



CITY COUNCIL MEETING AGENDA

*This is a remote meeting due to the Covid-19 Coronavirus emergency.
Details on how to attend this meeting are below. Public comments are not taken during
study session.*

Zoom Meeting ID: 847 5622 4088

Phone number 253-215-8782

**September 14, 2020
Monday**

**Study Session
7:00 p.m.**

- 1. Call to Order and Flag Salute**
- 2. Roll Call of Councilmembers**
- 3. Regular Agenda**
 - A. Sound Transit Briefing**
 - B. Shoreline Master Program**
- 4. Adjournment**

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Agenda Item #: 3A

To: Mayor Styron Sherrell and City Council Members
From: Nick Afzali, MSCE, Public Works Director
Date: September 14, 2020
Re: Sound Transit Presentation

ATTACHMENTS: Sound Transit – Tacoma Dome Link Extension Presentation

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Issue: Sound Transit staff; Ms. Elizabeth Scott, Mr. Curvie Hawkins and Mr. Austin Neilson will update the City Council on the status of extension of Light Rail from Federal Way Transit Station to Tacoma Dome.

Discussion: There are several topics that are important to Milton. These are:

- How the taxes paid by Milton residents are being invested.
- Coordination with the City project which is the construction of Porter Way at SR-99.
- Alignment of the Light Rail along I-5 and potential impacts.
- Permits from the City.
- Access via various modes of travel to South Federal Way Light Rail Station (vicinity of Costco) and Fife Light Rail station.

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Tacoma Dome Link Extension

*Milton City Council Study Session
September 14, 2020*

Tacoma Dome Link Extension (TDLE)

- 10 miles
- 4 stations
- 1 river crossing

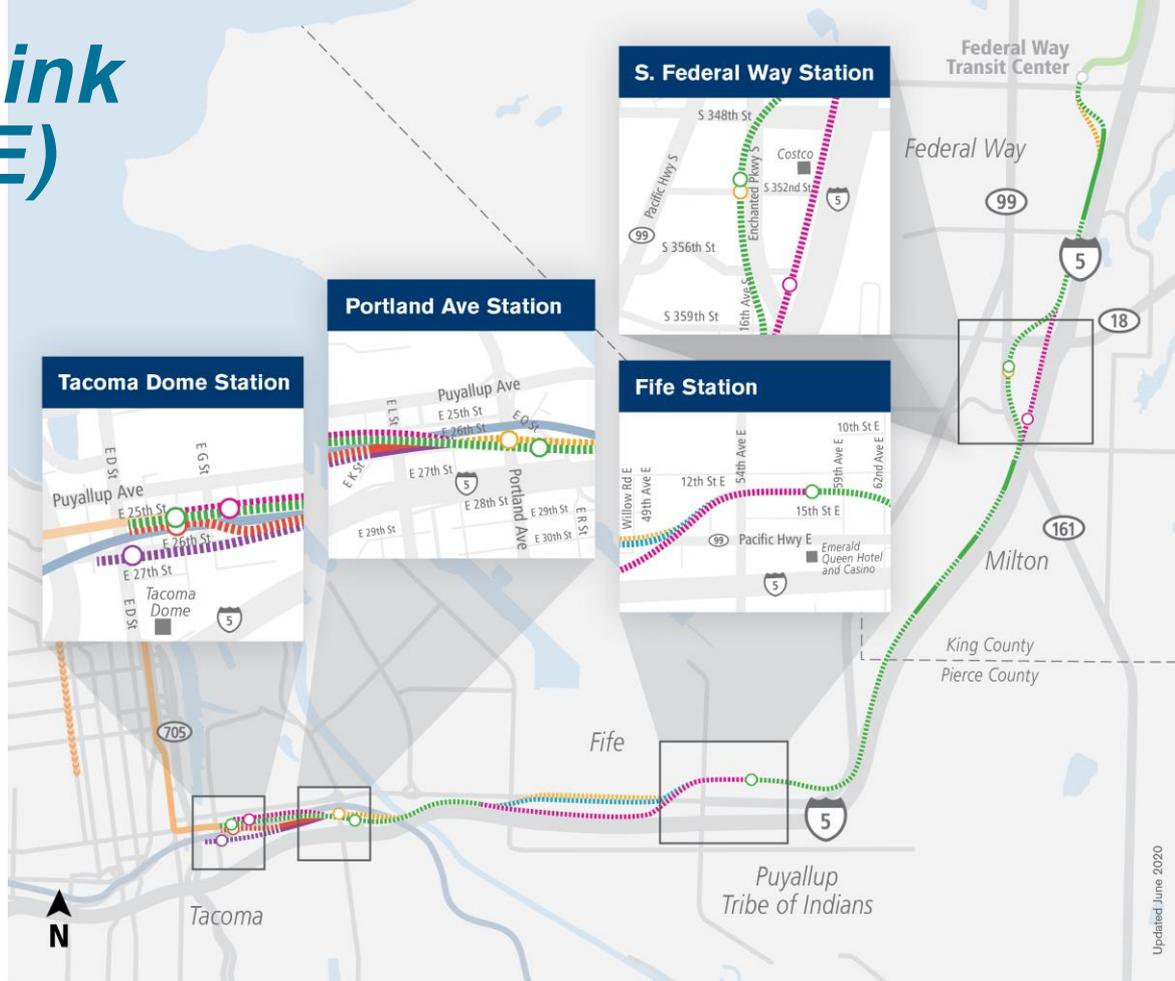
- Preferred Alternative
- Design options
- Other Draft EIS alternatives

Route profiles

- ▬▬▬ Elevated
- ▬▬▬ Surface
- Station alternatives

Other rail service

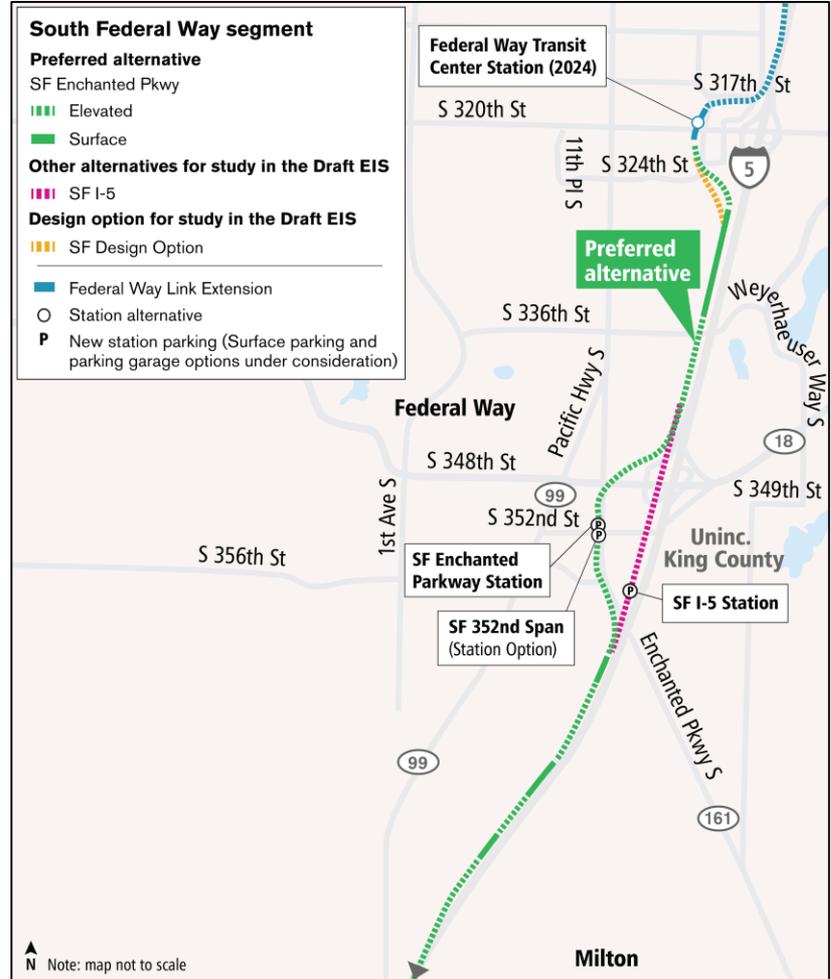
- Angle Lake–Federal Way (2024)
- Sounder South: Lakewood–Seattle (in service)
- Tacoma Dome–Theater District (in service)
- Theater District–St Joseph (2022)
- Existing station



Updated June 2020

South Federal Way Segment: overview

- Two alignment alternatives leaving Federal Way Transit Center Station (FWLE)
- Two station location alternatives +1 option
 - SF Enchanted Parkway Station (*preferred*)
 - SF 352nd Span (*option*)
 - SF I-5 Station



South Federal Way Station: design refinements

- Refined location for SF I-5 station
- Included SF Enchanted Parkway station option spanning 352nd St
- Configuration of up to 500 park-and-ride spaces (surface or structure)
- Non-motorized and transit access to station

South Federal Way segment

Preferred alternative

SF Enchanted Pkwy

|||| Elevated

■ Surface

Other alternatives for study in the Draft EIS

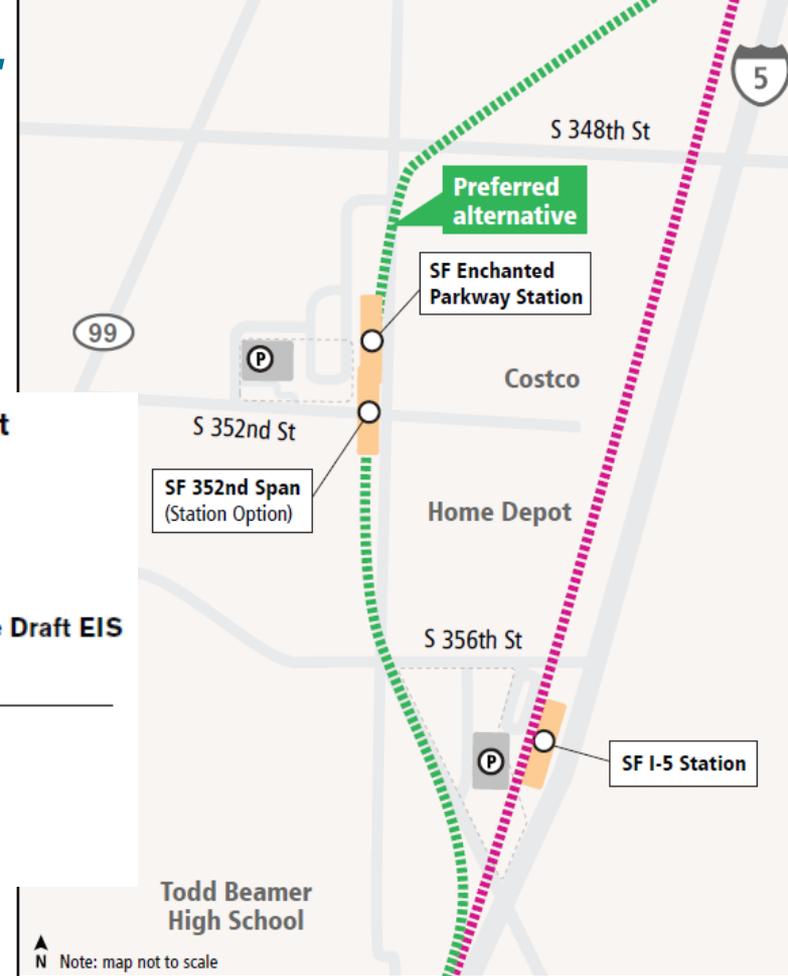
|||| SF I-5

○ Station alternative

P New station parking

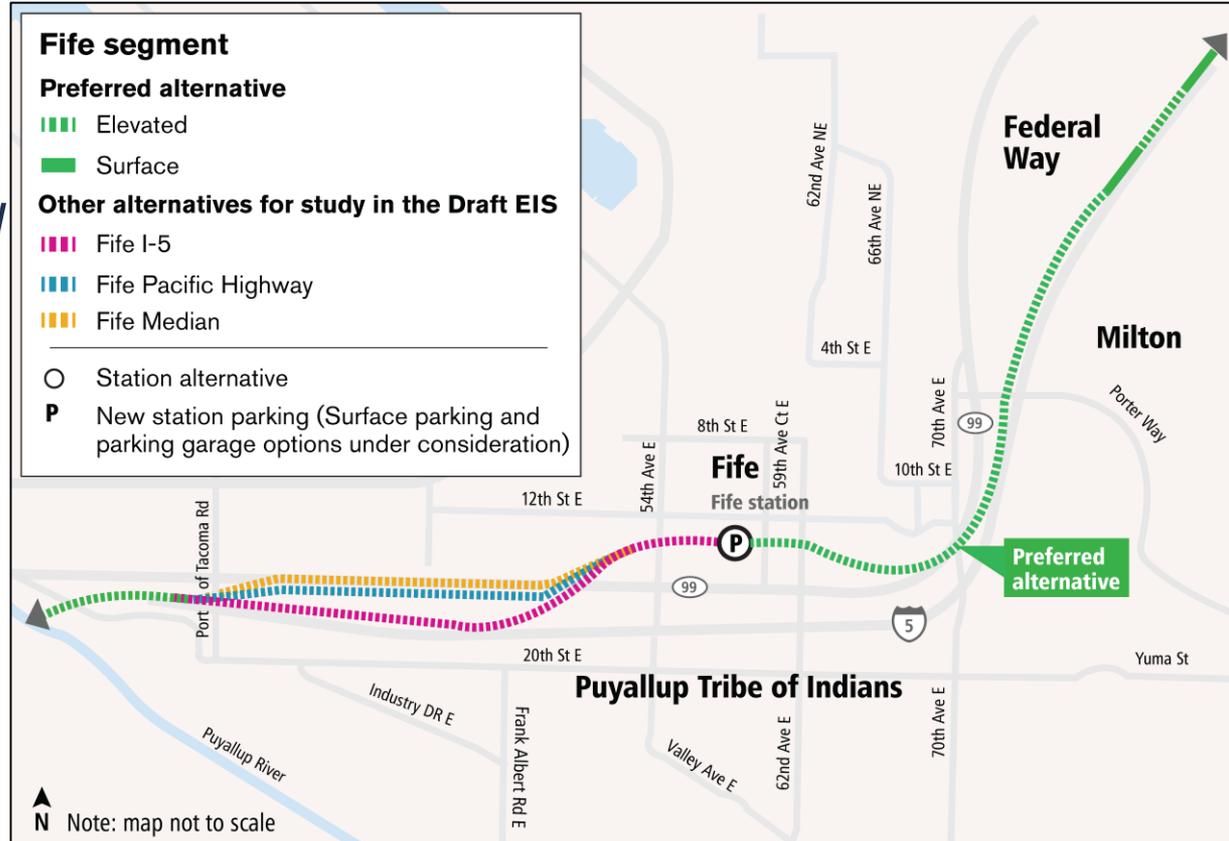
□ Surface parking option

■ Garage parking option



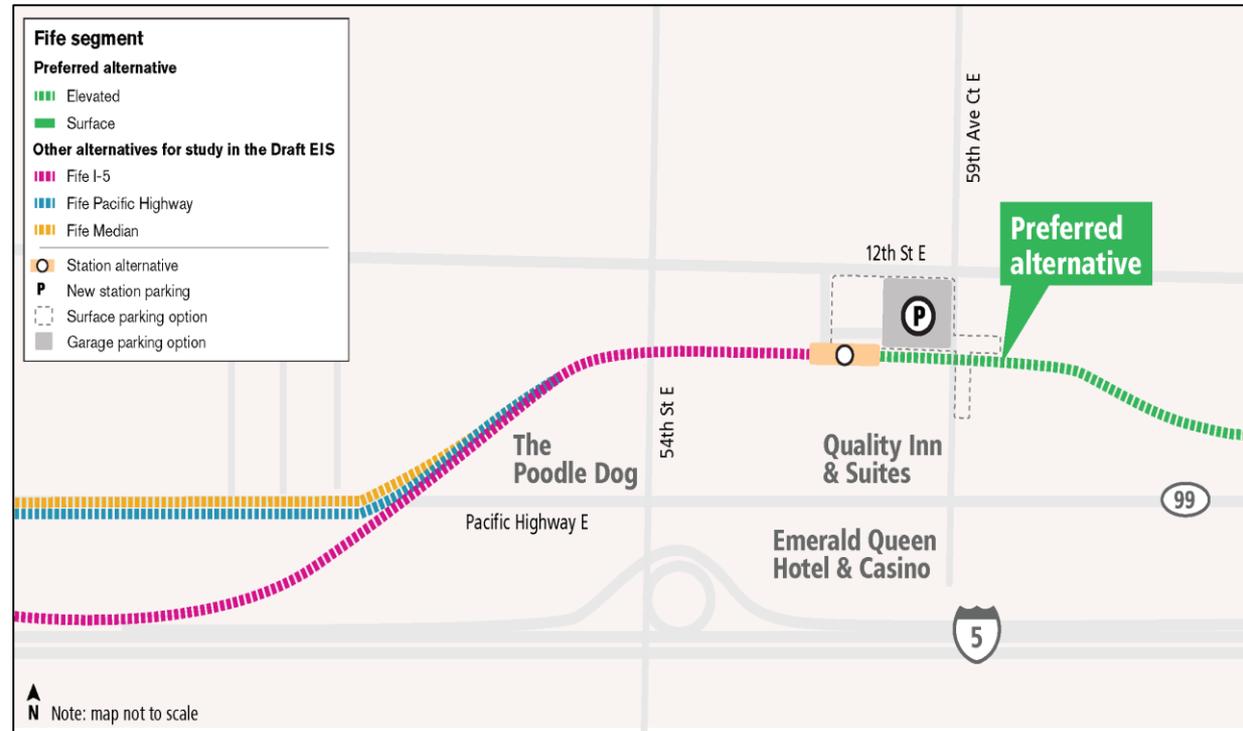
Fife Station Segment: overview

- One station location
- Three alignment alternatives (*no preferred west of station*):
 - Fife Pacific Highway
 - Fife Median
 - Fife I-5



Fife Station: design refinements

- Configuration of up to 500 park-and-ride spaces (surface or structure)
- Non-motorized and transit access to station



TDLE Environmental Review timeline*

Public participation throughout

2019

July 2019

ST Board & FTA identified alternatives to study in EIS

2020 / 2021

Spring 2021

Draft EIS issued; public comment period

Summer 2021

ST Board confirms or revises Preferred Alternative

2022

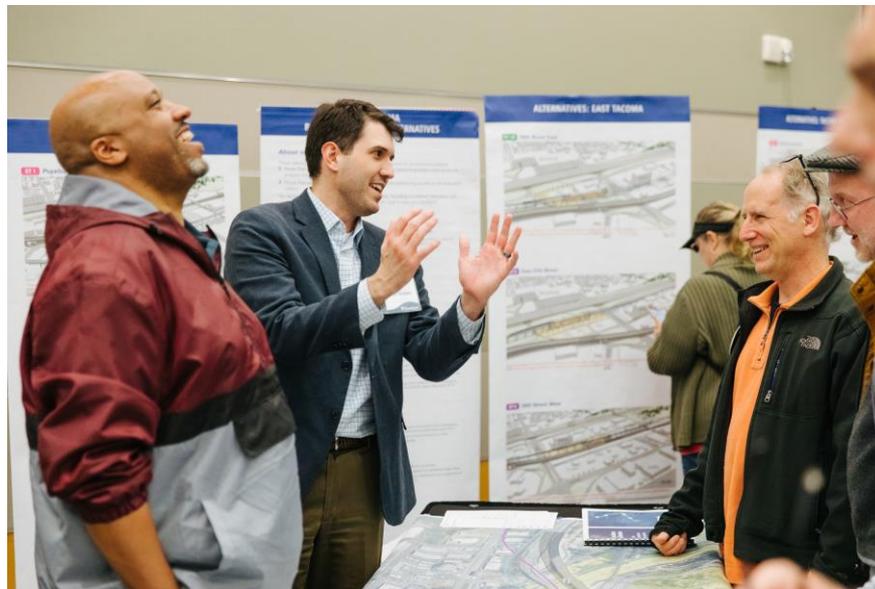
Spring/Summer 2022

Final EIS issued
ST Board selects project to be built
FTA issues record of decision (ROD)

***Pre-COVID-19 schedule**

Upcoming Fall Outreach

- Online open house
 - Design refinements
 - Transit & non-motorized station access
- Phone follow-ups
- Briefings to community groups and property owners

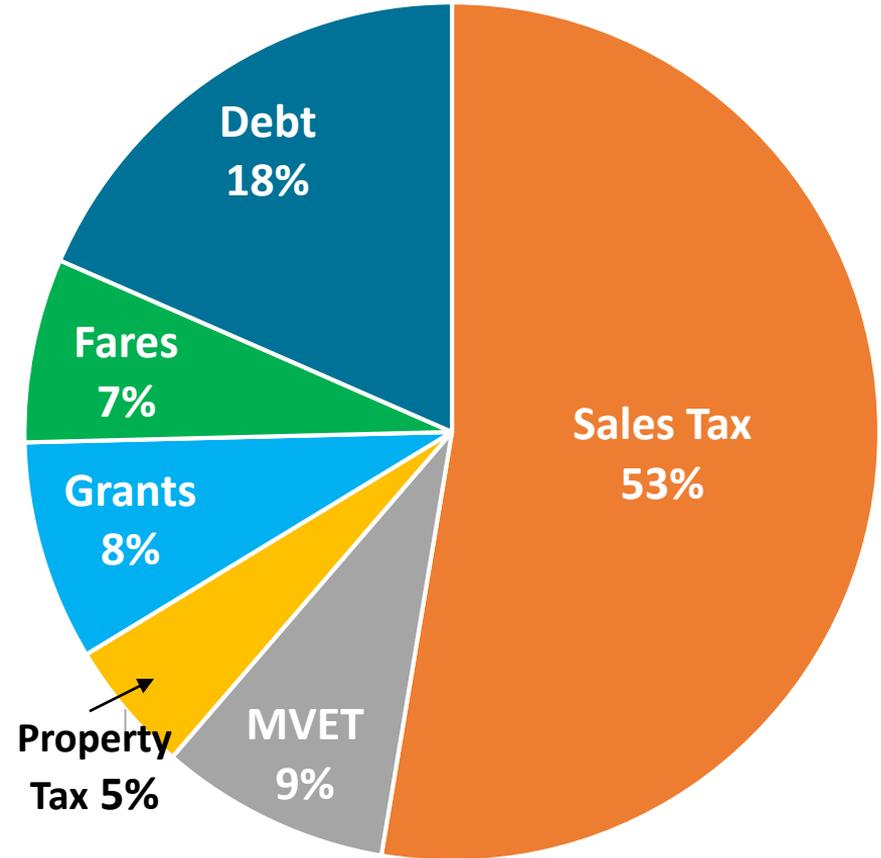


Realigning expansion plans



Revenue sources

- Tax revenues fund 66%.
- Debt funds 18%.
- Fares fund 7%.



Board tools to manage affordability

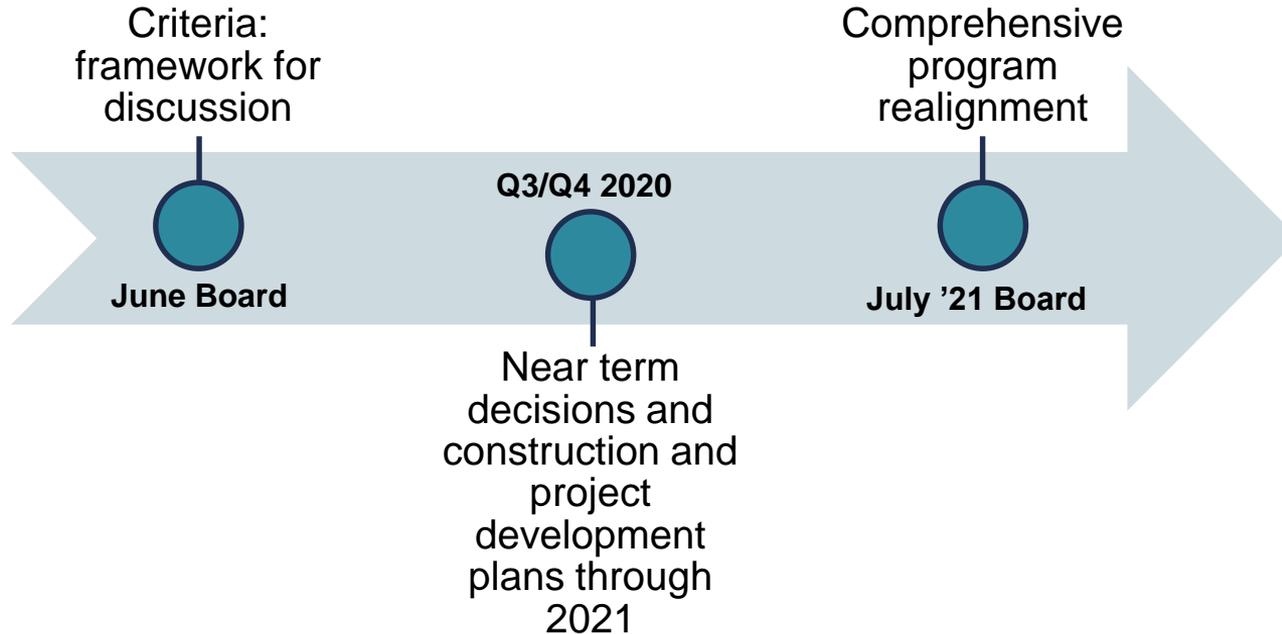
Tools established in ST3 plan documents

- Delay project completion.
- Modify project scope (alignments/stations, etc).
- Secure new grant funding or funding partners.

Board criteria for re-evaluating projects

Criterion	Concept
Ridership potential	How many daily riders is the project projected to serve?
Socio-economic equity	How well does the project expand mobility for transit-dependent, low-income, and/or diverse populations?
Connecting centers	Does the project connect designated regional centers?
Tenure	How long have voters been waiting for the project?
Outside funding	Are other funding sources available, secured or at risk?
Completing the spine	Does the project advance development of the regional HCT spine?
Advancing logically beyond the spine	Is the project a 'logical next step' beyond the spine and within financial capacity?
Phasing compatibility (constructability)	Can the project be constructed and opened for service in increments?

Realignment process timeline



Thank you.



 [soundtransit.org](https://www.soundtransit.org)





Agenda Item #: 3B

To: Mayor Shanna Styron-Sherrell and City Council Members
From: Brittany Port, AICP, Contract Senior Planner
Date: September 14, 2020
Re: **Shoreline Master Program Periodic Review – Briefing on Proposed Amendments**

ATTACHMENTS: 1) Department of Ecology Initial Determination, dated August 5, 2019
2) Draft SMP with Ecology Comments Resolved, dated September 24, 2019

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Issue: Review changes to draft SMP prior to conducting a public hearing.

Background: The Shoreline Master Program is a document that plans for the City’s shorelines of statewide significance and shorelands within 200’ of their ordinary high-water mark. The City is required to review its SMP and prepare amendments to address changing local circumstances, new information or improved data per RCW 90.58.080. The legislature adopted a staggered review cycle which requires that this document be reviewed and amended every 8 years. The Shoreline Master Program is locally adopted by the City and then approved by the Washington State Department of Ecology.

Discussion: City staff prepared a draft amended Shoreline Master Program for review by the Planning Commission at their November 14, 2018 meeting. Following the work session with the Planning Commission, City staff made the changes as directed and submitted the draft Shoreline Master Program to the Department of Ecology for their review on January 10, 2019.

On March 27, 2019, with Ecology in attendance, the Planning Commission held the required joint public hearing on the proposed amendments to the City’s Shoreline Master Program.

On April 8, 2019 City Council was briefed on the proposed amendments to the City’s SMP. On April 15, 2019, City Council adopted Ordinance 1963-19 amending the City’s SMP. An effective date for the ordinance was set for 5 days following Ecology’s approval.

Following adoption on April 15, 2019, it was brought to staff's attention that the request for initial determination per the joint review process pursuant to WAC 173-26-104 was incomplete and an initial determination on the City's SMP was never conducted. Without the initial determination findings, the City ran afoul of the joint review process as established under WAC 173-26-104 by adopting the SMP. In addition, the effective date of the ordinance is required by state law to be set 14 days after Ecology issues its approval.

City staff submitted the SMP for initial determination and received conditional approval from the Department of Ecology on August 5, 2019. City staff made changes to the SMP per Ecology's findings in the Initial Determination and Attachment 1. City Council must now repeal Ordinance 1963-19 and replace it with the one adopting the revised SMP conditionally approved by Ecology. Legal counsel recommends that City Council hold an additional public hearing due to changes that were made to the SMP following Ecology's review and due to the time, that has elapsed since the last public hearing in March of 2019. The public hearing date has been set for September 21, 2020.

TO: Jamie Carter, Milton Director of Public Works
FROM: Sarah Cassal Shoreline Planner, WA Department of Ecology
CC: Brittany Port, Milton Planner
Date: August 5, 2019
Subject: Initial Determination of Concurrence
Sent via email to: jcarter@cityofmilton.net

SMP Submittal accepted on May 29, 2019
Prepared by Department of Ecology on August 5, 2019

Brief Description of Proposed Amendment

The City of Milton (City) has submitted a Shoreline Master Program (SMP) amendment to Ecology for an initial determination of concurrence under the joint review process to comply with periodic review requirements. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of RCW 90.58.020 and the applicable rules.

FINDINGS OF FACT

Need for amendment

The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City Shoreline Master Program pursuant to RCW 90.58.080(4). The City prepared a checklist that documents proposed revisions. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the last SMP amendment, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

Changes proposed for compliance with the Act and state Rules include: Increasing the substantial development cost threshold to \$7,074.00; the exclusion of dismantling a structure to the definition of substantial development; exceptions to local review and approval by the local government under the Act; additions to the exemption from substantial development including retrofitting for ADA and the cost threshold for freshwater docks from \$10,000 to \$20,000 ; permit filing procedures; incorporation of the most current wetland requirements including the use of the most current wetland delineation manual and buffer requirements.

In addition to these changes the city has also amended the method of how the city incorporates the regulations to protect critical areas within shoreline jurisdiction. The existing SMP adopts Milton Municipal Code Chapter 16.18 *Critical Areas* by reference with exceptions for consistency with the critical area provisions under the Act; the city has changed this existing schematic to embed a standalone version of the Critical Areas Code creating two separate versions of critical area regulations: one that regulates critical areas within shoreline jurisdiction that is in compliance with the state rule, found in Appendix 3, and a second version that regulates critical areas outside of shoreline jurisdiction that does not meet standards found in the state rule.

The Appendix 3 includes several changes including adoption of the Federal Wetlands Delineation Manual for Western Washington and Ratings System.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. To encourage the public to become involved in the periodic review, the City created a webpage to provide access to information related to the amendment process and Planning Commission held a public open house on November 7, 2018.

The City used Ecology's checklist of legislative and rule amendments to review amendments to Chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i).

The City reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii).

The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii).

The City consulted with Ecology and solicited comments throughout the review process.

The City held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on [March 11, 2019](#) and continued through [April 10, 2019](#). A public hearing before the Planning Commission and Ecology was held on March 27, 2019.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City did not provide demonstration of legal notice consistent with WAC 173-26-104(2)(c)(ii).

Ecology distributed notice of the joint comment period to state interested parties and affected Indian tribes on March 3, 2019.

One organization submitted comments on the proposed amendments. The City submitted to Ecology its responses to issues raised during the comment period on May 2, 2019. No changes were proposed in response to comments received.

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology’s decision on the proposed amendments to the City’s SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Critical Areas

Ecology has identified several changes to Appendix C, renamed as part of the amendment, Appendix 3 *Shoreline Critical Area Regulations*, for compliance with WAC 173-221(2) *Critical Areas*. The following summarizes the required changes to Appendix 3 necessary for compliance with the state rule, specific track changes can be found in attachment 1 of this document.

Formatting

Ecology has identified a need to reformat Appendix 3 with a standardized alpha-numeric system to enable the reference of specific regulations for implementation. The City removed the formatting from the document and replaced it with bullet points creating an unnecessary level of ambiguity to the document.

Finding. Ecology finds the City chose to remove the formatting from the critical area regulations creating a document that cannot reference specific regulations for implementation. Ecology finds that Appendix 3 should be modified to incorporate alpha-numeric formatting, as used in the SMP so individual regulations can be referenced for implementation and compliance purposes. Ecology has not proposed specific reformatting of Appendix and assumes the City can achieve this without further guidance.

Exemptions

Ecology has identified changes necessary for compliance with WAC 173-27-040 *Developments exempt from substantial development permit requirements*. Sections A3.B.8 and A3.B.9 identify projects do not require compliance with the regulations in Appendix 3, creating exemption allowances beyond those specific exemptions found in WAC 173-26-040(2), and excluding proposals with in shoreline jurisdiction that are not required to follow the mitigation sequence, inconsistent with WAC 173-26-201(2)(e). The only developments and uses that are eligible for exemption from shoreline permitting are found in WAC 173-27-040(2) and can be found in the Milton SMP 7.A.1.; However, as specified in WAC 173-27-040(1)(b), all proposed development must be consistent with the requirements of the SMA “An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act.”

Finding. Ecology finds A3.B.8 *Exemptions* and A3.B.9 *Partial Exemptions* inconsistent with WAC 173-27-040 and Milton SMP 7.A.1. Sections A3.B.8 and A3.B.9 should be removed for compliance with permit procedural requirements and the requirement for all development and uses to be compliant with the Act and the SMP.

No-Net-Loss of Ecological Function

Ecology has identified a change necessary for compliance with WAC 173-26-201(2)(e) *Protection of ecological functions of the shorelines* that requires no-net-loss of ecological function. A3.B.10 *Single Family Residence Administrative Exception* allows for single family residences to be developed within critical areas without applying the mitigation sequence and leaving mitigation as discretionary to the Administrator. Although single family residences are a preferred use under the Act and exempt from requiring a substantial development permit, they are still required to meet the substantive requirements of the SMP and the SMA.

Finding. Ecology finds section A3.B.10 allows for single family residential structures to be built and expanded on existing lots within a critical area and the buffer without applying the mitigation sequence, inconsistent with WAC 173-26-201(2)(e). Ecology finds that this section should be removed from Appendix 3 as it does not meet the standard of no-net-loss of ecological function.

Ecology has identified a change necessary for compliance with WAC 173-26-201(2)(e) *Environment Impact Mitigation*. Section A3.B.14 does not incorporate the required mitigation sequence which assures no-net-loss of ecological function.

Finding. The mitigation sequence found in Milton SMP A3.B.12 is inconsistent with the required mitigation sequence and should be altered for compliance.

Ecology has identified a change necessary for compliance with no-net-loss of ecological function found in WAC 173-26-201(2)(e). Section A3.C.2 *Performance Standards* allows impacts to wetlands without the application of the mitigation sequence.

Finding. Ecology finds that section A3.C.2 allows for impacts to certain wetlands and the associated buffer without applying the mitigation sequence. Ecology finds that this section should be removed from the Milton SMP Appendix 3 to assure no-net-loss of ecological function.

Ecology has identified several changes for consistency with WAC 173-26-221(2)(c)(i)(D) *Buffers*. *Milton SMP A3.C.2 Performance Standards* contains regulations for wetland buffers and how they are applied to protect wetland function and values. The standards in this section are inconsistent with best available science documented in *Wetland Guidance for CAO Updates Western Washington Version*. Several changes to this section are necessary for compliance, and include: removal of the standard buffer language and the standard buffer in the buffer tables for compliance with best available science to protect wetland habitat and function; the addition of a requirement to use all of the best management practices in Table 2 to be able to apply the reduced buffers found in Table 1 to assure the protection of habitat function; the addition of Table 3 which contains the required larger wetland buffers if the best management practices in Table 2 are not utilized; removal of the section that allows impacts to certain wetlands and the associated buffer without mitigation or consistency with the regulatory requirements; and, the removal of the wetlands buffer reduction section. Please see specific changes in attachment 1.

Finding. Ecology finds that the standards for wetland buffers do not meet-best available science as proposed and should be change in order to meet no-net-loss of ecological function.

Permits

Ecology has identified a change necessary for consistency with WAC 173-27 *Permit and Enforcement Procedures*. Section A3.B.12 *Review Criteria* lists standards to issue permits for impacts to critical areas similar to those found in WAC 173-27-170 *Review Criteria for Variance Permits*. Permit review criteria for the issuance of all development within shoreline jurisdiction is found in WAC 173-27-140; for substantial development in WAC 173-27-150; for conditional use permits in WAC 173-027-160; and, in WAC 173-27-170 for variance permits. These are the standards that apply for permit issuance.

Finding. Ecology finds section A3.B.12 inconsistent with the required permit criteria found in WAC 173-27. Ecology finds that this section should be removed. Further, Ecology recommends the City incorporate the required review criteria for all development found in WAC 173-27-140 and the review criteria for substantial development in WAC 173-27-150 into Milton SMP chapter 7, to transparently identify when the city can issue a permit under the SMP, however this criteria still applies regardless of incorporation into the SMP.

INITIAL DETERMINATION

After review by Ecology of the complete record submitted, Ecology has determined that the City proposed amendments, subject to and including Ecology's required changes (itemized in Attachment 1), are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Next Steps

Consider the changes identified by Ecology as required and recommended to resolve the issues shown above and within Attachment 1. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.

If these issues are resolved prior to local adoption, Ecology anticipates being able to approve your SMP Periodic Review amendment promptly after formal submittal is provided consistent with WAC 173-26-110.

Appendix ~~C3~~: – Milton Shoreline Critical Area Regulations: ~~(Ordinance 1671 9/1/08)~~

~~18.06.20~~ A3.A Definitions:

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in ~~Title 18~~this Appendix, the following terms shall have the following meanings, unless the context indicates otherwise. Words and phrases used in this ~~title~~ Appendix shall be interpreted as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this ~~title~~ Appendix its most consistent and reasonable application in carrying out its regulatory purpose.

“Adjacent” means immediately adjoining (in contact with the boundary of the critical area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located a distance equal to or less than the required critical area buffer width and building setback.

“Alteration” means any human-induced activity that changes the existing condition of a critical area. Alterations include, but are not limited to, grading; filling; dredging; draining; channelizing; clearing or removing vegetation; discharging pollutants; paving; construction; or any other human activity that changes the existing landforms, vegetation, hydrology, fish, wildlife, or wildlife habitat of a critical area.

“Anadromous fish” means species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to fresh water rivers and streams to procreate.

“Applicant” means the person, party, firm, corporation, or other entity that proposes any activity that could affect a critical area.

“Aquifer” means a saturated geologic formation that will yield a sufficient quantity of water to serve as a private or public water supply.

“Aquifer recharge areas” means areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas are classified as follows:

- A. High Significance Aquifer Recharge Areas. Areas with slopes of less than 15 percent that are underlain by coarse alluvium or sand and gravel, and overlain by soils with moderate to rapid permeability, as classified by the U.S. Department of Agriculture Soil Conservation Service;

B-18.06.21 Moderate Significance Aquifer Recharge Areas.

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1. Areas with slopes of less than 15 percent that are underlain by fine alluvium, silt, clay, or glacial till, and overlain by soils with moderate to rapid permeability as classified by the U.S. Department of Agriculture Soil Conservation Service; and
 2. Areas with slopes of 15 to 30 percent that are underlain by coarse alluvium, sand or gravel, and overlain by soils with moderate to rapid permeability, as classified by the U.S. Department of Agriculture Soil Conservation Service;
- C. Low Significance Aquifer Recharge Areas.
1. Areas with slopes of 15 to 30 percent that are underlain by silt, clay, or glacial till; and
 2. Areas with slopes greater than 30 percent.

“Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area.

“Base flood” means a flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood.

“Best available science” means the 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.

“Best management practices (BMPs)” means the conservation practices or systems of practices and management measures that:

- A. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
- B. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands;
- C. Protect trees and vegetation designated to be retained during and following site construction; and
- D. Provide standards for proper use of chemical herbicides within critical areas.

The City shall monitor the application of best management practices to ensure that the standards and policies of this Ordinance are adhered to.

“Buffer” or “buffer area” means a naturally vegetated and undisturbed or revegetated zone surrounding a critical area that protects the critical area from adverse impacts to its integrity and value, or is an integral part of the resource’s ecosystem.

“City” means the city of Milton, including any department, official, board or body thereof with jurisdiction over the subject of this chapter.

“Clearing” means the removal of timber, brush, grass, ground cover, or other vegetative matter from a site that exposes the earth’s surface of the site or any actions that disturb the existing ground surface.

“Conservation easement” is a legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

“Creation” means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.

“Critical aquifer recharge area” are areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

“Critical areas” include any of the following areas or ecosystems: Aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A and this Ordinance.

“Critical ecosystems” means environmentally sensitive areas subject to natural hazards or those landform features which in their natural state carry, hold or purify water and support unique, fragile or valuable natural resources such as fish, wildlife and other organisms. These areas also provide flood protection, shoreline stability and aid in recharging valuable ground water resources. These critical ecosystems include aquifer recharge areas, fish and wildlife habitat conservation and open space areas, frequently flooded areas, geologically hazardous areas, natural resource areas, stream corridors, wetlands and their associative transitional buffer zones.

“Critical facility” means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use or store hazardous materials or hazardous waste.

“Critical geologic hazard areas” means lands or areas subject to high or severe risks of geologic hazard.

“Critical habitats” means those habitat areas which meet any of the following criteria:

- A. Areas with which species listed by the federal government or state of Washington as endangered, threatened, or sensitive have a primary association;
- B. Those streams identified as Type I or Type II streams as defined in Chapter 18.14 MMC;
- C. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
- D. Those wetlands identified as Category I or II wetlands, as defined in Chapter 18.14 MMC;
- E. Open space wetlands, river and stream banks, ravines, wooded areas and any other upland areas that provide essential habitat for sensitive and locally important plant or wildlife species;
- F. Areas with which priority species (as determined by the Washington Department of Fish and Wildlife) have a primary association;
- G. Priority habitats as identified by the Washington Department of Fish and Wildlife.

Priority habitats are areas with one or more of the following attributes: comparatively high wildlife density, high wildlife species richness, significant wildlife species richness, significant wildlife breeding habitat, significant wildlife seasonal ranges, significant movement corridors for wildlife, limited availability, and/or high vulnerability;

H. Habitats or species of local importance.

“Critical species” are all animal and plant species listed by the state or federal government as threatened or endangered.

“Cumulative impacts or effects” are the combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

“DBH” or “Diameter at Breast Height” means the diameter of a tree as measured at breast height (54 inches above the ground).

“Degraded wetland” means a wetland in which the vegetation, soils and/or hydrology have been adversely altered, resulting in lost or reduced functional value.

“Department” means any division, subdivision or organizational unit of the city established by resolution, rule or order.

“Department of Ecology” means the State Department of Ecology.

“Development” means a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, stockpiling of materials, bulkheading, driving of piling, paving, placing of obstructions, or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the provisions of this chapter at any state of water level.

“Developable area” means a site or portion of a site that may be utilized as the location of development, in accordance with the rules of this Ordinance.

“DNS” means determination of nonsignificance.

“DS” means determination of significance.

“Dredging” means the removal of earth from the bottom of a navigational channel, berthing area or to obtain bottom materials for landfill.

“Early notice” means city’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (mitigated determination of nonsignificance (DNS) procedures).

“Enhancement” means an action that increases the functions and values of a stream, wetland, or other critical area or buffer.

[Milton SMP Periodic Review](#)

[Initial Determination](#)

[Attachment 1](#)

4

“Emergent wetland” means a wetland with at least 30 percent of its surface covered by erect, rooted, herbaceous vegetation at the uppermost vegetative strata.

“Epicenter” means the location on the surface of the earth directly above the place where an earthquake originates.

“Erosion” means wearing away of earth’s surface as a result of movement of wind, water, ice or any means.

“Erosion hazard areas” means those lands susceptible to the wearing away of their surface by water, wind or gravitational creep. Erosion hazard areas are classified as low, moderate or high risk based on slope inclination and soil types as identified by the U.S. Department of Agriculture Soil Conservation Service:

- A. Low. All sites classified with soil types designated by the U.S. Department of Agriculture Soil Conservation Service as having no or slight erosion hazard.
- B. Moderate. All sites classified with soil types designated as moderate hazard.
- C. High. All sites classified with soil types designated as severe or very severe erosion hazard.

“Existing and ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those existing activities involved in the production of crops or livestock. Activities may include the operation and maintenance of farm and stock ponds or drainage ditches; operation and maintenance of existing ditches or irrigation systems; changes from one type of agricultural activity to another agricultural activity; and normal maintenance, repair, and operation of existing serviceable structures, facilities, or improved areas. Activities which bring a nonagricultural area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years.

“Exotic” means any species of plants or animals, which are foreign to the planning area.

“Extraordinary hardship” means the prevention of all reasonable economic use of a site by strict application of this chapter and/or procedures adopted to implement this chapter.

~~“Fish and wildlife habitat conservation areas” are areas necessary for maintaining fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). Fish and wildlife habitat areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. “Fish and wildlife habitat conservation areas” are areas necessary for maintaining fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5).~~

“Fish habitat” means habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

“Fill” means dumping or placing, by any means, any material from, to or on any soil or sediment surface including temporary stockpiling of material.

“Flood hazard areas” means those areas subject to inundation by the base flood. These areas consist of the following components, as determined by the city:

- A. Floodplain. The total area subject to inundation by the base flood.
- B. Flood Fringe. That portion of the floodplain outside the floodway which is generally covered by floodwaters during the base flood. It is generally associated with standing water rather than rapidly flowing water.
- C. Floodway. The channel of the stream and that portion of the adjoining floodplain that is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot.

“Forested wetland” means a wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

“Frequently flooded areas” are lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the City in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

“Functional value” means the beneficial role streams and wetlands serve including, but not limited to, fish and wildlife habitat, ground water recharge/discharge, water quality protection, storm water storage, conveyance, floodwater and storm water retention, provision of erosion and sediment controls and recreation and aesthetic value.

“Geologic hazard areas” means lands or areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to potentially significant or severe risk of landslides, erosion, or seismic activity.

“Grading” means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

“Ground water” means all water found beneath the ground surface, including slow moving subsurface water present in aquifers and recharge areas.

“Ground water management area” means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a ground water management program is required.

“Ground water management program” is a comprehensive program designed to protect ground water quality, to assure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated ground water management area or subarea and developed pursuant to Chapter 173-100 WAC.

“Growth Management Act” is RCW 36.70A and 36.70B, as amended.

“Habitat” means the specific area or environment in which a particular type of plant or animal lives.

“Habitat conservation areas” are areas designated as fish and wildlife habitat conservation areas.

“Hazard areas” are areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

“Hazardous substance” means any substance defined as a “hazardous substance” pursuant to RCW 70.105D.020(5), which subsection is adopted by reference as though set forth herein in full.

“Hazardous substance processing or handling” means the use, storage, manufacture or other land use activity involving, hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container.

“Hazardous waste” means all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

A. “Dangerous waste” means any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

1. Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
2. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

B. “Extremely hazardous waste” means any waste which:

1. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife; and
2. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.

“Hazardous waste treatment and storage facility” means a facility that treats and stores hazardous waste and is authorized pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC. It includes all contiguous land and structures used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste.

“Height” means the vertical distance measured from the average grade level to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to one-half the vertical distance between the eaves and ridge of a gable, hip or gambrel roof; provided, however, that where buildings are set back from the street line, the height of the buildings may

be measured from the average elevation of the finished yard grade along the front of the building.

“High intensity land use” means a use associated with high levels of human or structural activity. These uses include:

- A. Residential buildings and structures;
- B. Active recreational areas and facilities;
- C. Commercial or industrial uses and structures; or
- D. Similar activities.

“Hydric soil” means soil that is saturated or flooded long enough during the growing season to develop anaerobic (oxygen deficient) conditions in the upper part. In order to develop these characteristics, the soil must be covered or saturated by water for at least seven days during the normal growing season for at least two or more years.

“Hydroperiod” means the seasonal occurrence of flooding and/or soil saturation which encompasses the depth, frequency, duration and seasonal pattern of inundation.

“Hydrophyte” means an aquatic plant growing in water or on a substrate (hydric soil) that is at least periodically deficient in oxygen where the water or waterlogged soil is too wet for most plants to survive. Examples of these plants can include:

- A. Cattails;
- B. Sedges;
- C. Bulrush;
- D. Alder;
- E. Salmonberry.

“Hyporheic zone” is the saturated zone located beneath and adjacent to streams that contains some portion of surface waters, serves as a filter for nutrients, and maintains water quality.

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

“In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

“Isolated wetlands” are those wetlands that are outside of and not contiguous to any 100-year

floodplain of a lake, river, or stream, and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

“Infiltration” is the downward entry of water into the immediate surface of soil.

“Injection well(s)” are as follows:

- A. Class I – A well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one quarter (1/4) mile of the well bore, an underground source of drinking water.
- B. Class II – A well used to inject fluids:
 - 1. Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection;
 - 2. For enhanced recovery of oil or natural gas; or
 - 3. For storage of hydrocarbons that are liquid at standard temperature and pressure.
- C. Class III – A well used for extraction of minerals, including but not limited to the injection of fluids for:
 - 1. In-situ production of uranium or other metals that have not been conventionally mined;
 - 2. Mining of sulfur by Frasch process; or
 - 3. Solution mining of salts or potash.
- D. Class IV – A well used to inject dangerous or radioactive waste fluids.
- E. Class V – All injection wells not included in Classes I, II, III, or IV.

“Inter-rill” are areas subject to sheetwash.

“Lahars” are mudflows and debris flows originating from the slopes of a volcano.

Land Use Administrator. The planning/building director of the city shall serve as land use administrator as said position was established pursuant to MMC [18.14.030\(A\)](#). The mayor may also designate an acting land use administrator who shall have all of the duties and powers of the land use administrator in the absence of or inability of the land use administrator to act.

“Landslide” means episodic downslope movement of a mass of soil or rock.

“Landslide hazard areas” means areas that, due to a combination of slope inclination, relative soil permeability and hydrologic factors, are susceptible to varying risks of landsliding.

“Liquefaction” means a process by which a water-saturated granular (sandy) soil layer loses strength because of ground shaking commonly caused by an earthquake.

“Lot slope” means a measurement by which the average slope of the lot is calculated as a percentage. The lowest elevation of the lot is subtracted from the highest elevation, and the resulting number is divided by the horizontal distance between these two points. The resulting product is multiplied by 100.

“Magnitude” means a quantity characteristic of the total energy released by an earthquake. Commonly, earthquakes are recorded with magnitudes from 0 to 8.

“Maintenance dredging” means the removal of earth from the bottom of a stream, river, lake, bay or other water body for the purpose of maintaining a prescribed minimum depth of any specific waterway project.

“Marsh” means a wetland which is permanently submerged or has intermittent aquatic plant life where dominant vegetation is nonwoody plants such as grasses and sedges.

“Mass wasting” is a general term for a variety of processes by which large masses of rock or earth material are moved downslope by gravity, either slowly or quickly.

“Mineral extraction” means the removal of naturally occurring materials from the earth, excluding dredging as defined in this chapter.

“Mineral resource lands” means any area presently operating under a valid Washington State Department of Natural Resources (DNR) surface mining permit. Other areas shall be classified as mineral resource lands when a surface mining permit is granted by DNR.

“Minerals” means gravel, sand and valuable metallic substances.

“Monitoring” means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures through the monitoring period and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

“Native growth protection area (NGPA)” is an area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat and removal of invasive species;

“Native vegetation” means plant species that are indigenous and naturalized to the city’s region and which can be expected to naturally occur on a site. Native vegetation does not include noxious weeds.

“Non-conformity” means a legally established existing use or legally constructed structure that is not in compliance with current regulations.

“Non-indigenous” See “exotic.”

“Noxious weed” means any plant which, when established, is highly destructive, competitive, or difficult to control by cultural or chemical practices. Any plant designated as a noxious weed in the state noxious weed list, as defined and referenced at RCW 17.10.010, shall be presumed to be a noxious weed for purposes of this chapter.

“Ordinance” means the ordinance or other procedure used by the city to adopt regulatory requirements.

“Ordinary high water mark” (OHWM) on all lakes, streams and tidal water, means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on June 1, 1971, or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Out-of-kind compensation” means to replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement "out-of-category."

“Palustrine wetland” means a freshwater wetland, emergent herbaceous vegetation, scrub- shrub vegetation and/or trees that is isolated from a larger water body.

“Permeability” is the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

“Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation or agency of the state or local government unit however designated.

“Ponds” means naturally occurring impoundments of open water less than 20 acres and more than 2,500 square feet which maintain standing water throughout the year.

“Porous soil types” are soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices or other openings which allow the passing of water.

“Potable water” means water that is safe and palatable for human use.

“Practicable alternatives” means alternatives to the proposed project which shall accomplish essentially the same objective and avoid or have less adverse impacts than the proposed project.

“Primary association area” is the area used on a regular basis by, or is in close association with, or is necessary for the proper functioning of the habitat of a critical species. Regular basis means that the habitat area is normally, or usually known to contain a critical species, or based on known habitat requirements of the species, the area is likely to contain the critical species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

“Priority habitats” means seasonal range or habitat element with which a given species is primarily associated and which, if altered, may reduce survival potential of that species over the long-term. These may include habitat areas of:

- A. High relative density or species richness;

- B. Breeding habitat;
- C. Winter range and movement corridors;
- D. Limited availability; or
- E. High vulnerability to alteration.

“Priority species” means plant or animal species which are of concern due to their population status and sensitivity to habitat alteration. Priority species include those which are listed by the state as endangered, threatened or sensitive as well as other species of concern and game species.

“Project area” means all areas 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.

“Protection” (Preservation) means removing a threat to, or preventing the decline of, conditions by an action in or near a critical area or buffer.

“Qualified professional” is a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or related field, and a minimum of two years of related work experience.

~~A. A qualified professional for habitats or wetlands~~ A qualified professional for wetlands must be 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.

~~A. must have a degree in biology and professional experience related to the subject species.~~

~~B.A.~~ A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

~~C.B.~~ A qualified professional for critical aquifer recharge areas must be a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

“Rare, threatened or endangered species” means plant or animal species that are regionally relatively uncommon, are nearing endangered status or whose existence is in immediate jeopardy and that are usually restricted to highly specific habitats.

“Reasonable alternative” is an alternative that is available and capable of being carried out after taking into consideration, cost, existing technology, and logistics in light of overall project purposes, and having less impacts to critical areas.

Commented [CS(1): REQUIRED CHANGE]
See Wetlands Guidance for CAO Updates Western WA Version, Appendix B.

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“Reasonable use” means alternatives to the proposal which will result in minimum feasible alteration or impairment of the functional characteristics including contours, vegetation, fish and wildlife resources, ground water and hydrological conditions.

“Recessional outwash geologic unit” means sand and gravel materials deposited by melt-water streams from receding glaciers.

“Recharge” means the process involved in the absorption and addition of water to ground water.

“Reclaimed water” is municipal wastewater effluent that has been adequately and reliability treated so that it is suitable for beneficial use. Following treatment it is no longer considered wastewater (treatment levels and water quality requirements are given in the water reclamation and reuse standards adopted by the state Departments of Ecology and Health).

“Recreation” means the refreshment of body and mind through forms of play, amusement or relaxation. The recreational experience may be active, such as boating and swimming, or may be passive such as enjoying the natural beauty of the shoreline or its wildlife through nature walks, wildlife observation, fishing and hiking.

“Regulated activities” means any act which would destroy natural vegetation; result in significant change in water temperature, physical or chemical characteristics; substantially alter existing pattern of tidal flow; obstruct the flow of sediment or alter the natural contours of a site.

“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” is measures taken to restore an altered or damaged natural feature including:

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

“Rills” are steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

“Riparian habitat” means wetland habitat bordering a stream which is occasionally flooded and periodically supports predominantly hydrophytes.

“Scrub-shrub wetlands” means a wetland with at least 30 percent of its surface area covered with woody vegetation less than 20 feet in height.

“Seeps” is a spot where water oozes from the earth, often forming the source of a small stream.

“Seismic hazard areas” means areas that, due to a combination of soil and ground water conditions, are

subject to severe risk of ground shaking, subsidence, or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floors of river valleys. Geologic material is weighted most heavily in the following classification of seismic risk:

- A. Class I – High. All areas with lands designated as alluvium and recessional outwash surficial geologic units (as identified in Groundwater Occurrence and Stratigraphy of Unconsolidated Deposits, Central Pierce County, WA, Water Supply Bulletin #22, Plates One and Two, U.S. Department of Interior, Geological Survey, Water Resources Division), or high risk slopes.
- B. Class H – Low. All other sites with a lower risk geological classification.

“SEPA rules” means Chapter 197-11 WAC adopted by the Department of Ecology.

“Shoreline Environmental Designation” There is one shoreline environment defined and designated to exist on the shorelines within the city. This shoreline environmental designation is defined as: Rural-residential. The rural-residential designation is designed to insure medium intensity residential, commercial and multifamily development and to allow for a natural transitional area between the highly intensified land use of urban areas and the surrounding minimal agricultural uses, recreational uses and open space found in the rural environment.

“Sheetwash” is overland flow of water in thin sheets.

“Shorelines” means all the water areas, including the streams, lakes, and ponds of the city including Surprise Lake and its associated wetlands, together with the lands underlying it.

“Shorelines of the city” means the total of all “shorelines” and “shorelines of statewide significance” within the city.

“Shorelines of the state” are the total of all “shorelines,” as defined in RCW 90.58.030(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW 90.58.030(2)(c).

“Shorelines of statewide significance” are those areas defined in RCW 90.58.030(2)(e).

“Shorelands or shoreland areas” are those lands extending landward for two hundred feet (200 ft) in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.

“Significant portion of its range” means that portion of a species range likely to be essential to the long-term survival of the population in Washington.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

“Sludge” means a semisolid substance consisting of settled solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or

system or other sources, including septage sludge, sewage sludge, or industrial sludge.

“Sludge land application site” means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

“Soil survey” means the most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

“Solid waste” means all putrescible and nonputrescible solid and semisolid wastes including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles and parts thereof, discarded commodities and any other discarded materials which may be deemed to be worthless for any use or purpose.

“Special protection areas” are aquifer recharge areas defined by WAC 173-200-090 that require special consideration or increased protection because of unique characteristics, including, but not limited to:

- A. Ground waters that support an ecological system requiring more stringent criteria than drinking water standards;
- B. Ground water recharge areas and wellhead protection areas, that are vulnerable to pollution because of hydrogeologic characteristics; and
- C. Sole source aquifer status.

“Species, endangered” means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

“Species of local importance” means those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species.

“Species, priority” means any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

“Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

“Stockpiling of materials” means the accumulation and storage of raw materials, equipment, apparatus and/or supplies by an individual, business or organization. Stockpiling of materials as a primary use activity is subject to all applicable shoreline permits. Stockpiling of materials as a secondary use activity pursuant to a valid shoreline permit is considered a permitted use activity.

“Stream corridor” means perennial, intermittent or ephemeral waters included within a channel of land, and its adjacent riparian zones, which serve as a transitional zone between the aquatic and terrestrial

upland ecosystems.

“Streams” means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year-round.

“Swamp” means wetland where the dominant vegetation is composed of woody plants and trees.

“Temporary erosion control” means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

“Transitional zones” means an area of land adjacent to a sensitive ecosystem which serves as an integral component of that ecosystem and can help to minimize or reduce the impacts to the ecosystem.

“Unavoidable and necessary impacts” means impacts to regulated streams or wetlands and their associated buffer zones that will remain after it has been demonstrated that no practicable alternatives exist.

“Underground utilities” means services which produce and carry electric power, gas, sewage, communications, oil, water and storm drains below the surface of the ground.

“Upland” means landward of the ordinary high water mark.

“Utility line” means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications and sanitary sewers.

“Vadose Zone” is the zone between land surface and the water table within which the moisture content is less than saturation (except in the capillary fringe) and pressure is less than atmospheric.

“Volcanic hazard areas” are areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

“Vulnerability” means the combined effect of susceptibility to contamination and the presence of potential contaminants.

“Water dependent activity” means activity or use that requires the use of surface water to fulfill the basic purpose of the proposed project.

“Water dependent use” means a use which cannot logically exist in any other location but on the shoreline and is dependent on the water by reason of the intrinsic nature of its operation. Examples would include, but not be limited to, the following:

- A. Marinas and boat launch facilities;
- B. Dockside fishing facilities;

C. Moorage facilities – permanent/transient.

“Water related use” means a use which is not intrinsically dependent on a waterfront location but whose location on or near the waterfront will either facilitate its operation or will provide increased opportunity for general public use and enjoyment of shorelines and shoreline areas. Examples would include, but not be limited to, the following:

- A. Commercial. Other commercial uses which provide increased opportunity for general public use and enjoyment of shorelines and shoreline areas.
- B. Marine recreation.
 - 1. View and observation areas;
 - 2. Trails and pathways;
 - 3. Clubhouses, meeting areas and related uses.
- C. Marine related educational or scientific uses.

“Water table” is that surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

“Watercourse” is any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined beds or banks, which influence the quality of fish habitat downstream. This includes watercourses that flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

“Well” is a bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

“Wellhead protection area (WHPA)” is the portion of a zone of contribution for a well, wellfield or spring, as defined using criteria established by the state Department of Ecology.

“Wetlands” are 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. For identifying and delineating a wetland, local government shall use the [approved federal wetlands delineation manual and applicable](#)

regional supplement ~~Washington State Wetland Identification and Delineation Manual.~~

“Wetland edge” is the boundary of a wetland as delineated based on the definitions contained in this Ordinance.

“Wetland edge” means a line dividing uplands from water habitat. The line can be identified through procedures in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands by examining the presence or absence of aquatic plants (hydrophytes), hydric soils and/or water table at or near the surface.

Wetlands.

A. ~~“Regulatory wetlands~~ Wetlands” ~~(10) “Wetlands” or “wetland areas” means 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 typically 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 nonwetland 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 nonwetland areas to mitigate the conversion of wetlands~~ means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include small lakes, ponds, streams, swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally

Commented [CS(2): REQUIRED CHANGE]
There is only one definition of wetlands used under the SMA for compliance with WAC 173-22-030(10), see inserted language, the second should be removed.

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~~created from nonwetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, farm ponds and landscape amenities if routinely maintained for those purposes. The applicant shall bear the burden of proving that the site was not previously wetlands. However, wetlands do include those artificial wetlands intentionally created to mitigate conversion of wetlands.~~

~~B. For inventory, incentives and nonregulatory purposes, wetlands are those lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have one or more of the following attributes:~~

- ~~1. At least periodically, the land supports predominantly hydrophytes;~~
- ~~2. The substrate is predominately un-drained hydric soil; or~~
- ~~3. The substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of the year.~~

“Wetlands biologist” means a person who has earned a degree in biological sciences from an accredited college or university and has demonstrated experience in delineating wetland boundaries, analyzing wetland functions and values, and has experience in developing wetland mitigation plans. A professional person who has had equivalent education and training or with equivalent experience may also qualify as a wetlands biologist for the purpose of performing wetland delineations, analysis of functions and values and determination of possible mitigation subject to the approval of the land use administrator.

“Zone of contribution” means the area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

A3.B General Provisions

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Authority

A3.B.3

Abrogation and Greater

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Partial Exemptions

A3.B.10

Single Family Residence Administrative

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[A3.C](#) [Wetlands](#)

- [A3.C.1](#) [Wetlands Designation and Classification.](#)
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[A.3.E](#) [Geologically Hazardous Areas](#)

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[A3.F](#) [Fish And Wildlife Habitat Conservation Areas](#)

- [A.3.F.1](#) [18.16.610 Fish And Wildlife Habitat Conservation Areas Designation.](#)
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General Provisions

- ~~18.16.010 Purpose~~
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- ~~18.16.110 Reasonable Use Permit~~
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- ~~18.16.170 Notice on Title~~
- ~~18.16.180 Native Growth Protection Areas~~
- ~~18.16.185 Critical Areas Tracts~~
- ~~18.16.190 Building Setbacks.~~
- ~~18.16.200 Security to Ensure Mitigation, Maintenance, and Monitoring~~ 18.16.210
 Unauthorized Critical Areas Alterations and Enforcement

Wetlands

- ~~18.16.310 Wetlands Designation and Classification.~~
- ~~18.16.320 Performance Standards~~
- ~~18.16.330 Wetland Mitigation Requirements~~
- ~~18.16.340 Subdivisions.~~

Critical Aquifer Recharge Areas

- ~~18.16.410 Critical Aquifer Recharge Areas Designation.~~

~~18.16.430 Performance Standards~~

~~18.16.440 Uses prohibited from critical aquifer recharge areas.~~

Geologically Hazardous Areas

~~18.16.510 Geologically Hazardous Areas Designation - 18.16.520~~

~~Additional Critical Areas Report Requirements 18.16.530~~

~~Performance Standards~~

Fish and Wildlife Habitat Conservation Areas

~~18.16.610 Fish And Wildlife Habitat Conservation Areas Designation -~~

~~18.16.620 Water Type Classification.~~

~~18.16.630 Additional Critical Areas Report Requirements.~~

~~18.16.640 Performance Standards~~

Frequently Flooded Areas

~~18.16.710 Frequently Flooded Areas~~

A3.B General Provisions

A3.B.1 ~~18.16.010~~ Purpose

- A. The purpose of this **Ordinance Appendix** is to designate and protect ecologically sensitive and hazardous areas in accordance with the Growth Management Act, while also allowing for reasonable use of private property.
- B. By limiting and regulating development and alteration of critical areas, this **Ordinance Appendix** seeks to:
- ~~1-~~ Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, volcanic eruptions, or flooding;
 - ~~2-~~ Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plants and animal species;
 - ~~3-~~ Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and

4. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas and habitat conservation areas so that there will be no net loss of wetlands, and our goal is to increase the quality and vitality of wetland acreage.

C. This [OrdinanceAppendix](#) is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this [OrdinanceAppendix](#) to make a parcel of property unusable by denying its owner reasonable use of the property or to prevent the provision of public facilities and services necessary to support existing development and that planned for by the community.

A3.B.2 ~~19.16.020~~ Authority

A. As provided herein, the Land Use Administrator, or his or her designee, is given the authority to interpret and apply, and the responsibility to enforce this [OrdinanceAppendix](#) to accomplish the stated purpose. The Land Use Administrator or his or her designee is authorized to adopt administrative rules as necessary and appropriate to implement this [OrdinanceAppendix](#) and to prepare and require the use of such forms as necessary for its administration.

B. The City Council may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this [OrdinanceAppendix](#).

A3.B.3 ~~19.16.030~~ Abrogation and Greater Restrictions

Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this [OrdinanceAppendix](#) or any existing regulation, easement, covenant, or deed restriction, conflicts with this [OrdinanceAppendix](#), that which is more restrictive shall apply.

A3.B.4 ~~19.16.040~~ Severability.

If any clause, sentence, paragraph, section, or part of this [OrdinanceAppendix](#) or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared to be severable.

A3.B.5 ~~19.16.050~~ Applicability

A. The provisions of this [OrdinanceAppendix](#) shall apply to all lands, all land uses and development activity, and all structures and facilities in the City, whether or not a permit or authorization is

required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this [OrdinanceAppendix](#).

~~B.~~ Approval of a permit or development proposal pursuant to the provisions of this [OrdinanceAppendix](#) does not discharge the obligation of the applicant to comply with the provisions of this [OrdinanceAppendix](#).

~~C.~~ The approximate location and extent of critical areas may be shown on City maps and on maps prepared by county, state, federal and other agencies. These maps are to be used as a guide for the City, project applicants and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical areas designation.

~~C.~~ [Compliance with the provisions of the Title does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required \(for example, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits\). The applicant is responsible for complying with these requirements, apart from the process established in this Title. Where applicable, the designated official will encourage use of information such as permit applications to other agencies or special studies prepared in response to other regulatory requirements to support required documentation submitted for critical areas review.](#)

~~C.A.~~

Commented [CS(3): RECOMMENDED CHANGE]
This language is recommended in our Guidance to alert the applicant that there are other requirements for impacts to critical areas.

~~A3.B.6~~ ~~18-16-060~~ Fees.

Unless otherwise indicated in this [OrdinanceAppendix](#), the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

~~A3.B.7~~ ~~18-16-070~~ Appeals

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this [OrdinanceAppendix](#) may be appealed to the Hearing Examiner according to, and as part of, the appeal procedure for the permit or approval involved.

~~A3.B.8~~ ~~18-16-080~~ Exemptions

All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this [OrdinanceAppendix](#) does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense. The following developments, activities, and associated uses shall be exempt from the provisions of this [OrdinanceAppendix](#):

Commented [CS(4): REQUIRED CHANGE]
This section does not apply in shoreline jurisdiction and should to be removed. Exemptions for shoreline permits are found in Milton DRAFT SMP 7.A.1, page 128.

A- Emergencies. Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this [Ordinance Appendix](#).

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the City within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the Land Use Administrator shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the City determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of Section 18.16.210 shall apply.

~~1-~~ After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical areas report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical areas report, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner;

B- Operation, maintenance or repair. Operation, maintenance or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

C- Maintenance or repair of single family residence. Maintenance or repair of existing single family residences including infrastructure, driveways and landscaping that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed maintenance or repair;

D- Passive outdoor activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to Section 18.16.090.D; and

E- Forest practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, [Ordinance Chapter 222 WAC](#), and those

that are exempt from City's jurisdiction, provided that forest practice conversions are not exempt.

~~3.B.9~~ ~~A3.B.8~~ **Partial Exemptions**

~~Partial exemptions shall be consistent with the purpose and provisions of this Ordinance Appendix, but do not require critical areas review or the submittal of a critical areas report. The City may apply conditions to the underlying permit or approval, such as a building permit, to ensure that the proposal is consistent with the provisions of this Ordinance Appendix to protect critical areas. The following activities and associated uses shall be exempt from the provisions of this Ordinance Appendix provided they meet the associated conditions:~~

- ~~A. **Permit requests subsequent to previous critical areas review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:~~
 - ~~1. The provisions of this Ordinance have been previously addressed as part of another approval;~~
 - ~~2. There have been no material changes in the potential impact to the critical area or buffer since the prior review;~~
 - ~~3. There is no new information available that is applicable to any critical areas review of the site or particular critical area;~~
 - ~~4. The permit or approval has not expired or, if no expiration date, no more than [five years] has elapsed since the issuance of that permit or approval; and~~
 - ~~5. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;~~
- ~~B. **Modification to existing structures.** Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one (1) year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;~~
- ~~C. **Activities within the improved right of way.** Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right of way or a City authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater;~~
- ~~D. **Public and private non-motorized trails.** Public and private non-motorized trails, except in wetlands, fish and wildlife habitat conservation areas, subject to the following:~~

Commented [CS(5): REQUIRED CHANGE
This section should be removed, exemptions within shoreline jurisdiction are found in Milton SMP 7.A.1.

Commented [CS(6): REQUIRED CHANGE
This language should be removed. The placement of a new structure or expansion of an existing structure or an expansion of the right-of-way requires a permit and is subject to the mitigation sequence to avoid, minimize and mitigate the critical area and the associated buffer. A more narrow but similar exemption for existing structures can be found in WAC 173-27-040(2)(b) as well as Milton SMP 7.A.1.b.2- Normal Maintenance and Repair.

Commented [CS(7): This language should be removed. This is an permitted and regulated development, subject to the SMP and accompanying CAO that requires a SDP. It is unclear how an applicant or the city would accurately identify the wetland and buffer edge without a critical area report to locate the outer 25% of the buffer. Although trails are allowed in the outer 25%, development impacting a wetland buffer requires mitigation and is subject to the CAO mitigation ratios.

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- 1. Trails in wetland buffers or fish and wildlife habitat conservation area buffers shall be located in the outer 25% of the buffer where feasible;
- 2. The trail surface shall meet all other requirements including water quality standards set forth in the storm water management regulations (MMC 13.26);
- 3. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
- 4. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report;.

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E.C. Select vegetation removal activities. The following vegetation removal activities, provided that no vegetation shall be removed from a critical area or its buffer without approval from the City:

Commented [CS(8):

- 1. The removal of non-native invasive ~~the following~~ vegetation with hand labor including and ~~light equipment:~~
 - ~~a.~~ Invasive and noxious weeds;
 - ~~b.~~ English Ivy (Hedera helix);
 - ~~c.~~ Himalayan blackberry (Rubus discolor, R. procerus);
 - ~~d.~~ Evergreen blackberry (Rubus laciniatus);
 - ~~e.~~ ~~C~~anary grass; and
 - ~~f.~~ ~~Other commonly found invasive species.~~
- 2. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
 - ~~a.~~ The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
 - ~~b.~~ Where trimming is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
 - ~~c.~~ All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
 - ~~d.~~ Coniferous trees shall be replaced by coniferous trees native to Washington and deciduous trees shall be replaced by deciduous trees native to Washington;
 - ~~e.~~ Replacement coniferous trees shall be at least eight (8) feet in height. Replacement deciduous trees shall be at least one and one-half (1.5) inches in diameter (DBH); and

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Light equipment is not defined. What does this term refer to? The Ecology 2016 Wetlands Guidance for CAO Updates for Western WA allows hand removal of non-native invasive species within a wetland and the buffer for the purpose of enhancement to a wetland, which seems like a more narrow allowance than what is being stated here.

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- o ~~f.~~ Trees shall be replaced subject to the following replacement ratios:
 - ~~i.~~ Removed trees with a DBH greater than nine (9) inches up to twelve (12) inches shall be replaced by four (4) trees;
 - ~~ii.~~ Removed trees with a DBH greater than twelve (12) inches up to sixteen (16) inches shall be replaced by six (6) trees; and
 - ~~iii.~~ Removed trees with a DBH of sixteen (16) inches or more shall be replaced by eight (8) trees;
- o ~~g.~~ If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods or removal that will minimize impacts; and
- o ~~h.~~ Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from City provided that within fourteen (14) days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this Title.
- o ~~i.~~ Financial guarantees for replacement trees may be required consistent with the provisions of MMC 18.16.220
 - ~~3.~~ Measures to control a 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 in-kind or with similar native species within one (1) year in accordance with an approved restoration plan.
 - ~~4.~~ 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, or alteration of the critical area by changing existing topography, water conditions, or water sources.
 - ~~5.~~ Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited.

~~F.D.~~ **Minor site investigative work.** Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and

~~G.E.~~ **Boundary markers.** Installation or modification of boundary markers.

A3.B.10 ~~18.16.100~~ **Single Family Residence Administrative Exception** ~~The Land Use Administrator may approve the construction, addition to or modification of a single family residence on an existing legal lot, provided:~~

A. The applicant shall submit any critical areas report and a mitigation plan following a preapplication review meeting as well as such other documents or studies, as requested by the City.

B. The proposal meets the following requirements:

- 1. The proposal is the minimum necessary to accommodate the building footprint and access. In no case shall the total impervious surface exceed 5,000 square feet.
- 2. Access is located so as to have the least impact on the critical area and its buffer.
- 3. The proposal preserves the functions and values of wetlands and streams to the maximum extent possible.
- 4. Adverse impacts resulting from alterations of steep slopes are minimized.
- 5. The proposal includes on-site mitigation to the maximum extent possible.
- 6. The proposal will not significantly affect drainage capabilities, flood potential, and steep slopes and landslide hazards on neighboring properties; and
- 7. The proposal first develops noncritical area land, then the critical areas buffer before the critical area itself is developed.

C. The Land Use Administrator may require on-site or off-site mitigation measures to compensate for the loss of the functions and values of the critical areas and buffers and may impose mitigating conditions to the modification or waiver in order to meet the standards of this chapter.

D. This section shall not apply to the following critical areas:

- 1. Landslide hazard areas that are unmitigatable;
- 2. Slopes of greater than 70 percent where either the lot or slope are abutting and above a Type S and Type F streams or Category I and Category II wetlands, and associated buffer, or an open stormwater conveyance system;
- 3. Type S and Type F streams; or
- 4. Category I and Category II wetlands.

~~18.16.110 Reasonable Use Permit~~

~~A. If the application of this Ordinance would deny all reasonable use of the~~

Commented [CS(10): REQUIRED CHANGE

This section does not apply in shoreline jurisdiction and should be removed. Single family residences constructed by the owner are exempt from requiring a substantial development permit but are still subject to the SMA, specifically the mitigation sequence and the requirement to meet no-net loss of ecological function. This section allows an applicant to directly impact a critical area and it's buffer without applying the mitigation sequence or requiring mitigation.

~~subject property, the property owner may apply for an exception pursuant to this Section.~~

~~B. An application for a reasonable use exception shall include a critical areas report, including mitigation plan, if necessary, and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents).~~

~~C. The city council shall review the application and conduct a public hearing pursuant to the hearing provisions of the development code. The city council shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use permit criteria in Subsection (D).~~

~~D. Reasonable use permit criteria. All of the following criteria must be met:~~

~~1. The application of this Ordinance would deny all reasonable use of the property;~~

~~2. No other reasonable use of the property has less impact on the critical area or its buffer;~~

~~3. The impact to the critical area or its buffer is the minimum necessary to allow for reasonable use of the property;~~

~~4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;~~

~~5. The proposal protects and mitigates impacts to the critical area functions and values consistent with the best available science;~~

~~E. Burden of proof. The applicant has the burden of proving that the application meets the stated reasonable use permit criteria.~~

A3.B.11 ~~18.16.120~~ Critical Areas Review Process

A ~~Pre-application consultation.~~ Any person preparing to submit an application for development

or use of land where the proposal is located within 300 feet of a critical area or its buffer, or is likely to impact a critical area, shall meet with the Land Use Administrator prior to submitting an application for development or other approval. At this meeting, the Land Use Administrator shall discuss the requirements of this [OrdinanceAppendix](#); provide a critical areas checklist, available critical areas maps, scientific information, and other materials; outline the review process; and, work with the applicant to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.

- B. **Initial review.** Following submittal of an application for development or use of land, the Land Use Administrator or his or her designee shall review the application, site conditions, and other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal.
- C. **Site inspection.** The property owner shall provide the City with reasonable access to the site for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.
- D. **Critical areas report required.** If the information available indicates that the project area is within or adjacent to a critical area or buffer, or that the proposed activity is likely to degrade a critical area or buffer, then the applicant shall be required to submit a critical areas report prior to further review of the project.

A3.B.12 ~~18.16.130~~ **Review Criteria**

A. Any permit or approval that includes an alteration to a critical area or its buffer, unless otherwise provided for in this [OrdinanceAppendix](#), may be approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- ~~That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;~~
- ~~That the hardship described in (1) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;~~
- ~~That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;~~

Commented [CS(11): REQUIRED CHANGE

This section does not apply within shoreline jurisdiction. Permit review criteria for the issuance of all development is found in WAC 173-27-140, for substantial development in WAC 173-27-150, conditional uses in WAC 173-027-160, and variance permits in WAC 173-27-170- this is the criteria for issuing permits within shoreline jurisdiction, not the language listed here. It does not appear that Milton SMP chapter 7 includes review criteria found in WAC 173-27-140 nor WAC 173-27-150, I recommend adding it to chapter 7, to transparently identify when the city can issue a permit under the SMP, however it still applies regardless of incorporation into the SMP.

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- ~~That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;~~
- ~~That the variance requested is the minimum necessary to afford relief; and~~
- ~~That the public interest will suffer no substantial detrimental effect.~~
- ~~1. The proposal minimizes the impact on critical areas in accordance with Mitigation sequencing MMC 18.16.150;~~
- ~~2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;~~
- ~~3. The proposal is consistent with the general purposes of this Ordinance and the public interest;~~
- ~~4. Any alterations permitted to the critical area are mitigated in accordance with Mitigation requirements MMC 18.16.160;~~
- ~~5. The proposal is consistent with other applicable regulations and standards. A favorable critical areas review should not be construed as endorsement or approval of any underlying permit or approval.~~
- ~~B. The City may condition the underlying permit or approval as necessary to mitigate impacts to critical areas and to conform to the standards required by this Ordinance Appendix. Any conditions of approval shall be attached to the underlying permit or approval.~~
- ~~C. The applicant has the burden of proving that a proposal complies with the standards set forth in this Ordinance Appendix.~~

A3.B.13 ~~18.16.140~~ Critical Areas Report

- ~~A. The critical areas report shall use scientifically valid methods and studies in the analysis of critical areas data and field reconnaissance and reference the source of science used. The critical areas report shall evaluate the proposal and all probable impacts to critical areas. The critical areas report shall be prepared by a qualified professional.~~
- ~~B. At a minimum, the report shall contain the following:~~
 - ~~1. The name and contact information of the applicant, the project area, a description of the proposal, and identification of the permit requested;~~
 - ~~2. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;~~
 - ~~4. Identification and characterization of all critical areas and water bodies within three hundred (300) feet of the proposed project area;~~
 - ~~5. A statement specifying the accuracy of the report, and all assumptions made and relied~~

upon;

- ~~6.~~ An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- ~~7.~~ An analysis of site development alternatives;
- ~~8.~~ A description of reasonable efforts made to avoid, minimize, and mitigate impacts to critical areas consistent with MMC 18.16.150;
- ~~9.~~ Plans for adequate mitigation, as needed, to offset any impacts;
- ~~10.~~ A discussion of the performance standards applicable to the critical area and proposed activity;
- ~~11.~~ Financial guarantees to ensure compliance; and
- ~~12.~~ Any additional information required for the critical area as specified in the corresponding chapter.

~~C.~~ Unless otherwise provided, a critical areas report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the City.

~~D.~~ The required geographic area of the critical areas report may be limited as appropriate if:

- ~~1.~~ The applicant, with assistance from the City, cannot obtain permission to access properties adjacent to the project area; or
- ~~2.~~ The proposed activity will affect only a limited part of the subject site.

~~E.~~ The City may require additional information to be included in the critical areas report when determined to be necessary to the review of the proposed activity in accordance with this [Ordinance Appendix](#).

~~A3.B.14~~ ~~18.16.150~~ **Mitigation Sequencing.**

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, [mitigation measures shall be applied in the following sequence of steps listed in order of priority, starting with avoidance, being top priority. In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable. such alteration shall be avoided, minimized, or compensated for in the sequential order of preference shown below. Mitigation for individual actions may include a combination of these measures.](#)

~~A.~~ Avoiding the impact altogether by not taking a certain action or parts of an action;

Commented [CS(12): REQUIRED CHANGE
Changes to this section are necessary for compliance with the mitigation sequence. The deleted language below in this section is inconsistent with the mitigation sequence required in WAC 173-26-201(2)(e). Language consistent with the Rule has been inserted.

1. ~~B.~~ 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;
2. ~~C.~~ Rectifying the impact to wetlands, critical aquifer recharge 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;~~
3. ~~D.~~ ~~Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;~~
4. ~~E.~~ Reducing or eliminating the impact or hazard over time by preservation and maintenance operations ~~during the life of the action;~~
5. ~~F.~~ Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
6. ~~G.~~ Monitoring the ~~hazard impact or the compensation projects other required mitigation~~ and taking ~~remedial action when necessary~~ appropriate corrective measures.

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A3.B.15 ~~18.16.160~~ Mitigation Requirements

- ~~A.~~ Unless otherwise provided in this OrdinanceAppendix, if alteration to the critical area or buffer is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with an approved critical areas report.
- ~~B.~~ Mitigation shall be sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
- ~~C.~~ Mitigation shall not be implemented until after City review of a critical areas report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical areas report.
- ~~D.~~ Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to fish, wildlife and flora.
- ~~E.~~ The City may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall

not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the City, and include a financial guarantee.

~~F.~~ **Mitigation plan.** When mitigation is required, the applicant shall submit for approval by city a mitigation plan as part of the critical areas report. The mitigation plan shall include:

- ~~1.~~ **Environmental goals and objectives.** The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
 - ~~a.~~ A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
 - ~~b.~~ A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
 - ~~c.~~ An analysis of the likelihood of success of the compensation project.
- ~~2.~~ **Performance standards.** The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this [Ordinance Appendix](#) have been met.
- ~~3.~~ **Detailed construction plans.** The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
 - ~~a.~~ The proposed construction sequence, timing, and duration;
 - ~~b.~~ Grading and excavation details;
 - ~~c.~~ Erosion and sediment control features;
 - ~~d.~~ A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - ~~e.~~ Measures to protect and maintain plants until established.
- ~~4.~~ Written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
- ~~5.~~ **Monitoring program.** The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5 and 7 after site construction), and how the

monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

- ~~6.~~ **Contingency plan.** The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

~~A3.B.16~~ ~~18.16.170~~ Notice on Title

- ~~A.~~ In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county records and elections division. The notice shall state the presence of the critical area or buffer on the property, of the application of this [OrdinanceAppendix](#) to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land.
- ~~B.~~ The applicant shall submit proof that the notice has been filed for public record before the City approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

~~A3.B.17~~ ~~18.16.180~~ Native Growth Protection Areas

- ~~A.~~ Unless otherwise required in this [OrdinanceAppendix](#), native growth protection areas (NGPA) shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below:
 - ~~1.~~ All landslide hazard areas and buffers;
 - ~~2.~~ All wetlands and buffers;
 - ~~3.~~ All habitat conservation areas; and
 - ~~4.~~ All other lands to be protected from alterations as conditioned by project approval.
- ~~B.~~ Native growth protection areas shall be recorded on all documents of title of record for all affected lots.

~~C~~ Native growth protection areas shall be designated on the face of the plat or recorded drawing in a format approved by the City attorney. The designation shall include the following restrictions:

- ~~1~~ An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- ~~2~~ The right of the City to enforce the terms of the restriction.

~~A3.B.18~~ ~~19.16.185~~ Critical Areas Tracts

~~A~~ Critical areas tracts shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below that total five thousand (5,000) or more square feet:

- ~~1~~ All landslide hazard areas and buffers;
- ~~2~~ All wetlands and buffers;
- ~~3~~ All habitat conservation areas; and
- ~~4~~ All other lands to be protected from alterations as conditioned by project approval.

~~B~~ Critical areas tracts shall be recorded on all documents of title of record for all affected lots.

~~C~~ Critical areas tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city attorney. The designation shall include the following restriction:

- ~~1~~ An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- ~~2~~ The right of the city to enforce the terms of the restriction.

~~D~~ The city may require that any critical areas tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract).

All critical areas, regardless of size or type, and associated buffer shall be shown on proposals and recording documents for subdivisions, short subdivisions, planned unit developments, and binding site plans.

A3.B.19 ~~18.16.190~~ Building Setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of fifteen (15) feet from the edges of all critical areas buffers. The following may be allowed in the building setback area [when also allowed and permitted in this SMP](#):

- ~~A~~ Landscaping;
- ~~B~~ Uncovered decks;
- ~~C~~ Building overhangs if such overhangs do not extend more than eighteen (18) inches into the setback area; and

A3.B.20 ~~18.16.200~~ Security to Ensure Mitigation, Maintenance, and Monitoring

- ~~A~~ When mitigation required pursuant to a development proposal is not completed prior to the City final permit approval, such as final plat approval or final building inspection, the City shall require of the applicant an assignment of funds or post a performance bond or other security in a form and amount deemed acceptable by the City. If the development proposal is subject to mitigation, the applicant shall post mitigation security in a form and amount deemed acceptable by the City to ensure mitigation is fully functional.
- ~~B~~ The security shall be in the amount of one hundred and fifty percent (150%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- ~~C~~ The security shall be in the form of assignment of funds, a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the City attorney.
- ~~D~~ Security authorized by this Section shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Security shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
- ~~E~~ Depletion, failure, or collection of security funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- ~~F~~ Public development proposals shall be relieved from having to comply with the security requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- ~~G~~ Any failure to satisfy critical areas requirements established by law or condition including,

but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.

~~H.~~ Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

A3.B.21 ~~18.16.210~~ *Unauthorized Critical Areas Alterations and Enforcement*

~~A.~~ **Unauthorized alteration.** When a critical area or its buffer has been altered in violation of this [OrdinanceAppendix](#), all ongoing development work shall stop and the critical area shall be restored.

~~B.~~ 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 responsible party's expense to compensate for violation of provisions of this [OrdinanceAppendix](#). At a minimum, the structural and functional values of the critical area shall be restored and any hazard shall be reduced to a level equal to, or less than, the pre-development conditions.

~~2.~~ All development work shall remain stopped until a restoration plan has been approved by the City. Such a plan shall be prepared by a qualified professional. The City may, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

~~C.~~ **Site inspections.** The Land Use Administrator, or his or her designee, is authorized to make site inspections and take such actions as necessary to enforce this [OrdinanceAppendix](#). The Land Use Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

~~D.~~ **Penalties.** Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this [OrdinanceAppendix](#) shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this [OrdinanceAppendix](#) is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this [OrdinanceAppendix](#) 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 [OrdinanceAppendix](#). The civil penalty shall be assessed at a maximum rate of \$1000 dollars per day per violation.

A3.C WETLANDS

A3.C.1 ~~18.16.310~~ Wetlands Designation and Classification.

A. Wetlands Designation. Wetlands are designated in accordance with the ~~the approved federal wetlands delineation manual and applicable regional supplement currently adopted Washington State Wetlands Identification and Delineation Manual (1997 or as revised).~~

Wetlands are 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 typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

- ~~1-~~ 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.
 - ~~2-~~ Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

B. Wetlands Classification. Wetlands shall be rated according to the ~~Washington State Wetland Rating System for Western Washington – 2014 update (Department of Ecology Publication #14-06-029, October 2014 – Effective January 2015, or as revised)~~ *Washington State Wetland Rating System for Western Washington (Department of Ecology 2004, or as revised)*. This document contains the definitions, methods and a rating form for determining the categorization of wetlands described below:

Category I wetlands include those that receive a score of ~~23 through 27~~ *greater than or equal to 70* based on functions, or those that are rated Category I based on Special Characteristics as defined in the rating form.

Category II wetlands include those that receive a score of ~~20 through 22~~ *51 through 69* based on functions, or those that are rated Category II based on Special Characteristics as defined in the rating form.

Category III wetlands include those that receive a score of ~~16 through 19~~ *30 through 50* based on functions.

Category IV wetlands score less than ~~30~~ *16* points based on functions.

A3.C.2 ~~18.16.320~~ Performance Standards

A. Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided for in this Ordinance Appendix. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and values of the wetland and other critical areas, or that the impacts to the functions and values will be fully mitigated.

~~B. Category III and IV wetlands less than 4,000 square feet may be exempted or partially exempted from the provisions of this chapter and may be altered by filling or dredging as outlined below.~~

- 1. ~~Category III and IV wetlands less than 1,000 square feet are exempt where:~~
 - ~~a. The wetland is isolated;~~
 - ~~b. The wetland is not associated with a riparian corridor;~~
 - ~~c. The wetland is not part of a wetland mosaic, as defined by the Washington Department of Ecology;~~

~~o. d. The wetland does not contain Washington Department of Fish and Wildlife designated priority species or habitat identified as essential for local populations of priority species.~~

~~2. Category III and IV wetlands between 1,000 and 4,000 square feet may be exempted from the mitigation sequencing requirement to first avoid impacts where:~~

- ~~a. A critical areas report is performed in accordance with MMC 18.16.140; and~~
- ~~b. The wetland meets the criteria listed in MMC 18.16.320.B.1; and~~
- ~~c. The proposed plan includes full mitigation.~~

C.B. Wetland buffers

~~1. **Standard buffer widths.** Buffer Requirements. The standard buffer widths in Table 1 – “Wetland Buffers” have been established in 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.~~

~~a. The use of the standard buffer widths in Table 1 requires the implementation of the measures in Table 2, where applicable, to minimize the impacts of the adjacent land uses. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate then the buffer width shall be increased or the buffer should be planted to maintain the standard width.~~

~~(12) b. If an applicant chooses not to apply the mitigation measures in Table 2 – “Required measures to minimize impacts to wetlands”, then a 33% increase in the width of all~~

Commented [CS(13): REQUIRED CHANGE]
This language should be removed. All wetlands associated to a shoreline of the state are subject to the regulations of the SMP and the CAO. No exclusions apply.

~~buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them. Wetland buffers, then the buffer widths in Table 3 must be used.~~

~~(13) widths, based on wetland category, habitat score and land use intensity, are shown in the table below~~

~~(14)(13) The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.~~

~~(14) if the wetland is a Category I or II For a wetland with a habitat score greater than of 56 or greater points and it is located within 300 feet of a priority habitat area as defined by the Washington State Department of Fish and Wildlife, the applicant shall provide a relatively undisturbed vegetated corridor at least 100 feet wide between the wetland and the priority habitat area, subject to the following:~~

~~(15)~~

~~The corridor shall be protected for the entire distance between the wetland and the priority habitat through a conservation easement, native growth protection easement or the equivalent. Presence or absence if a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available the buffers in Table 3 shall be implemented.~~

~~z~~

~~The measures in Table 2 are implemented, where applicable, to minimize the impacts of the adjacent land use.~~

□ Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 8 points for habitat function would require a buffer of 225 feet (75 + 150).

Table 1 Wetland Buffer Requirements if Table 2 is Utilized

Wetland Category	Standard Buffer Width	Additional buffer width if wetland scores 3-54 habitat points	Additional buffer width if wetland scores 65-7 habitat points	Additional buffer width if wetland scores 8-9 habitat points
Category I: Based on total score	75ft	Add 30 ft75	Add 90 ft110	Add 150 ft225
Category I: Bogs and wetlands of high conservation value	190 ft	NA190	NA190	Add 35 ft225
Category I: Forested	75ft	Add 30 ft75	Add 90 ft110	Add 150 ft225
Category I: Estuarine	150 ft (habitat scores not applicable)	NA	NA	NA
Category II: Based on score	75 ft	Add 30 ft75	Add 90 ft110	Add 150 ft225
Category III (all)	60 ft	Add 45 ft60	Add 105 ft110	Add 165 ft225
Category IV (all)	40 ft	NA40	NA40	NA40

Commented [CS(14): RECOMMENDED CHANGE]
These can be removed, they do not apply.

Commented [CS(15): REQUIRED CHANGE]
This table should be updated. There is no standard buffer established in the Ecology wetlands Guidance. All wetlands are based on habitat score in this table. I have updated the table to reflect the minimum buffer widths required. This table can only be applied when the BMPs found in Table 2 are also utilized.

Table 2 – Required Measures to Minimize Impacts to Wetlands

<u>Examples of Disturbance</u>	<u>Examples of Activities That Cause the Disturbance</u>	<u>Examples of Required Measures to Minimize Impacts</u>
Lights	Parking lots Warehouses	<input type="checkbox"/> <u>Direct lights away from wetland</u>

<u>Examples of Disturbance</u>	<u>Examples of Activities That Cause the Disturbance</u>	<u>Examples of Required Measures to Minimize Impacts</u>
	<u>Manufacturing</u> <u>Residential</u>	
<u>Noise</u>	<u>Manufacturing</u> <u>Residential</u>	<input type="checkbox"/> <u>Place activity that generates noise away from the wetland</u> <input type="checkbox"/> <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> <input type="checkbox"/> <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u>
<u>Toxic runoff</u>	<u>Parking lots Roads Manuf</u> <u>acturing Resident</u> <u>ial areas</u> <u>Application of</u> <u>agricultural pesticides,</u> <u>herbicides, fungicides,</u> <u>fertilizers</u> <u>Landscaping</u>	<input type="checkbox"/> <u>Route all new untreated runoff away from wetland while ensuring the wetland is not dewatered.</u> <input type="checkbox"/> <u>Utilize and require covenants limiting use of pesticides within 150 feet of wetland</u> <input type="checkbox"/> <u>Apply Integrated Pest Management programs</u>
<u>Change in water regime</u>	<u>Any impermeable</u> <u>surface Lawns</u> <u>Tilling</u>	<input type="checkbox"/> <u>Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns.</u>

<u>Pets and human disturbance</u>	<u>Residential areas</u>	<input type="checkbox"/> <u>Use privacy fence OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion.</u> <input type="checkbox"/> <u>Place wetland and its buffer in a separate tract or protect with a</u>
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<u>Examples of Disturbance</u>	<u>Examples of Activities That Cause the Disturbance</u>	<u>Examples of Measures to Minimize Impacts</u>
		<u>conservation easement.</u>
<u>Dust</u>	<u>Tilled fields</u>	<input type="checkbox"/> <u>Use best management practices to control dust</u>
<u>Disruption of corridors or connections</u>		<input type="checkbox"/> <u>Maintain connections to offsite areas that are undisturbed.</u> <input type="checkbox"/> <u>Restore corridors or connections to offsite habitats by replanting.</u>
<u>Storm water runoff</u>	<u>Stormwater ponds</u> <u>Other stormwater facilities</u>	<input type="checkbox"/> <u>Retrofit stormwater detention and treatment for roads and existing adjacent development.</u> <input type="checkbox"/> <u>Prevent channelized flow from lawns that directly enters the buffer.</u> <input type="checkbox"/> <u>Use Low Intensity Development techniques (per PSAT publication on LID techniques).</u>

Table 3- Wetland Buffer Requirements if Table 2 is not implemented

<u>Wetland Category</u>	<u>3-5 habitat points</u>	<u>6-7 habitat points</u>	<u>8-9 habitat points</u>
<u>Category I: Based on total score</u>	<u>100</u>	<u>150</u>	<u>300</u>
<u>Category I: Bogs and wetlands of high conservation value</u>	<u>250</u>	<u>250</u>	<u>300</u>
<u>Category I: Forested</u>	<u>100</u>	<u>150</u>	<u>300</u>

Commented [CS(16): REQUIRED CHANGE]
 Add in Table 3 buffers required when table 2 BMPS are not utilized. These buffers must be used instead of the Table 1 buffers when the BMPS in Table are not used in concert with the Table 1 reduced buffer standards.

Category II: Based on score	100	150	300
Category III (all)	80	150	300
Category IV (all)	50	50	50

Category I, II & III	Buffers	
	Standard	High Intensity
31 or higher	225	300
30	200	270
29	175	240
28	155	210
27	135	180
26	115	150
25	105	136
24	95	124
23	85	112
22	75	100
21	70	92

20	65	85
19 or lower	60	80
Category IV	40	50

c. Standard buffer widths apply if the following conditions are met, otherwise High Intensity buffer widths apply:

- i. If the wetland is a Category I or II wetland with a habitat score greater than twenty points and it is located within three hundred feet of a priority habitat area as defined by the Washington state Department of Fish and Wildlife, the applicant shall provide a relatively undisturbed vegetated corridor at least one hundred feet wide between the wetland and the priority habitat area. The corridor shall be protected for the entire distance between the wetland and the priority habitat through a conservation easement, native growth protection easement or the equivalent; and
- ii. The following measures shall be implemented to the extent reasonably possible to minimize impacts from high intensity land uses:

Examples of Disturbance	Examples of Activities that Cause the Disturbance	Examples of Measures to Minimize Impacts
Lights	Parking Lots Warehouse s Manufacturing Residential	Direct lights away from wetland
Noise	Manufacturing Residential	Place activity that generates noise away from the wetland.
Toxic runoff	Parking Lots Roads Manufacturing Residential Areas Application of Agricultural Pesticides, herbicides, fungicides, fertilizers Landscaping	Route all new untreated runoff away from wetland Covenants limiting use of pesticides within 150 feet of wetland Integrated

		pest management programs
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Change in water regime	Any impermeable surface Lawns Filling	Infiltrate or treat, detain and disperse into buffer new runoff from surfaces
Pets and Human disturbance	Residential areas	Fence around buffer Plant buffer with "impenetrable" natural vegetation appropriate for region
Dust	Filled fields	Use best management practices to control dust

2- **Measurement of wetland buffers.** Buffers shall be measured from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

3- Where a legally established and constructed public roadway transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the roadway provided:

- ~~a.~~ The isolated part of the buffer does not provide additional protection of the wetland; and
- ~~b.~~ The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the wetland; and
- ~~c.~~ The resulting buffer distance is less than 50% of the standard or optional buffer for the applicable wetland category, no further reduction shall be allowed.

4- Where a buffer has been previously established after 1996, through a City development review and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established.

5- **Buffer width increasing.** The Land Use Administrator may require the standard buffer to be increased by ~~the greater of 50 feet or~~ a distance necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation shall at a minimum demonstrate the following: and provide connectivity to other wetland and habitat areas for one of the following:

- ~~a. To maintain viable populations of existing species listed by the Federal or State government~~

~~as endangered, threatened or sensitive; or~~ The wetlands is used by a state of 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 of raptor nesting trees; or

- ~~• _____~~
- ~~• _____ b. To protect wetlands against severe erosion~~ The adjacent land is subject to severe erosion, and that standard erosion control measures will not effectively ~~address~~ prevent adverse wetland impacts; or
- ~~• _____~~ The adjacent land has minimal vegetation cover or slopes greater than 30 percent.
- ~~• _____ c. When a category I, II or III wetland is located within 300 feet of:~~
 - ~~• _____~~ i. Another category I, II, or III wetland;
 - ~~○ _____~~ ii. A fish and wildlife habitat conservation area; or
 - ~~○ _____~~ iii. A type S or F stream as defined in MMC 18.16.620;

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect wetland and habitat functions. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

~~6. Wetland buffer width averaging.~~ Buffer averaging. If wetland buffers are established using Table 3 buffer widths, buffer averaging may be allowed to improve wetland protection by the Land Use Administrator if all of the following criteria are met:

- ~~_____ a.~~ It will provide additional protection to wetlands or enhance their functions, as long as the total area contained in the buffer on the development proposal site does not decrease;
- ~~• _____~~
- ~~_____ b.~~ The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- ~~• _____~~
- ~~_____ c.~~ The buffer width is not reduced to less than ~~50~~25% of the ~~standard required~~ buffer widths ~~found in Table 3~~ at any location ~~except by variance; and~~
- ~~• _____~~
 - ~~d. Buffer width averaging may not be used in conjunction with buffer reduction options in this section, provided the total combined reduction does not reduce the buffer to less than 50% of standard buffer width at any location.~~

~~7. Reduction of wetland buffer widths.~~ Buffer Width Averaging to Accommodate Allowed Uses. Standard ~~b~~ buffer widths may be averaged to accommodate permitted uses when all of the below criteria are met:

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Commented [CS(17): These are not in the guidance, but can be retained if appropriate.

Commented [CS(18): REQUIRED CHANGE
Buffer width averaging is only allowed when the larger buffers in table 3 are used, consistent with *Wetlands Guidance for CAO Updates, Western WA Version, page 13 and 31.*

Commented [CS(19): REQUIRED CHANGE
The reductions that were in this section should be removed, but the inserted language for wetland buffer averaging is allowed as long as it is consistent with the policies and regulations in the rest of the SMP. This averaging language isn't required but I recommend it as an equivalent to this section.
Best available science is clear on the issue that adequate upland buffers are required to protect wetland functions and values. Allowing the reduction of standard buffers by implementing low impact development measures which cannot provide adequate protection for habitat function is simply inappropriate.
The required buffers in Tables 1 and 3 are the minimum needed to meet the no-net-loss requirements. Table 1 is the reduced buffer option, and it has been demonstrated that no-net-loss can be met when the BMPs in Table 2 are implemented.

1. The use or development is allowed in the SMP.
2. There are no feasible alternatives to the site design that could be accomplished without averaging.
3. The average buffer will not result in degradation of the wetland's function and values as demonstrated by a qualified wetlands professional.
4. The total buffer area after averaging is equal to the area required without averaging.
5. The buffer width at its narrowest point is never less than 3/4s the required width of the wetland buffer found in Table 3, except with a shoreline variance permit, reduced up to 50/25% when buffer width reduction impacts are mitigated and result in equal or greater protection of the wetland functions. Buffer reduction shall not reduce the required buffer by more than 25% except by variance.

Prior to considering buffer reduction, the applicant shall demonstrate application of mitigation sequencing as required in MMC 18.16.150. A plan for mitigating buffer reduction impacts must be prepared using selected incentive-based mitigation options from the list below. The following incentive options for reducing standard buffer widths shall be considered cumulative up to a maximum reduction of 50/25% of the standard buffer width. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five (5) year monitoring and maintenance plan.

~~a. Installation of biofiltration/infiltration mechanisms: up to twenty percent (20%) reduction in the standard buffer width may be allowed for the installation of bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements in accordance with MMC 13.26.~~

~~b. Removal of existing impervious surfaces:~~

~~i. Up to ten percent (10%) reduction in standard buffer width if impervious surfaces within the to-be remaining buffer area are reduced by at least fifty percent (50%); or~~

~~ii. Up to twenty percent (20%) reduction in standard buffer width if the to-be remaining buffer area is presently more than fifty percent (50%) impervious AND all of it is to be removed.~~

~~c. Removal of invasive, non-native vegetation: up to ten percent (10%) reduction in standard buffer width for the removal and extended (minimum 5-year) monitoring and continued removal maintenance of relatively dense stands of invasive, non-native vegetation from significant portions of the remaining buffer area.~~

~~d. If not already required under an existing development proposal, installation of oil/water separators for storm water quality control: up to ten percent (10%) reduction in standard buffer width.~~

~~e. Use of pervious material for driveway/road construction: up to ten percent (10%) reduction in standard buffer width.~~

~~f. Restoration of off-site area if no on-site area is possible:~~

~~f. Restoration of off-site area if no on-site area is possible:~~

~~i. Up to ten percent (10%) reduction in standard buffer width if restoration area is at a 2:1 ratio or greater; Or~~

~~i. Up to ten percent (10%) reduction in standard buffer width if restoration area is at a 2:1 ratio or greater; Or~~

~~ii. Up to twenty percent (20%) reduction in standard buffer width if restoration area is at a 4:1 ratio or greater.~~

~~ii. Up to twenty percent (20%) reduction in standard buffer width if restoration area is at a 4:1 ratio or greater.~~

~~g. Removal of significant refuse or sources of toxic material: up to ten percent (10%) reduction in standard buffer width.~~

~~g. Removal of significant refuse or sources of toxic material: up to ten percent (10%) reduction in standard buffer width.~~

~~8. The Land Use Administrator may also consider buffer reductions for decreasing impacts to buffers using methods such as Low Impact Development (LID).~~

~~9.8. Buffer conditions shall be maintained.~~ Except as otherwise specified or allowed in accordance with this [Ordinance Appendix](#), wetland buffers shall be retained in an undisturbed condition.

~~D.C.~~ Signs and fencing of wetlands

~~1. Temporary markers.~~ The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and inspected by the Land Use Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.

~~2. Permanent signs.~~ As a condition of any permit or authorization issued pursuant to this Chapter, the Land Use Administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.

~~a. Permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability.~~

~~b. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity.~~

~~c. The sign shall be worded as follows or with alternative language approved by the Land Use Administrator:~~

~~3. Fencing~~

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a
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D
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N
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rb

Contact [local contact information]
Regarding Uses and Restriction”

- ~~a.~~ The City shall condition any permit or authorization to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.
- ~~b.~~ Fencing installed as part of a proposed activity or as required in this Subsection shall be design 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.

~~A3.C.3~~ ~~18.16.330~~ Wetland Mitigation Requirements

~~C.~~ Mitigation and mitigation plans shall be developed consistent with the Department of Ecology *Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans, 2006*, or as revised.

~~D.~~ Compensatory Mitigation General Provisions.

- ~~1.~~ Compensatory mitigation for alterations to a wetlands and the associated buffer shall only be used for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biological functions. Replace wetland impacts with the same or higher category of wetland.
- ~~2.~~ Compensatory mitigation shall be conducted on property which shall be protected and managed to avoid further loss or degradation. The Applicant or violator shall provide for long term preservation of the compensation area.
- ~~3.~~ Compensatory mitigation shall follow an approved Mitigation Plan, as required in A3.B.15.
- ~~4.~~ Enhancement of existing wetlands, other than Category I and Category II wetlands, may be considered for compensation.
- ~~5.~~ Compensation shall be completed prior to, or concurrently with, wetland loss, or, in the case of an enforcement action, prior to further development of the site.

~~E.~~ Mitigation Ratios.

~~D.~~ Any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland in order to compensate for wetland losses. The wetlands to be created or restored shall be in-kind (i.e., the same type of wetland) and accomplished prior to or concurrently with loss. The ratio of lost wetlands to newly created or restored shall be determined in accordance with *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance, March 2006* or as revised.

~~E.~~ Mitigation ratios shall be as follows:

Category of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only ⁴	Re-establishment or Creation (R/C) and Rehabilitation (RH)	Re-establishment or Creation (R/C) and Enhancement (E)	Enhancement Only ⁴

Category I	6:1	12:1	1:1 (R/C) and 10:1 (RH)	1:1 (R/C) and 20:1 (E)	24:1
Category II	3:1	6:1	1:1 (R/C) and 4:1 (RH)	1:1 (R/C) and 8:1 (E)	12:1
Category III	2:1	4:1	1:1 (R/C) and 2:1 (RH)	1:1 (R/C) and 4:1 (E)	8:1
Category IV	1.5:1	3:1	1:1 (R/C) and 1:1 (RH)	1:1 (R/C) and 2:1 (E)	6:1

Commented [CS(20): REQUIRED CHANGE]
Please provide a title and number to this table for reference.

~~F.~~ Decreased replacement ratio. The City may decrease these ratios under the following circumstances:

- ~~a. Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high likelihood of success;~~
- ~~b. Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or~~

~~E. c.~~ The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

Commented [CS(21): REQUIRED CHANGE]
The ratios found in the table above are the minimum required to compensate for impacts demonstrated with best available science. Reduction of the ratios is not allowed as it will most likely result in a net loss of ecological function.

~~F.~~ On-site compensation is generally preferred over off-site compensation. Compensatory mitigation actions shall generally be conducted within the same sub-basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. Off-site compensation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. The following conditions apply to off-site compensation:

- ~~G. 1.~~ Off-site compensation shall occur within the same sub-drainage basin of the same watershed where the wetland loss occurs, provided that Category IV wetlands may be replaced outside of the watershed if there is no reasonable alternative. In such instances, the stormwater storage function provided by Category IV Wetlands must be provided for within the design of the development project. The following criteria shall be evaluated to determine whether off-site mitigation is ecologically preferable.
1. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should

include: anticipated replacement ratios for wetland mitigation, buffer conditions and required widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

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

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

4. Off-site locations shall be in the same sub-drainage basin unless:

a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or

b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;

c. Fees are paid to an approved in-lieu-fee program to compensate for the impacts.

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

•

~~2. Off-site compensation can be allowed only under one or more of the following circumstances:~~

~~(16) a. On-site compensation is not feasible due to hydrology, soils, or other factors; or b. On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State or local public safety directive;~~

~~(17) c. Potential functions and value at the site of the proposed restoration are greater than the lost wetland functions and value;~~

~~(18) d. When the wetland to be altered is of a limited function and value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functional value possible.~~

~~B. Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of this Section and the mitigation sequence outlined in MMC 18.16.150.~~

~~G. Selecting Compensation Sites.~~

- 4. Except in the case of cooperative compensation projects in selecting compensation sites, Applicants shall pursue locations in the following order of preference:
 - ~~a.~~ Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;
 - ~~b.~~ Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists.
- 5. Where out-of-kind replacement is accepted, greater restoration/creation ratios may be required.

Timing. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will impact wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

Commented [CS(22): REQUIRED CHANGE
To meet no-net-loss compensatory mitigation must be completed at the time of the impact.

~~A. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and plants. Construction shall be timed to assure that grading and soil movement~~

~~B.A. 1. The Administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the City.~~

~~occurs during the dry season and planting of vegetation shall be specifically timed to needs of the target species.~~

Commented [CS(23): RECOMMENDED CHANGE
Wetlands Guidance for CAO Updates, Western WA Version allows for a one time delay for mitigation projects. This is not required, but recommended to accommodate the applicant.

C.B. Alternative Compensation Projects. The Land Use Administrator may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of alternative compensation projects allowed under the provisions of this Section wherein one or more Applicant(s), or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:

- ~~1.~~ Creation of one or several larger wetlands may be preferable to many small wetlands;
- ~~2.~~ The group demonstrates the organizational and fiscal capability to act cooperatively;
- ~~3.~~ The group demonstrates that long term management of the compensation area

- will be provided;
- ~~4~~. There is a clear potential for success of the proposed compensation at the identified compensation site;
- ~~5~~. Conducting compensation as part of a cooperative process does not reduce or eliminate the required replacement ratios outlined above. Exception: where a compensatory mitigation plan including a 5 year monitoring agreement is included as a condition of approval, such plan shall allow for 1:1 replacement ratios upon successful completion of the monitoring agreement;

~~E~~. Wetlands enhancement as mitigation

Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical areas report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

~~A3.C.4~~ ~~18.16.340~~ Subdivisions.

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

- ~~A~~. Land that is located wholly within a wetland or its buffer may not be subdivided.
- ~~B~~. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
 - ~~1~~. Located outside of the wetland and its buffer; and
 - ~~2~~. Meets the minimum lot size requirements.
- ~~C~~. Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the City determines that no other feasible alternative exists in and when consistent with this ~~Ordinance~~Appendix

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