

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2368

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, RELATING TO THE CITY'S DEVELOPMENT REGULATIONS TO PROTECT THE CITY'S WETLANDS, BY REPEALING AND REPLACING SNOHOMISH MUNICIPAL CODE (SMC) CHAPTER 14.260 – WETLANDS, AND AMENDING SMC CHAPTERS 14.100 – DEFINITIONS AND 14.255 – CRITICAL AREAS, GENERAL; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Washington State Growth Management Act under Chapter 36.70A includes the goal to protect the environment and requires municipalities to designate and protect critical areas, which includes wetlands, by using best available science when drafting development regulations to protect the functions and values of wetlands; and

WHEREAS, the City has the authority under Title 35A and Chapter 58.17 RCW to adopt regulations related to zoning and land uses and the processing of land use development permits; and

WHEREAS, the City has adopted a Land Use Development Code under Title 14 SMC (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City; and

WHEREAS, SMC Chapter 14.255 – Critical Areas, General provides general regulations to protect critical areas from the negative impacts of development, and SMC Chapter 14.260 – Wetlands, provides specific regulations protecting wetlands while allowing development to occur near them; and

WHEREAS, in taking the actions set forth in this Ordinance, the City of Snohomish has utilized the best available science (BAS); and

WHEREAS, the City of Snohomish has provided ample opportunity for public hearing input and written comments on the proposed revisions to the City’s regulations and has duly considered said input and comments; and

WHEREAS, pursuant to the State Environmental Policy Act, the City of Snohomish as the designated lead agency for review of the proposed regulations, issued a Determination of Non Significance on July 25, 2019 pursuant to WAC 197-11-340(2); and

WHEREAS, on April 26, 2019, the proposed regulations contained herein were transmitted to the State Department of Commerce as required by RCW 36.70A.106; and

WHEREAS, on August 7, 2019, following notice as required by law, the Planning Commission held a duly-noticed public hearing to receive staff and citizen input concerning the proposed regulations contained herein and all persons who wished to be heard on the matter were heard; and

WHEREAS, the Planning Commission adopted “Findings of Facts & Conclusions” and recommended City Council approval of the proposed regulations which are attached hereto as “Exhibit A” and incorporated by this reference; and

WHEREAS, on September 3, 2019, at a duly-noticed public meeting, the City Council received staff and citizen input, and considered the recommendation of the Planning Commission, and all persons who wished to be heard on the matter were heard; and

WHEREAS, the City Council has determined that it is in the public interest to preserve the natural environment of the City of Snohomish by protecting wetlands from being negatively impacted by development activity;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. **Adoption of Recitals as Findings.** The City Council hereby adopts each of the recital paragraphs above as findings and hereby incorporates them by reference as though fully stated herein.

Section 2. **Adoption of Planning Commission Findings.** The Planning Commission findings as set forth in “Exhibit A” are hereby adopted and incorporated by reference, including but not limited to the findings that the Development Code regulations and amendments adopted by this Ordinance are:

- a. Internally consistent with the City of Snohomish Comprehensive Plan;
- b. Consistent with the Washington State Growth Management Act;
- c. Consistent with the Washington State Environmental Policy Act (Chapter 43.21C RCW); and
- d. In the interest of the public health, safety, and welfare of Snohomish residents.

Section 3. **Amended SMC 14.100.020, adopted.** SMC 14.100.02 entitled “Definitions”, is hereby amended to:

- repeal in their entirety the definitions for:
 - “Development Activity”; and
 - “Federal methodology”; and
- repeal and replace the definitions for:
 - “Functions and Values”; and
 - “Ordinary High Water Mark”; and
- add new definitions for;
 - “Agricultural activities, existing and ongoing”;
 - “Best Available Science”;
 - “Bog”;

- “Creation, wetland”;
- “Degraded wetland buffer”;
- “Development”;
- “Ecology”;
- “Hazardous Substances”;
- “Isolated Wetland”;
- “Mature and Old-Growth Forested Wetland”;
- “Project Area”;
- “Qualified Wetland Professional”;
- “Reasonable use”;
- “Re-establishment, Wetland”;
- “Rehabilitation, Wetland”;
- “Repair or Maintenance”;
- “Restoration”;
- “Species, Listed”;
- “Stream”;
- “Unavoidable Impacts”;
- “Variance”;
- “Wetlands”
- “Wetland of high conservation value”;
- “Wetland Mitigation Bank”; and
- “Wetland Mosaic”; and
- amend the existing definitions for:
 - “Alteration”;
 - “Buffer”;
 - “Critical areas”;
 - “Enhancement, when applied to wildlife habitat, wetlands, or wetland buffers”;
 - “In-kind mitigation”;
 - “Mitigation”; and
 - “Native vegetation”

and shall read as set forth in attached “Exhibit B” which is hereby incorporated herein by this reference.

Section 4. Chapter 14.255 SMC Amended. Chapter 14.255 SMC entitled “Critical Areas – General” is hereby amended to read as set forth in attached “Exhibit C” which is hereby incorporated herein by this reference.

Section 5. Chapter 14.260 Repealed. Chapter 14.260 SMC entitled “Wetlands” is hereby repealed in its entirety.

Section 6. New Chapter 14.260 SMC Adopted. A new Chapter 14.260 SMC entitled “Wetlands” is hereby adopted to read as set forth in attached “Exhibit D” which is hereby incorporated herein by this reference as though fully contained herein.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction,

such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 8. Authority to Make Necessary Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance and attachments including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 9. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 3rd day of September, 2019.

CITY OF SNOHOMISH

By John T. Kartak
John T. Kartak, Mayor

ATTEST:
By Pat Adams
Pat Adams, City Clerk

APPROVED AS TO FORM:
By Grant Weed
Grant Weed, City Attorney

Date of Publication: 9/7/2019

Effective Date (5 days after publication): 9/12/2019

Exhibit A

Snohomish Planning Commission Findings of Fact & Conclusions

Based on the review of the proposed amendments to the critical area and wetland regulations in Title 14, Snohomish Municipal Code and related definitions, the Planning Commission of the City of Snohomish makes the following Findings of Fact:

1. The City has the authority under RCW Title 35A to adopt regulations related to land use development.
2. The Washington State Growth Management Act, pursuant to RCW 36.70A.040(3)(b), requires local governments to designate and protect critical areas, which include wetlands and that the protective regulations must be based on Best Available Science.
3. The City of Snohomish is a designated Urban Growth Area. The Planning Goals as stated in the Washington State Growth Management Act (RCW 36.70A.020) include goals to encourage growth in urban areas and to protect the environment. These goals can conflict in designated Urban Growth Areas necessitating a need to balance the requirements of both goals without disregarding them.
4. The City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City. Title 14 includes regulations to designate and protect wetlands in Chapters 14.255 – Critical Areas, General and in Chapter 14.260 – Wetlands.
5. The wetlands in the City of Snohomish are located in urbanized areas and many are already impacted by nearby development. There are no known wetlands in the city that are Category 1 and none, of any category, are known to have a habitat score greater than 7.
6. The vast majority of buffer areas surrounding existing wetlands in the city are highly degraded.
7. The current wetland regulations allow reducing standard buffer widths by up to 50% in some circumstances which is contrary to the Washington State Department of Ecology recommendation that standard buffer widths not be reduced by more than 25%. There is no evidence the current regulations have caused a decrease in the functionality of wetlands located in the City of Snohomish.
8. The proposed amendments implement the following policies contained in the Snohomish Comprehensive Plan:
 - GOAL EP 1:** Preserve and protect significant critical areas as responsible stewards of public and private resources.
 - EP 1.1:** Best available science. Maintain the City’s critical area regulations to be consistent with best available science standards and practices.
 - EP 1.2:** Technical guidance. Require professional studies and seek the guidance of disciplines with expertise in critical area protection and natural hazard mitigation: 1) where appropriate to confirm the presence of regulated

critical areas and compliance with critical area regulations; and 2) where prudent to ensure that public and environmental safety is adequately addressed through the development review process.

- EP 1.3:** Mitigation sequencing. Emphasize mitigation sequencing – avoiding and minimizing impacts to critical areas – before determining whether and what type of compensatory mitigation is appropriate.
- EP 1.4:** Mitigation measures. Where disturbance of regulated critical areas or their buffers occur, employ mitigation measures that provide cumulative and long-term benefit to natural systems.
- EP 1.5:** Preserve buffers. Ensure that buffers of native vegetation are adequate to preserve the functions and values of wetlands, lakes, and stream corridors.
- EP 1.6:** No net loss. Allow no net loss of wetland functions and values on a basin-wide basis.
- EP 1.8:** Wetland mitigation. Consider alternative wetland mitigation programs to maximize the potential for long-term success and benefit while preserving the critical functions of on-site resources.
- EP 1.10:** Reasonable use. Allow judicious use of property encumbered by critical areas where compliance with regulations would deny reasonable economic use of the property, where mitigation measures adequately address protection of the resource, and where risk to other properties is not increased.

9. Pursuant to SMC 14.15.070 and RCW 36.70A.106(1), a notice of intent to adopt the proposed amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on April 30, 2019.
10. Pursuant to the State Environmental Policy Act, the City of Snohomish, as the designated lead agency for review of the proposed amendment, issued a Determination of Non Significance on July 25, 2019 pursuant to WAC 197-11-340(2).
11. The Planning Commission met on March 6, May 1, June 5, and June 26 to be briefed on wetland issues and to provide direction on staff-generated draft code language.
12. A Notice of Planning Commission Public hearing consistent, with Snohomish Municipal Code requirements, was published on July 13, 2019.
13. The Planning Commission held a public hearing on August 7, 2019, to receive public testimony concerning the proposed amendments. After hearing a staff presentation on the proposed amendments, asking questions, and receiving public testimony, the public hearing was closed and the Commission deliberated before making its recommendation to the City Council that the proposed code amendments be approved.

Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions.

1. It is necessary to be flexible in applying Best Available Science, especially as it is used to recommend buffer widths, in order to be consistent with the Growth Management Act's goal of encouraging growth in urban areas. The proposed wetland regulation amendments incorporate the necessary amount of flexibility to accommodate future growth without sacrificing the requirement to protect the environment.
2. The Washington State Department of Ecology's recommended buffer widths are based on informed decisions that consider an amalgam of scientific studies as well as practical land use realities and an understanding of the uncertainties of translating the science into specific protection measures such as buffer widths. Therefore, the deviations from those recommended buffer widths, with conditions, as allowed by the proposed amendments are still generally consistent with the best available science.
3. Allowing standard buffers to be reduced by up to 50% on a case-by-case basis and not as a standard procedure, while requiring significant buffer enhancement with provisions to ensure the viability of those efforts, as allowed by the proposed amendments, is an acknowledgement of the characteristics of development patterns near wetlands in the City of Snohomish. Allowing those reductions is an acceptable risk to wetland functionality.
4. Development near wetlands and their buffers does not necessarily create negative impacts on the functionality of a wetland. Given the degraded state of most of the wetland buffer areas in the city buffer enhancement requirements attached to development proposals will frequently result in improved buffer functionality even when the buffer width is reduced by up to 50% of the standard recommended width.
5. The proposed amendments will not result in decreased functionality of wetlands located within the City of Snohomish.
6. The proposed amendments are consistent with Washington State law and the SMC.
7. The proposed amendments implement and are consistent with the goals and policies of the Comprehensive Plan.
8. The proposed amendments protect the public health, safety, and general welfare.
9. The proposed amendments do not result in an unconstitutional taking of private property for public purpose and they do not violate substantive due process guarantees.

Date: 8/7/19

By: Terry Lippincott
Terry Lippincott, Planning Commission Chair

Exhibit B

SMC 14.100.020 – Definitions

Agricultural activities, existing and ongoing means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conversation program. Forest practices are not included in this definition.

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 means 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.

Bog means a low-nutrient, acidic wetland with organic soils and characteristic bog plants, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Buffer or Buffer zone means an area contiguous to a critical area that is established to maintain the functions and/or structural stability of 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 means environmentally sensitive areas of land, including wetlands, frequently flooded areas, ~~fish and wildlife~~ habitat conservation areas, geologically hazardous areas, and critical aquifer recharge areas, as defined in RCW 36.70A and in this Title, needing protection.

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 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, increasing plant density or diversity, removing non-indigenous or noxious species, or controlling erosion.

Functions and Values means 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 means 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 critical areas with substitute areas whose characteristics and functions closely approximate or improve those destroyed or degraded by a regulated activity.

Isolated Wetland means 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 means a wetland having at least 1 contiguous acre of either old-growth forest or mature forest, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Mitigation means 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 a certain 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 remedial action when necessary.

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

Native vegetation means indigenous plant species that occur naturally in a particular region or environment.

Ordinary High Water Mark means 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 means measures taken to restore an altered or damaged natural feature, including:

- A. Active re-establishment steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized

alteration; and

- B. Rehabilitation actions performed to repair structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

Species, Listed means 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 means 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 means adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

Variance means an authorization to modify certain regulations of this code, to the minimum amount necessary to provide relief, when due to special circumstances of the property strict application of such regulations would mean the site would be deprived of development privileges commonly enjoyed by other properties in the same land use designation or vicinity. A variance runs with the land, and compliance with the conditions of a variance shall be the responsibility of the current property owner, whether that is the applicant or a successor.

Wetlands means 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 means 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 means 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 means 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.

Exhibit C

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 |
| 14.255.110 | Independent Review of Critical Area Report |
| 14.255.120 | Substantive Requirements |
| 14.255.130 | <u>Critical Area</u> Variances |
| 14.255.120 | Reasonable Use Variances |
| 14.255.140 | 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. While the overall goal of this chapter and Chapters 14.260 –14.280 SMC are to protect environmentally sensitive areas, those goals can conflict with the City’s obligation under the Washington State Growth Management Act to accommodate future growth. Therefore, the regulations in this and the other critical area chapters have been tempered to manage that conflict, including providing for deviations and variances to allow the accommodation of urban growth without encouraging urban sprawl and recognizing property rights, while still protecting the functionality of the critical areas. 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.~~

14.255.030020 Critical Areas Code.

Chapters 14.255 through 14.280 SMC shall collectively be known as the “Critical Areas Code”. Chapter 14.255 SMC shall establish the general framework for Chapters 14.260 through 14.280 SMC. The ~~City Planner~~Planning Director shall administer and interpret the Critical Areas Code.

14.255.035030 Best Available Science (BAS).

- 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-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:
 - a. *Peer review.* The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline.
 - b. *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.
 - c. *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.
 - d. *Quantitative analysis.* The data have been analyzed using appropriate statistical or quantitative methods.
 - e. *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.
 - f. *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.~~

14.255.050040 Applicability.

Unless exempted in SMC ~~14.255.060~~14.255.050, 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.

14.255.060050 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 Planner~~Planning Director within one (1) working day following commencement of the emergency action. The ~~City Planner~~Planning 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~~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~~110(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 Planner~~Planning Director and including but not limited to:
 1. English Ivy (Hedera helix);
 2. Himalayan blackberry (Rubus ~~discolor~~aremeniacus, R. ~~procerus~~bifrons); ~~and~~
 3. Evergreen blackberry (Rubus laciniatus);
 4. Bohemian knotweed (Polygonum x bohemicum); and
 5. Scotch or Scot's Broom (Sarthamnus 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 Washington State Departments of Ecology and 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 Planner~~Planning 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, as defined in RCW 84.34.020(2), 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.~~

14.255.070 — Review Process.

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.

| | | |
|---------------|---|--|
| Step 1 | Is the development proposal in a critical area or its buffer? The City Planner shall check maps, review the environmental checklist, visit the site, and require scientific determinations as necessary to make this determination. | |
| | Yes | No |
| | Go to step 2. | Go to step 4. |
| Step 2 | Is the development proposal exempt per SMC 14.255.060? | |
| | Yes | No |
| | Go to step 4. | 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. |
| Step 3 | Does the proposal, with conditions of approval as necessary, conform to SMC 14.255.120, Substantive Requirements? | |
| | Yes | No |
| | Go to step 4. | Go to step 4. |
| 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 Planner/Planning 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.

A.B. ~~All~~ critical area reports shall:

1. ~~A~~ 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 inclusive.
 - a. ~~1~~ Wetlands: ~~wetland biologist~~ qualified wetland professional.
 - b. ~~2~~ Critical aquifer recharge areas: hydro-geologist, geologist, or engineer.
 - c. ~~3~~ Floodplains: hydrologist or engineer.
 - d. ~~4~~ Geologically hazardous areas: geotechnical engineer or geologist.
 - e. ~~5~~ Fish and wildlife habitats: biologist.
2. ~~B~~ Incorporate best available science.
3. 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.
4. ~~Contain~~ Include the following:
 - a. ~~1~~ 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~~ Description of the proposed ~~development project;~~ and
 - iv. ~~identification~~ identification of all the local, state and/or federal permits required ~~permits for the project;~~ and
 - v. A vicinity map for the project;
 - b. ~~2~~ Site plan drawn to scale showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;
 - ~~a-c.~~ ~~3~~ Characterization of critical areas and buffers;
 - ~~b-d.~~ ~~4~~ Assessment of the probable impact to critical areas;
 - ~~e-e.~~ ~~5~~ 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;
 - ~~d-f.~~ ~~6~~ Descriptions of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to SMC 14.255.~~120110~~.E ("sequencing");
 - ~~e-g.~~ ~~7~~ Mitigation plans as needed, in accordance with SMC ~~14.255.100~~ 14.255.090;
 - ~~f-h.~~ ~~8~~ Evaluation of compliance with this Critical Areas Code's substantive requirements applicable to the proposed development;

- ~~g.i.~~ 9 ~~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;
- ~~h.i.~~ 10 Additional information as required in the chapter corresponding to the type of critical area;
- ~~i.k.~~ 11 Documentation of who ~~prepared the report and when, performed the with~~ fieldwork and prepared data sheets and when the work was done;
- ~~j.l.~~ 12 Statement specifying the accuracy of the report and assumptions relied upon, and
- ~~m.~~ 13 Additional information as required by the ~~City Planner~~ Planning Director.

14.255.~~090~~070 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.~~100~~080 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 The critical area report shall include a mitigation plan consisting of the following elements. Mitigation plans for specific critical areas, as described in Chapters 14.260 through 14.280, may require additional elements specific to those types of critical areas:

- 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 may be 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. The amount of the maintenance surety shall be equal to 50% of the total cost of the mitigation plan as approved by the City
 - b. The term of the surety shall reflect that of the approved monitoring program.
 - c. The amount of the surety may be reduced after years 3 and/or 7 of the monitoring period if new cost estimates are provided and approved by the Planning Director.

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

14.255.110090 Independent Review of Critical Area Report.

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-record~~ a notice with the ~~county records and elections division~~Snohomish County Auditor’s Office 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 ~~beare~~ 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
 - 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 conservation easement or protected tract and if a qualified professional demonstrates confirms in writing 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.~~

- H. 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.~~J. 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~~Planning Director, depending on who ~~is~~ the applicable decision-maker is, 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 provided the overall density cap is not exceeded.

- M.L. 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~~

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 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. Approval Criteria. Reasonable Use Variances require 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, in a manner proposed by a qualified wetland professional and approved by the Planning Director, to reduce significant adverse impacts to the critical area; or
2. Off-site buffer mitigation shall be required to compensate at a 1:1 ratio for the area of buffer reduced. Off-site mitigation may be:
 - a. Located on adjacent parcels, provided the mitigation area is placed within a Native Growth Protection Area tract or a conservation easement; or
 - b. Created by purchasing credits from an off-site wetland mitigation bank certified by the State of Washington or other appropriate agency.

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. Have a maximum building footprint of one thousand five hundred (1,500) square feet.

c. Include the least amount of impervious area necessary to provide vehicular access 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. Include yard areas 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 Multi-family, Commercial, and Industrial Reasonable Use Lots. Reasonable use variances shall allow for the economically viable development of lots with a land use designation of Multi-family Residential, Commercial or Industrial 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 (50%) 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. For commercial and industrial projects, the number of required parking stalls may be reduced by up to forty percent (40%) if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.

F. Reasonable use lots shall not be subdivided unless there is sufficient area to construct all buildings, driveways, 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.

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

Exhibit D

Chapter 14.260 Wetlands

Sections:

- 14.260.010 Purpose and Intent
- 14.260.020 Identification and Rating
- 14.260.030 Regulated Activities
- 14.260.040 Wetland Exemptions
- 14.260.050 Uses Allowed in Wetlands
- 14.260.060 Wetland Buffers
- 14.260.070 Critical Area Reports for Wetlands
- 14.260.080 Compensatory Mitigation
- 14.260.090 Unauthorized Alterations and Enforcement

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 procedures for development proposals that have the potential for negatively impacting the functionality of wetlands due to their close proximity to wetlands.
- C. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

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, except for those exempted in SMC 14.260.040B, 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 opinion of the qualified wetland professional and the City's 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), 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 more than 22 points). 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 20-22 points).
 - 3. Category III wetlands are wetlands with a moderate level of functions (scoring 16-19 points) that generally have been disturbed in some way 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 SMC 14.260.070) 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 except as allowed by SMC 14.260.050.
 - 8. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222- 12-030, or as thereafter amended.
 - 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:
 - a. Each new lot:
 - i. Is located outside of the wetland and its buffer;
 - ii. Meets the minimum lot size requirements established pursuant to Title 14 SMC; and
 - 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

- A. Wetlands pursuant to subsections B and C below are exempt from the requirement to avoid impacts pursuant to SMC 14.260.080(A)(1) and from the buffer requirements pursuant to SMC 14.260.060 and they may be filled if the impacts are fully mitigated based on the remaining actions in SMC 14.260.080(A)(2-6). If available, impacts may be mitigated through the purchase of credits from a mitigation bank approved by the State and Federal Interagency Review Team (IRT), consistent with the terms and conditions of the bank. A critical area report for wetlands meeting the requirements in SMC 14.260.070 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 are exempt if they:
 - 1. Are not associated with riparian areas or their buffers;
 - 2. Are not associated with shorelines of the state or their associated buffers;
 - 3. Are not part of a wetland mosaic;
 - 4. 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); and
 - 5. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife or 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.

14.260.050 Uses Allowed in Wetlands

The activities listed below are allowed in wetlands. Generally, these activities will 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. These activities include:

- 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 shall 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 shall ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.
- 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.
- 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.

- 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.
- 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 as shown by specific studies prepared by a hydrologist or similar qualified specialist shall be required.
- 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.
- G. Educational and scientific research activities by a reputable organization and as approved by the Planning Director.
- 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.
- I. Stormwater management facilities. Stormwater LID (Low Impact Development) BMPs (Best Management Practices) as part of new development or redevelopment may be placed within a wetland unless there are wetland features that would render LID BMPs infeasible. A site-specific characterization shall be required to determine if an LID BMP is feasible at the project site. A wetland can be physically or hydrologically altered to meet the requirements of an LID facility, Runoff Treatment or Flow Control BMP if all of the following criteria are met:
 - 1. The wetland is classified as a Category III or a Category IV wetland with a habitat score of 3-5 points; and
 - 2. There will be “no net loss” of functions and values of the wetland; and
 - 3. The wetland does not contain a breeding population of any native amphibian species; and
 - 4. 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 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

5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and
 6. 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
 7. 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.
- J. Walkways and trails, provided that those pathways are:
1. Necessary to connect existing trails outside of the wetland or necessary to accommodate a new trail in the buffer area that must be diverted due to terrain or dense vegetation;
 2. Limited to crossings that have no adverse impact on water quality;
 3. Located to avoid removal of significant trees;
 4. 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 but shall be reviewed on a case-by-case basis.

14.260.060 Wetland Buffers

- 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).

B. Table 1: Wetland Buffer Width Requirements.

Table 1

| Wetland Category | Standard Buffer Width Based on Habitat Score | | |
|---|--|-----|-----|
| | Habitat Score | | |
| | 3-5 | 6-7 | 8-9 |
| | Buffer Width (in feet) | | |
| Category I: Based on total score | 75 | 110 | 225 |
| Category I: Bogs and Wetlands of High Conservation Value | 190 | | 225 |
| Category I: Forested | 75 | 110 | 225 |
| Category II: Based on score | 75 | 100 | 225 |
| Category III (all) | 60 | 100 | 225 |
| Category IV (all) | 40 | | |

C. Required Measures to Minimize Impacts to Wetlands.

1. For wetlands that score 6 points or more for habitat function, the following criteria must be met if there is a stream or lake on the site or on a parcel adjacent to the site:
 - a. If there is an existing vegetated corridor connecting the wetland to the stream/lake it shall be protected in such a manner as to provide a connection for wildlife to use.
 - b. The corridor shall be protected for the entire distance between the wetland and the stream/lake by some type of legal protection such as a conservation easement and designated as a Native Growth Protection Area.
 - 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 measures described in Table 2 below 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

| Disturbance | Required Measures to Minimize Impacts |
|----------------------------|---|
| Lights | <ul style="list-style-type: none"> • Direct lights away from wetland |
| Noise | <ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • 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 |
| Toxic runoff | <ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland |
| Stormwater runoff | <ul style="list-style-type: none"> • Retrofit to current standards existing stormwater detention and treatment for roads and existing on-site development • Prevent channelized flow from lawns that directly enters the buffer |
| Change in water regime | <ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns |
| Pets and human disturbance | <ul style="list-style-type: none"> • Use fencing to delineate buffer edge and to discourage disturbance • Place wetland and its buffer in a separate tract or protect with a conservation easement |
| Dust | <ul style="list-style-type: none"> • Use best management practices to control dust |

- D. Increased Wetland Buffer Area Width. Buffer widths may be increased on a case-by-case basis as determined by the Planning Director when a larger buffer is necessary to protect wetland functions and values. This determination must be supported by 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. Buffer widths may be decreased through buffer reduction and/or buffer averaging but shall only be allowed on a case-by-case basis. Buffer reduction and buffer averaging shall be considered as a last resort option available only if decreasing buffer widths below the standard width is unavoidable.
2. Buffer widths may be reduced by up to 25% through buffer reduction 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 development of the site.
 - c. The reduced 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. Invasive species are removed from the areas where the buffer width is reduced and the areas are replanted to create the appropriate plant community for the ecoregion.
 - e. A temporary irrigation system is 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.
 - f. 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.
3. Buffer widths may be reduced by up to 50% through buffer averaging when all of the following conditions are met:
 - a. There is no practical alternative site design that would allow reasonable development of the site that completely avoids the need to reduce the buffer.
 - b. The areas where the buffer width reduction is more than 25% are kept to a minimum.
 - 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 are removed from the areas where the buffer width is reduced and the areas are replanted to create the appropriate plant community for the ecoregion.
 - f. A temporary irrigation system is operated in the areas that are replanted for a minimum of the first three summers (June 1 – September 30) following the planting.
 - g. The buffer at its narrowest point is never less than either 50 percent of the required width pursuant to Table 1 or 50 feet for Category I and II wetlands, 40 feet for Category III wetlands, and 25 feet for Category IV wetlands, whichever is greater.
4. Buffer reduction and buffer averaging may be used in conjunction with each other on the same site provided that there is no loss of function and the original buffer width is not reduced by more than fifty percent (50%) or to be less than 25 feet for a Category IV wetland at any point.

- F. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field.

1. When there is 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.
 2. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the standard buffer width required for the category of the created, restored, or enhanced wetland.
 3. With buffer averaging, when buffer width is increased the added areas must be fully vegetated in order to be included in buffer area calculations.
 4. With buffer averaging, walkways, driveways, and other paved areas shall not be considered buffers or included in buffer area calculations.
- G. 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.
- H. 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 vegetation is required for the duration of the mitigation surety.
- I. Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in Section 14.260.080 of this Chapter.
- J. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland or between two wetlands with different categories or habitat scores), the wider buffer applies.
- 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 except the pathway may go outside the outer 25% if necessary to avoid terrain, vegetation or other natural feature that would otherwise block the pathway;
 - 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 but shall be reviewed on a case-by-case basis.

- b. Wildlife-viewing structures.
- c. Educational and scientific research activities by a reputable organization and as approved by the Planning Director.
- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.
- i. 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 vaults, and detention ponds with a freeboard of greater than two (2) feet, if:
 - i. Located in the outer 50% of the wetland buffer of a Category II – IV wetland; and
 - ii. There is no significant loss in buffer functionality; and
 - iii. There is “no net loss” of functions and values of the wetland being protected by the buffer; and
 - iv. The wetland hydrology is unaltered; and
 - v. 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 Planning Director or designee prior to the commencement of any ground disturbance or other 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, a 4x4 wooden post, or another non-treated material of equal durability.
 - ii. Posted at an interval of one every fifty feet, or one per lot if the lot is less than fifty feet wide;
 - iii. Located at least four feet above the ground;
 - iv. At least eight inches wide and twelve inches tall
 - v. Maintained by the property owner in perpetuity; and
 - vi. Worded as follows or with alternative language allowed if approved by the Planning Director:

Native Growth Protection Area

This upland buffer and critical area is protected to provide wildlife habitat and maintain water quality.

Please do not disturb this valuable resource.

Contact the City of Snohomish Department of Planning & Development Services Regarding Uses, and Restrictions.

- b. The provisions of subsection (a) above 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 feet high or similar design as approved by the Planning Director or designee.
 - b. When the edge of the buffer is adjacent to an area containing a use that 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 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.

14.260.70 Critical Area Reports for Wetlands

- A. All applications for new development or redevelopment that propose new structures or expand the footprint of existing structures may be required to provide, at a minimum as determined by the Planning Director, a reconnaissance letter prepared by a qualified wetland professional, stating there are no wetlands on the site or on adjacent parcels. 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 of 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 there is uncertainty in the conclusion whether there is a likelihood of a wetland being on the site or within 150 feet of the site then a full written wetland report shall be required.
- B. Minimum Standards for Critical Area Report for Wetlands. The critical area wetland report shall be written. The report and the accompanying plan sheets shall contain the following information:
1. The written report shall, at a minimum, include:
 - a. All of the requirements stated in SMC 14.255.060
 - b. Documentation of any fieldwork performed on the site, including but not limited to field data sheets for delineations, rating system forms, baseline hydrologic data, and photographs showing typical conditions in the wetlands and buffer areas.
 - 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 150 feet of the project boundary, provide all of the following (to the extent possible recognizing the limitations created if access to an off-site wetland is restricted):
 - i. the wetland rating, including a description of and score for each function,;
 - ii. required standard buffers pursuant to SMC 14.260.060B;
 - iii. hydrogeomorphic classification;
 - iv. wetland acreage based on a professional survey from the field delineation (acreages for on-site portion or estimate of entire wetland area including off-site portions);
 - v. Cowardin classification of vegetation communities;
 - vi. observed 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.
 - h. A detailed description of how mitigation sequencing, pursuant to SMC 14.260.080A, has been applied to avoid, minimize, and mitigate impacts to critical areas.
 - i. 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.
 - j. An evaluation of the functions of the wetland and its buffer. Include references for the method used and data sheets.
2. The accompanying site plan sheet(s) for the project shall, at a minimum, include:
- 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.
 - c. If mitigation is being proposed, a mitigation and planting plan with plant specifications.

14.260.080 Compensatory Mitigation.

- 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 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*, (Ecology Publication #06-06- 011b), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-32, December 2009).
 - 2. Mitigation ratios shall be 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 if 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:
 - a. The Planning Director determines that it would provide appropriate compensation for the proposed impacts; and
 - b. The impact site is located in the service area of the bank; and
 - c. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
 - d. Replacement ratios for projects using bank credits are consistent with replacement ratios specified in the certified mitigation bank instrument.
2. Permittee-responsible mitigation. 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 Planning Director's satisfaction that the proposed approach is consistent with the criteria in this section.

E. Types of Compensatory Mitigation. To offset lost or diminished wetland and buffer functions caused by development, four types of mitigation are acceptable. These acceptable types of mitigation are listed below in preferential order. The mitigation type with the highest preference level shall be required if viable. Mitigation types with lower preference levels shall be allowed only if the applicant's qualified wetland professional demonstrates to the Planning Director that all mitigation types of a higher preference are not viable.

1. Restoration: Restoration is achieved through 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 or buffer. Restoration actions are either "re-establishment" or "rehabilitation" activities as defined in SMC 14.100.020.

2. Creation: If a site cannot support wetland or buffer restoration to compensate for expected wetland and/or buffer impacts, the Planning Director may authorize creation of a new wetland and buffer upon demonstration by the applicant's qualified wetland professional that:
 - a. 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; and
 - b. 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
 - c. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.
3. Enhancement. If restoration or creation are not viable options for a site then enhancement shall be undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat improvement. Enhancement may result in a change in some wetland functions and may lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Enhancement 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. Preservation (Permanent protection/Maintenance). Preservation is achieved by removing a threat to, or preventing the decline of, wetland conditions in or near a Category I or II wetland located within the Snohomish City limits.
 - a. Preservation shall be used only when none of the other acceptable compensatory mitigation types are viable for an impacted site.
 - b. Preservation may only be used off-site on Category I or II wetlands and their associated buffers that are at risk of degradation.
 - c. Preservation mechanisms include, but are not limited to, the purchase of land or easements to restrict development potential and repairing water control structures or fences.
 - d. Preservation does not result in a gain of wetland acres.
 - e. Preservation can be used only if:
 - i. The Planning Director determines that the proposed preservation is the best and most viable mitigation type available; and
 - ii. 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; and
 - iii. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Characteristics indicative of high-quality sites include:

- Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands);
 - Aquatic habitat that is rare or a limited resource in the area;
 - The presence of habitat for priority or locally important wildlife species;
 - Provides biological and/or hydrological connectivity;
 - Priority sites in an adopted watershed plan.
- f. Permanent preservation of the wetland and buffer shall be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust. The Planning Director may approve other legal and administrative mechanisms in lieu of a conservation easement or tract if it is determined they are adequate to protect the site; and
- g. Ratios for preservation in combination with other forms of mitigation shall range from 10:1 to 20:1 (in terms of acres or square feet), as determined on a case-by-case basis by the 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 preferable for ecological reasons or because of increased likelihood the mitigation will succeed and eventually be self-sustaining. When considering off-site mitigation, preference should be given to using a mitigation bank.
1. The following criteria shall be used to determine the preferred location of compensatory mitigation:
 - a. There are no reasonable opportunities on site or within the sub-drainage basin; 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 shall include:
 - i. Anticipated replacement ratios for wetland mitigation;
 - ii. Buffer conditions and required widths;
 - iii. Available water to maintain anticipated hydrogeomorphic classes of wetlands when restored;
 - iv. Proposed flood storage capacity, and
 - v. Potential to mitigate riparian fish and wildlife impacts (such as connectivity).
 - b. On-site mitigation would require elimination of high-quality upland habitat.
 - c. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
 2. 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 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;

3. The design for the compensatory mitigation project shall be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation shall 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.

1. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
2. The 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. Appropriate rationale would include:
 - a. An example of appropriate rationale could include the identification of 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).
 - b. A delay in implementing compensatory mitigation shall only be approved subject to the following criteria and conditions:
 - i. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation or be injurious to the health, safety, or general welfare of the public;
 - ii. Written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan shall be provided by the applicant. The justification must be verified and approved by the City.
 - iii. A performance surety in the amount of 150% of the estimated cost of implementing the compensatory mitigation shall be required whenever compensatory mitigation is delayed.

H. Wetland Mitigation Ratios.

Table 3 (ratios refer to units of area such as acres and square feet)

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

- 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), the Planning Director 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).
- 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 included as part of the wetland critical area 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).
 1. The written report must contain, at a minimum:
 - 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.
 - b. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
 - 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 and impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating.

- d. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions:
 - i. Acreage (or square footage) of wetlands and uplands,
 - ii. Water regime and sources of water,
 - iii. Vegetation,
 - iv. Soils,
 - v. Landscape position,
 - vi. Surrounding land uses, and
 - vii. Functions.
 - e. Estimate of future conditions in the location if the compensation actions are not undertaken (i.e., how the site would progress through natural succession).
 - f. 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
 - g. A description of the proposed actions for compensation of wetland, buffer, 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.
 - h. A description of the proposed mitigation construction activities and timing of activities.
 - i. Performance standards (measurable standards for the years post- installation) for buffer areas and wetland communities, a monitoring schedule, and a maintenance schedule and actions proposed by year.
 - j. A discussion of ongoing management practices that will protect wetlands and buffers after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
 - k. A surety estimate for the entire compensatory mitigation project, including cost estimates for the following elements:
 - i. Site preparation,
 - ii. Plant materials,
 - iii. Construction materials,
 - iv. Installation oversight,
 - v. Maintenance twice per year,
 - vi. Monitoring field work and reporting, and
 - vii. Contingency actions for a maximum of the total required number of years for monitoring.
2. The plan sheets for the mitigation plan must be scaled and contain, at a minimum:
- 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 with the area of each called out in square feet or acres.
 - 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.
- 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.
 - d. Required wetland buffers for existing wetlands and proposed compensation areas with any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter clearly identified.
 - 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.
3. Performance and maintenance surety devices pursuant to SMC 14.255.080(G)(1-2) may be required to ensure compliance with the requirements of the mitigation plan.
 - a. 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 that may negatively affect the success of the project, a performance surety equal to 150% of the estimated cost of the mitigation project shall be required, and the required improvements shall be installed in a satisfactory manner within six months or less of project completion. After completion of the work the performance surety may be converted into a maintenance surety.
 - b. A maintenance surety equal to in conformance with the requirements of SMC 14.255.080(G)(2) shall be required on all mitigation projects to ensure that the improvement successfully survives the required monitoring period as required in subsection M below.
 4. The wetlands and buffers on the project site, including the compensatory mitigation areas, shall be protected by being placed in a separate tract or with a conservation easement to create a Native Growth Protection Area.
- 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 and designated as a Native Growth Protection Area.
- M. Monitoring.
1. Mitigation monitoring may be required for up to 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 stipulated in the mitigation plan are achieved. If mitigation goals are obtained and sustained before year 10, the monitoring program may be ended based on a recommendation by a qualified wetland professional and as approved by the Planning Director.

- 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).
- O. Alternative Mitigation Plans. The Planning 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.
1. The Planning Director may approve alternative mitigation proposals that:
 - a. Use a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-32, December 2009).
 - b. Call for the creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
 - c. Are necessary because mitigation pursuant to this section is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
 2. All alternative mitigation proposals shall:
 - a. Have a clear potential for success of the proposed mitigation at the proposed mitigation site.
 - b. Include 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 subsection J of this section.
 - c. Be reviewed and approved as part of overall approval of the proposed use.
 3. Plans may propose a wetland of a different type if justified based on regional needs or functions and values as determined by the Planning Director. However, the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
 4. Plans shall include mitigation guarantees that meet or exceed the minimum requirements as outlined in SMC 14.260.080(J).
 5. Plans shall be prepared by a qualified wetland professional.

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 Planning Director may, 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 impacted by unauthorized alterations, 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 Planning Director.
- D. Site Investigations. The Planning Director or designee is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The Planning 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.