, are exempt from the first two “sequencing” methods stated in SMC 14.255.120110(E), provided that actions that alter a wetland or watercourse, such as culverts or bridges, or that result in the transport of sediment or increased stormwater shall be subject to the following requirements wherever possible:
   1. Critical area and/or buffer widths shall be increased equal to the width of the right-of-way improvement, including disturbed areas; and
   2. Native vegetation shall be retained and/or replanted, per the City of Snohomish plant material list, along the right-of-way improvement.

G. Minor utility projects, such as placement of a utility pole, street sign, anchor, or vault, which do not significantly impact critical areas function or values, if constructed using best management practices.

H. Removal with hand labor and light equipment of invasive or State recognized noxious weeds or plants, as designated by the City PlannerPlanning Director and including but not limited to:
   1. English Ivy (Hedera helix);
   2. Himalayan blackberry (Rubus discoloraremeniacus, R. procerusbifrons); and
   3. Evergreen blackberry (Rubus laciniatus);
   4. Bohemian knotweed (Polygonum x bohemicum); and
5. Scotch or Scot’s Broom (Sarothamnus scoparius).

I. Removal of trees, which a qualified arborist, landscape architect, or forester has documented as posing a threat to public safety and which do not provide critical habitat such as eagle perches, provided that removed trees are left on-site.

J. Measures to control fire or halt the spread of disease or damaging insects, consistent with the State Forest Practices Act, Chapter 76.09 RCW, provided that the removed vegetation shall be replaced with the same or similar species within one year or species in accordance with City of Snohomish plant material list and an approved plan.

K. Application of herbicides, pesticides, or fertilizers, if necessary, provided that their use shall conform to Department of Fish and Wildlife Management Recommendations and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency and that written approval has been obtained from the City PlannerPlanning Director.

L. Minor clearing or digging necessary for surveys, soil logs, percolation tests, and similar activities, provided that critical area impacts are minimized and disturbed areas are immediately restored.

M. Navigational aids and boundary markers.

N. Proposed developments that have undergone critical area review at a previous stage of permit review, provided that the earlier permit has not expired and the proposed development has not significantly changed (in order to avoid duplicate review).

O. Harvesting of wild crops without injuring their natural reproduction, tilling the soil, planting crops, applying chemicals, or altering the critical area.

P. Conservation measures of soil, water, vegetation, fish, and other wildlife that do not adversely impact ecosystems.

Q. Required environmental impact remediation.

R. Existing and ongoing agricultural activities, where the land has not lain idle so long that modifications to the hydrological regime are necessary to resume operations; and

S. Development within isolated Category III and IV wetlands less than 1,000 square feet in size.

T. Development within isolated Category III and IV wetlands between 1,000 square feet and 3,000 square feet in area shall be exempt from the normal sequencing process but shall be fully mitigated as required elsewhere in the critical area requirements.


The City Planner’s general sequence for administering this Critical Areas Code shall be per the following table, which shows questions the City Planner shall answer, and actions he or she shall take depending on the answer.

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Is the development proposal in a critical area or its buffer?</th>
</tr>
</thead>
</table>

Planning Commission Meeting
June 5, 2019
18
## DISCUSSION ITEM 7.

The City Planner shall check maps, review the environmental checklist, visit the site, and require scientific determinations as necessary to make this determination.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Go to step 2.</td>
<td>Go to step 4.</td>
</tr>
</tbody>
</table>

### Step 2

Is the development proposal exempt per SMC 14.255.060?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Go to step 4.</td>
<td>Require a critical area report. Don’t issue Determination of Completeness until critical area report is received. Reference critical area report in any public notice.</td>
</tr>
</tbody>
</table>

### Step 3

Does the proposal, with conditions of approval as necessary, conform to SMC 14.255.120, Substantive Requirements?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Go to step 4.</td>
<td>Go to step 4.</td>
</tr>
</tbody>
</table>

### Step 4

Document the review process in a manner appropriate to, and filed with, the permit(s) required for the proposed development, and act on the permit application in accordance with the findings.

### 14.255.080060 Critical Area Reports.

#### A.  Unless waived by the City PlannerPlanning Director on the grounds that the specific information required in this section does not apply to the development in question, critical area reports shall be prepared for non-exempt proposed developments located within critical areas or their buffers.

#### B. AllSaid critical area reports shall:
A1. Be prepared by qualified professionals as defined in WAC 365-195-905(4). The following list shows the type of critical area report and the related professional discipline. **The list is illustrative and not intended to be**

1a. Wetlands: wetland biologist qualified wetland professional.
2b. Critical aquifer recharge areas: hydro-geologist, geologist, or engineer.
3c. Floodplains: hydrologist or engineer.
4d. Geologically hazardous areas: engineer or geologist.
5e. Fish and wildlife habitats: biologist.

B2. Incorporate best available science.

C3. Cover a study area large enough to understand relationships with important off-site factors and identify any off-site critical area so near that its required buffer covers part of the project site.

D4. Contain Include the following:

1a. General Information:
   i. Name and contact information of the applicant;
   ii. Name, qualifications, and contact information for the primary author(s) of the critical area report;
   iii. Description of the proposed development; and
   iv. Identification of all the local, state and/or federal permits required for the project; and
   v. A vicinity map for the project.

2b. Site plan drawn to scale showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;

2c. Characterization of critical areas and buffers;

4d. Assessment of the probable impact to critical areas;

5e. Analysis of site development alternatives. If proposal requires a reduction of a buffer width, the analysis must explain why the need for the reduction was unavoidable;

6f. Description of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to SMC 14.255.120110.E (“sequencing”);

7g. Mitigation plans as needed, in accordance with SMC 14.255.10014.255.090;

8h. Evaluation of compliance with this Critical Areas Code’s substantive requirements applicable to the proposed development;

9i. Financial A description of the financial guarantees, if any, that will be required to ensure compliance, pursuant to SMC 14.255.080(G)(1-2) such as a performance bond or deposit, if necessary;

10j. Additional information as required in the chapter corresponding to the type of critical area;
11k. Documentation of who prepared the report and when, performed the fieldwork and prepared data sheets and when the work was done;

12l. Statement specifying the accuracy of the report and assumptions relied upon, and

13m. Additional information as required by the City Planner/Planning Director.

14.255.090070 Previous Studies.
Critical area reports may rely upon, without duplication of effort, valid previous studies prepared for the site, taking into account any change in the site, the proposed development, or the surrounding area provided the previous studies have been reviewed by a qualified wetland professional and determined to be still valid or to re-verify the study. The Planning Director, based on the qualified wetland professional’s determination and the City’s professional wetland consultant, may require an updated study or new delineation and assessment be made.

14.255.100080 Mitigation Plan Requirements.
If the City allows conformance with this Critical Areas Code’s substantive requirements to be achieved by mitigation as provided for by the Code, a mitigation plan shall be required pursuant to Step 3 of SMC 14.255.070, the critical area report shall include a mitigation plan consisting of the following elements. Mitigation plans for specific critical areas may require additional elements:

A. An analysis of the anticipated impacts;

B. A strategy for mitigating the impacts, including site selection factors;

C. An analysis of the anticipated functions and values that will result from the mitigation, including an assessment of risks;

D. A review of the best available science relative to the proposed mitigation;

E. Specific standards for evaluating whether the mitigation is successful;

F. Detailed construction plans, including:
   1. Construction timing;
   2. Grading and excavation details;
   3. Erosion and sediment control features;
   4. Planting plan; and
   5. Measures to protect plants until established;

G. A program for monitoring the mitigation over at least five (5) years, provided that ten (10) years of monitoring are required to ensure successful establishment of all trees and woody shrubs unless specifically stated otherwise in the chapter corresponding to the type of critical area. Sureties shall be required as described below to ensure compliance with the mitigation and monitoring program requirements. The monitoring program shall include information about the cost basis used to calculate surety amounts, and

   1. Performance Surety. All critical area mitigation and buffer enhancements shall be completed prior to final plat approval and/or building occupancy depending on the type
of application. However, when improvement cannot be completed prior to final acceptance due to weather conditions which may negatively affect the success of the project, a performance surety may be used. The surety shall equal one hundred fifty percent (150%) of the cost of the mitigation project, and the required improvements shall be installed in a satisfactory manner within six months or less.

2. Maintenance Surety. A maintenance surety shall be required on all mitigation and enhancement projects to ensure that the improvement successfully survives the monitoring periods set above.

   a. Mitigation Projects. The amount of the maintenance surety shall be equal to fifteen percent (15%) of the cost of the mitigation project and the term of the surety shall reflect that of the monitoring program.

   b. Buffer Enhancement Projects. The amount of the maintenance surety shall be equal to fifteen percent (15%) of the costs of the enhancement project and the term of the surety shall reflect that of the monitoring program.

H. Potential corrective measures should the monitoring indicate standards are not being met.


The City Planner/Planning Director may have the critical area report evaluated by an independent qualified professional and/or request consultation from a government agency with expertise. If the report and evaluations disagree, the City Planner/Planning Director shall determine which to utilize, based on which is most consistent with the best available science.

14.255.120100 Substantive Requirements.

A. All treatment of critical area shall be in accordance with best available science as defined in WAC 365-195-900 through 365-195-925, which is hereby adopted by reference, along with the Washington State Department of Community Development’s Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas.

B. Critical areas and their buffers shall be left undisturbed, except that the following may be permitted if best management practices are used:

1. Authorized functional restoration or enhancement, including native vegetation associated with low impact development facilities, removal of invasive species, and trimming of significant trees in a manner consistent with best horticultural practices, that does not negatively impact the trees’ health and survivability;

2. In buffers: utility poles and utility lines which do not require excavation or clearing;

3. In the outer 50 percent of buffers: permeable-surfaced walkways, trails, and minimal wildlife viewing structures;

4. Developments for which mitigation is allowed per subsection (E) of this section; and

5. Other uses specifically authorized by the Critical Areas Code.
C. No development shall occur which results in a net loss of the functions or values of any critical area except reasonable use variances per SMC 14.255.130120(B). The pre- and post-development functional comparison shall be on a per function basis unless otherwise authorized by the Critical Areas Code.

D. No development shall occur in critical areas and their buffers which results in an unreasonable hazard to the public health and safety.

E. These substantive requirements shall be met via one or more of the following methods, listed in preferential sequence (commonly known as “sequencing”). The methods used shall be those which are highest on the list yet consistent with the objectives of the proposed development:
   1. Avoiding the impact altogether by not taking a certain action or parts of an action;
   2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
   3. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
   4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
   5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
   6. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
   7. Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.

F. As a condition of any permit approval, the City may require that:
   1. The outer edge of the critical area or buffer be marked, signed, or fenced to protect the resource. Such protection may be temporary, during construction, or permanent such as to protect the resource from livestock or people. The City Planner/Planning Director shall specify the design and sign message, if applicable, of such markers, signs, and fencing.
   2. The applicant file a notice with the county records and elections division stating the presence of the critical area or buffer and the application of this Critical Areas Code to the property, in order to inform subsequent purchasers of the property.
   3. The critical area and/or buffer be placed in a critical area tract or conservation easement, the purpose of which is to set aside and protect the critical area. The critical area tract or conservation easement shall be:
      a. Held by the City, a homeowners’ association, a land trust or similar conservation organization, or by each lot owner within the development in an undivided interest;
      b. Recorded on all documents of title of record for the affected parcels;
      c. Noted on the face of any plat or recorded drawing; and
DISCUSSION ITEM 7.

d. Delineated on the ground with permanent markers and/or signs in accordance with local survey standards.

G. The City may allow averaging reduction of buffer widths, if steps are implemented to offset the negative impact of the reduction such as enhancement plantings, a proactive weeding program, placement of the buffer into a protected tract and a qualified professional demonstrates that: functions and values of the critical area and buffer are not adversely affected.

1. Functions and values are not adversely affected;
2. The total buffer area is not reduced; and
3. At no location is the buffer width reduced more than 40 percent.

H. Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical areas and critical area buffers. The same protrusions into this setback area shall be allowed as the development code allows into property line setback areas.

I. Critical areas and buffers shall not be allowed within any lot of a subdivision and/or short plats unless the plat was vested prior to the effective date and implementation of the ordinance codified in this chapter. Subdivision and/or short plats shall show, on their face, any applicable critical area limitations.

J. When any existing regulation, easement, covenant, or deed restriction conflicts with this Critical Areas Code, the one which provides more protection to the critical areas shall apply.

K. When critical areas of two or more types coincide, the more restrictive buffer and requirements shall apply.

L. Subject to approval through the planned residential development process, or approval by the City Planner, depending on who is the applicable decision-maker, in calculating allowable residential units per acre, up to 100 percent of the acreage of critical areas and buffers may be counted and this density transferred to buildable portions of the site.

M. The substantive requirements unique to the type of critical area shall also be complied with, as set forth in the applicable chapter of the Critical Areas Code.

14.255.130110 Critical Area Variances.
The City may grant variances from the Critical Areas Code’s substantive regulations in accordance with Chapter 14.70 SMC, if the variance request: the criteria in A or B below are met:

A. The variance conforms to the variance criteria stated in SMC 14.70.040, plus the variance:
   1B. Conforms with the purpose of the Critical Areas Code,
   2C. Does not impact anadromous fish habitat; and
   3D. Is justifiable in light of the best available science and the GMA policies referenced in SMC 14.255.010 (FG).
B. The variance is determined to be a reasonable use (conformance with the SMC 14.70.040 criteria not required) in accordance with the following:
1. The application of the Critical Areas Code would otherwise deny all reasonable economic use of the property;
2. The City does not offer to compensate the owner for the denial of reasonable economic use;
3. No other reasonable economic use of the property or development design has less impact on the critical area;
4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;
5. The proposal conforms to other applicable regulations;
6. Impacts to critical areas are mitigated; and
7. The application is sufficiently documented (for example, critical area report, mitigation plan, permit applications, and environmental documents) to make a determination regarding these criteria.

14.255.120 Reasonable Use Variances

A. Purpose: The standards and requirements of the Critical Areas Code are not intended and shall not be construed or applied in a manner to deny all reasonable use of private property. The purpose of a Reasonable Use Variance is to ensure no private property owner is denied all reasonable use of their private property. If an applicant demonstrates to the satisfaction of the Hearing Examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions. A Reasonable Use Variance is intended as a “last resort” when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a reasonable viable use of his or her property.

B. Conformance with the criteria for a variance pursuant to SMC 14.70.040 is not required in order for a Reasonable Use Variance to be approved.

C-B. Approval of a Reasonable Use Variances requires all of the following criteria be met:
1. That no reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable;
2. There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to:
   a. Relocation of proposed structures;
   b. Reduction in proposed density or building size;
   c. Phasing of project implementation;
   d. Change in timing of activities; and
   e. Revision of road or parcel layout or related site planning considerations;
3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;

4. The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions, and consideration has been given to best available science;

5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;

6. The proposed activity or use complies with all local, state, and federal laws and the applicant has applied for or obtained all required state and federal approvals; and

7. The inability to derive reasonable use is not the result of actions by the applicant in segregating or dividing the property.

C. If a reasonable use variance results in a loss in non-degraded buffer area:

1. The remaining buffer shall be enhanced to reduce significant adverse impacts to the critical area; and

2. Off-site buffer mitigation shall be required to compensate at a 1:1 ratio for the area of buffer reduced. Off-site mitigation can be on adjacent parcels or by purchasing credits from a certified off-site wetland mitigation bank pursuant to SMC 14.260.070(D)(1).

D. Allowed Reductions for Single-Family Residential Reasonable Use Lots. Reasonable use variances shall allow the development of a modest (in terms of floor area, footprint size, height, and exterior amenities) single-family residential home located on a lot that is partially or completely within a critical area or its buffer.

1. Building setbacks, pursuant to Chapter 14.210 – Dimensional and Other Requirements, may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city’s code requirements without encroaching onto a critical area or its buffer.

2. Development on single-family residential reasonable use lots shall:

   a. Leave at least seventy percent (70%) of the lot undisturbed to protect the critical areas.

   b. On lots seven thousand two hundred (7,200) square feet or less, a maximum building footprint of one thousand five hundred (1,500) square feet is allowed.

   c. The least amount of impervious area necessary to provide vehicular access will be permitted provided it provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the use of bridges and open bottom culverts shall be considered minimal impact.
d. Yard areas shall be permitted only if they do not encroach into the critical area or buffer and do not require a buffer width reduction to accommodate the yard area.

E. Allowed Reductions for Multifamily, Commercial, and Industrial Lots.

1. Building setbacks, pursuant to Chapter 14.210 – Dimensional and Other Requirements, may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city’s code requirements without encroaching onto a critical area or its buffer.

2. The number of required parking stalls may be reduced by up to forty percent if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.

F. Subdivisions of reasonable use lots will not be allowed unless there is sufficient area to construct all buildings, driveways, drainage facilities, landscaping, and yards areas without intruding on the critical area or buffer.

14.255.140130 Enforcement and Inspections.

A. In enforcing violations of the Critical Areas Code per Chapter 14.85 SMC, the City Planner Planning Director may require a restoration plan prepared by a qualified professional. Historic functions and values, soil configurations, and native vegetation shall be used as a guide for restoration. Flood and geological hazards shall be reduced to the pre-development level.

B. Reasonable access to the development shall be provided to agents of the City for critical area inspections, monitoring, restoration, or emergency action.
14.260.010 Purpose and Intent

A. The purpose of this Chapter is to recognize and protect the beneficial functions performed by wetlands, which include, but are not limited to:

1. Providing food, breeding, nesting and/or rearing habitat for fish and other wildlife;
2. Recharging and discharging ground water;
3. Contributing to stream flow during low flow periods;
4. Stabilizing stream banks and shorelines;
5. Storing storm and flood waters to reduce flooding and erosion; and
6. Improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.

B. The intent of this Chapter is to:

1. Be consistent with the relevant policies of the City of Snohomish Comprehensive Plan.
2. Be consistent with the goals and policies of the Washington State Growth Management Act (36.70A RCW).
3. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout the City of Snohomish; and
4. Establish review procedure for development proposals that have the potential for negatively impacting the functionality of wetlands due to their close proximity to wetlands.

14.260.020 Identification and Rating

A. Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and
applicable regional supplement. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter.

B. Wetland delineations are valid for five years. For wetland delineations older than five years the applicant shall provide a report from a qualified wetland professional to determine if the delineation is still valid. Based on the qualified wetland professional’s opinion and the City professional wetland consultant, the Planning Director may, at his or her discretion, require an updated or new delineation and assessment be made.

C. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

1. Category I wetlands are:
   a. Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/Washington State Department of Natural Resources;
   b. Bogs;
   c. Mature and old-growth forested wetlands larger than 1 acre;
   d. Wetlands that perform many functions well (scoring 23 points or more). These wetlands:
      i. Represent unique or rare wetland types;
      ii. Are more sensitive to disturbance than most wetlands;
      iii. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
      iv. Provide a high level of functions.

2. Category II wetlands are wetlands with a moderately high level of functions (scoring between 20 and 22 points).

3. Category III wetlands are wetlands with a moderate level of functions (scoring between 16 and 19 points) that generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. Category III wetlands can often be adequately replaced with a well-planned mitigation project but replacement cannot be guaranteed in any specific case.

4. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that can be replaced or in some cases improved. However, replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

D. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant’s knowledge.
14.260.030 Regulated Activities

A. For any regulated activity, a critical areas report or reconnaissance letter (see Chapter SMC 14.260.060) shall be required to support the requested activity.

B. The following activities are regulated if they occur in a regulated wetland or its buffer:
   1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
   2. The dumping of, discharging of, or filling with any material.
   3. The draining, flooding, or disturbing of the water level or water table.
   4. Pile driving.
   5. The placing of obstructions.
   6. The construction, reconstruction, demolition, or expansion of any structure.
   7. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
   9. Activities that result in:
      a. A significant change of water temperature.
      b. A significant change of physical or chemical characteristics of the sources of water to the wetland.
      c. A significant change in the quantity, timing, or duration of the water entering the wetland.
      d. The introduction of pollutants.

C. Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:
   1. Land that is located wholly within a wetland or its buffer may not be subdivided.
   2. Land that is located partially within a wetland or its buffer may be subdivided provided that each new lot is:
      a. Each new lot:
         a.i. Located outside of the wetland and its buffer;
         b.ii. Meets the minimum lot size requirements of established pursuant to SMC 14.210.330; and
         c.iii. Has a motor vehicle access route that does not encroach into a wetland or its buffer.
      b. The wetland and its buffer are placed in a separate tract designated as a Native Growth Protection Area.
14.260.040  **Wetland Exemptions and Allowed Uses in Wetlands**

A. The following wetlands may be exempt from the requirement to avoid impacts pursuant to SMC 14.260.070(A)(1) to avoid impacts, and they may be filled if the impacts are fully mitigated based on the remaining actions in SMC 14.260.070(A)(2-6). If available, impacts shall be mitigated through the purchase of credits from a mitigation bank, consistent with the terms and conditions of the bank. A critical area report for wetlands meeting the requirements in SMC 14.260.060 must be submitted in order to verify the wetland meets the criteria to be exempt.

B. All isolated Category IV wetlands less than 4,000 square feet that are exempt if they:
   a. Are not associated with riparian areas or their buffers
   b. Are not associated with shorelines of the state or their associated buffers
   c. Are not part of a wetland mosaic
   d. Do not score 6 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology)
   e. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat.

C. Wetlands of any type less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

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14.260.050  **Uses Allowed in Wetlands**

B. Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. Generally, these activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer.

1. A. Existing and ongoing agricultural activities, provided that they implement applicable Best Management Practices (BMPs) contained in the latest editions of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or develop a farm conservation plan in coordination with the local conservation district. BMPs and/or farm plans should address potential impacts to wetlands from livestock, nutrient and farm chemicals, soil erosion and sediment control and agricultural drainage infrastructure. BMPs and/or farm plans should ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.

2. B. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.
3.C. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.

4.D. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

5.E. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist or similar qualified specialist shall be required to demonstrate the ground water connection to the wetland or percolation of surface water down through the soil column will not be disturbed.

6.F. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to removal by hand or by means that cause minimal ground disturbance and will not allow the accidental removal of desirable plants unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

7.G. Educational and scientific research activities.

8.H. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way or easement, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.

9.I. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID (Low Impact Development) facility, Runoff Treatment or Flow Control BMP (Best Management Practices) if all of the following criteria are met:
   a. The wetland is classified as a Category IV-III or a Category III-IV wetland with a habitat score of 3-5 points and
   b. There will be “no net loss” of functions and values of the wetland and
   c. The wetland does not contain a breeding population of any native amphibian species and
   d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication #09-06-32, December 2009, or as revised and approved by Ecology);
or the wetland is part of a priority restoration plan that achieves restoration goals identified in the City of Snohomish Shoreline Master Program or other local or regional watershed plan, and

e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and

f. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits, and

g. Modifications that alter the structure of a wetland or its soils shall require appropriate permits. Existing functions and values that are lost shall be compensated/replaced pursuant to a plan approved by the Planning Director.

h. Stormwater LID BMPs required as part of new development or redevelopment can be placed within a wetland unless there are wetland features that would render LID BMPs infeasible. A if a site-specific characterization shall be required to determine if an LID BMP is feasible at the project site.


A. Buffer Requirements. The following buffer widths have been established in general accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology) and development patterns in the City of Snohomish. The adjacent land use intensity is assumed to be high.
**B. Table 1: Wetland Buffer Width Requirements**

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>Buffer width (in feet) based on habitat score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3-5</td>
</tr>
<tr>
<td>Category I: Based on total score</td>
<td>75</td>
</tr>
<tr>
<td>Category I: Bogs and Wetlands of High Conservation Value</td>
<td>190</td>
</tr>
<tr>
<td>Category I: Forested</td>
<td>75</td>
</tr>
<tr>
<td>Category II: Based on score</td>
<td>75</td>
</tr>
<tr>
<td>Category III (all)</td>
<td>60</td>
</tr>
<tr>
<td>Category IV (all)</td>
<td>40</td>
</tr>
</tbody>
</table>

**C. Table 2: Required measures to minimize impacts to wetlands**

1. For wetlands that score 5 points or more for habitat function, the following criteria must be met:
   a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife.
   b. The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement.
   c. Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available the Planning Director may determine providing a habitat corridor is not required.

2. All development shall be designed to implement the following measures described in Table 2 in order to ensure the required buffer width will be effective in minimizing the impact of the development on the functionality of the wetland.
### Table 2

<table>
<thead>
<tr>
<th>Disturbance</th>
<th>Required Measures to Minimize Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lights</td>
<td>• Direct lights away from wetland</td>
</tr>
<tr>
<td>Noise</td>
<td>• Locate activity that generates noise away from wetland</td>
</tr>
<tr>
<td></td>
<td>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</td>
</tr>
<tr>
<td>Toxic runoff</td>
<td>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</td>
</tr>
<tr>
<td></td>
<td>• Establish covenants limiting use of pesticides within 150 feet of wetland</td>
</tr>
<tr>
<td>Stormwater runoff</td>
<td>• Retrofit to current standards existing stormwater detention and treatment for roads and existing on-site development</td>
</tr>
<tr>
<td></td>
<td>• Prevent channelized flow from lawns that directly enters the buffer</td>
</tr>
<tr>
<td>Change in water regime</td>
<td>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</td>
</tr>
<tr>
<td>Pets and human disturbance</td>
<td>• Use fencing to delineate buffer edge and to discourage disturbance</td>
</tr>
<tr>
<td></td>
<td>• Place wetland and its buffer in a separate tract or protect with a conservation easement</td>
</tr>
<tr>
<td>Dust</td>
<td>• Use best management practices to control dust</td>
</tr>
</tbody>
</table>

**D. Increased Wetland Buffer Area Width.** Buffer widths may be increased on a case-by-case basis as determined by the Director when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must demonstrate, at a minimum, the following criteria are met:

1. The wetland is used by a state or federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
2. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
3. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.
E. Reducing Buffer Width.

1. Reduction of buffer widths shall only be allowed on a case-by-case basis. Use of the buffer reduction or buffer averaging tool should be considered a last resort option available only if decreasing buffer widths below the requirement in Table 1, SMC 14.260.060B is unavoidable.

2. Intact Wetland Buffers: Buffer widths may be reduced by up to 25% through averaging of buffers that do not meet the definition of a “degraded buffer” when all of the following conditions are met:
   a. There is no practical alternative site design that would completely avoid the need to reduce the buffer.
   b. Mitigation sequencing pursuant to SMC 14.260.080A demonstrates reducing buffer widths is necessary to allow reasonable development of the site.
   c. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional.
   d. The total area of the buffer after averaging is equal to the area required without averaging.
   e. Invasive species shall be removed from the buffer areas where the buffer width is reduced and the areas shall be replanted to create the appropriate plant community for the ecoregion.
   f. The areas where the buffer width is increased to accommodate the reduction are replanted to create the appropriate plant community for the ecoregion.
   g. A temporary irrigation system shall be installed and operated in the areas that are replanted and shall be operated for a minimum of the first three summers (June 1 – September 30) following the planting.
   h. The buffer at its narrowest point is never less than either 25% of the required width pursuant to Table 1 or 25 feet for Category IV, whichever is greater.

2. Degraded Wetland Buffers: Buffer averaging of “degraded wetland buffers” will be permitted. Buffer widths may be reduced by up to 50% through buffer averaging when all of the following conditions are met:
   a. The wetland is determined to be a “degraded wetland buffer” in a submitted wetland report prepared by a qualified wetland professional.
   b. There is no practical alternative site design that would completely avoid the need to reduce the buffer.
   c. Mitigation sequencing pursuant to SMC 14.260.080A demonstrates reducing buffer widths is necessary to allow reasonable development of the site.
   d. The areas where the buffer width reduction is more than 25% are kept to a minimum.
b.d. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional.

c.e. The total area of the buffer after averaging is equal to the area required without averaging.

d.f. Invasive species are removed from the remaining areas where the buffer width is reduced and the areas are replanted to create the appropriate plant community for the ecoregion. Species shall be removed from the entire buffer area.

e.g. The entire buffer area is replanted to create the appropriate plant community for the ecoregion and a temporary irrigation system is installed and operated in the areas that are replanted for a minimum of the first three summers (June 1 – September 30) following the planting.

f.h. The buffer at its narrowest point is never less than either 50 percent of the required width pursuant to Table 1 or 40 feet for Category I and II wetlands and 25 feet for Category IV wetlands, whichever is greater.

1.3. Buffer reduction and buffer averaging may be used in conjunction with each other on the same site.

F.—Buffer Reduction: Buffer reduction will be permitted in non-degraded buffers when all of the following conditions are met:

1. Invasive species shall be removed from the entire buffer area.

2. The entire buffer area is replanted to create the appropriate plant community for the ecoregion and a temporary irrigation system is installed and operated for a minimum of the first three summers (June 1 – September 30) following the planting.

3. The buffer at its narrowest point is never less than either 25 percent of the required width pursuant to Table 1 or 40 feet for Category I and II wetlands and 25 feet for Category IV wetlands, whichever is greater.

G.—Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. When an existing developed impervious area within a wetland buffer that is generally parallel to the wetland boundary, the wetland buffer measurement stops at the edge of the impervious area. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, and other mowed or paved areas shall not be considered buffers or included in buffer area calculations.

H.—Buffers on Wetland Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

I.—Buffer Maintenance. Except as otherwise specified or allowed in accordance with this
Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds-vegetation is required for the duration of the mitigation bond surety.

**J-I. Impacts to Buffers.** Requirements for the compensation for impacts to buffers are outlined in Section 14.260.070 of this Chapter.

**K-J. Overlapping Critical Area Buffers.** If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

**L-K. Allowed Buffer Uses.** The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize negative impacts to the buffer and adjacent wetland:

1. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
2. Passive recreation facilities designed and in accordance with an approved critical area report, including:
   a. Walkways and trails, provided that those pathways are:
      i. Limited to crossings that have no adverse impact on water quality;
      ii. Generally parallel to the perimeter of the wetland;
      iii. Located only in the outer twenty-five percent (25%) of the wetland buffer area;
      iv. Located to avoid removal of significant trees;
      v. Limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
   b. Wildlife-viewing structures.
3. Educational and scientific research activities.
4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way or easement, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.
7. Enhancement of a wetland buffer through the removal of non-native invasive plant
species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

9. Stormwater management facilities including, but not limited to, bioretention ponds, bioswales, low impact development facilities, level spreaders, rain gardens, and treated water outfalls with energy dispersion, but excluding stormwater detention and retention vaults/ponds/detention vaults, and detention ponds with a freeboard of greater than two (2) feet, if:
   a. Located in the outer 50% of the wetland buffer of a Category II – IV wetland; and
   b. There is no significant loss in buffer functionality; and
   c. There is “no net loss” of functions and values of the wetland being protected by the buffer; and
   d. The wetland hydrology is unaltered; and
   e. The natural routing of run-off is not significantly altered.

M. Signs and Fencing of Wetlands and Buffers:

1. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Director of Planning prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs are in place.

2. Permanent signs. As a condition of any permit or authorization issued pursuant to this Chapter the applicant shall install permanent signs along the boundary of a wetland or buffer.
   a. Permanent signs shall be:
      i. Made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability.
      ii. Posted at an interval of one (1) every fifty feet (50’), or one (1) per lot if the lot is less than fifty feet (50’) wide;
      iii. Located at least four feet (4’) above the ground;
      iv. At least eight inches (8”) wide and twelve inches (12”) tall
      v. Be maintained by the property owner in perpetuity; and
vi. Worded as follows or with alternative language approved by the Director:

**Protected Wetland Native Growth Protection Area Do Not Disturb**

Contact the City of Snohomish Department of Planning & Development Services Regarding Uses, Restrictions, and Opportunities for Stewardship

b. The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing
   a. A permanent fence shall be installed around or on the outer edge of the buffer to delineate the edge of the protected area. The fence shall be a split rail fence no more than four (4) feet high or similar design as approved by the Director or designee.
   b. When the edge of the buffer is adjacent to an area whose use necessitates fencing that provides security or safety the Planning Director may approve an alternative to a split rail fence.
   c. When domestic grazing animals are present or may be introduced on site, the required permanent fence around the edge of the buffer shall be of construction adequate to prevent the domestic grazing animals from entering the protected area.
   d. Fencing installed as part as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.


A. All applications for new development or redevelopment that propose new structures or expands the footprint of existing structures shall require a reconnaissance letter prepared by a qualified wetland professional, stating there are no wetlands on the site or nearby that would be impacted by the proposed development. For developed sites with more than 75% impervious coverage a reconnaissance letter or wetland report are not required.

B. The reconnaissance letter shall:
   1. Be prepared by a qualified wetland professional;
   2. Include a description of the field activity the qualified wetland professional performed when visiting the site;
   3. Include a statement as to the likelihood there is a wetland located on the site or near enough to be impacted by the proposed development and the basis for that statement; and
4. If the conclusion is other than an absolute statement that there is no likelihood of a wetland being on the site or within 300 feet of the site then a full written wetland report shall be required.

C. Minimum Standards for Critical Area Reports for Wetlands. The written critical area wetland report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include:
   a. All of the requirements stated in SMC 14.255.060
   b. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
   c. A description of the methodologies used to conduct the wetland delineations, wetland ratings, or impact analyses, including references.
   d. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
   e. For each wetland identified on site and within 300 feet of the project boundary, provide:
      i. the wetland rating, including a description of and score for each function;
      ii. required buffers;
      iii. hydrogeomorphic classification;
      iv. wetland acreage based on a professional survey from the field delineation (acreages for on-site portion or estimate entire wetland area including off-site portions);
      v. Cowardin classification of vegetation communities;
      vi. habitat elements;
      vii. soil conditions based on site assessment and/or soil survey information; and
      viii. to the extent possible, hydrologic information such as location and condition of inlets/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues.
   f. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
   g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.
   h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
   i. A detailed description of how reasonable efforts made to apply mitigation sequencing, pursuant to SMC 14.260.070A080A, has been applied to avoid,
minimize, and mitigate impacts to critical areas.

j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.

k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

l. An evaluation of the functions of the wetland and its buffer. Include references for the method used and data sheets.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

   a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; and areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

   b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

   b.c. If mitigation is being proposed, a mitigation plan with a planting plan and specifications.


A. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans—Version 1,
2. Mitigation ratios shall be consistent with Subsection H of this Chapter.

3. Mitigation requirements may also be determined using the credit/debit tool described in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report* (Ecology Publication #10-06-011, March 2012, or as revised and approved by Ecology) consistent with subsection H of this Chapter.

C. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or

2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.

D. Approaches to Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on the approaches listed below.

1. Wetland mitigation banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC is allowed if:
   1. The DirectorPlanning Director determines that it would provide appropriate compensation for the proposed impacts; and
   2. The impact site is located in the service area of the bank.
   3. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument.
   4. Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.

2. Permittee-responsible mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation shall be used only if the applicant’s qualified wetland professional demonstrates to the DirectorPlanning Director’s satisfaction that the proposed approach is ecologically preferable to use of a bank, consistent with the...
criteria in this section.

E. **Types of Compensatory Mitigation.** Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant’s qualified wetland professional demonstrates to the Director’s satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.

1. **Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:
   a. **Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres and functions.
   b. **Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

2. **Establishment (Creation):** The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

   1. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant’s qualified wetland professional that:
      i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
      ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and
      iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. **Enhancement.** The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can
lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland’s buffer’s functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

4. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, or repairing water control structures or fences. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:

a. The Director (Planning Director) determines that the proposed preservation is the best mitigation option;

b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

c. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:
   i. Category I or II wetland rating (using the wetland rating system for western Washington)
   ii. Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands) or aquatic habitat that is rare or a limited resource in the area;
   iii. The presence of habitat for priority or locally important wildlife species; or also list has provides biological and/or hydrological connectivity;
   iv. Provides biological and/or hydrological connectivity;
   v. Priority sites in an adopted watershed plan.

d. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust.

e. The Director (Planning Director) may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site.

f. Ratios for preservation in combination with other forms of mitigation shall range from 10:1 to 20:1, as determined on a case-by-case basis by the Director (Planning Director), depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation shall be at least 20:1.

F. Location of Compensatory Mitigation. Compensatory mitigation actions shall generally be
conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. **However, when purchasing credits from an off-site mitigation bank it is assumed that mitigation is ecologically preferable.** Otherwise, the following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank or advance mitigation.

1. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and required widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat.

3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.

4. Off-site locations shall be in the same sub-drainage basin unless:
   a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or
   b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;

5. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.

G. **Timing of Compensatory Mitigation.** Compensatory mitigation projects shall be completed prior to activities that will impact wetlands. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora. The **Director Planning Director** may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the
environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the City.

H. **Wetland Mitigation Ratios: Table 3**

<table>
<thead>
<tr>
<th>Category and Type of Wetland</th>
<th>Creation or Re-establishment</th>
<th>Rehabilitation</th>
<th>Enhancement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I: Bog, Natural Heritage site</td>
<td>Not considered possible</td>
<td>Case by case</td>
<td>Case by case</td>
</tr>
<tr>
<td>Category I: Mature Forested</td>
<td>6:1</td>
<td>12:1</td>
<td>24:1</td>
</tr>
<tr>
<td>Category I: Based on functions</td>
<td>4:1</td>
<td>8:1</td>
<td>16:1</td>
</tr>
<tr>
<td>Category II</td>
<td>3:1</td>
<td>6:1</td>
<td>12:1</td>
</tr>
<tr>
<td>Category III</td>
<td>2:1</td>
<td>4:1</td>
<td>8:1</td>
</tr>
<tr>
<td>Category IV</td>
<td>1.5:1</td>
<td>3:1</td>
<td>6:1</td>
</tr>
</tbody>
</table>

I. **Credit/Debit Method.** To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance *Wetland Mitigation in Washington State Parts I and II* (Ecology Publication #06-06-011a-b, March 2006, or as revised and approved by Ecology), the Director of Planning may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report*, (Ecology Publication #10-06-011, March 2012, or as revised and approved by Ecology).

J. **Compensatory Mitigation Plan.** When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified wetland professional shall be required, meeting the following minimum standards:

1. **Wetland Critical Area Report.** A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in this Chapter.

2. **Compensatory Mitigation Report.** The mitigation plan shall include a written report and plan sheets that contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State– Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06-06-011b, March 2006 or as revised and approved by Ecology).
1. The written report must contain, at a minimum:
   i.a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
   ii.b. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
   iii.c. Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating.
   iv.d. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession?).
   v.e. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Include illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
   vi.f. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
   vii.g. A description of the proposed mitigation construction activities and timing of activities.
   viii.h. Performance standards (measurable standards for years post-installation) for upland and wetland communities, a monitoring schedule, and a maintenance schedule and actions proposed by year.
   ix.i. A discussion of ongoing management practices that will protect wetlands after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
   j. A bond-surety estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
   k. An acceptable surety device is required to ensure compliance with the
requirements of the mitigation plan.

i. Performance Surety. All wetland mitigation and buffer enhancement shall be completed prior to final plat approval and/or building occupancy depending on the type of application. However, when improvements cannot be completed prior to final acceptance due to weather conditions which may negatively affect the success of the project, a performance surety may be used. The surety shall equal one hundred fifty percent of the cost of the mitigation project, and the required improvements shall be installed in a satisfactory manner within six months or less.

ii. Maintenance Surety. A maintenance surety shall be required on all mitigation projects to ensure that the improvement successfully survives the monitoring periods set above.

iii. Wetland Mitigation Projects. The amount of the maintenance surety shall be equal to fifteen percent of the cost of the mitigation project and the term of the surety shall reflect that of the monitoring program.

iv. Buffer Enhancement Projects. The amount of the maintenance surety shall be equal to fifteen percent of the costs of the enhancement project and the term of the surety shall reflect that of the monitoring program.

xi. Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

2. The scaled plan sheets for the compensatory mitigation plan must contain, at a minimum:

i.a. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.

ii.b. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed in the compensation area(s). Also include existing cross-sections (estimated one-foot intervals) of wetland areas on the development site that are proposed to be altered and for the proposed areas of wetland or buffer compensation.

iii.c. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.

iv.d. Required wetland buffers for existing wetlands and proposed compensation areas. Also identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter.

v.e. A planting plan for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.

K. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a minimum 1:1 ratio.
Compensatory buffer mitigation shall replace those buffer functions lost from development.

L. **Protection of the Mitigation Site.** The mitigation area and any associated buffer shall be located in a critical area tract or a conservation easement consistent with this Chapter.

M. **Monitoring.**

1. Mitigation monitoring shall be required for a 10-year period to establish that performance standards have been met. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project’s natural resource values and functions.

2. Monitoring reports prepared by a qualified wetland professional for years 1, 2, 3, 5, 7, and 10 of the monitoring period shall be submitted to the City. If the mitigation goals are not obtained within that period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

N. **Advance Mitigation.** Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations consistent with *Interagency Regulatory Guide: Advance Permittee- Responsible Mitigation* (Ecology Publication #12-06-015, Olympia, WA, December 2012, or as revised and approved by Ecology).

O. **Alternative Mitigation Plans.** The Director may approve alternative wetland mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the City of Snohomish Shoreline Master Program. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

The Director shall consider the following for approval of an alternative mitigation proposal:

1. The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-32, December 2009, or as revised and approved by Ecology).

2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.

3. Mitigation according to Section E is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.

4. There is clear potential for success of the proposed mitigation at the proposed mitigation site.

5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in Section J.

6. The plan shall be reviewed and approved as part of overall approval of the proposed
7. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.


9. Qualified professionals in each of the critical areas addressed shall prepare the plan.

10. The City may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

14.260.080 14.260.090 Unauthorized Alterations and Enforcement

A. When a wetland or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop, and the critical area shall be restored. The City shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of provisions of this Chapter.

B. Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the City. Such a plan shall be prepared by a qualified wetland professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in Subsection C below. The Director shall, at the applicant or other responsible party’s expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or other responsible party for revision and re-submittal.

C. Minimum Performance Standards for Restoration. The following minimum performance standards shall be met for the restoration of a wetland, provided that if the applicant or other responsible party can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:

1. The historic structure, functions, and values of the affected wetland shall be restored, including water quality and habitat functions.

2. The historic soil types and configuration shall be restored to the extent practicable.

3. The wetland and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration.

4. Information demonstrating compliance with other applicable provisions of this Chapter shall be submitted to the Director.

D. Site Investigations. The Director or designee is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The Director shall present proper credentials and make a reasonable effort
to contact any property owner before entering onto private property.

E. Enforcement and Penalties.

1. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Chapter shall be subject to the provisions of Chapter 14.85, Enforcement, SMC.

2. Any development carried out contrary to the provisions of this Chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The City may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Chapter. The civil penalty shall be assessed consistent with the provisions of Chapter 14.85, Enforcement, SMC and Chapter 1.14, Code Enforcement, SMC.

3. If the wetland affected cannot be restored, monies collected as penalties shall be deposited in a dedicated account for the preservation or restoration of landscape processes and functions in the watershed in which the affected wetland is located. The City may coordinate its preservation or restoration activities with other cities in the watershed to optimize the effectiveness of the restoration action.