Chapter 18.300

CRITICAL AREAS

Sections:

18.300.010 Authority and title.

This chapter is established pursuant to RCW 36.70A.060 and La Center Ordinance No. 2001-2. This chapter is known as the La Center critical areas ordinance. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.020 Purpose.

The purpose of the critical areas overlay district is to implement the open space policies of the La Center comprehensive plan. This chapter creates an overlay district that requires the conservation and/or enhancement of identified critical areas while encouraging urban densities and affordable housing through density transfer to nonsensitive (buildable) lands.

Commented [BD(1]: GMA requires designation and protection, not conservation and/or enhancement.

Critical areas are valuable and fragile natural resources with significant development constraints that, in their natural state, provide many valuable social and ecological functions. The attendant buffers of critical areas are essential to the maintenance and protection of the sensitive land, its functions and values. The loss of social and ecological functions provided by critical areas, especially wetlands, riparian zones and fish and wildlife habitat, results in a detriment to public safety and welfare.

Critical areas help to relieve the burdens on the people of La Center which urban development can create including congestion, noise and odors, air pollution, and water quality degradation.

Critical areas serve several important urban design functions. They provide: (1) open space corridors separating and defining developed areas within the city; (2) views which enhance property values and quality of life in developed neighborhoods; (3) educational opportunities for the citizens of La Center; and (4) accessible areas for residents to stroll, hike and enjoy La Center's valuable natural features. The La Center comprehensive plan proposes a system of connected trails that are closely associated with La Center's stream corridors, natural drainage ways and the East Fork of the Lewis River.

Conservation of critical areas has associated natural resource benefits, including improved air and water quality, maintenance of fish and wildlife habitat, decreased erosion and sedimentation to streams, absorption of pollutants and preservation of rare plant and animal species.

The intent of this overlay district is for the city of La Center to achieve no net loss of wetlands, floodplains, fish and wildlife habitat areas, and riparian zones and to avoid the loss of geologically hazardous areas and aquifer recharge/wellhead protection areas. The city's preferred strategy to achieve no net loss is to avoid adverse impacts to critical areas and buffers. However, the city recognizes that there are situations and circumstances where avoidance is not practicable whereupon the intent of this chapter is to minimize and mitigate the environmental impacts of development within and adjacent to critical areas and buffers. An overriding objective of this overlay district is to protect stream corridors and associated wetlands and riparian vegetation throughout the urban area. This overlay district is also designed to ensure conservation of wetland areas and their functions, where such areas are associated with steep slopes or stream corridors. The overlay district promotes a balance between recreational and public use of critical areas, consistent with the maintenance of their natural appearance and functional values.

Development limitations on critical areas reduces the need to require additional studies to ensure compliance with the State Environmental Policy Act (SEPA) process and other state or federal environmental regulations. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.030 Definitions.

For the purposes of this chapter the definitions set forth in this chapter and Chapter 18.40 LCMC shall apply. Unless specifically defined in this chapter or Chapter 18.40 LCMC, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this title its most reasonable application.

(1) "Alter" means to adjust, modify or rework a structure or parcel of land.

"Altered," when referring to wetlands, means a wetland of which at least 50 percent has been graded, drained, devegetated, or replanted with nonwetland plants. Any portion of a wetland

Commented [BD(2]: We recommend the following change: Any portion of a wetland that has been graded….

(2)

(3) "Anadromous" means fish that migrate up rivers and streams from the ocean to breed in fresh water.

(4) "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designations on the flood insurance rate maps include the letter A.

(5) "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). Designations on the flood insurance rate maps include the letter A.

(6) "Basement" means any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

(7) "Best available information" means data, other than official flood insurance rate map data, from federal, state, or other sources, provided this data has either been generated using technically defensible methods or is based on reasonable historical analysis and experience.

(8) "Best available science (BAS)" means a valid scientific process or method of inquiry that is consistent with the criteria for establishing best available science as found in WAC 365-195-90~~0~~5, as amended.

(9) "Buffer" means a vegetated area adjacent to a critical area that can reduce impacts from adjacent land uses through various physical, chemical, and/or biological processes. ~~an area that surrounds and protects critical area functions from adverse impacts~~.

(10) "City" means a Class 4 municipality governed by the mayor and La Center city council, or the city designee.

(11) "Conservation covenant" means a recorded instrument entered into pursuant to a condition of approving a triggering application.

(12) "Council" means the council of the city of La Center.

(13) "Creation (establishment)" means the manipulation of the physical, chemical, or biological characteristics present to develop a critical area or wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create wetland soils and support the growth of hydrophytic plant species. Creation results in a net gain of wetland acres.

(14) "Critical areas" means any of the following areas or ecosystems: wetlands, critical aquifer recharge areas, streams, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas as defined by the Growth Management Act (RCW 36.070A.170).

(15) "Critical aquifer recharge area" means an area with a critical recharging effect on an aquifer used for potable water, including an area where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

~~(15)~~(16) "Critical facility" means ~~a facility for which even a slight chance of flooding would be too great. Critical~~ facilities includinge but ~~are~~ not limited to schools, hospitals, police, fire and emergency response installations, nursing homes, and installations which produce, use, or store hazardous materials or hazardous waste.

~~(16) "Designated floodway" means the regulatory floodway that has been delineated on the FIRM with detailed information on the community's flood insurance study and is included in the community's flood damage prevention ordinance.~~

~~(17)~~(18) "Elevation certificate" means the official form (FEMA Form 086-0-33) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by Community Officials.

~~(18)~~(19) "Emergent wetland" means a wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

~~(19)~~(20) "Endangered species" means fish and wildlife species native to Washington that are seriously threatened with extinction throughout all or a significant part of their ranges within the state.

~~(20)~~(21) "Enhancement" means actions performed to improve the condition of an existing degraded wetland or buffer so that the functions provided are of a higher quality.

~~(21)~~(22) "Erosion hazard areas" means those areas containing soils that, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion.

(23) "Exotic" means any species of plants or animals that are not native to the watershed.

~~(22)~~(24) "Fish and wildlife habitat conservation areas" means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and that, if

Commented [BD(3]: Our guidance says: The area contiguous with a critical area that maintains the functions and/or structural stability of the critical area.

Commented [BD(4]: We recommend a more precise definition that includes the purpose of the covenant.

Commented [BD(5]: This definition is only used in conjunction with wetlands, so we recommend removing "critical area or".

Commented [ES6]: Eric, Naomi, Critical facilities are applicable to other types of critical areas, not just flooding.

Commented [ES7]: Eric, Naomi, we are recommending deleting. This could be confusing in light of the definition of "floodway" below.

Commented [BD(8]: Stratum

Commented [BD(9]: Don't endangered species included plants?

altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors, and areas with high relative population density or species richness. These areas may also include locally important habitats and species. Fish and wildlife habitat conservation 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.

~~(23)~~(25) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters; and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

~~(24)~~(26) "Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

~~(25)~~(27) "Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles and the water surface elevation of the base flood.

~~(26)~~(28) "Flood protection elevation" means one foot above the base flood elevation.

~~(27)~~(29) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. For areas of special flood hazard studied in detail, the floodway boundary is delineated upon the flood insurance rate maps. In all other areas of special flood hazard, the floodway boundary shall be determined by the use of other base flood data.

~~(28)~~(30) "Floodway fringe" shall mean the land between the boundary of the floodway and the limits of the 100-year floodplain. In those special flood hazard areas where the floodway boundary is not delineated upon flood insurance study maps, the floodway fringe area shall be determined by the use of other base flood data, as described in LCMC 18.300.090(3)(p)(iii).

~~(29)~~(31) "Floor (lowest)" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this title.

~~(30)~~(32) "Forested wetland" means a wetland with at least 30 percent of the surface area covered by a canopy of woody obligate, facultative wet, or facultative plants greater than 20 feet in height.

~~(31)~~(33) "Frequently flooded" means a flooding class in which flooding is likely to occur often under normal weather conditions (more than 50 percent chance of flooding in any year or more than 50 times in 100 years).

~~(32)~~(34) "Functions" means the beneficial roles served by wetlands including the control of flood waters, maintenance of summer stream flows, filtration of pollutants, recharge of ground water, and provision of significant habitat areas for fish and wildlife.

~~(33)~~(35) "Geologically hazardous areas" means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(36) "Habitat" means the environment occupied by individuals of a particular species, population or community.

~~(34)~~(37) "Hazardous materials" means those substances, debris, and waste that are a physical or health hazard, and chemical substances that are ignitable, corrosive, reactive or toxic, consistent with Chapter 173-303 WAC and the International Fire Code, as amended.

~~(35)~~(38) "Headwaters" means springs, lakes, ponds, or wetlands providing significant sources of water to a stream.

~~(36)~~(39) "High intensity land use" means roadways, commercial, industrial, and multifamily (more than four units per parcel) land uses.

~~(37)~~(40) "Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the U.S. Army Corps Wetlands Delineation Manual.

~~(38)~~(41) "Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the wetlands delineation manual.

~~(39)~~(42) "Intermittent stream" means surface streams with no measurable flow during 30 consecutive days in a normal water year.

(43) "JARPA" means Joint Aquatics Resource Permit Application.

(44) "Landslide hazard areas" means areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors. These factors include any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Landslide hazard areas include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for developing a building on the site; or

(ii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or the Washington Department of Natural Resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than 15 percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or groundwater seepage.

(c) Areas that have shown movement during the Holocene Epoch (from 10,000 years ago to the present), or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than 80 percent subject to rockfall during seismic shaking;

Commented [BD(10]: Our guidance recommends that high intensity refer to all residential with more than 1unit/acre. Residential with less than 1 unit/acre is considered to be moderate intensity.

Commented [BD(11]: Need to reference the Western Mountains, Valleys and Coast Region Supplement—info is in both the manual and the supplement.

Commented [BD(12]: Same comment as for "hydric soil"

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk for, snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

~~(c)~~(i) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

~~(40)~~(45) "Local habitat area" means an area that contains sufficient food, water, or cover for native terrestrial or aquatic species that the city of La Center has identified in this chapter as being of significant local concern.

~~(41)~~(46) "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title.

~~(42)~~(47) "Listed species" are state-listed species including native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011) or sensitive (WAC 232-12-011); and include threatened and endangered species under the Federal Endangered Species Act, 50 CFR 17.11 and 50 CFR 17.12.

Commented [BD(13]: Should this also include plants?

~~(43)~~(48) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" does not include a recreational vehicle including park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

~~(44)~~(49) "Minimizing impacts to wetlands or buffers" means:

(a) Using appropriate and best available technology or best available science;

(b) Taking affirmative steps to avoid or reduce impacts;

(c) Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;

(d) Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities;

(e) Not jeopardizing the continued existence of endangered, threatened, rare, sensitive, or monitor species as listed by the federal government or the state of Washington.

~~(45)~~(50) "Mitigation area" is the land area used to compensate for impacts to critical areas and/or their attendant buffers. Compensation may be for loss of acreage and/or functions of the critical area and/or attendant buffers.

~~(46)~~(51) "Mitigation sequence" is the order of action that the approving agency shall require so as to avoid or compensate for impacts to critical areas resulting from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, as determined by the city, in the following sequential order of preference:

(a) Avoiding the impact by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing or providing substitute resources or environments; or

(f) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

~~(47)~~(52) "Native," when referring to plants or plant communities, means those species or communities that are indigenous to the watershed, including extirpated species.

~~(48)~~(53) "New construction" means structures for which the "start of construction" commenced on or after the effective date of this title.

~~(49)~~(54) "Normal water year" means a 12-month period (October 1st through September 30th) with average precipitation based upon data from the past 50 years.

~~(50)~~(55) "Obligate," "facultative wet," and "facultative" refer to groupings of plants according to their frequency of occurrence in wetlands. Obligate wetland plants almost always (99 percent probability) occur in wetlands under natural conditions. Facultative wet plants usually (67 to 99 percent probability) occur in wetlands. Facultative plants are equally likely (34 to 66 percent probability) to occur in wetlands or nonwetlands. Such groupings are more fully defined in the wetlands delineation manual.

~~(51)~~(56) "Open water," when not specifically defined by the rating criteria, means a proportion of open water to vegetative cover equal to 25 percent to 75 percent of the total wetland area during a majority of a normal water year.

~~(52)~~(57) "Ordinary high water line" or "OHWL" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining freshwater is the elevation of the mean annual flood. (WAC 220-660-030[108]). ~~"Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and bands and ascertaining where the presence and action of waters are so common and usual, and so long continued in 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, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or department; provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line 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 high water. (RCW 90.58.030(2)(b).)~~

Commented [BD(14]: Need to remove the percentage ranges—they are no longer used.

Commented [BD(15]: "Open water" is a Cowardin class. Need to check that this is consistent with that definition.

~~(53)~~(58) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or any agency of the state or local governmental unit however designated.

~~(54)~~(59) "Preservation (protection/maintenance)" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.

~~(55)~~(60) "Priority habitat" is a habitat type with unique or significant value to many species. An area identified and mapped as priority habitat has one or more of the following attributes: comparatively high fish and wildlife density, comparatively high fish and wildlife species diversity, important fish and wildlife breeding habitat, important fish and wildlife seasonal ranges, limited availability, high vulnerability to habitat alteration, or unique or dependent species. The Washington State Department of Fish and Wildlife maintains a list of maps and priority species that occur within the state and La Center.

~~(56)~~(61) "Priority species" are fish and wildlife species requiring protective measures and/or management guidelines to ensure their perpetuation. The Washington State Department of Fish and Wildlife maintains a list of priority species that occur within the state and La Center.

~~(57)~~(62) "Qualified wetland professional" generally means a person with at least two years of full-time professional experience and comprehensive training in wetlands issues, including experience performing wetland delineations using state and federal manuals, assessing wetland functions and values, analyzing wetland impacts, preparing wetland reports, developing and implementing mitigation plans, and recommending and designing wetland mitigation projects.

~~(58)~~(63) "Recreational vehicle" means a vehicle that is:

(a) Built on a separate chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Is designed to be self-propelled or permanently towable by a light duty truck; and

(d) Is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

~~(59)~~(64) "Regulated activities" include land clearing, grading, placement of fill or waste material, removal of protected native vegetation, construction and other habitat-altering activities.

~~(60)~~(65) "Restoration" means the manipulation of physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Restoration is divided into the following two classes:

(a) ~~Re-establishment~~Reestablishment, which is the manipulation of physical, chemical or biological characteristics with the goal of returning natural or historic functions to a former wetland. This results in a net gain of wetland acres.

(b) Rehabilitation, which is the manipulation of physical, chemical or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. This results in the gain in wetland function but does not result in a gain in wetland acres.

~~(61)~~(66) "Review authority" means the decision maker that issues the final land use order, not the appeal authority.

~~(62)~~(67) "Riparian habitat area" is defined as an area adjacent to aquatic systems with flowing rivers, perennial or intermittent streams, seeps, springs) that contain elements of both aquatic and terrestrial ecosystems which mutually influence each other.

(68) "Scrub-shrub wetland" means a wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

(69) "Seismic hazard areas" means areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

~~(63)~~(70)

~~(64)~~(71) "Sensitive species" are fish and wildlife species native to Washington that are vulnerable or declining, and are likely to become endangered or threatened in a significant portion of their ranges within the state, without cooperative management or the removal of the threats.

Commented [BD(16]: Should this include plants?

~~(65)~~(72) "SEPA" means State Environmental Policy Act, Chapter 42.21C RCW and Chapter 197-11 WAC.

~~(66)~~(73) "Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement of a manufactured home on a foundation, or other permanent construction beyond the stage of excavation, was within 180 days of the permit date.

(a) The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

(b) Permanent construction does not include:

(i) Land preparation, such as clearing, grading and filling;

(ii) Installation of streets and/or walkways;

(iii) Excavation for a basement, footings, piers, or foundation or the erection of temporary forms;

(iv) Construction of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(c) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

~~(67)~~(74) "Stormwater management facilities" include biofiltration swales, filter strips, bubbler diffusers, detention ponds, retention ponds, wet ponds, and similar facilities designed and intended to control and treat stormwaters, but not including ditches designed and intended primarily for conveyance.

~~(68)~~(75) "Streams" means those areas where surface waters produce a defined channel or bed excluding streams and lakes regulated under the State Shorelines Management Act.

~~(69)~~(76) "Structure" means a walled and roofed building, which may include ~~including~~ a gas or liquid storage ~~tank~~ tank, that is principally above ground.

Commented [BD(17]: This would seem to exclude a lot of things that should reviewed, such as fences, gazebos, etc.

~~(70)~~(77) "Substantial damage" means damage of any origin sustained by a structure whereby the costs of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

~~(71)~~(78) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term can exclude:

(a) Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

~~(72)~~(79) "Threatened" species are native to the state of Washington and likely to become endangered in the foreseeable future throughout a significant portion of its range within the state without cooperative management or the removal of threats. Threatened species are legally designated in WAC 232-12-011.

~~(73)~~(80) "Triggering application" means an application for one of the permits or approvals listed in this chapter.

~~(74)~~(81) "Water-dependent" means a use or a portion of a use that requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations.

~~(75)~~(82) "Watershed" means an area draining to the East Fork of the Lewis River.

(83) "Waters of the state" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

Commented [BD(18]: Is this necessary in your CAO? This definition is from RCW 90.48 and should be: "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~(76)~~(84) "Wetland(s)" 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 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 non-wetland areas created to mitigate conversion of wetlands.

~~(77)~~(85) "Wetland classes and subclasses" means descriptive classes of the wetlands taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al. 1978).

Commented [BD(19]: Should reference the latest update (August 2013)

~~(78)~~(86) "Wetlands delineation manual" means the ~~Washington State Wetland Identification and Delineation Manual (Publication No. 96-94) dated March 1997,~~*Corps of Engineers Wetland*

Delineation Manual, dated 1987, and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys and Coast Region (Version 2.0)*, dated 2010, and as subsequently amended. [(Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007).]

18.300.040 Applicability and critical areas map.

(1) Applicability. The provisions of this chapter apply to lands within the La Center corporate limits and urban growth area that are either designated as critical areas and their buffers on the city's official critical areas maps, or are critical areas and buffers which are identified as part of a project specific application and land use review.

(a) Properties containing critical areas are subject to this title.

(b) Buffers are protected and impacts to buffers are regulated to help improve the functional values of critical areas.

(c) When the requirements of this chapter are more stringent than those of other La Center codes and regulations, the requirements of this chapter shall apply.

(d) Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this title.

(2) Critical Areas. Critical areas include:

(a) Wetlands;

(b) Category I and II aquifer recharge areas;

(c) Wellhead protection areas;

(d) Fish and wildlife habitat conservation areas;

(e) Frequently flooded areas;

(f) Geologically hazardous areas; and

(g) Slopes with a gradient of 25 percent or greater.

(3) Map Location. The general location of critical areas is depicted on the adopted La Center critical areas map. The critical areas map is an indicator of probable regulated areas. The precise limits of critical areas and their attendant buffers on a particular parcel of land shall be determined by the applicant prior to approval of a development action on the subject property. Development shall avoid critical areas, and where avoidance is not practical, as determined by the city, development shall minimize adverse impacts to critical areas and buffers, consistent with the provisions of this chapter. To determine whether avoidance is practical, the city shall consider issues such as: the substantial evidence presented by the applicant demonstrating the avoidance measures the applicant considered; the quality of the critical resource and buffer functions and values to be impacted, avoidance of impacts to higher quality resources and buffers is preferred; the nature and extent of mitigation and enhancement measures proposed to compensate for the proposed impact; whether the impacts proposed are necessary to implement the city's capital facilities plan; and other factors determined relevant by the city. The city may also consider the financial implications of avoidance but shall not give private gain greater weight than resource management founded upon best available science. The city public works director shall keep on permanent file and maintain the critical areas map.

Commented [BD(20]: We recommend that the precise limit should be determined by a qualified professional and verified by the regulatory agencies.

Formatted: Highlight

Commented [BD(21]: We recommend "critical areas and their buffers"

Commented [BD(22]: Consider putting this text in its own section, since it doesn't pertain to map location.

Commented [BD(23]: For more info on avoidance and minimization, see https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Avoidance-and-minimization

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(4) Use of Existing Procedures and Laws. The following laws and procedures shall be used to implement this chapter:

(a) La Center Municipal Code (LCMC). Development activity regulated under this title that will occur within a protected critical area or critical area buffer shall comply with the provisions of this chapter.

(b) The State Environmental Policy Act (SEPA), Chapter 43.21C RCW. Development activity that is likely to have a significant adverse impact upon identified critical areas regulated by this chapter shall not be categorically exempt from SEPA review and shall demonstrate compliance with this chapter. (See LCMC 18.310.235.)

(c) The Shorelines Management Act (SMA), Chapter 90.58 RCW.

(5) State and Federal Agency Review. Regulated activities subject to this chapter shall be routed to appropriate state and federal agencies for review and comment as required through the SEPA and/or JARPA review process.

(6) Applicability by Activity. Table 18.300.040 establishes the level of review required for uses or activities under this title.

(a) Exempt (E). Activities or uses that are exempt require no review and do not need to meet the standards of this chapter.

(b) Review Required (RR). Activities and uses that are categorized as "Review Required" must comply with the standards of this chapter but no special report is needed. Determination of compliance with this chapter shall be determined through the review process required for the underlying development permit application.

(c) Critical Area Report (CAR). When a critical area report is required, the applicant must submit a report consistent with this chapter and with the underlying development application and will submit additional application fees consistent with the adopted fee schedule.

(d) The director shall have the discretion to determine whether the proposed activity may adversely impact protected critical areas and/or their buffers and shall assign the appropriate level of review: Exempt, Review Required, or Critical Area Report. The decision of the director may be appealed to the hearings examiner.

(e) Critical Aquifer Recharge Area (CARA). See LCMC 18.300.090(1)(a)(v) for a list of uses prohibited in a CARA I area. The director shall exercise discretion to determine whether similar uses not listed therein require additional review and oversight.

Table 18.300.040

USE/ACTIVITY	Development located in any of the following critical areas may be Exempt (E), Require Review (RR), or are subject to a Critical Area Report (CAR): WETLAND	FISH AND WILDLIFE HABITAT	GEOLOGIC HAZARDOUS AREA	FREQUENTLY FLOODED AREA
RESIDENTIAL ACTIVITIES				
One single-family dwelling on a pre-existing legal lot located in a critical area or buffer	E	E	E	E
~~Single-family permit located outside critical area or buffer~~	~~E~~	~~E~~	~~E~~	~~E~~

Commented [BD(24]: We recommend the following: Activities that are exempt from the provisions of this chapter, provided that they are otherwise consistent with the intent and provisions of this chapter and other local, state and/or federal laws and requirements.

All exempted activities should use reasonable methods to avoid potential impacts to critical areas. Exemption does not give permission to alter or degrade a critical area or ignore risk from natural hazards. Any part of a critical area that suffers incidental damage or alteration that is not a necessary outcome of the exempted activity should be promptly restored, rehabilitated, or replaced at the responsible party's expense.

You do have this language in 18.300.070.3, but it doesn't hurt to include it here as well.

Commented [ES26]: Eric, I know we had a discussion about this. This provision seems to suggest you could construct a house in a critical area or buffer with no critical areas review, report, or permit. That doesn't seem right. I believe you said we should keep it, but this doesn't seem to pass the no net loss test. If you do want to keep it, it should be listed as an exemption in 070 rather than an allowed use in 050 requiring a Type II permit process.

Commented [BD(25]: SFRs should not be exempt but should require additional review under the City's RUE process.

Commented [ES27]: Eric, Naomi, This would be covered by the new exemption we provided in the "other" category below.

USE/ACTIVITY	Development located in any of the following critical areas may be Exempt (E), Require Review (RR), or are subject to a Critical Area Report (CAR):			
	WETLAND	**FISH AND WILDLIFE HABITAT**	**GEOLOGIC HAZARDOUS AREA**	**FREQUENTLY FLOODED AREA**
Approved multifamily site plan prior to 2004	RR	RR	RR	RR
Multifamily site plan within critical area or buffer	CAR	CAR	CAR	CAR
Multifamily site plan outside critical area or buffer	E	E	E	E
Interior or exterior alteration or repair that does not change the footprint of the building or does not increase the footprint within a critical area or buffer	E	E	E	E
COMMERCIAL AND INDUSTRIAL ACTIVITIES				
New construction on vacant land in critical area or buffer	CAR	CAR	CAR	CAR
New construction previously approved prior to adoption of the ordinance codified in this chapter	E	E	E	E
New construction on vacant land outside critical areas or buffer	E	E	E	E
Expansion, alteration or addition to existing construction within a critical area or buffer	RR	RR	RR	RR
Expansion, alteration or addition to existing construction outside of critical area or buffer	E	E	E	E
Public facilities and services identified on the CFP such as road, sewer and water infrastructure, power lines, gas lines, and so forth	RR	RR	RR	RR
Public facilities on a site already developed where there is no proposed impact to a resource or buffer	E	E	E	E
OTHER ACTIVITIES				
Clearing, filling, grading, and native vegetation removal activities within a critical area or buffer	CAR	CAR	CAR	CAR
Forest practices except conversions	RR	RR	RR	RR
Emergencies[1]	~~RR~~E	~~RR~~E	~~RR~~E	~~RR~~E
Repair of existing: structures, infrastructure improvements, utilities, public or private roads or drainage systems in critical areas or buffers	~~RR~~E	~~RR~~E	~~RR~~E	~~RR~~E
Developments~~Public facilities on a site already developed~~ where there is no proposed impact to a resource or buffer	E	E	E	E
Public improvement projects located within existing impervious surface areas.	E	E	E	E
Developments by utility service providers or public agencies subject to a memorandum of agreement per 18.300.070(1l)	E	E	E	E
Activities within an existing improved right-of-way or roadway easement	E	E	E	E
Chemical applications subject to applicable local, state or federal handling and application requirements	E	E	E	E
Minor site investigative work, up to 10 cubic yards of fill or removal or removal of trees of six-inch dbh or less	E	E	E	E

Commented [BD(28]: We recommend requiring a CAR for this

Commented [BD(29]: We recommend including "within a critical area or buffer" and requiring a CAR for this.

Commented [ES30]: Eric, Naomi, changed to align with 18.300.070(1)(b)

Commented [ES31]: Eric, Naomi, changed to align with 18.300.070(1)(c)

Commented [ES32]: Eric, Naomi, this was inserted to align with 18.300.070(1)(l)

Commented [ES34]: Eric, Naomi, this was inserted to align with 18.300.070(1)(a)

Commented [BD(33]: If this causes an impact to a critical area or buffer, a CAR should required.

USE/ACTIVITY	Development located in any of the following critical areas may be Exempt (E), Require Review (RR), or are subject to a Critical Area Report (CAR):			
	WETLAND	FISH AND WILDLIFE HABITAT	GEOLOGIC HAZARDOUS AREA	FREQUENTLY FLOODED AREA
Hand removal of invasive weeds and blackberries	E	E	E	E
Construction and modification to existing structures that do not increase the footprint of the structure	E	E	E	E
Public and private pedestrian trails	RR	RR	RR	RR
Select removal of hazard trees and vegetation when necessary to comply with fire codes	RR	RR	RR	RR
Construction of fences in a critical area or buffer	RR	RR	RR	RR
Vegetation removal and maintenance activities inside existing landscaped areas on lots that predate adoption of this chapter (other than removal of trees greater than six-inch dbh)	E	E	E	E

[1] Emergencies: See LCMC 18.300.070. Within one week of substantially completing the emergency work, the party responsible for the emergency activity shall file a report with the planning director demonstrating compliance with this chapter.

[Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.050 Allowed uses.

(1) Unless the requirements of this chapter are met, La Center shall not grant any approval or permission to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement regulated through the following: building permit, commercial or residential; binding site plan; franchise right-of-way construction permit; site development permit; right-of-way permit; shoreline permit; short subdivision; use permit; subdivision; utility permit; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

(2) Compliance with these regulations does not remove an applicant's obligation to comply with applicable provisions of any other federal, state, or local law or regulation.

(3) The city may approve uses listed in subsection (4) of this section, Allowed Uses, subject to a Type II process, if the proposed development activity meets the standards in LCMC 18.300.110, Development standards, and LCMC 18.300.120, Mitigation.

(4) Allowed Uses. The city may allow the following uses on critical areas and within buffer areas subject to the development standards of LCMC 18.300.110 and appropriate mitigation standards as described in LCMC 18.300.120:

(a) Pervious trails for nonmotorized use.

(b) Below or aboveground utilities, facilities and improvements, where necessary to serve development consistent with the La Center comprehensive plan and development code, including: streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities, where there is no other reasonable alternative, based on topographic and environmental conditions, as determined by the director.

(c) Removal of diseased or dangerous trees, as determined by the director of public works, or the removal of invasive or nuisance plants.

Commented [ES35]: Eric, Naomi, this was inserted to align with 18.300.070(1)(i)

Commented [BD(36]: Recommend including criteria such as:
Pedestrian trails in wetlands or buffers should be limited to permeable surfaces no more than five feet in width. Trails should not be permitted in wetlands except for minor crossings that minimize impact. They should be located only in the outer 25% of a wetland buffer, and should be designed to avoid removal of significant trees. In most cases, wetland buffer widths should be increased to compensate for the loss due to the width of the trail.

(d) Construction, replacement, or alteration of a single-family dwelling unit in a residential zoning district on a legal lot of record created prior to December 31, 1994, so long as the replacement or expansion conforms with the height regulations, lot coverage and dimension standards and other design provisions for the zone in which the residence is located. The dwelling unit shall be used solely for single-family purposes. Approval is subject to Type II review. The city may modify underlying zoning district dimensional standards applicable by up to a 50 percent adjustment, if necessary to protect critical areas.

(e) Existing agricultural practices on lands used continuously for agricultural purposes since December 31, 1994. Allowed agricultural practices include: pasture, vineyards, Christmas tree farms, gardens, etc., but do not include machine intensive row crop production. Best management practices shall be required.

(f) Specific Uses Allowed in Wetlands.

(i) Enhanced Replacement. Replacing or enhancing a wetland such that the enhanced wetland is of higher quality and meets the criteria for a higher category.

(ii) Wetland Banking. Construction, enhancement or restoration of wetlands to use as mitigation for future wetland development impacts in the same watershed is permitted if:

(A) A critical area permit shall be obtained prior to any mitigation banking. Federal and state wetland regulations, if applicable, shall supersede city requirements.

(B) All impacts to wetlands and wetland buffers shall be mitigated and monitored consistent with LCMC 18.300.090(6)(l).

(iii) New lots shall not be platted within a wetland or wetland buffer.

(5) Limited Uses. Limited uses, as described in this section, shall avoid critical areas, to the greatest extent reasonable and practicable. Limited uses may be allowed within critical area buffers subject to the mitigation measures and implementation of a monitoring plan as described in LCMC 18.300.090(6)(l). Applications for development within critical areas or buffers shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas and buffers. All limited uses shall be consistent with the provisions of this chapter and shall be subject to SEPA review.

(a) Subdivision or Short Plat. The subdivision or short plat process may be used when provisions are made (e.g., avoidance, mitigation, dedication of land or conservation easements) that substantially minimize adverse effects upon critical areas.

(b) Development Subject to Site Plan Review. Any new building or structure affecting critical areas or buffers shall be subject to site plan review, unless otherwise exempted in this chapter.

(c) Stormwater Facilities. Stormwater facilities may be allowed in buffers of ~~Class~~ Category III and IV wetlands with low habitat function (less than 20 points on the habitat section of the rating system form~~);~~), provided~~,~~ that the facilities shall be built on the outer 25 percent of the buffer and will not degrade the existing buffer function and are designed to blend with the natural landscape. Unless determined otherwise by the responsible official, the following activities shall be considered to degrade a wetland buffer when they are associated with the construction of a stormwater facility:

(i) Removal of trees greater than ~~four~~ 4 inches diameter at ~~four and one half~~4½ ~~–~~feet above the ground or greater than 20 feet in height;

Commented [BD(37]: Include "construction" and also use either "alteration" or "enhancement" to be consistent with first sentence.

Commented [BD(38]: Recommend including additional criteria. For example, see Sultan's language at https://www.codepublishing.com/WA/Sultan/#!/Sultan17/Sultan1710.html#17.10.120

Commented [ES39]: Eric, Naomi, See my note in the table above.

Commented [BD(40]: Recommend moving (f) to the wetlands section. And (i) seems to be part of mitigation. If enhancement and creation are already mentioned in the wetland section, (i) is not necessary.

Commented [BD(41]: Should say "creation" and not "construction" to be consistent with wetland language.

Commented [BD(42]: Recommend "A critical area permit is obtained prior to any development of the mitigation bank project."

Commented [BD(43]: Recommend "All impacts to wetlands and wetland buffers are mitigated and …."

Commented [BD(44]: See our latest recommendation on page 26 of https://fortress.wa.gov/ecy/publications/documents/1606001.pdf as revised in B.9.a to say:
The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-5 points, and …

(ii) Disturbance of plant species that are listed as rare, threatened or endangered by the county or any state or federal management agency;

(iii) The construction of concrete structures other than manholes, inlets, and outlets that are exposed above the normal water surface elevation of the facility;

(iv) The construction of maintenance and access roads;

(v) Slope grading steeper than four to one (4:1) horizontal to vertical above the normal water surface elevation of the stormwater facility;

(vi) The construction of pretreatment facilities such as fore bays, sediment traps, and pollution control manholes;

(vii) The construction of trench drain collection and conveyance facilities;

(viii) The placement of fencing; and

(ix) The placement of rock and/or riprap, except for the construction of flow spreaders, or the protection of pipe outfalls and overflow spillways; provided, that buffer functions for areas covered in rock and/or riprap are replaced;

(x) Stormwater facilities may not be placed in a buffer area that has been reduced through approved buffer averaging or buffer reduction measures. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.060 Variances.

(1) An applicant who seeks to vary from the requirements of this chapter may seek a variance pursuant to this section. The city shall review a request to vary from the requirements of this chapter through a Type III review process.

(2) An application to vary from the requirements of this chapter shall demonstrate compliance with all of the following criteria:

(a) There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to other properties;

(b) The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of special circumstances is denied to the property in question;

(c) Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvement;

(d) Granting the variance will not violate, abrogate, or ignore the goals, objectives, or policies of the La Center comprehensive plan;

(e) In addition to the approval criteria above, an application to vary from the buffer requirements of a fish habitat conservation area or riparian area shall demonstrate that the requested buffer width modification preserves adequate vegetation to:

(i) Maintain proper water temperature;

(ii) Minimize sedimentation; and

(iii) Provide food and cover for critical fish and wildlife species;

(f) When granting a variance, the city may attach specific conditions to the variance that will serve to meet the goals, objectives, and policies of this chapter, including the preparation and implementation of a mitigation and monitoring plan consistent with LCMC 18.300.090(6)(l). [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.070 Exemptions.

(1) Exempt Activities in All Critical Areas. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements, and a written request for exemption has been filed with and approved by the planning director.

(a) Developments that propose no impact to a resource or buffer.

Commented [BD(45]: Recommend "critical area or buffer"

~~(a)~~(b) The director shall have the authority to negotiate memoranda of agreements with utility service providers or public agencies, and said agreements shall specify best management practices (BMPs) to be used in situations of emergency and usual and customary repair, which, if rigorously adhered to, may exempt said emergency or repair activity, including routine operation and maintenance, from further review under this chapter. Memoranda of agreements shall be authorized by the La Center city council only after notice and completion of a public hearing on the full terms and merits of the agreement.

~~(b)~~(c) 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 time frame too short to allow for compliance with the requirements of this chapter. 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 working day following commencement of the emergency activity. Following the emergency appropriate mitigation shall be implemented and permanent activities, installations or impacts are subject to review and compliance with the applicable standards.

(i) Authorization. Notwithstanding the provisions of this chapter, the planning director may issue a temporary emergency permit prospectively or, in the case of imminent threats to public health, safety or welfare, retroactively, where the anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by the Act and other applicable laws.

(ii) Prior to issuing an emergency permit, the planning director shall issue a finding that extraordinary circumstances exist and that the potential threat to public health, safety or welfare from the emergency situation is clearly significant and substantial.

(iii) Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this Act and shall:

(A) Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and

(B) Require, within this 90-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

~~(B)~~(C) Within one week of substantially completing the emergency work, the party responsible for the emergency activity shall file a report with the planning director demonstrating compliance with this chapter.

(iv) Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in the city of La Center not later than 10 days after issuance of such permit.

(v) Termination. The emergency permit may be terminated at any time without process upon a determination by the city that the action is no longer necessary to protect human health or the environment.

~~(c)~~(d) Repair. Repair or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, including operation and maintenance of existing facilities, 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)~~(e) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222, and those that are exempt from La Center's jurisdiction; provided, that forest practice conversions are not exempt.

~~(e)~~(f) Activities within the Improved Public Right-of-Way or Recorded Easement. 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 recorded easement, or a city-authorized private roadway except those private activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater.

~~(f)~~(g) Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary; provided, that their use shall be restricted in accordance with Department of Fish and Wildlife Management recommendations, the city of Portland's pest management program and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.*

~~(g)~~(h) 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.

~~(h)~~(i) Boundary Markers. Construction or modification of boundary markers or fences.

~~(i)~~(j) Construction and modifications to existing structures that do not increase the footprint of the structure.

~~(j)~~(k) The removal of the following vegetation with hand labor and light equipment, and vegetation removal that is a hazard to electrical power lines with hand-held and walk-beside equipment such as mowers and weed eaters in compliance with the provisions contained in the ANSI A300 (Part 1) guidelines, including, but not limited to:

(i) Invasive nonnative weeds;

Commented [ES46]: Eric, Naomi, this was inserted to align with the footnote under table 18.300.040.

Commented [BD(47]: Portland? The state Department of Ecology, which regulates the use of herbicides to control nuisance weeds and algae in lakes and streams, should be included here.

(ii) English ivy (Hedera helix);

(iii) Himalayan blackberry (Rubus discolor, R. procerus); and

(iv) Evergreen blackberry (Rubus laciniatus).

~~(k)~~(l) Emergency or hazard tree removal conducted so that habitat impacts are minimized.

~~(l)~~(m) Public improvement projects located within existing impervious surface areas.

~~(m)~~(n) Public agency and utility exemption.

(2) Exemption Request and Review Process. The proponent of the activity shall submit a completed exemption request form to the building official that describes the activity and states the exemption listed in this section that applies. The director shall review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department and the requesting party notified. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter. Determinations shall be considered a Type I process pursuant to LCMC 18.30.080 and subject to appeal pursuant to LCMC 18.30.130.

(3) Exempt Activities Shall Minimize Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential adverse impacts to critical areas. To be exempt from this chapter 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. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

* More information on commercial and residential use of chemicals can be found in Department of Ecology "Guidance Document for Establishment of Critical Aquifer Recharge Areas Ordinances" Version 3.0, Publication No. 97-30; and from the state Department of Agriculture, http://www.wa.gov/agr/.

18.300.080 Reasonable economic use exception.

(1) Reasonable Economic Use Exceptions. The following exceptions shall apply. The city shall apply the standards of this chapter to the maximum extent practicable to avoid and minimize adverse impacts on the functions and values of critical areas and buffers. Mitigation of impacts, consistent with this chapter, is required. Reasonable economic use execep~~mp~~tions include:

(a) The placement of a new single-family residence and normal accessory structures on a buildable legal lot of record created prior to December 31, 1994. The city shall employ reasonable discretion in applying the standards of this chapter to limit the proposed location and size of structures and removal of native vegetation.

(b) The expansion of a home or accessory structure on a lot that does not show building or development envelopes, wetlands or wetland buffers on the recorded plat, not to exceed 25 percent of the existing building footprint.

(c) The replacement of a single-wide mobile home with another dwelling and normal accessory structures.

(d) Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

(2) General Requirements.

Commented [BD(48]: Should be Rubus armeniacus. Also, R. procerus is no longer used.

Commented [BD(49]: Should include a definition for hazard trees, or hazard trees should be defined in the definitions section of the CAO. This would discourage property owners from cutting trees in a critical area or buffer for a view corridor or other non-exempt reasons, and it would allow the City to have a better regulatory tool for preventing non-hazard tree cutting in critical areas.

Commented [BD(50]: Recommend including the following criteria from the Department of Commerce:
A. If application of this chapter would prohibit development or other alteration by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section. To qualify for an exception the agency or utility must demonstrate that:
1. There is no other practical alternative to the proposed development which has less impact on critical areas;
2. The application of this chapter would unreasonably restrict the ability to provide needed services or benefit to the public;
3. The proposed use does not pose a threat to the public health, safety or welfare;
4. The proposal protects critical area functions and values to the extent feasible and provides for mitigation in accord with the provisions of this chapter; and
5. The proposal is consistent with other applicable regulations and standards.
B. Where a permit is required, a request for exception shall be submitted to the city with the permit application materials. Whether or not a permit is required, the request shall be supplemented with an explanation as to how the public agency and utility exception criteria are satisfied. The administrator may require additional information or studies to supplement the exception request.
C. A public agency and utility exception shall be processed according to the provisions governing a full administrative review.
D. It shall be a condition of any alteration granted a public agency and utility exception that only the portion of the alteration that must be located in a critical area may be so located.

Commented [ES51]: Eric, Naomi, exception vs. exemption. Match to title above.

Commented [BD(52]: See above comment in allowed uses table

Commented [BD(53]: We recommend limiting the expansion to the side away from the critical area so that there is no further encroachment into the critical area.

(a) Except when application of this chapter would deny all reasonable economic use of a lot, an applicant who seeks a modification from the regulations of this chapter may pursue a variance as provided in LCMC 18.300.060, Variances, and consistent with the requirements of this subsection.

(b) The mayor or his or her designee shall prepare and maintain application forms necessary to implement this subsection.

(3) Application Requirements.

(a) Preliminary Review. The provisions for conducting a preliminary review of a proposed reasonable economic use exception are set forth in this section.

(b) Regulations – General Provisions – Application Filing.

(i) Reasonable economic use exception applications shall be reviewed for completeness in accordance with city submittal standards checklists and pursuant to LCMC 18.30.050.

(ii) An applicant for a development proposal may file a request for a reasonable economic use exception which shall include the following information:

(A) A description of the areas of the site which are critical areas or within setbacks required under this title;

(B) A description of the amount of the site which is within setbacks required by other standards of this title;

(C) A description of the proposed development, including a site plan;

(D) An analysis of the impact that the amount of development described in subsection (3)(b)(ii)(C) of this section would have on the critical area(s);

(E) An analysis of whether any other reasonable economic use with less impact on the critical area(s) and associated buffer(s) is possible;

(F) A design of the proposal so that the amount of development proposed as reasonable economic use will have the least impact practicable on the critical area(s);

(G) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

(H) A description of any modifications needed to the required front, side, and rear setbacks; building height; and buffer widths to provide for a reasonable economic use of the site while providing greater protection to the critical area(s); and

(I) Such other information as the city determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

(4) Public Review.

(a) The city shall process a request for a reasonable economic use exception as a Type III procedure pursuant to LCMC 18.30.100.

(b) The city shall forward a copy of a request for reasonable economic use exception to the state and federal agencies with jurisdiction over the resource at issue and to all property owners within 300 feet of the subject property.

(c) The city shall provide public notice of the request for reasonable economic use exception pursuant to LCMC 18.30.120.

(d) A party shall appeal a final decision of a request for reasonable economic use exception pursuant to LCMC 18.30.130.

(5) Reasonable Economic Use Approval Criteria. The hearings examiner shall approve a reasonable economic use exception if the examiner determines the following criteria are met:

(a) There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the critical area(s);

(b) The proposed development does not pose a threat to the public health, safety, or welfare on or off the site;

(c) Any alteration of the critical area(s) shall be the minimum necessary to allow for reasonable economic use of the property;

(d) The proposed development will not result in a "take" of a threatened or endangered species;

(e) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of the ordinance codified in this chapter; and

(f) The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing reasonable economic use of the site. The applicant shall prepare and implement a mitigation and monitoring plan consistent with LCMC 18.300.090(6)(l). [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

Commented [BD(54]: Why only to the extent possible? Recommend removing this phrase.

18.300.090 Critical lands.

(1) **Critical Aquifer Recharge Areas.** Due to the exceptional susceptibility and/or vulnerability of ground waters underlying aquifer recharge areas to contamination and the importance of such ground waters as sources of public water supply, it is the intent of this chapter to safeguard ground water resources by mitigating or precluding future discharges of contaminants from new land use activities. The provisions of this chapter shall apply to regulated activities specified herein within those portions of the La Center UGA classified as Category I aquifer recharge areas.

(a) Category I Aquifer Recharge Areas (CARA I). For purposes of this chapter, critical aquifer recharge areas include lands within the 10-year zone of contribution around wellheads, as shown on the La Center critical areas map. Category I CARAs are subject to the following prohibitions:

~~(i) Areas with a critical recharging effect on aquifers used for potable water are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.~~

~~(iv) For purposes of this chapter, critical aquifer recharge areas include lands within the 10-year zone of contribution, as shown on the La Center critical areas map.~~

(A) Landfills;

(B) Class V injection wells: (I) agricultural drainage wells; (II) untreated sewage waste disposal wells; (III) cesspools; (IV) industrial process water and disposal wells; and (V) radioactive waste disposal;

Commented [ES55]: Eric, Naomi, why have a category I if you don't have a category II? Maybe it's because the City uses the County's GIS mapping which distinguishes between the two, but there is no mention of "areas as designated by County mapping as Category I" below.

Commented [ES56]: Eric, Naomi, (a)(i)-(iv) is confusing. It appears to be a mix of classification and regulations. So, we've moved the classification language in (ii) to appear after the heading and the remaining are regulations. Let us know what you think.

Commented [ES57]: Eric, Naomi, there is an issue with the 10-year time of travel. If you look at the County's code, Category I is 1-year time of travel and Category II is 10-year. If the City uses the County's maps, Category I for Maps Online would be 1-year whereas your code is regulating 10-year. There is flexibility in terms of how CARAs are regulated and what areas you use, but most jurisdictions use 10-year if they are using a single category. In Skamania, we are proposing 10-year using a single category. Washougal and Ridgefield both use 10-year and a single category.

1-year is a very narrow area, so I am proposing 10-year pending discussion with you.

Commented [ES58]: Eric, Naomi, This is the definition of a CARA from WAC 365-190-030. We have provided this definition in the definitions section, so don't think we need it here.

(C) Radioactive disposal sites; and

(D) Surface mining operations.

~~(g)~~(b) Storage Tank Permits. The Clark County fire marshal regulates and authorizes permits for underground storage tanks, pursuant to the Uniform Fire Code (Article 79) and this chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (Chapter 173-360 WAC).

(i) Facilities with Underground Tanks – New Underground Tanks.

(A) All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

(I) Prevent releases due to corrosion or structural failure for the operational life of the tank;

(II) Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and

(III) Use material in the construction or lining of the tank that is compatible with the substance to be stored.

(ii) Aboveground Tanks.

(A) No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous substance to the ground, ground waters, or surface waters of La Center within a CARA I.

(B) For a tank that will contain a hazardous substance, no new aboveground tank or part thereof shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof.

(C) A new aboveground tank that will contain a hazardous substance will require a secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks located within an aquifer recharge area. The secondary containment system or dike system must be designed and constructed to contain the material stored in the tank(s).

(c) The applicant shall demonstrate, through the land use approval process, that the proposed activity will not have any adverse impacts on ground water in critical aquifer recharge areas, based on the Safe Drinking Water Act and the Wellhead Protection Area Program, pursuant to Public Water Supplies, Chapter 246-290 WAC; Water Quality Standards for Ground Waters of the State of Washington, Chapter 173-200 WAC; and Dangerous Waste Regulations, Chapter 173-303 WAC. ~~By this reference, Chapters 173-200, 173-303 and 246-290 WAC, as written and hereafter updated, will be part of this chapter.~~

(d) Level 1 hydrogeological reports required. Unless the City of La Center waives one or more of the informational requirements listed below, nonexempt applications for activities undertaken in a Category I CARA must complete a Level 1 hydrogeological report containing these items:

Commented [ES60]: Eric, Naomi, it's not very common to incorporate entire chapters of state code by reference. Sometimes these change or are updated in ways that the City wouldn't be aware of. I think the first paragraph is enough to require compliance with these regs without incorporating by reference.

Commented [ES61]: Eric,Naomi, I took a look at hydrogeological report requirements for Ridgefield, Washougal, Cowlitz County and Lacey. I ended up mirroring language from Lacey based on a discussion I had with Laurie Morgan at Ecology in the water quality program who wrote the 2005 CARA Guidance. As with many jurisdictions, there are two levels of reports required. In level 1, the applicant provides basic information about the hydrogeological setting of the site including the susceptibility of soils, location of wells, and contamination sources; this is intended to be primarily a desktop exercise. If that isn't sufficient to determine if the aquifer will be protected, they move on to Level 2.

(i) A site development plan that shows the entire parcel of land owned by the applicant, and the features of the parcel that are relevant to groundwater source protection, including but not limited to:

(A) The exact boundary and description of wellhead protection areas, including the source well and sanitary control area, if applicable;

(B) The locations of susceptible soils on the site;

(C) Groundwater contours indicating the direction of shallow groundwater flow, shown in relation to the wellhead and its wellhead protection area if applicable, and existing and proposed stormwater facilities;

(D) Any existing well(s) on site, whether in use or abandoned;

(E) All potential sources of soil or groundwater contamination on the site; and

(F) The locations of proposed temporary construction dewatering wells or other resource protection wells.

(ii) A description of the proposed use of the site, and descriptions of the types and quantities of hazardous materials that would be used or stored on the site, including fuels and fuels associated with mechanical equipment and retail products.

(iii) Descriptions of how the engineering design and planned operation and maintenance of the project will mitigate impacts to groundwater quality and quantity at the development site. The descriptions shall also identify how the characteristics of the site, such as soils and geology, limit the mitigation of impacts to site development.

(e) Level 2 hydrogeological reports required. A Level 2 hydrogeological report shall be required by the City for a project located in a Category I CARA if:

(i) There is insufficient hydrogeological information provided in the Level I report to perform an adequate review to assure aquifer protection; or

(ii) The project is likely to possess, store, use, transport, or dispose of hazardous materials.

(f) Hydrogeological reports shall be prepared, signed, and dated by a professional who is licensed in the state of Washington in hydrogeology or geology.

(g) The report shall identify and characterize the aquifer recharge area as it relates to the development site and assess the impacts of the development proposal on the aquifer, and assess the impacts of any alteration proposed for the aquifer recharge or wellhead protection area.

(h) The Level 2 hydrogeological report shall contain the information required by the Level 1 report and the following:

(i) Information sources;

(ii) Site geology and hydrostratigraphy, supported by well logs or borings;

(iii) Available data on wells and springs located within a quarter mile of the site;

(iv) Location and depth of perched water tables;

(v) Groundwater elevations, flow direction, and gradient;

(vi) Recharge potential of the site, including aquifer permeability and transmissivity;

(vii) Background water quality;

(viii) Identification of all hazardous materials to be used or stored on the site;

(ix) Analysis of the increase or change in nitrate concentrations predicted to occur in groundwater beneath the site as a result of the project;

(x) A description of site conditions prior to project development, including vegetation and other conditions relating to existing and historic groundwater recharge at the site;

(xi) An analysis of site conditions as they are likely to exist during and after construction of the proposed project, and their cumulative impacts on ground water quantity and quality;

(xii) Discussion of proposed mitigation measures to minimize impacts to groundwater quality and quantity, including training, maintenance and monitoring plans, and the mechanisms and financial measures that are proposed that will ensure the long-term implementation of mitigation measures; and

(xiii) Any other information as required by the City.

(2) Fish and Wildlife Habitat Conservation Areas.

(a) Fish and Wildlife Habitat Conservation Areas. Identified sensitive fish and wildlife habitat conservation areas shall be preserved or adverse impacts mitigated. Fish and wildlife habitat conservation areas that must be considered for classification and designation include~~are divided into four basic categories~~:

(i) Riparian.

(A) Overwhelming evidence exists to support the use of riparian buffers of adequate size to maintain healthy, productive fish and wildlife habitat. Although riparian areas comprise only a small portion of the surface landscape, approximately 90 percent of Washington's land-based vertebrate species prefer, or are dependent upon, riparian habitat for essential life.

(B) Riparian habitat areas may include frequently flooded areas, critical recharge areas and wetlands. Riparian habitat areas are those areas immediately adjacent to waterways that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. WAC 222-16-~~020~~030, relating to stream classification, shall be the city's classification system for streams.

(ii) Endangered or Threatened.

(A) Areas that have a primary association with federal listed endangered or threatened species of fish or wildlife and which if altered may reduce the likelihood that the species will maintain and reproduce over the long term.

(B) Point locations are the specific sites (nests, dens, etc.) where critical wildlife species are found. Many of these sites have been identified and mapped by the Washington Department of Fish and Wildlife (WDFW). Point locations are lands where species designated as endangered or threatened have a primary association with that land. Development of such lands shall be controlled in accordance with a site-specific fish and wildlife management plan consistent with the WDFW's priority habitats and species management recommendations and prepared by a qualified consultant. The Washington Department of Fish and Wildlife should be consulted to provide a technical review and an advisory role in the decision making process.

(iii) Local Habitat Areas.

(A) Species of local importance are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

(B) Habitats of local importance include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

(C) Local habitat areas include those areas specifically identified as local habitat areas on the city's adopted critical areas map and background maps used to prepare the critical areas map.

(I) The city or private citizens may nominate areas for consideration as local habitat areas and for inclusion on the critical areas map.

(II) The applicant shall be responsible for preparing the nomination using city-prescribed forms. The applicant shall pay a processing fee of one percent of the assessed value of the proposed area as zoned at the time of application.

(III) The hearings examiner, through a Type III process, and in reliance upon all best available science in the hearing record, shall make a determination of whether the nominated area qualifies as a local habitat area.

(iv) Priority Habitat Species (PHS) Areas. Areas with which state-listed monitor or candidate species or federally listed candidate species have a primary association, as specified in Washington Department of Fish and Wildlife Policies 4802 and 4803, and which if altered may reduce the likelihood that the species will maintain and reproduce over the long term.

(v) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(vi) Waters of the state;

(vii) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(viii) State natural area preserves, natural resource conservation areas, and state wildlife areas.

~~(v)~~(ix) Buffers.

Table 18.300.090(2)(a) – Priority Habitat and Species Buffers

Resource Type	Critical Zone	Protected Buffer
Wildlife Habitat		
Local Habitat	Delineated	Use BAS for species.
Nonriparian Priority Habitat and Species	Delineated	300 feet or threshold based upon consultation with WDFW or through the city's peer review process.[1]
Subject to the ESA	Delineated	Use BAS for species up to 1,300-foot threshold distance.

Commented [DD62]: Oregon white oak woodlands Options
Oak woodlands are a priority habitat per WDFW and are mapped within the City. If a project occurs within the mapping or they are identified on site, they would be regulated as a PHS under FWHCA section. We've added the WDFW publication: Management Recommendations for Washington's Priority Habitat: Oregon White Oak Woodland Habitat to the list of sources for management recommendations.
Optionally, the City could nominate them for a Habitat of Local Importance or add management recommendations from the WDFW document to the code. These are listed in the BAS document

Commented [DD63]: Added to be consistent with WAC 365-190-130. Some of these (i.e. ponds) are not found in the City and these could be edited.

[1] For example, the city may allow a reduced buffer around a single Oregon white oak tree as a result of consultation with the regulatory agency or as a result of the city peer review process if the important functions and values of the resource will not be significantly diminished as a result of the buffer reduction.

(b) Sources. The ~~city~~ City consulted the following sources to identify critical fish and wildlife habitat areas and protective measures:

(i) Water Type Reference Maps, Washington Department of Natural Resources;

(ii) Natural Heritage Data Base, Washington Department of Natural Resources;

(iii) Priority Habitats and Species Program and Priority Habitat Species Maps, Washington Department of Fish and Wildlife;

(iv) Non-Game Data Base, Washington Department of Fish and Wildlife;

(v) Washington Rivers Information System, Washington Department of Fish and Wildlife;

(vi) Water Resource Index Areas (WRIA), Washington Department of Fish and Wildlife;

(vii) Water Crossing Design Guidelines, Washington Department of Fish and Wildlife (2013);

(viii) Stream Habitat Restoration Guidelines, Washington Department of Fish and Wildlife (2012);

(ix) Land Use Planning for Salmon , Steelhead, and Trout, Washington Department of Fish and Wildlife (2011);

(x) Landscape Planning for Washington's Wildlife, Washington Department of Fish and Wildlife (2009);

(xi) Aquatic Habitat Guidelines (2010, 2014), Washington Department of Fish and Wildlife;

(xii) Management Recommendations for Washington’s Priority Habitat: Oregon White Oak Woodland Habitat, Washington Department of Fish and Wildlife (1998) and as amended;

(xiii) Management Recommendations for Washington’s Priority Habitat: Riparian, Washington Department of Fish and Wildlife (1997); and

(xiv) Field studies performed by qualified natural resource specialists.

(c) Education and Information. A voluntary education program to explain the need for and methods of habitat management may provide for long-term protection and enhancement of critical fish and wildlife habitat areas. By informing citizens about the declining populations of several fish and wildlife species in La Center, the diminishing animal habitat available, and the management techniques that individuals can use to preserve and restore fish and wildlife habitat areas, the city can foster good stewardship of the land by property owners.

(i) The city will provide educational materials and lists of additional sources of information to applicants proposing regulated activities in the vicinity of critical fish and wildlife habitat areas. Materials will be selected from a variety of state and local resources.

(ii) The city may accumulate information on the number of proposed activities associated with fish and wildlife habitat areas as identified by this chapter and indicated by state and local governmental maps to be in the vicinity of identified critical fish and wildlife habitats. Information shall include the number of single-family residences and other development occurring in the vicinity of critical fish and wildlife areas. Based on this information, additional regulations could be developed.

(iii) The education and information program is an important adjunct to the implementation of the regulatory provisions of this chapter.

(d) ~~Species and Habitat Assessment~~Critical Areas Report. A critical area report is required where specifically indicated and when an activity is proposed within a critical area or buffer that is not specifically exempt, or is permitted only with review. Where a critical areas report is required, it ~~shall be consistent with the following standards~~must:

(i) ~~The report must b~~Be completed by a qualified professional.

(ii) ~~The critical area report shall u~~Use scientifically valid and professionally recognized and accepted methods and studies or best available science in the analysis of critical area data and field reconnaissance and ~~reference~~ refer to the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.

(iii) Minimum Report Contents. At a minimum, the report shall contain the following:

(A) The name and contact information of the applicant, ~~and~~ the name and address of the qualified professional who prepared the report, a description of the proposal, and an identification of the permit requested;

(B) A copy of the site plan for the development proposal showing:

(I) Identified critical areas, buffers, and the development proposal with dimensions;

(II) Limits of any areas to be cleared;

(III) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations; and

(IV) General location and types of vegetation;

(C) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

(D) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;

(E) A statement specifying the accuracy of the report, and all assumptions made and relied upon;

(F) A description of reasonable efforts made to apply mitigation sequencing pursuant to ~~mitigation sequencing,~~ LCMC 18.300.~~120~~030(51) to avoid, minimize, and mitigate impacts to critical areas;

(G) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with mitigation plan requirements, LCMC 18.300.120, including, but not limited to:

(I) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

(II) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

(H) A discussion of the performance standards applicable to the critical area and proposed activity;

(I) Financial guarantees to ensure compliance; and

Commented [DD64]: East Fork 303d Listing
Consider adding code language here to address the status of East Fork Lewis River as a 303(d) listing for bacteria and temperature. Code could include special provisions to:
- Implement BMPs to reduce fecal coliform loading.
- Continue management of stormwater through appropriate BMPs to reduce water quality impacts at Brezee Creek stormwater outfalls, particularly during the wet season.
- Continue education and outreach work in the watershed community about the effects of nonpoint pollution to water quality and human health. This includes nonpoint pollution from pet waste and recreational activities at parks and greenways on the waterfront of the EF Lewis River and its tributaries.
- Continue to increase native vegetation plantings on streambanks to increase riparian shade. Focus these restoration activities in areas with large shade deficits, as determined through the shade analysis.
- Protect and restore natural floodplains, riparian habitats, and microclimate enhancements that increase the number of cold water refuges available and improve the overall habitat quality for salmonids and other fish species.
- Identify grant opportunities to implement stream restoration such as the Clark County Clean Water Restoration Fund Grant, Clark County Clean Water Restoration Fund, or Salmon Recovery Grants.

Optionally, the city could adopt the most recent stormwater manual that could help increase stormwater detention/infiltration reducing stormwater temperature increases associated with impervious surfaces.

(J) Any additional information required for the critical area as specified in the corresponding chapter.

(iv) Unless otherwise provided, a critical area 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, by a qualified professional, for and applicable to the development proposal site, as approved by the director.

(v) The director may waive specific requirements of the critical area reports where less information is required to ~~adequately~~ address the impacts to the critical area adequately or where existing information is on file with the city that addresses the impacts.

(vi) The director may require additional information that is necessary to determine compliance with the standards of this chapter.

(vii) A qualified professional shall be a person who has the education, training, experience, and/or certification that meets the specific requirements to evaluate fish and wildlife habitat.

(e) Best Available Science. ~~Habitat~~ Critical area reports and decisions to alter fish and wildlife habitat conservation areas shall rely on the best available science to protect the functions and values of critical habitat areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat. Best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, and that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

(f) Habitat Buffers. Fish and wildlife habitat conservation areas and buffers are assigned to the lands regulated by this section according to Table 18.300.090(2)(a). Development activities are restricted within buffer areas as indicated in Table 18.300.090(2)(f).

Table 18.300.090(2)(f) – Riparian Areas

Fish and Wildlife Habitat Areas RIPARIAN AREAS	Characteristic	Riparian Ecosystem Area (in feet)
Type S (fish bearing)	East Fork of the Lewis River	250
Type F (perennial or fish bearing)	Brezee, Jenny and McCormick Creeks and stream < 5 feet wide, if fish bearing	200
Type Np streams~~, low mass wasting potential~~	Less than 3 feet in width on average	150
Type Ns stream~~, high mass wasting potential~~	Seasonal streams with a defined channel	75

(i) Water types are defined and mapped based on WAC 222-16-030 or 222-16-031, whichever is in effect on the date of application. While the WAC definitions control, generally, Type S streams include shorelines of the state and have flows averaging 20 or more cubic feet per second; Type F streams are those that are non-Type S but still provide fish habitat; and Type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). Erosion gullies or rills, and streams which are manmade, or streams less than six inches wide or not having a defined bed and/or bank are not included.

(g) Buffer Standards.

(i) Building Setback and Construction Near Buffer. A minimum setback of 15 feet from the buffer shall be required for construction of any impervious surface(s) greater than 120 square feet of base coverage from the head or toe of a slope where the overall slope is greater than 35 percent. Clearing, grading, and filling within 15 feet of the buffer setback shall be allowed only when the applicant can demonstrate that native vegetation within the buffer will not be damaged. The additional impervious surface setback from the toe and head of a slope may be waived if the applicant demonstrates, by credible evidence, that the proposed impervious surface will not significantly affect the stability of the slope.

(ii) Marking of the Buffer Area. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground.

(iii) Fencing from Farm Animals. Permanent fencing shall be required from the buffer when farm animals are introduced on a site.

(h) Riparian Area Ecosystem Buffers. Regulated activities proposed along rivers and streams shall provide for habitat protection.

(i) The riparian ecosystem buffer is generally an area of no building, consisting of undisturbed natural vegetation. The buffer shall be required along all streams as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the ordinary high water ~~mark~~ line of the water body.

(ii) The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure which reduces the impact proposed activities would have on the river or stream.

(iii) The city identifies ~~the following river and~~Brezee, McCormick, and JennyCreeks ~~stream segments~~ as being critical to anadromous fish and, therefore, requiring a larger buffer protection than those stated in Table 18.300.090(2)(f):

~~(I) East Fork of the Lewis River within the UGA; and~~

(i) Approval. City approval of a mitigation plan is a prerequisite for approval of any development activities within a designated habitat area or habitat buffer.

(ii) Application. The applicant shall submit a written request describing the extent and nature of the proposed development activity on critical areas and buffers. The request shall include boundary locations of all critical areas and associated buffers.

(A) The application for development shall include a mitigation plan prepared in compliance with this section.

(B) The city may require the applicant to prepare special reports evaluating potential adverse impacts upon critical areas and potential mitigation measures as part of the land use application process. These reports may include, but are not limited to, the following: stormwater management plan; hydrology, geology, and soils report; grading and erosion control plan; native vegetation report; fish and wildlife assessment and impact report; water quality report; wetlands delineation; and other reports determined necessary by the city.

(iii) The city may consult with state and federal resource management agencies and, in order to protect wildlife habitat or natural resource values, shall attach such conditions as may be necessary to effectively mitigate identified adverse impacts of the proposed development activity.

(iv) The city may request third party "peer review" of an application by qualified professionals and may incorporate recommendations from such third party reports in findings approving or denying the application.

(v) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at years one, three, five, seven, and, if mitigation measures will result in reclassification of the resource to a higher category, year 10 shall be required.

(vi) The city may require replacement mitigation to be established and functional concurrent with project construction.

~~(l)~~(j) No Net Loss.

(i) Mitigation efforts, when allowed, shall ensure that development activity does not yield a net loss of the area or function, including fish and wildlife habitat values, of the critical area. No net loss shall be measured by:

(A) Avoidance or mitigation of adverse impacts to fish or wildlife; or

(B) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(C) Avoidance or mitigation of loss of area by habitat type.

(ii) Mitigation to achieve no net loss should benefit those organisms being impacted.

(iii) Where development results in a loss of habitat area, the mitigation plan shall demonstrate that habitat area is replaced at an equal or greater functional value(s).

(A) Wherever possible, replacement or enhancement shall occur on site.

(B) However, where the applicant can demonstrate that off-site mitigation will provide greater functional values, the city may approve such off-site mitigation.

~~(m)~~(k) Mitigation Plan. A mitigation plan shall provide for the design, implementation, maintenance, and monitoring of mitigation measures. A mitigation plan shall include but is not limited to the following:

(i) Methods and techniques to be used to mitigate impacts to the critical area;

(ii) Explanation of methods and techniques, such as construction practices to be used to implement the identified mitigation methods;

(iii) Methods and techniques for monitoring the proposed mitigation and a time frame for such monitoring.

~~(n)~~(l) Buffer Reduction. The city may allow the reduction of Np and Ns stream buffers by no more than 50 percent of the required buffer width if the area proposed for buffer reduction:

(i) Is currently adversely impacted by development such as roads, parking areas, buildings, or public facilities; or

(ii) Has primarily nonnative vegetation, such as grass pasture; and

(iii) The proposed reduction will not significantly reduce the water quality and habitat functions of the buffer;

(iv) When buffer reduction is allowed, the applicant shall provide the city with a vegetative buffer enhancement plan for review and approval;

(v) Stormwater facilities are not permitted in the remainder buffers reduced by operation of this buffer reduction provision.

~~(o)~~(m) Vegetative Buffer Enhancement. Where the city permits the use of buffer reduction opportunity described in this section, the following enhancement standards shall apply:

(i) The applicant shall submit to the city a written request describing the extent and nature of the proposed development activity and shall submit an enhancement plan prepared by a professional biologist, landscape architect or other equally qualified person;

(ii) Buffer shall not be reduced to less than 50 percent of the base buffer width listed in Tables 18.300.090(2)(a) and 18.300.090(2)(f);

(iii) The enhancement plan shall include calculations and maps that illustrate:

(A) Required boundary locations of all critical areas and associated buffers;

(B) Proposed buffer areas after reduction;

(C) The nature and extent of the enhancement measures proposed;

(D) A timeline for completion of the enhancement plan;

(E) A financial surety mechanism acceptable to the city;

(iv) Methods and techniques used to mitigate impacts to critical areas, consistent with best management practices (BMPs);

(v) An explanation of methods and techniques, such as construction practices to be used to implement the identified mitigation methods;

(vi) Methods and techniques for monitoring said mitigation and a proposed time frame for monitoring;

(vii) The enhanced area shall be of equal or greater habitat value(s) based on best available science;

(viii) Enhancement shall occur on site, unless the applicant can demonstrate that off-site mitigation will provide greater functional value(s);

(ix) The city may elect to submit the vegetative buffer enhancement plan to one or more qualified experts for peer review.

~~(p)~~(n) Standard Requirements. All applications requiring review under this section shall have the following minimum conditions applied:

(i) Marking Buffer During Construction. The location of the outer extent of the habitat buffer, or if no buffer is required the habitat area, shall be marked in the field and such markings shall be maintained throughout the duration of the permit.

(ii) Permanent Marking of Buffer Area. A permanent and perpetual physical demarcation along the upland boundary of the habitat buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedgerow, wood or wood-like fencing, or other prominent physical marking approved by the director. In addition, signs (measuring minimum size one foot by one foot and posted three and one-half feet above grade) shall be posted at an interval of one per lot or every 100 feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the habitat buffer approved by the director worded substantially as follows: “Habitat Buffer – Please Retain in a Natural State.”

(iii) A conservation covenant shall be recorded in a form approved by the city attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a permit prior to engaging in regulated activities within a habitat area or its buffer.

(3) Frequently Flooded Areas.

(a) Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "~~The~~ Flood Insurance Study, ~~for~~ Clark County, Washington and Incorporated Areas" ~~dated~~revised January~~September 5~~19, 201~~2~~8, with accompanying flood insurance rate maps (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study is on file at the office of the city clerk/treasurer. ~~The best available information for flood hazard area identification as outlined in subsection (3)(p)(iii) of this section shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under subsection (3)(p)(iii) of this section.~~

Commented [ES66]: Deleted this phrase, b/c the FIRM panels include base flood elevation, so I didn't see why this would be needed.

(b) Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.

(c) Abrogation and Greater Restrictions. Where this chapter and another code, ordinance, easement, covenant or deed restriction conflict or overlap, that which imposes the more stringent restriction shall prevail.

(d) Interpretation. In the interpretation and application of this section, all provisions shall be:

(i) Considered as minimum requirements;

(ii) Liberally construed in favor of the governing body; and

(iii) Deemed neither to limit nor repeal any other powers granted under state statutes.

(e) Interpretation of FIRM Boundaries. The local administrator, the governing body or its agent or employee may interpret and apply when necessary the exact location of the boundaries of the areas of special flood hazards where there appears to be a conflict between a mapped boundary and actual field conditions. Any aggrieved person may contest the location of the boundary and shall be given a reasonable opportunity to appeal the interpretation to the local administrator and then the governing body. Such appeal shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59 through 76).

(f) Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes, and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of La Center, any officer or employee thereof, or the Federal Emergency Management Agency or Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(g) Floodplain (FP) Combining District. A floodplain (FP) combining district is established and shall be applied to all areas of special flood hazard identified on the flood insurance rate maps, which have been adopted by reference. The land use and siting provisions of these

areas shall be in addition to other zoning provisions applied. For areas of special flood hazards that include a floodway, two distinct areas are recognized within the FP district: the "floodway" area and the "floodway fringe" area.

(h) Regulatory Area. The areas for state and local floodplain management regulations shall be those areas subject to a base (100-year) flood (except as noted for siting of critical facilities). Base floodplains are designated as special flood hazard areas on the most recent flood insurance rate maps provided by the Federal Emergency Management Agency for the National Flood Insurance Program. Best available information shall be used in areas where a base flood elevation has not been determined.

(i) Relationship to Other Requirements. Land uses in the floodplain combining district shall be subject to all relevant local, state, or federal regulations including those of the underlying zoning district. Where applicable, permit requirements under the Shoreline Management Act (Chapter 90.58 RCW), or the State Flood Control Zone Act (Chapter 86.16 RCW) may be substituted for permits required under this chapter; provided, that the standards of this chapter are applied.

(j) Criteria for Land Management and Use. The standards and definitions contained in 44 CFR Parts 59 and 60 for the National Flood Insurance Program are adopted by reference as the minimum state standards.

(k) Uses Permitted in the Floodplain (FP) Combining District. Park, recreational, agricultural, and other similar open space uses allowed in the underlying zoning district that do not change the topography of the land, and not involving structures, fill, storage of equipment or materials, or other development, are permitted outright in the FP district.

(l) Uses Prohibited in the Floodway. Structures for human habitation and other structures or works posing a high flood damage potential are prohibited in the floodway, except for the replacement of structures or works, single-family residences in accordance with WAC 508-60-040, and travel trailers subject to the provisions set forth in this chapter. Any use other than those permitted outright in a floodway shall be subject to the terms of a floodplain permit.

(m) Uses Allowed Under a Floodplain Permit. All other uses permitted in the zoning district with which the FP district has been combined are allowed in the floodway and floodway fringe areas subject to the terms of a floodplain permit.

(n) A floodplain permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be required for all structures, including manufactured homes, and other development. Permit application forms shall be furnished by the mayor or his or her designee. The application shall include, but is not limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question, and existing or proposed structures, fill, storage of materials, and drainage facilities. Specifically, the following information is required:

(i) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FF 086-0-33) with Section B completed by the local official;

(ii) Elevation in relation to mean sea level to which any structure has been floodproofed;

(iii) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing requirements; and

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(o) Designation of the Local Administrator. The mayor or his or her designee is authorized to administer and implement this title by granting or denying floodplain permit applications in accordance with its provisions.

(p) Duties and Responsibilities of the Local Administrator. Duties of the local administrator, if applicable, shall include, but not be limited to:

(i) Development Review.

(A) Review all proposed developments to determine whether or not a floodplain permit is required.

(B) Review all proposed developments with respect to the flood insurance study maps and zoning district boundaries. Make interpretations where needed as to the exact location of special flood hazard area boundaries.

(ii) Permit Review.

(A) Review all proposed development permits to determine that the permit requirements of this title have been satisfied.

(B) Review all proposed development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(C) Review all proposed development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions are met.

(iii) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with subsection (3)(a) of this section (Basis for Establishing the Areas of Special Flood Hazard), the mayor or his or her designee shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from an agency of federal or state government, or other sources, in order to administer this section, including specific standards for residential construction, nonresidential construction and floodways and floodway requirements.

(iv) Information to Be Obtained and Maintained.

(A) Where base flood elevation data is provided through the flood insurance study or required as in subsection (3)(a) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement recorded on a current elevation certificate (FF 086-0-33) with Section B completed by the local official.

(B) For all new or substantially improved floodproofed structures, the local administrator shall:

(I) Verify and record the actual elevation (in relation to mean sea level) to which any structure has been floodproofed;

(II) Maintain the floodproofing certifications;

(III) Maintain for public inspection all records pertaining to the provisions of this chapter;

(IV) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration and the Federal Emergency Management Agency;

(V) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and

(VI) Interpretation of FIRM Boundaries. Make interpretation, where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.

(q) Variance Procedure – Additional State Requirements. The variance procedure contained in 44 CFR Part 60.6 and this title shall apply to the additional state requirements contained in WAC 173-158-060 and 173-158-070, unless an activity or use is expressly prohibited therein.

(r) Appeal and Review of City Action.

(i) A person with standing may appeal the approval or denial of a floodplain permit as provided in LCMC 18.30.130.

(A) In acting on appeals or permit approval requests, the city shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this chapter, and:

(I) The danger that materials may be swept onto other lands to the injury of others;

(II) The danger of life and property due to flooding or erosion damage;

(III) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;

(IV) The importance of the services provided by the proposed facility to the community;

(V) The necessity to the facility of a waterfront location where applicable;

(VI) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;

(VII) The compatibility of the proposed use with existing and anticipated development;

(VIII) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(IX) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(X) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site; and

(XI) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets and bridges.

(B) Upon consideration of the above factors, and the purposes of this chapter, the appeal hearing body may attach such conditions to actions on appeals and approvals as it deems necessary to further the purpose of this chapter.

(C) The mayor or his or her designee shall maintain the records of all appeal and approval actions of the city of La Center.

(s) Conditions for Variances.

(i) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases, the technical justification required for issuing the variance increases.

(ii) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places.

(iii) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(iv) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(v) Variances shall only be issued upon:

(A) Showing a good and sufficient cause;

(B) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(C) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(vi) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations shall be quite rare.

(vii) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (3)(s)(i) of this section, and otherwise complies with anchoring and construction materials and methods general standards below.

(viii) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood

elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(t) Penalties and Enforcement.

(i) The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(ii) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed $1,000 for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(iii) The penalty provided for in this section shall be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(iv) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by the city shall be subject to review by the city council. Any penalty jointly imposed by the department and city shall be appealed to the pollution control hearings board.

(u) General Standards. In all areas of special flood hazards the following standards set forth in this section are required:

(i) Anchoring.

(A) All new construction and substantial improvements shall be designed (or modified) and anchored adequately enough to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads~~,~~ and including the effects of buoyancy.

(B) All manufactured homes must likewise be elevated and anchored to ~~prevent~~ resist flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA P-85 "Protecting Manufactured Homes from Floods and Other Hazards" guidebook for additional techniques). This requirement is in addition to the applicable state and local anchoring requirements for resisting wind forces.

(ii) Construction Materials and Methods.

(A) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(B) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(C) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(iii) Utilities.

(A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(B) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;

(C) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

(D) Water wells shall be located on high ground that is not in the floodway.

(iv) Subdivision Proposals.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage;

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(D) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

(v) Review of Building Permits. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

Commented [ES67]: Eric, based on our discussion, you had suggested this be footnoted, however, it is already in the body of the ordinance, so I left it that way.

(v) Additional Standards.

(i) Critical Facilities.

(A) Critical facilities should be afforded additional flood protection due to their nature. The city shall use the 500-year frequency flood as a minimum standard instead of the 100-year frequency flood as used for other types of development.

(B) Construction of new critical facilities shall be, to the extent possible, located outside the limits of the 500-year floodplain as identified on the city's FIRM. Construction of new critical facilities shall be permissible within the 500-year frequency floodplain if no feasible alternative site is available. Critical facilities constructed within the 500-year frequency floodplain shall have the lowest floor elevated to or above the level of the 500-year frequency flood or the flood protection elevation, whichever is greater. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters.

(C) Access routes elevated to or above the level of the 500-year frequency flood shall be provided to all critical facilities to the extent possible.

(ii) Flood Protection Elevation. In order to account for the impacts of future development on flood depths, and in order to ensure the least expensive insurance rates for floodplain occupants, all development within special flood hazard areas which requires elevation or floodproofing shall be elevated or floodproofed to the flood protection elevation (base flood elevation plus one foot).

(w) Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in subsection (3)(a) of this section, Basis for Establishing the Areas of Special Flood Hazard, or subsection (3)(p)(iii) of this section, Use of Other Base Flood Data, ~~the following provisions are required~~construction must include the following provisions:

(i) Residential Construction.

(A) New construction and substantial improvement of any residential structure shall have the lowest floor, including basements and crawlspaces, elevated to one foot or more above the base flood elevation.

~~(B)~~ Fully enclosed areas below the lowest floor that are subject to flooding are prohibited.~~, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either 1) be certified by a registered professional engineer or architect, or 2) must meet or exceed the following minimum criteria:~~

Commented [ES68]: Eric, as discussed, we are prohibiting basements and crawlspaces for residential structures in the floodplain, but allowing for non-residential structures below. For this reason, I have transferred the provisions related to openings to the non-residential section below.

(ii) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of one foot or more above the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

(A) Be floodproofed so that below the flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water;

(B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(C) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Specific elevation data (in relation to mean sea level) shall be provided to the official along with the ~~Such~~ certification~~s shall be provided to the official~~;

(D) Nonresidential structures that are elevated, not floodproofed, with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of flood waters. Designs for meeting this requirement must either 1) be certified by a registered professional engineer or architect, or 2) must meet or exceed the following minimum criteria: ~~must meet the same standards for space below the lowest floor as described in subsection (3)(w)(i) (Residential Construction) of this section;~~

(I) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(II) The bottom of all openings shall be no higher than one foot above grade.

~~(I)~~(III) Openings may be equipped with screens, louvers, valves, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters.

~~(D)~~(E) ~~Applicants floodproofing n~~Nonresidential buildings shall be flood proofed to a level that is one foot above the base flood level. ~~notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).~~

(x) Manufactured Homes. All manufactured homes to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(y) Recreational Vehicles. Recreational vehicles placed on sites are required to either:

(i) Be on site for fewer than 180 consecutive days; or

(ii) Be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(iii) Meet the requirements for a manufactured home and the elevation and anchoring requirements for manufactured homes; may be allowed in the floodway and floodway fringe areas on a temporary basis.

(z) Floodways and Floodway Requirements. Located within areas of special flood hazard established in subsection (3)(a) of this section are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris~~,~~ and increase erosion potential, the following provisions apply:

(i) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

(ii) Prohibit c~~C~~onstruction or reconstruction of residential structures ~~is prohibited~~ within designated floodways, except~~:~~ ~~for~~

(A) ~~(A)~~ repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and

(B) ~~(B)~~ repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either:

(I) ~~(I)~~ before the repair or reconstruction, or improvement ~~is~~ begins~~started~~, or

(II) before the damage occurred, ~~(II)~~ if the structure has been damaged~~,~~ and is being restored~~, before the damage occurred~~. Work done on ~~Any project for improvement of a~~ structures to comply with ~~correct~~ existing health, sanitary, ~~violations of state or local health, sanitary,~~ or safety codes ~~specifications~~ which have been identified by the local code enforcement or building official and ~~which~~ are the minimum necessary to assure safe living conditions, or to structures

Commented [ES69]: Eric, this is consistent with our discussion – flood proofing to one foot above the base flood to reduce insurance premiums. Please note that the existing language in the ordinance that I have deleted reflects the WA FEMA model ordinance which notifies applicants that insurance premiums are based on one foot below. Keeping the existing language still meets the FEMA recommendations.

identified as historic places, ~~may be excluded~~shall not be included in the 50

(C) Existing farmhouses in designated floodways that meet the provisions of WAC 173-158-075,

(D) Residential dwellings other than farmhouses that meet the depth and velocity and erosion analysis provisions of WAC 173-158-076,

(E) Structures identified as historical places.

(i) Residential dwellings located partially within a designated floodway will be considered as totally within a designated floodway and must comply with 18.300.090(3)(z)(i) and (ii).

(ii) If subsections 18.300.090 (3)(z)(i) and (3)(z)(ii) of this section are satisfied, all new construction and substantial improvements shall comply with all the other applicable flood hazard reduction provisions of this section. The placement of any manufactured homes ~~is not allowed~~ in floodways is not allowed ~~and not included~~.

(aa) In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point.

~~(d)~~ Geologically Hazardous Areas.

(a) Development on lands classified as "erosion hazards," "landslide hazards" or "seismic hazards" as defined in Section 18.300.030 shall be prohibited unless the applicant meets the requirements of this section. ~~provides a report, prepared and signed by a licensed engineer, specializing in geotechnical engineering, which provides construction methodologies, based upon best available science, and quality assurances that the site can be developed without significant risk to public safety.~~

(a) Exempt, Prohibited, and Permitted Activities in Geologically Hazardous Areas

(i) Alterations. In the limited instances when development in geologically hazardous areas is permitted, it shall meet all applicable provisions of this section as determined by the review authority prior to issuance of a critical areas permit. Alterations of geologically hazardous areas or associated buffers may occur only for activities that:

(A) Will not increase the threat of the geologic hazard to adjacent properties beyond predevelopment conditions;

(B) Will not impact other critical areas adversely;

(C) Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than predevelopment conditions; and

(D) Are recommended by a qualified professional in a signed and stamped geotechnical engineering report.

(ii) Critical facilities, as defined in Section 18.300.030, shall not be sited in geologically hazardous areas unless there is no other practical alternative, as demonstrated in a geotechnical assessment.

(iii) Utilities Transmission Facilities. Utility facilities which carry liquid petroleum products or any other hazardous substance as defined in Chapter 173-303 WAC may be permitted within geologically hazardous areas only when a qualified professional demonstrates that the design and location of the proposed facility will not cause adverse impacts.

(b) General Design Standards for Landslide and Erosion Hazard Areas

(i) Protection of Landslide and Erosion Hazard Areas. Modification of topography and vegetation in landslide and erosion hazard areas shall be limited in order to preserve the long-term stability of sensitive slopes, reduce erosion potential and stormwater runoff, and preserve related ecological values.

(ii) Development or alterations within a landslide or erosion hazard area and/or buffer shall be designed to meet the following requirements. Deviations from one or more of these standards may be permitted where it can be demonstrated by a qualified professional that an alternative design provides equal or greater protection of the critical area and proposal. The basic development design standards are:

(A) Structures and improvements shall be located to avoid landslide and erosion hazard areas and other critical areas, unless impacts are unavoidable;

(B) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;

(C) The removal of vegetation from a landslide or erosion hazard area or landslide hazard area buffer shall be permitted only when approved by a qualified professional. If the landslide or erosion hazard area or landslide hazard area buffer lacks adequate vegetation, a vegetation restoration plan or other slope stability measure(s) may be required. Development within a landslide hazard area buffer must conform to the buffer provisions of this section;

(D) The proposed development shall not result in an increase in surface water discharge or sedimentation to adjacent properties;

(E) The following uses and activities may be situated on landslide and erosion hazard areas only where analysis by a qualified professional finds that they will not result in increased risk of landslide or erosion:

(I) Stormwater retention and detention systems, including percolation systems utilizing buried pipe;

(II) On-site sewage disposal system drainfields;

(III) Utility lines and pipes. A qualified professional shall design and verify to the city that said systems are installed and functioning as designed.

(F) Drainage Plan. Applicants proposing development within landslide and erosion hazard areas must develop a drainage plan in consultation with a qualified professional that complies with all applicable requirements of LCMC 18.320. Surface drainage (including downspouts) must avoid draining to landslide and erosion hazard areas. Drainage originating above a landslide or erosion hazard area shall be collected and directed by tight line drain, and be provided with an energy dissipative device for discharge to a swale or other acceptable natural drainage area.

(G) Seasonal Restriction.

(I) Clearing activities that disturb the soil shall be allowed from May 1 to October 1, provided that the City may extend or shorten the dry season on a case-by-case basis, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit;

(II) Outside of the designated dry season, clearing activities that disturb the soil may occur only when demonstrated by a qualified professional that no increased risk to landslide and erosion hazard and buffer areas will occur from clearing activities;

(c) Design Standards – Landslide Hazard Areas.

(i) Landslide Hazard Area Buffers. A buffer shall be established from all edges of landslide hazard areas.

(A) Buffer Size. The minimum dimension of the buffer shall be 50 feet from the edge of the landslide hazard area.

(B) Buffer Reduction. The buffer may be reduced to a minimum of 25 feet when a qualified professional demonstrates that the reduction will provide adequate protection for the proposed development, the adjacent developments and uses, and the subject critical area.

(C) Buffer Use. Where reduction of the buffer is not recommended by a qualified professional, development encroachment within the buffer area may be allowed provided a qualified professional demonstrates that the site alteration will not impact a landslide area and/or the adjacent properties.

(D) Increased Buffer. The buffer may be increased where the review authority or a qualified professional determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.

(E) The buffer shall be clearly staked before and during any construction or clearing.

(F) All portions of landslide hazard areas and buffers shall be designated as landslide protection areas and recorded as such on the approved site plan or plat document.

(d) Design Standards - Erosion Hazard Areas

(i) Buffers. Erosion hazard area buffers shall be as recommended in an approved geotechnical report.

(ii) Erosion Control Plan. An erosion control plan is required for all development in identified erosion hazard areas; the plan shall:

(A) Demonstrate that roads, driveways, and other vehicular accesses, trails, walkways, and parking areas are designed with lower gradients and/or are parallel to the natural contours of the site;

(B) Include stabilization best management practices (BMPs) such as temporary/permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, tree protection, and preservation of mature vegetation. Stabilization BMPs shall address conveyance outlets and streambanks;

(C) Demonstrate that no exposed or disturbed soils will be allowed to overwinter without erosion control BMPs in place;

(D) Preserve existing vegetation and undergrowth where feasible;

(E) Ensure cut and fill slopes will be designed and constructed to minimize erosion; and

(F) Demonstrate that clearing, grading, and impervious surfaces will be minimized.

~~(bb)~~(e) Design Standards – Seismic Hazard Areas. Development proposed in seismic hazard areas shall conform to the applicable provisions of the International Building Code concerning structural standards and safeguards to reduce risks from seismic activity.

~~(8) Slopes with a Gradient of 25 Percent or Greater.~~

(a) Purpose. Wetlands constitute important natural resources which provide significant environmental functions including: the control of flood waters, maintenance of summer stream flows, filtration of pollutants, recharge of ground water, and provisions of significant habitat areas for fish and wildlife. Uncontrolled urban-density development in and adjacent to wetlands can eliminate or significantly reduce the ability of wetlands to provide these important functions, thereby detrimentally affecting public health, safety, and general welfare.

(b) Applicability. The provisions of this chapter apply to any soil disturbance occurring or land use proposal affecting a Category I, II, III, or IV wetland or its buffer unless otherwise expressly exempted by this chapter.

(c) Exempted Wetlands. This chapter shall not apply to the following wetlands:

(i) Isolated wetlands less than one-tenth of an acre in size and scoring less than ~~20~~ 5 points under the Department of Ecology rating system, as amended.

(ii) Riparian. Wetlands less than five feet wide above the ordinary high water mark along streams and lakes which are regulated under the ~~State~~ Hydraulic Code Rules in WAC 220-660. ~~Shorelines Management Act.~~

(d) Interpretation. Except where a contrary intent clearly appears, the provisions of this chapter shall be construed to the maximum feasible extent consistent with the Federal Clean Water Act, 33 USC Section ~~–~~ 1251 et seq., and the rules and guidelines promulgated pursuant thereto. Nothing in this chapter shall be construed to preclude application of the State Environmental Policy Act in approving applications not listed in LCMC 18.310.090.

(e) City Policy ~~Towards~~ towards Disturbance of Wetlands and Wetland Buffers.

(i) The city has limited oversight, staffing and expertise in monitoring and management of impacted wetlands or wetland buffers. Therefore, as a matter of public policy, the city prefers avoidance of wetlands and wetland buffers and discourages disturbance of wetlands or wetland buffers for private purposes.

(ii) The city prohibits platting of privately held lots in wetlands or wetland buffers.

(iii) The city may allow disturbance of Category III and IV wetlands or wetland buffers for public purposes if the disturbance directly advances the provision of infrastructure facilities and services. Public purpose includes streets, potable water, sanitary sewer, stormwater facilities, schools, and utilities.

(iv) The city may allow impacts to Category III and IV wetlands and wetland buffers if the mitigation area is owned by a homeowner's association or similar entity recognized by the city and if the city finds that the accepting entity has the means and ability to inspect, monitor, and maintain the mitigation area for a minimum of 10 years.

Commented [BD(72]: See the list of regulated activities on page 23 of our guidance. https://fortress.wa.gov/ecy/publications/documents/1606001.pdf

Commented [BD(73]: Recommend replacing with our small wetlands exemption language, which is more consistent with BAS. Should also say 5 points or less.

Commented [BD(74]: The intent of this isn't clear? (Categorical exemptions for SEPA)

Commented [BD(75]: "Disturbance" isn't defined. May want to use "alteration" as edited above

Commented [BD(76]: See the list of regulated activities on page 23 of our guidance. https://fortress.wa.gov/ecy/publications/documents/1606001.pdf

Commented [BD(77]: We understand the intention but this paragraph doesn't seem to solve the problem of having someone be responsible for the mitigation. We'd like to discuss this further.

(v) In limited circumstances, the city may allow impacts to Category I and II wetlands and wetland buffers if the impacted area is dedicated to the city, or similarly protected, with funds deemed by the city to be sufficient to restore and enhance the wetland and buffer and to inspect, monitor, and maintain the mitigation area for a minimum of 10 years.

(f) Wetland Delineation and Marking.

(i) An application for wetland impacts shall not be deemed technically complete until completion (if required) of a wetland delineation.

(ii) The mayor or his or her designee shall determine whether a wetland delineation is required based upon several factors including but not limited to a site visit, review of existing critical areas maps, review of National Wetland Inventory maps, the presence of hydric soils, historical evidence, or consultation with a qualified expert.

(iii) Wetland Delineation.

(A) Methodology. The location of a wetland and its boundary shall be determined through the performance of a field investigation, to be performed by a qualified scientific expert (see WAC 395-195-905) using the methodology contained in the wetlands delineation manual. The applicant shall be responsible for the cost of the professional services. If a wetland is located off site and is inaccessible, the best available science shall be used to determine the wetland boundary and category.

(B) Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation report shall be submitted to the city. The report shall include the following information:

(I) U.S.G.S. quadrangle map with site clearly defined;

(II) Topographic map of area;

(III) National wetland inventory map showing site;

(IV) Soil Conservation Service soils map of the site;

(V) Site map, at a scale no smaller than ~~one~~ 1 inch equals 400 feet, if practical, showing the following information: (1) wetland boundaries; (2) sample sites and sample transects; and (3) boundaries of forested areas; ~~and (4) boundaries of wetland classes if multiple classes exist~~;

(VI) Discussion of methods and results with special emphasis on technique used from the wetlands delineation manual;

(VII) Acreage of each wetland on the site based on the survey if the acreage will impact the buffer size determination or the project design;

(VIII) All completed field data sheets (U.S. Army Corps of Engineers' format for three parameter application) numbered to correspond to each sample site.

(C) Responsibility. The wetland delineation is the responsibility of the applicant. The city shall verify the accuracy of the boundary delineation within 20 working days of receiving the delineation report. This review period may be extended when excessively dry conditions prohibit the confirmation of the wetland delineation. If the delineation is found to not accurately reflect the boundary of the wetland, the city will issue a report, within 30 working days of receiving the applicant's delineation report, citing evidence (for example, soil samples) that demonstrates where the

Commented [BD(78]: We recommend not allowing impacts to Category I and II wetlands. See Pacific County's draft language in accompanying emails. We'd like to discuss this further.

Commented [BD(79]: Recommend removing "Marking" and just sticking to delineation requirements here.

Commented [BD(80]: Need to replace:
Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the [City or County] meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter.

Commented [BD(81]: We usually see a wetlands report that includes the delineation, the rating, the details of the proposed activity and a mitigation plan.

Commented [BD(82]: This is a tight timeline if Ecology or the Corps is expected to assist with the verification.

delineation is in error. The applicant may then either revise the delineation and submit another report or administratively appeal.

(iv) Buffers. All buffers shall be measured perpendicularly outward from the delineated wetland boundary.

(v) Marking Buffer during Construction. The location of the outer extent of the wetland buffer shall be marked in the field and such markings shall be maintained throughout the duration of the permit.

(vi) Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedgerow, fencing, or other prominent physical marking approved by the hearings examiner. In addition, small signs shall be posted at an interval of one per lot or every 100 feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the wetland buffer worded substantially as follows: "Wetland and Buffer – Please Retain in a Natural State."

(vii) A conservation covenant shall be recorded in a form approved by the city attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer.

(viii) In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in subsection (6)(f)(vii) of this section.

(g) Wetland Rating. The Washington State Department of Ecology 2014 publication ~~wetland rating system,~~ *Washington State Wetland Rating System for Western Washington* ~~(Revised, Publication No. 0414 06-025029, August October 20042014)~~, as updated, shall be used in part to determine base buffer widths and to determine mitigation and enhancement requirements.

(i) The determination of the specific category of wetland and buffer type for each wetland shall be the responsibility of the applicant and subject to city approval.

~~(ii) A single wetland may be classified into more than one category only if the director finds, based upon substantial evidence in the record, the classification will result in a substantial diminution of property value.~~

~~(iv)~~(iii) Wetland Rating System.

(A) Category I.~~–~~ ~~Category I~~These wetlands represent a unique or rare wetland type; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or provide a high level of water quality, hydrologic and habitat functions. ~~These~~ Category I wetlands ~~meet one or more of the following criteria~~are identified as such because they satisfy one or more of these criteria:

(I) Wetlands that are identified by scientists of the Washington Department of Natural Resources Washington Natural Heritage Program as 1) ~~high quality wetlands~~wetlands of high conservation value~~,~~; 2) relatively undisturbed wetlands; or 3) wetlands that support state-listed threatened or endangered plants;

(II) Bogs due to their sensitivity to disturbance and because they are irreplaceable through compensatory mitigation;

Commented [BD(83]: Recommend replacing with our language on page 34

Commented [BD(84]: Our guidance says 50 feet

Commented [BD(85]: See our comment in the definitions section about conservation covenant. Let's talk about this.

Commented [BD(86]: Sections (iv) thru (viii) are not part of delineation. Could these be placed in a separate Marking Section?

Commented [BD(87]: 14-06-029

Commented [BD(88]: Replace with our language for categories

(III) Mature (stands where the largest trees are 80-200 years old or the species that make up the canopy have an average diameter at breast height [dbh] exceeding 21 inches~~softwoods 80 years old or older and hardwoods 50 years old or older~~) and old growth forested wetlands (stands larger than 1 acre and composed of at least two tree species, forming a multi-layered canopy with occasional small openings, with at least 8 trees/ac [20 trees/ha] that are at least 200 years of age and have a dbh of 32 inches or more);

(IV) Wetlands that perform many functions well, as indicated by scoring ~~70~~ 23 to 27 points ~~(out of 100)~~ in the rating system.

(B) Category II~~. . Category II~~These wetlands are difficult, but not impossible, to replace and perform most functions relatively well or perform one group of functions (water quality, hydrologic or habitat) very well and the other two groups moderately well. These wetlands have moderately high level of function~~s~~, as indicated by scoring ~~51 to 69~~20 to 22 points in the Ecology rating system.

(C) Category III~~. . Category III~~These wetlands perform a moderate level of functions, typically have been disturbed in some manner, and are often less diverse and more isolated from other natural resources in the landscape than Category II wetlands. These wetlands score between ~~30 to 50~~16 to 19 points in the Ecology rating system.

(D) Category IV~~. . Category IV~~These wetlands have the lowest levels of functions and are often heavily disturbed. These wetlands score less than ~~30~~ 16 points in the Ecology rating system.

(h) Base Buffer Width.

(i) Buffer width, measured in feet, shall be based upon ~~"~~Alternative 3 in Appendix 8C of ~~*Freshwater*~~ *Wetlands in Washington State*, Vol. 2.~~"~~ Intensity of use shall be based upon ~~"~~Table 8C-3~~,~~ (Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands)~~"~~ that is ~~described~~ included in ~~"Appendix 8C of Freshwater Wetlands in Washington State, Vol. 2"~~that source and is attached to the ordinance codified in this chapter.

Commented [BD(89]: We recommend just including the table and double-checking your definitions section.

Table 18.300.090(6)(h)(i)-1 – Buffers Required to Protect Hydrologic Functions

Wetland Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use
Category I	50 ft.	75 ft.	100 ft.
Category II	50 ft.	75 ft.	100 ft.
Category III	40 ft.	60 ft.	80 ft.
Category IV	25 ft.	40 ft.	50 ft.

Table 18.300.090(6)(h)(i)-2 – Buffers Required to Protect Habitat Functions in Category III Wetlands

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
≤ ~~19~~ 5 points	See Table 1	See Table 1	See Table 1

Commented [ES90]: Eric, Naomi,

These buffer requirements generally comply with BAS. There is a 2016 Ecology (Wetland Guidance for CAO Updates) that provides buffer widths by habitat score, rather than land use intensity and habitat as your ordinance does, so the buffer widths vary slightly from that guidance. Your existing ordinance may provide more flexibility than the Ecology guidance. For instance, the Ecology Guidance recommends a buffer width of 50 feet for all category IV wetlands, whereas yours provides for three widths (25, 40, and 50) based on land use intensity.

If you want, we can condense these tables into a single table for simplicity as per the Ecology Guidance. Or just leave it as is. Here is the Ecology Guidance (See pg. 30)

https://fortress.wa.gov/ecy/publications/documents/1606001.pdf

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
≥ ~~20~~6 points	75 ft.	110 ft.	150 ft.

Table 18.300.090(6)(h)(i)-3 – Buffers Required to Protect Habitat Functions in Category I and II Wetlands

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
≤ ~~19~~ 5 points	See Table 1	See Table 1	See Table 1
~~20 – 23~~6 points	60 ft.	90 ft.	120 ft.
~~24 – 27~~7 points	90 ft.	130 ft.	180 ft.
~~28 – 30~~8 points	130 ft.	195 ft.	260 ft.
≥ ~~31~~ 9 points	150 ft.	225 ft.	300 ft.

(ii) New urban residential lots shall not be platted within wetland buffers.

(iii) Stormwater facilities and public utilities, if approved by the city, may be located within the outer 25 percent of Category III or IV wetland provided no other location is feasible and that it will not degrade the functions of the wetland or its buffer. Stormwater facilities may not be allowed in wetland buffers that have been reduced through the buffer reduction or buffer averaging provisions of this chapter.

(i) Wetland Buffer Reduction. (See subsection (6)(e) of this section for policy guidance.)

(i) Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts due to pre-existing roads, structures, or vertical separation shall be excluded from buffers otherwise required by this chapter.

(ii) The full buffer width of higher quality wetlands (habitat scores of ~~20~~ 6 or greater) shall not be extended over lesser quality wetlands that have reduced habitat function as designated in Tables 18.300.090(6)(h)(i)-1, 18.300.090(6)(h)(i)-2 and 18.300.090(6)(h)(i)-3, if all of the following criteria are met:

(A) The area of reduced habitat function is at least one acre in size;

(B) The area supports less than five native plant species and contains no special habitat features listed in H 1.5 of the rating form;

(C) The area does not meet any WDFW priority habitat or species criteria;

(D) The required buffer width to protect habitat function is provided for all portions of the wetland that do not have reduced habitat function.

(iii) The city may allow the averaging of a buffer of a Category III or IV wetland if:

(A) The buffer proposed for reduction has a habitat rating of ~~19~~ 5 points or less;

(B) No area averaged is less than 50 percent of the width of the required base buffer;

(C) The proposed reduction will not create a net loss of buffer function; and

(D) The total area contained in the buffer after averaging shall be at least functionally equivalent and equal in size to the area contained within the buffer prior to averaging.

Commented [BD(91)]: Need to include the requirement to use Cat II buffers if a Cat III scores 8-9 for habitat function.

Commented [BD(92)]: We agree with Ethan that using our tables would be more simple.

Commented [BD(93)]: See our latest recommendation on page 26 of https://fortress.wa.gov/ecy/publications/documents/1606001.pdf as revised in B.9.a to say:
The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-5 points, and …

Commented [BD(94)]: Does vertical separation functionally isolate the buffer? Let's discuss.

Commented [BD(95)]: This seems to be talking about one wetland with different ratings? Is this about dual rating? Let's discuss.

Commented [BD(96)]: We recommend limiting averaging to 75% We recommend that averaging should be allowed only to increase wetland protection or allow reasonable use. See our guidance on page 31. https://fortress.wa.gov/ecy/publications/documents/1606001.pdf

(iv) A buffer for a Category III or IV wetland may be reduced by no more than 25%~~50~~ percent of the area of the buffer if:

(A) The buffer proposed for reduction has a habitat rating of ~~19~~ 5 points or less;

(B) The proposed reduction will not create a net loss of buffer function;

(C) Buffer width shall not be less than 50 percent of the base buffer width at any point; and

(D) Mitigation and enhancement measures, consistent with the provisions of this chapter, are approved by the city and implemented by the developer.

(E) The city may elect to submit the mitigation and enhancement plans to one or more qualified experts for peer review.

(v) General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers if all of the following mitigation measures are applied to the greatest extent practicable:

(A) Buffer Enhancement. The intent and effect of an approved buffer enhancement program shall be to measurably improve low functioning buffers by increasing the identified functions of the buffer. This may include the removal and management of noxious weeds and/or invasive vegetation or specific measures to improve hydrologic or habitat function.

(B) Shielding of High Intensity Uses.

(I) Lights. Direct all lights away from wetlands;

(II) Noise. Locate activity that generates noise away from wetlands;

(III) Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract.

(C) Surface Water Management.

(I) Existing Runoff. Retrofit stormwater detention and treatment for roads and existing development and disperse direct discharge of channelized flows from lawns and landscaping.

(II) Change in Water Regime. Infiltrate and/or disperse stormwater runoff from impervious surfaces and drainage from lawns and landscaping into the buffer at multiple locations, except where the infiltration or dispersal would either be in opposition to the recommendations contained in the geotechnical report for the project or where the infiltration or dispersal would occur in a geologically hazardous area.

(vi) Low Impact Development. In the alternative, if the development of the site has a low impact upon the critical area, the applicant may reduce the buffer width. However, the following reductions cannot be used in combination:

(A) Limiting Effective Impervious Surface – Use of Low Impact Development Techniques and/or Limiting the Extent of Impervious Site Area. Areas set aside as nonimpervious surface must be protected by some type of permanent legal protection such as a covenant or easement.

Commented [BD(97]: Reductions should be tied to reducing the adjacent impacts. Recommend deleting A-E.

Commented [BD(98]: Should this be called "Buffer Reduction?" It isn't about general site design,

Commented [BD(99]: See our Table XX.2 on page 29 https://fortress.wa.gov/ecy/publications/documents/1606001.pdf

Commented [BD(100]: This is also about buffer reduction. Alternative to what? How is "low impact" determined?

Commented [BD(101]: The options of reducing buffer width as an incentive to reduce water quality impacts on adjacent wetlands are commendable and worthy of further exploration. However, a number of the proposed incentive options are already required for stormwater treatment and should be reevaluated as an incentive for buffer reduction. However, in no case should a buffer width based on the habitat function of a wetland be reduced in exchange for reductions in water quality impacts from adjacent land uses.

Commented [BD(102]: Should be "pervious" not "nonimpervious"

(I) Less than 35 percent effective impervious surface results in a low intensity impact.

(II) Less than 50 percent effective impervious surface results in a moderate intensity impact.

(B) Enhanced Stormwater Management. Reduction of high land use intensity buffer to moderate land use intensity buffer for implementation of stormwater treatment measures that exceed adopted city standards. (For example, stormwater facilities designed to the Western Washington Manual rather than the Puget Sound Manual.) This could include measures such as pretreatment or tertiary treatment of runoff and limiting discharge from the site to predevelopment runoff flow and volume.

(C) Habitat Corridors. Establishment of a minimum 100-foot-wide functioning or enhanced vegetated corridor between the wetland and any other priority habitat areas as defined by the Washington State Department of Fish and Wildlife:

(I) Applies only to wetlands with habitat function scores higher than ~~20~~ 5 on the rating system form;

(II) The habitat corridor must be protected for the entire distance between the wetland and the priority habitat area by some type of permanent legal protection such as a covenant or easement.

Commented [BD(103]: We recommend including "Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

(j) Wetland Development Standards – General.

(i) Any development proposal that impacts a wetland or wetland buffer shall not be allowed without an approved mitigation or enhancement plan consistent with LCMC 18.300.120 and the mitigation sequencing preference. (See "mitigation" in subsection (6)(l) of this section.)

(ii) The city shall not approve a development proposal that impacts wetlands or wetland buffers without a finding that:

(A) The proposed activity shall not cause significant degradation of ground water or surface water quality or fish and wildlife habitat;

(B) The proposed activity shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, and on-site wastewater disposal; and

(C) Wetland and wetland buffer impacts shall be avoided or substantially minimized consistent with the mitigation sequencing criteria.

(k) Wetland Activities. Activities that trigger a wetland permit shall meet the following standards:

(i) Wetland impacts to Category I wetlands that are bogs or natural heritage sites shall be avoided.

Commented [BD(104]: Consistent with previous language of allowed impacts to Category I?

(ii) All other wetland impacts shall meet the compensation ratios stated in Table 18.300.090(6)(k), Wetland Mitigation Ratios, for projects in the La Center urban growth area.

Table 18.300.090(6)(k) – Wetland Mitigation Ratios

Impacted Wetland Category and Type	Reestablishment or Creation	Rehabilitation	1:1 Reestablishment or Creation (R/C) plus Enhancement (E)	Enhancement Only
Category I Bog	Not considered possible	6:1 rehabilitation of a bog	~~Case-by-case~~Not considered possible	Case-by-case
Category I Natural Heritage Site	Not considered possible	6:1 rehabilitation of a natural heritage site	~~Case-by-case~~Not considered possible	Case-by-case
Category I Forested	6:1	12:1	1:1 R/C and ~~10~~20:1 E	~~18~~24:1
Category I Based on Score for Functions	4:1	8:1	1:1 R/C and ~~6~~12:1 E	~~12~~16:1
Category II	3:1	6:1	1:1 R/C and ~~4~~8:1 E	~~8~~12:1
Category III	2:1	4:1	1:1 R/C and ~~2~~4:1 E	~~6~~8:1
Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	~~4~~6:1

(l) Wetland Enhancement – Preliminary Plan. The preliminary enhancement/mitigation plan consists of two parts, baseline information for the site and a conceptual plan.

(i) Baseline information shall include:

(A) Wetland delineation report;

(B) Description and maps of vegetative conditions at the site;

(C) Description and maps of hydrological conditions at the site;

(D) Description of soil conditions at the site based on a preliminary on-site analysis;

(E) A topographic map of the site;

(F) Assessment of the functional uses of the existing wetland and buffer.

(ii) The contents of the conceptual plan shall include:

(A) Goals and objectives of the proposed project;

(B) Description of wetland type to be created;

(C) Map showing proposed wetland and buffer. This map should include the base buffer and the proposed buffer;

(D) Site plan;

(E) Discussion and map of plant material to be planted and planting densities;

(F) Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales);

(G) Discussion of water sources for the wetland;

(H) Project schedule;

(I) Discussion of how the completed project will be managed and monitored;

(J) Discussion of contingency plans in case the project does not meet the goals initially set for the project.

Commented [DD105]: Changed these to be consistent with USACE and Ecology guidance. If an applicant is impacting a wetland they will need to meet these regardless.

Commented [BD(106R105]: We recommend referring applicants to this guidance. *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance* (Version 1, Ecology Publication #06-06-011a, March 2006) and *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Ecology Publication #06-06-011b, March 2006) as revised. The latter is especially important for the preparation of mitigation plans.

Commented [BD(107]: Should just be referring to mitigation, since enhancement is a type of mitigation. No need to call it out separately.

Commented [BD(108]: This should be deleted and just refer to a wetland rating done according to the current rating system.

Commented [BD(109]: Should say "type of mitigation proposed" because it might not always involve creation.

Commented [BD(110]: Not sure what the difference is between the base buffer and the proposed buffer.

Commented [BD(111]: Site plan of the mitigation site or the impact site?

(m) Wetland Enhancement – Final Plan. The contents of the final enhancement/mitigation plan shall include:

(i) Preliminary enhancement/mitigation plan and all conditions imposed on that plan.

(ii) Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the enhancement/mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

(iii) Detailed Construction Plans. Written specifications for the enhancement/mitigation project shall be provided. The specifications shall include: the proposed construction sequence, grading and excavation details, water and nutrient requirements for planting, specification of substrate stockpiling techniques, and planting instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams, sealed 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.

(iv) Monitoring Program. Description of a detailed program for monitoring the success of the enhancement/mitigation project. In addition to the standards described in LCMC 18.300.120, a monitoring program shall include, but is not limited to:

(A) Establishing vegetation plots to track changes in plant species composition and density over time;

(B) Using photo stations to evaluate vegetation community response;

(C) Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, and heavy metals);

(D) Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;

(E) Measuring sedimentation rates, if applicable; and

(F) Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the project. A monitoring report shall be submitted annually, at a minimum, documenting 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 years.

(v) Associated Plans and Other Permits.

(A) Final landscaping plan;

(B) Final drainage plan; and

(C) Final erosion and sediment control plan.

(vi) Evidence of Financial and Scientific Proficiency. A description of how the enhancement/mitigation project will be managed during construction and the scientific capability of the designer to successfully implement the proposed project. In addition, a

Commented [BD(112]: Should just be referring to mitigation, since enhancement is a type of mitigation. No need to call it out separately here or throughout this section.

Commented [BD(113]: We recommend that monitoring should occur for at least five years from the date of plant installation and ten years where woody vegetation (forested or shrub wetlands) is the intended result. These communities take at least eight years after planting to reach 80-percent canopy closure. Having a ten-year monitoring program need not require biologists to collect data and produce a report every year. That could be done in years 1, 2, 3, 5, 7, and 10, for example.

demonstration of the financial capability of the applicant to successfully complete the project and ensure it functions properly over a five-year period. Evidence that required bonding can be obtained.

(vii) Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

(n) Wetland Permit – Application.

(i) Applications for wetland permits shall be made to the city on forms furnished by the city. The city shall process a wetland permit application as a request for land use approval pursuant to Chapter 18.30 LCMC.

(ii) Wetland permit applications shall include:

(A) Wetland delineations and required buffer width;

(B) A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one inch equals 400 feet showing the location, width, depth and length of all existing and proposed structures, roads, stormwater management facilities, sewage treatment, and installations within the wetland and its buffer;

(C) The exact sites and specifications for all regulated activities including the amounts and methods;

(D) A proposed preliminary enhancement/mitigation plan meeting the requirements of this chapter.

(o) Wetland Permit – Approval.

(i) The city shall issue final approval of the wetland permit authorizing commencement of the activity permitted thereby upon:

(A) Submittal and approval of a final enhancement/mitigation plan;

(B) Installation and approval of the required field markings;

(C) The recording of a conservation covenant.

(ii) Conditions. An approval of a wetland permit shall incorporate the following condition:

(A) Posting of a cash performance bond or other security acceptable to the city in an amount and with surety and conditions sufficient to fulfill the requirements of the required final plan, mitigation plan and enhancement plan and to secure compliance with other conditions and limitations set forth in the permit.

(B) The city shall release the bond upon determining that:

(I) All activities, including any required compensatory mitigation, have been completed in accordance with the terms and conditions of the permit and the requirements of this chapter; and

(II) Upon forfeiture of a performance or maintenance bond, the proceeds thereof shall be utilized either to correct deficiencies which resulted in forfeiture or, if such correction is deemed by the county to be impractical or ineffective, to enhance other wetlands in the same watershed.

(iii) Duration. Wetland permit final approval shall be valid for a period of two years from the date of issuance unless:

Commented [BD(114]: This should be the same as the required monitoring period (could be 10 years).

Commented [BD(115]: Wetland delineation report

Commented [BD(116]: What is meant by installations? Should this be "proposed development"?

Commented [BD(117]: We recommend changing "shall issue". This implies that final approval is a given, whereas a permit can be denied, or approved with conditions, or with modifications.

Commented [BD(118]: See previous comments about conservation covenants.

Commented [BD(119]: Recommend adding "and monitoring"

Commented [BD(120]: Needs to be changed to "city". Also, this should be coordinated with Ecology and the Corps, in case our corrective requirements are different.

Commented [BD(121]: The entirety of the permit, which includes mitigation, may take longer than 2 years. Can this be clarified?

(A) A longer period, not to exceed five years, is specified in the permit; or

(B) The city grants an extension upon the written request of the original permit holder or successor in title demonstrating to the satisfaction of the city:

(I) That the original intent of the permit would not be altered or enlarged by the extension; and

(II) That relevant circumstances and standards have not changed substantially since the permit application; and

(III) That the applicant has complied with the terms of the permit.

(iv) Revocation. In addition to other remedies provided for elsewhere, the city may suspend or revoke a permit if the applicant or permittee has not complied with any of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the permit. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.100 Best available science.

Commented [BD(122]: Wonder if this and the following sections could be moved up before .090? It seems like they could get missed.

Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat. Best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through 365-195-925. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.110 Development standards.

Within critical areas, the city shall prohibit soil excavation, grading, removal of native vegetation species, draining, intentional burning, planting of invasive or nuisance vegetation, placement of structures and new construction on critical areas unless otherwise authorized in this chapter.

Commented [BD(123]: Critical areas and their buffers

(1) These development standards apply to uses on critical areas and within buffers unless otherwise exempted in this title.

(2) In order to approve application for development on lands subject to this chapter, the mayor or his or her designee shall find that the following standards have been met:

(a) All reasonable alternatives for locating the development activity in such a way so as to avoid critical areas have been considered and the development activity will be located in the least environmentally sensitive area as practicable and the purpose of this chapter, as described in LCMC 18.300.010, is fulfilled. If avoidance is not practicable, as determined by the city, development shall minimize adverse impacts to critical areas and buffers consistent with the mitigation sequencing measures and mitigation and enhancement measures prescribed in this chapter.

(b) The city has approved the vegetation removal methods and the removal of native plants has been avoided.

(c) All adverse impacts to all affected critical areas and buffers are either avoided or fully mitigated.

(d) The plan minimizes cuts and fills.

(e) Soils are not exposed during the rainy season (November 1st through April 30th) and construction activity is limited to the dry season (May 1st through October 31st).

(f) The mayor or his or her designee has reviewed and approved an erosion control plan, grading plan, and vegetation removal and replanting plan prior to construction activity.

(g) All activities have received applicable state and federal permits, and comply with SEPA requirements if the lead agency makes a threshold determination of significance (DS), or a mitigated determination of nonsignificance (MDNS).

(h) Hydraulic permits are required for any activity occurring within the ordinary high water ~~mark~~ line of any state-regulated ~~Class I or Class II~~ streams.

(i) Compliance with this chapter does not constitute compliance with state and federal environmental standards. The applicant shall be responsible for demonstrating such compliance.

(3) Review Process.

(a) The review process shall be the type specified in the LCMC for each particular land use action unless otherwise specified in this chapter.

(b) Applications to develop on critical areas or their buffers shall be subject to Type I review if, within a one-year period, the cumulative impact on critical areas is:

(i) Disturbance of less than 10 cubic feet of soil;

(ii) An activity, the fair market cost of which is less than $500.00; or

(iii) The activity involves less than 1,000 square feet of critical areas.

(4) SEPA Review. On a case-by-case basis, the responsible official may issue a determination of nonsignificance (DNS) if:

(a) The application for development review contains all requested information, including reports, maps and other documents relevant to the proposed activity; and

(b) The proposed activity complies with all applicable development review and performance standards; and

(c) Compliance with all applicable development standards and performance standards is made a binding condition of land use approval. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

Commented [BD(124]: Make sure that these 3 criteria are consistent with SEPA criteria for issuing a DNS.

18.300.120 Mitigation.

(1) Approval. City approval of a mitigation plan is a prerequisite for approval of any development activities on critical areas.

(a) The applicant shall submit a written request describing the extent and nature of the proposed development activity on critical areas and buffers. The request shall include boundary locations and identification of all designated critical areas and buffers.

(b) The application for development shall include a mitigation plan prepared in compliance with this section. ~~(See Appendix C, "Monitoring and Maintenance Plan" as an illustration of recommended plan.)~~

(c) The city may require the applicant to prepare special reports evaluating potential adverse impacts upon critical areas and potential mitigation measures as part of the land use application process. These reports may include, but are not limited to, the following: stormwater management plan; hydrology, geology, and soils report; grading and erosion control plan; native vegetation report; fish and wildlife assessment and impact report; water quality report; wetlands delineation; and other reports determined necessary by the city.

(d) The city shall consult with state and federal resource management agencies and, in order to protect wildlife habitat or natural resource values, shall attach such conditions as may be necessary to effectively mitigate identified adverse impacts of the proposed development activity.

(e) The city may request third party "peer review" of an application by qualified professionals and may incorporate recommendations from such third party reports in findings approving or denying the application.

(f) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at years one, three, five, and seven. The city reserves the right to require reporting at year 10.

(g) The city may require replacement mitigation to be established and functional prior to project construction.

(2) No Net Loss.

(a) Mitigation efforts, when allowed, shall ensure that development activity does not yield a net loss of the area or function of the critical areas. No net loss shall be measured by:

(i) Avoidance or mitigation of adverse impacts to fish life; or

(ii) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(iii) Avoidance or mitigation of loss of area by habitat type.

(b) Mitigation to achieve no net loss should benefit those organisms being impacted.

(c) Where development results in a loss of wetland area, the mitigation plan shall demonstrate that wetland area is replaced consistent with the ratios described in Table 18.300.090(6)(k), Wetland Mitigation Ratios. The created or enhanced wetland shall be, acre for acre, of equal or greater biological values, including habitat value, and with equivalent hydrological values including storage capacity.

(i) Wherever possible, replacement or enhancement shall occur on site.

(ii) However, where the applicant can demonstrate that an off-site location is in the same drainage basin, and that greater biological and hydrological values will be achieved, the city may approve such off-site mitigation.

(iii) Wetponds established and maintained for control of surface water shall not constitute mitigation for wetland alterations.

Commented [ES125]: Eric, Naomi: what and where is this appendix? Not seeing an appendix C of the ordinance anywhere online nor Appendices A or B. So I have deleted for now. If this exists, we can bring the reference back in.

Commented [BD(126]: We usually say "equal or greater functions" as determined by using the wetland rating system.

Commented [BD(127]: This should refer to "mitigation" not just replacement or enhancement. And we recommend including the language on page 38 of our guidance regarding the use of mitigation banks and ILF programs.

Commented [BD(128]: Again, use "equal or great functions"

(iv) Where there is a wetland within 25 feet of the toe of a slope equal to or greater than 25 percent, the buffer shall be a minimum of 25 feet beyond the toe of the slopes.

(3) Mitigation Plan. A mitigation plan shall provide for the design, implementation, maintenance, and monitoring of mitigation measures. A mitigation plan shall include but is not limited to the following:

(a) Methods and techniques to be used to mitigate impacts to critical areas;

(b) Explanation of methods and techniques, such as construction practices to be used to implement the identified mitigation methods;

(c) Methods and techniques for monitoring said mitigation and a proposed time frame for such monitoring.

(4) Stormwater Management. Any development on critical areas shall be consistent with either Chapter 18.320 LCMC, Stormwater and Erosion Control, or the most recent version of the "Stormwater Management Manual for Western Washington," Washington State Department of Ecology, at the discretion of the public works director.

(5) Buffer Enhancement. Where a development avails itself of the buffer reduction opportunity described in this chapter, the following enhancement standards shall apply:

(a) The applicant shall submit to the city a written request describing the extent and nature of the proposed development activity and shall submit a written enhancement plan.

(b) The enhancement plan shall include calculations and maps that illustrate:

(i) Required boundary locations of all critical areas and attendant buffers;

(ii) Proposed buffer areas after reduction;

(iii) Proposed areas to receive enhancement measures;

(iv) A timeline for completion of the enhancement plan;

(v) Methods and techniques to be used to mitigate impacts to critical areas;

(vi) An explanation of methods and techniques, such as construction practices to be used to implement the identified mitigation methods; and

(vii) Methods and techniques for monitoring said mitigation and a proposed time frame for monitoring.

(c) The enhanced area shall ~~functionally~~ shall provide an equal or greater level of functions, including habitat functions. ~~be of greater biological values, including habitat value, and with greater hydrological values including storage capacity.~~

(d) Enhancement shall occur on site.

(e) Wetponds established and maintained for control of surface water shall not constitute mitigation for wetland alterations.

(f) Surface water management or flood control shall not be considered enhancement. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

Commented [BD(129]: We are in the process of revising our joint mitigation guidance which will include new recommendations for managing stormwater in wetlands and buffers. Be advised that Ecology and the Corps may require something different from what the PW director requires or what is required in Chapter 18.320.

Commented [BD(130]: Unless this applies to streams, should this be moved to the wetlands section?

Commented [BD(131]: This fix removes "values", and a buffer would not typically provide storage capacity.

18.300.130 Residential density transfer.

The city may permit density transfer from critical areas (sending lands) to designated noncritical areas (receiving areas).

(1) Residential Density Transfer. A property owner may transfer residential density to a receiving area.

(a) A receiving area shall be on the same parcel or same property, within the same zoning classification, owned by the property owner sending the density.

(b) Density may be transferred from a sending area only one time.

(c) The value of the transfer shall be calculated as follows:

(i) LDR Districts. Gross area of a critical area completely avoided times the minimum number of units allowed per gross acre in the affected zoning district times 60 percent. For example, in an LDR-7.5 zone, if two acres of critical areas are completely avoided and the minimum density allowed is four units per acre, the allowable density transfer would be 4.8 units (two acres times four du/ac times 60 percent equals 4.8).

(ii) MDR-16 District. Gross area of a critical area completely avoided times the minimum number of units allowed per gross acre in the affected zoning district times 60 percent. For example, in an MDR-16 zone, if two acres of critical areas are completely avoided and the minimum density allowed is 9.6 units per acre, the allowable density transfer would be four units (two acres times eight du/ac times 60 percent equals 9.6).

(2) Transfer Criteria. The mayor, or his or her designee, shall approve requests to transfer density subject to the following criteria:

(a) Adverse impacts to natural resources on the receiving areas shall be mitigated consistent with the mitigation section of this chapter.

(b) The building height standards of the receiving area shall be met.

(c) No receiving area lot gross area shall be less than 20 percent of the minimum lot size within the receiving district. For example, if the receiving area is an LDR-7.5 district no lot created as a result of density transfer shall be less than 6,000 square feet.

(d) No lot created as a result of density transfer that is smaller than the average minimum lot required in the receiving district may be located on the perimeter of the project site.

(e) The transfer of density to a receiving area shall not result in an increase in density throughout the project greater than the maximum net density allowed in the base zone or in the construction of a housing type not otherwise allowed in the receiving area.

(f) On density sending lands the remaining critical areas and buffers shall be enhanced at a ratio of four acres of enhanced function for every one acre (4:1) used in the density transfer calculations.

(g) Sending areas shall be:

(i) Dedicated to the city for public use; or

(ii) Protected as an unbuildable area by means of deed restriction, conservation easement, or other mechanism approved by the city council.

(3) Recordation Required. Density may be transferred from a protected critical area only once. The mayor, or his or her designee, (upon consultation with the city attorney) shall be responsible for approving the mechanism used for protecting each critical area. The mayor or his or her designee shall maintain a list of sites from which density has been transferred, and a corresponding list of sites that have received density from protected critical areas. The applicant shall record the density transfer mechanism with Clark County and shall furnish the mayor or his or designee with a copy of the recorded instrument. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.140 Selective timber harvesting on critical lands.

(1) Applicability. Consistent with RCW 76.09.240, the city extends its planning and zoning jurisdiction over forest practices in critical areas to the extent that:

(a) Commercial forestry activity occurs on lands identified as critical areas on the city's adopted critical areas maps;

(b) An application submitted under RCW 76.09.060 indicates that the lands will be converted to a use other than commercial timber productions;

(c) The subject lands were platted after January 1, 1960; and

(d) Consistent with the adopted La Center comprehensive plan, the city of La Center presumes that any application for commercial timber harvest within the La Center urban growth boundary that is subject to Chapter 76.09 RCW et seq. is for the purpose of converting forested lands into urban lands.

(2) Standards. Selective commercial timber harvesting may be permitted on critical areas subject to the following standards:

(a) Written Plan Required. Trees to be removed shall be identified through the development approval process and shall be clearly marked prior to their removal. An applicant shall present a written plan, explaining in detail the location of trees to be removed, and the method of removal, to the mayor, or his or her designee, for review and approval.

(b) In conjunction with a development application, selective tree cutting may occur to the minimum extent necessary in conjunction with an approved development.

(c) Prior to approval of a harvesting permit, the applicant shall sign and record an agreement with the city stating that no development application may be filed on the subject property, other than a single-family residence, for six years following completion of timber harvesting operations.

(d) Selective tree removal on critical lands shall not result in loss of more than 50 percent of existing tree canopy covering critical areas.

(e) The applicant shall demonstrate that the methods used for tree harvesting and removal are the least disruptive practicable.

(f) Operations shall be limited to the dry season, that is, from May 1st through October 30th.

(g) Applicants for selective timber harvesting shall prepare an erosion control plan for review and approval by the mayor or his or her designee and, if the plan is approved, shall comply with the plan during harvesting activity and shall maintain required erosion control mechanisms for a period of 180 days after completion of the timber removal project.

(3) Conditions. The mayor, or his or her designee, may recommend conditions of approval necessary to minimize adverse impacts on natural resource values, including water quality and wildlife habitat to the extent that such conditions are consistent with the La Center comprehensive plan. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.150 Modification to overlay zone.

The city may modify the boundaries of the critical areas overlay district based upon expert studies. Such amendments shall occur under Type III proceedings.

(1) Land to be conserved as public or private open space, through dedication, conservation easements or other appropriate means, shall retain a critical areas overlay designation.

(2) Land approved for private building construction shall be removed from this overlay district.

Commented [BD(132]: What does this mean? If it has a wetland on it, shouldn't it retain the critical area designation?

(3) The city shall maintain a record of all administrative amendments to the critical areas overlay district, including findings in support of the decision to modify the boundaries of the overlay district.

(4) The city shall correct mapping errors through a Type I process. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.160 Application fees.

At the time of application for land use review or critical areas review, the applicant shall pay a critical areas review fee, adopted and amended by the city council, from time to time, by resolution. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.170 Bonds to insure mitigation, maintenance and monitoring.

(1) 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 the applicant to 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 a performance bond and a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

(2) The bond shall be in the amount of 150 percent 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, and the cost of maintenance and monitoring for a 10-year period.

(3) The bond shall be in the form of an 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 or other method acceptable to the planning director.

(4) Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Mitigation bonds or other security shall be held by the city for a minimum of 10 years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(5) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

(6) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(7) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 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.

(8) Any funds recovered pursuant to this section shall be used to complete the required mitigation, maintenance or monitoring. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]

18.300.180 Critical area inspections.

Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. [Ord. 2012-01 § 1 (Exh. A), 2012; Ord. 2007-2 § 1, 2007.]