

AGENDA

Lynnwood Planning Commission

Thurs., August 12, 2004 — 7:00 pm — City Council Chambers, 19100 – 44th Ave. W., Lynnwood

- A. Call to Order** Chair JOHNSON
Commissioner BIGLER
Commissioner DECKER
Commissioner PEYCHEFF
Commissioner POWERS
Commissioner WALTHER
Commissioner ELLIOTT
- B. APPROVAL OF MINUTES:**
- Minutes of July 22, 2004 Planning Commission meeting
- C. CITIZEN COMMENTS** – on matters **not** on tonight's agenda:
- D. COMMISSION MEMBER DISCLOSURES:**
- E. PUBLIC HEARING:** None
- F. UNFINISHED BUSINESS:** None
- G. NEW BUSINESS:** None
- H. WORK SESSION:**
1. **LMC 17: Environmentally Critical Areas** – Staff briefing and discussion on proposed amendments to this section of the municipal code. The Commission will be asked to forward its suggestions or recommendations to the City Council.
 2. **Comprehensive Plan Amendments** – Continuation of earlier work session discussions. The Commission may arrive at preliminary recommendations on some of the Plan amendment proposals. Final recommendations will follow completion of the public hearing.
- I. DIRECTOR'S REPORT & INFORMATION:**
1. **Recent City Council Actions**
 2. **Upcoming Commission Meetings**
- J. ADJOURNMENT**

The public is invited to attend and participate. To request special accommodations for persons with disabilities, contact the City at 425-670-6613 with 24 hours advance notice.

Lynnwood Planning Commission
Meeting of August 12, 2004

Staff Report

Agenda Item: **H-1**

Sensitive Areas Ordinance Revisions

- Public Hearing
- Informal Public Meeting
- Work Session**
- New Business
- Old Business
- Information
- Miscellaneous

Staff Contact: Sandra Howe, Dept. of Public Works

BACKGROUND

In response to Growth Management Act requirements (GMA), the Public Works Department is revising the Sensitive Areas Ordinance. Review and revisions of the Sensitive Areas Ordinance must be completed by December 1, 2004. In order to meet GMA requirements the City must revise the purpose statement 17.10.010 to make it consistent with GMA, as well as include Best Available Science, and document in record what was used (this includes evaluating setbacks to ensure that best available science was used to determine). The City also wishes to make revisions to sections of the ordinance that need clarification.

PROPOSED REVISIONS

- Sensitive Areas changed to Critical Areas to match Growth Management Act.
- Indicator Map—not necessarily a sensitive area will also need a sensitive area special study
- Definitions updated
- Limit on how long delineation is valid; presently none; change to 3 years DOE
- Limit on time to complete mitigation work, require additional evaluations/ mitigation if mitigation work not completed in time period
- Update delineation requirements
- Fish and Wildlife Habitat clarify essential habitat as survival for federal and state species
- Specifications for geotechnical report such as faults, soils, springs, wells, drain fields, and groundwater
- Deletion of Hillside Development Standards Section
- Include requirement for fencing, monuments and signs for critical areas
- Monitoring Bond, what included- plant materials, 125%, monitoring, fencing, etc and for what period of time proposed 5 years
- Progressive Enforcement such as stop work order, civil remedies and penalties

To be changed with guidance from Jones & Stokes Consultant:

- Required Buffers
- Differentiate enhancement and creation, different ratios
- Tunnel Creek? (Include creeks in determining setbacks)
- Off-site Mitigation

COMMENTS, CONCERNS, QUESTIONS

Please review the proposed changes and provide staff with any concerns you may have, or problems the ordinance has created in the past, present or future.

ATTACHMENT

- LMC Chapter 17.10 – Environmentally Sensitive Areas (with proposed changes)

Chapter 17.10

ENVIRONMENTALLY CRITICAL AREAS

Sections:

- 17.10.010 Purpose.
- 17.10.015 General provisions.
- 17.10.020 Applicability.
- 17.10.030 Definitions.
- 17.10.040 Permitted uses.
- 17.10.045 Submittal requirements.
- 17.10.046 Exemptions allowed.
- 17.10.047 Exemptions.
- 17.10.048 Reasonable use exception – Modification.
- 17.10.049 Reasonable use application.
- 17.10.050 Wetland delineation.
- 17.10.051 Wetland rating.
- 17.10.052 Wetland buffers.
- 17.10.053 Increased wetland buffer width.
- 17.10.054 Decreased wetland buffer width.
- 17.10.055 Averaging of wetland buffer widths.

- 17.10.057 Building setback lines – Wetlands.
- 17.10.058 Alterations to wetlands and buffers, allowed.
- 17.10.059 Wetland and buffer alteration criteria.
- 17.10.060 Wetland mitigation plan.
- 17.10.061 Stream – Rating.
- 17.10.062 Standard buffer width – Streams.
- 17.10.063 Measurement of buffer width.
- 17.10.064 Increased stream buffer width.
- 17.10.065 Decreased stream buffer width.
- 17.10.066 Building setback line – Streams.
- 17.10.067 Riparian wetland.
- 17.10.068 Averaging of stream buffer width.
- 17.10.070 Category I streams preservation/alteration.
- 17.10.072 Category II and Category III streams preservation/alteration.
- 17.10.073 Culverting.
- 17.10.074 Stream system and buffer alteration criteria.
- 17.10.078 Mitigation for loss of stream system functional values.
- 17.10.080 Fish and wildlife priority habitat.
- 17.10.082 Wildlife habitat assessment.
- 17.10.084 Areas of potential geologic instability – Classification.
- 17.10.086 Areas of potential geologic instability – Setbacks.
- 17.10.087 Areas of potential geologic instability – Alteration.
- 17.10.088 Geotechnical report content requirements
- 17.10.089 Potential geologic instability – Development conditions.

- 17.10.100 Buffer credit.
- 17.10.101 Disturbance of Buffer
- 17.10.105 Critical Areas Signs, Monuments and Fencing.
- 17.10.110 Appeals.
- 17.10.115 Notice, performance securities, bonds, administration.
- 17.10.120 Unauthorized alterations.
- 17.10.130 Enforcement, violations and penalties.
- 17.10.135 Severability.

17.10.010 Purpose.

The purpose of this chapter is to identify critical areas and to supplement the development requirements contained in the building code and in the various use classifications in the Lynnwood Municipal Code by providing for additional controls as required by the Washington State Growth Management Act and other state law. Wetlands, fish and wildlife habitat conservation areas, areas of geologic hazard and flood hazard areas as defined in LMC 17.10.030 constitute critical areas that are of special concern to the City of Lynnwood. The standards and mechanisms established in this chapter are intended to protect the functions and values of these environmentally critical features and to avoid or abate public nuisances while providing property owners with reasonable use of their property. By regulating development and alterations to critical areas this chapter seeks to:

- A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- B. Educate the public as to the long-term importance of environmentally critical areas and the responsibilities of the city to protect and preserve the natural environment for future generations;
- C. Preserve and protect environmentally critical areas by regulating development within and adjacent to them;
- D. Mitigate unavoidable impacts to environmentally critical areas by regulating alterations in and adjacent to critical areas;
- E. Prevent, to the extent practicable, adverse cumulative impacts to the water quality, wetlands, streams, stream corridors and fish and wildlife habitat;
- F. Restore streams and watercourses, particularly those associated with Scriber Creek and Swamp Creek to their natural condition wherever possible and establish reasonable development incentives to encourage such restoration;
- G. Protect the public and public resources and facilities from injury, loss of life, property damage or financial losses due to flooding, erosion, landslides, soil subsidence or steep slope failure;
- H. Alert appraisers, assessors, owners and potential buyers or lessees to the development limitations of environmentally critical areas;

- I. Provide the city of Lynnwood with information necessary to approve, condition, or deny public or private development proposals;
- J. Provide predictability and consistency to the city of Lynnwood's development review process; and
- K. Implement the policies of the State Environmental Policy Act, Chapter 43.21C RCW, the Growth Management Act, the city of Lynnwood Policy Plan and all city functional plans and policies. (Ord. 2045 §8, 1995: Ord. 1877, 1992)

17.10.015 General provisions.

- A. Abrogation and Greater Restriction. It is not intended that this chapter repeal, abrogate or impair any existing regulation, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.
- C. Rule-Making Authority. The director is authorized to adopt written rules and procedures for the implementation of the provisions of this chapter. (Ord. 1877, 1992)

17.10.020 Applicability.

This chapter establishes regulations for the protection of properties which contain or are adjacent to environmentally critical areas. Environmentally critical areas include those which meet the definitions and requirements of this chapter. The City has an Environmentally Sensitive Areas map which shows areas that may be classified as Critical Areas. These areas must be verified by separate studies to indicate that all or portions of such areas or sites are environmentally critical. Development proposals for properties which contain or are adjacent to designated or regulated environmentally critical areas shall comply with the provisions and requirements of this chapter. A permit shall be obtained from the city for any activity which alters or disturbs an environmentally critical area or buffer, including but not limited to, clearing, grading, draining, filling, dumping of debris, demolition of structures and installation of utilities. Further, no boundary line adjustments or development permits including subdivisions, short plats, conditional use permits, rezones or variances shall be granted for any lot which contains or is adjacent to an environmentally critical area until approvals as required by this chapter have been granted by the City. The provisions of this chapter apply to projects proposed by private and public entities. (Ord. 1877, 1992)

17.10.030 Definitions.

Terms used in this chapter shall have the meaning given to them in this chapter except where otherwise defined, and unless where used the context thereof shall clearly indicate to the contrary. Words and phrases used herein in the past, present or future tense shall include the past, present and future tenses; and phrases used herein in masculine,

feminine or neuter gender shall include the masculine, feminine and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context shall indicate to the contrary.

A. “Adjacent” means within 200 feet of an environmentally critical area, measured from the edge of the environmentally critical area. “Adjacent wetland” means the entire area of the wetland under consideration and not just the portion within 200 feet of a development proposal.

“Alteration” means any human-induced action which impacts the existing conditions of a critical area or buffer. Alterations include but are not limited to grading; filling; dredging; draining; channelizing; cutting of trees; clearing; paving; construction; dumping; and demolition.

“Area of special flood hazard” means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

“Areas of Potential Geologic Instability” means those areas which:

1. Have naturally occurring slopes of 40 percent or more;
2. Other areas which the City has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazard.

B. “Buffer” means an area required by this chapter surrounding a natural, restored or newly created critical area. It is a designated or regulated area adjacent to a part of a stream or wetland that is an integral part of the stream or wetland ecosystem; or a designated or regulated area adjacent to steep slopes which protects slope stability, attenuation of surface water flow, and landslide and erosion hazards reasonably necessary to minimize risk.

C. “City” means the city of Lynnwood.

“Clearing” means the cutting or removal of vegetation or other organic plant materials by physical, mechanical, chemical or other means.

“Compensation” means the replacement, enhancement, or creation of an environmentally critical area equivalent in functions, values and area to those being altered or destroyed.

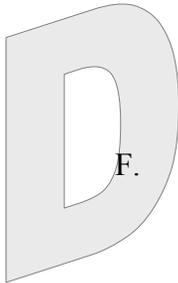
“Creation” means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.

“Critical areas” means the following areas and ecosystem:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas;
5. Geologically hazardous areas;
6. Streams; and

7. Areas of potential geological instability.
And any additional areas defined or established as critical areas under the provisions of the Washington State Growth Management Act or the provisions of this chapter.

- D. “Department” means Department of Public Works.
“Development proposal site” means the legal boundaries of the parcel or parcels of land for which the applicant has applied to the city for development permits.
“Director” means the Director of Public Works and/or the Director’s designee.
“Drainage facility” means the system of collecting, conveying, treating, and storing surface and storm water runoff. Drainage facilities shall include but not be limited to all surface and storm water runoff conveyance and containment facilities including streams, pipelines, channels, ditches, infiltration facilities, retention/detention facilities, and other drainage structure and appurtenances, both natural and manmade.
- E. “Enhancement” means an action which increases the functions and values of a stream, wetland or other critical area by increasing or decreasing plant diversity and increasing water quality, wildlife habitat or erosion controls.
“Erosion hazard areas” means those areas containing soils which, according to the U.S. Soil Conservation Service Soil Survey, have severe to very severe erosion hazard potential.
“Essential habitat” means habitat necessary for the survival of federally listed threatened, endangered and critical species and state-listed priority species.
- F. “Functional values” or “functions” means the beneficial roles served by wetlands and streams including water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, aesthetic values and recreation.
- G. “Geologic hazard areas” means those areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.
- H. “Hydrologically connected” means a critical area has a surface water connection, is within 200 feet, or lies within the floodplain of another critical area, and whose hydrology is directly affected by changes in the other critical area.
- L. “Lot coverage” has the meaning as defined in Chapter 21.02 LMC.
- M. “Mitigation” means the use of one or more of the following actions:
1. Avoiding impacts altogether by not taking a certain action or parts of an action;



2. Minimizing impacts by limiting the degree of magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal; or
5. Compensating for the impact by replacing, enhancing, or providing substitute critical areas.

“Monitoring” means evaluating the impacts of development on the biological, hydrologic and geologic elements of natural systems and assessing the performance of required mitigation through the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features.

N. “Net development area” means the total horizontal area of a project site, less any or all of the following:

- A. Areas within a project site which are required to be dedicated for public rights-of-way, or otherwise set aside for roads;
- B. Areas required by the city of Lynnwood to be dedicated or reserved as separate tracts, which may include, but not be limited to:
 1. Critical areas and their buffers to the extent they are required by this chapter to remain undeveloped;
 2. Areas required for stormwater control facilities other than facilities which are completely underground, including but not limited to retention/detention ponds, biofiltration swales and setbacks from such ponds and swales;
 3. Regional utility corridors;
 4. Other areas, excluding setbacks, required by the city of Lynnwood to remain undeveloped.

O. “Ordinary high water mark” A mark that has been found where the presence and action of waters are common, usual and maintained in an ordinary year, long enough to create a distinction in character between water body and the abutting upland.

P. “Person” means an individual, firm, partnership, association or corporation, governmental agency, or political subdivision.

“Priority habitats” means 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

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range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration. “Priority species” means those species of concern due to their population status and their sensitivity to habitat manipulation. Priority species critical are designated by the Washington Department of Wildlife, Priority Habitat and Species Program, and may include endangered, threatened, critical, candidate, monitored or game species.

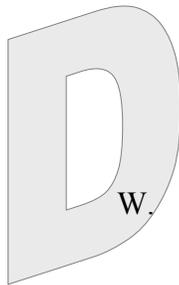
R. “Restoration” means actions to return an environmentally critical area to a state in which its stability, functions and values approach its unaltered state as closely as possible.

“Riparian” means the lands adjacent to and functionally related to a river or stream.

S.

“Stream” means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction in such watercourses.

“Stream system” means a network of contiguous streams including any portions of a stream enclosed in drainage pipes which connect to stream segments upstream of such drainage pipes.



“Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils 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 ponds and landscape amenities. Wetlands include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted or required by the city. (Ord. 2257 §2, 1999; Ord. 1877, 1992)

17.10.040 Permitted uses.

Uses permitted on properties subject to this chapter shall be the same as those permitted in the zoning district in which the property is located.

(Ord. 1877, 1992)

17.10.045 Submittal requirements.

- A. **Critical Areas Permit Application Required.** Any application for land use, boundary line adjustments or development proposals by private or public entities, including rezones, subdivisions, building permits, clearing and grading permits, or other activities which will result in any alteration or modification within an environmentally critical area or its standard buffer width shall include an application for a critical areas permit. The critical areas permit application shall be submitted to the department of public works for processing as required by LMC 2.44.040. The director or the director's designee shall review the information submitted by the applicant together with any other available information. If the director determines that there is insufficient environmental information to evaluate the proposal, the applicant shall be notified that additional environmental studies are required. The director may waive the requirement for a special study if there is substantial showing that there will be no alteration of the critical area and that there will be no significant adverse impacts on the critical area as a result of the proposed development.
- B. **Contents of Special Studies.** Special environmental studies shall be prepared by a qualified person with expertise in the area of concern in accordance with the requirements of this chapter and to the satisfaction of the department. Special studies are valid for three years, after such date the City will determine if a revision or additional assesment is necessary. Such studies shall:
1. Provide a site plan of the property at a scale sufficient to describe the proposed development and the environmentally critical area, and a written report.
 2. Identify and characterize any critical area as part of the total development site.
 3. Describe how the proposed development will impact the critical area(s) which are present on or which are adjacent to the property.
 4. Describe any plans for alteration or modification of the critical areas.
 5. A statement of any plans to utilize buffer credit, provide a detail of the calculations.
 6. A statement of the resources and methodology used in the reporting reflecting "best availabe science".
 7. Provide recommendations for avoiding or mitigating any identified impacts. (Ord. 2076 §21, 1996; Ord. 1877, 1992)

17.10.046 Exemptions allowed.

Certain activities set forth in LMC 17.10.047 are exempt from the requirements of this chapter while other activities may be granted specific exceptions or modifications as provided in this chapter, provided:

1. No person shall conduct any activity within any critical area or critical area buffer that is exempt from the provisions of this chapter until such time as such person has given 10 days' advance written notice (except for an emergency per LMC 17.10.047(D)) to the director of the activity to be conducted and the exception(s) relied upon by the person who intends to conduct such activity;
2. Such exemptions shall be verified by city staff and acknowledged on the face of the written notice prior to the invasion of the critical area or critical area buffer;
3. Impacts to critical areas are minimized; and
4. Disturbed areas are immediately restored.

(Ord. 1877, 1992)

17.10.047 Exemptions.

Subject to the conditions and requirements of LMC 17.10.046, the following situations are exempt from the operation of this chapter:

- A. All existing residential, commercial and industrial development located within critical areas or their associated buffers have a legal nonconforming status as to use and setback requirements.
- B. Existing structures or improvements that do not meet the requirements of this chapter may be remodeled, reconstructed or replaced, or maintained or repaired, providing that any such activity does not further intrude into a critical area or buffer or adversely affect critical area functions. Maintenance and repair does not include any modification that changes the use, scope or size of the original structure, facility or improved area, and does not include construction of a maintenance road. Nothing herein releases the site from compliance with the provisions of Chapter 21.12 LMC.
- C. Normal and routine maintenance of existing drainage ditches, drainage retention/detention facilities, or ornamental landscape ponds; provided, that none of these are part of a critical area mitigation plan required by this chapter.
- D. Emergencies that threaten the public health, safety and welfare, as determined by the city.
- E. Category III wetlands less than 2,500 square feet in area located on the site, so long as there are no adjacent wetlands that in combination with the subject wetland exceed 2500 square feet.
- F. Category IV wetlands less than 10,000 square feet in area located on the site, so long as there are no adjacent wetlands that in combination with the subject wetland exceed 10,000 square feet.
- G. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, and relocation of natural gas, cable communications, telephone facilities, and water or sewer lines, pipes, mains, equipment or appurtenances only when required and approved by the city and subject to the following:
 1. No practical alternative location is available; and

2. The applicant demonstrates such construction is necessary for gravity flow; and
 3. Construction is accomplished using best management practices; and
 4. The wetland and buffer environment is protected during construction and maintenance; and
 5. The original grade is replaced; and
 6. Joint use of a utility corridor by other utilities may be allowed; and
 7. Tree removal is permitted pursuant to an approved wetland permit.
- H. Installation or construction in improved city road right-of-way, and replacement, operation or alteration, of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less.
- I. Installation or construction in improved city road right-of-way, and replacement, operation repair or alteration of all natural gas, cable communications and telephone facilities, water or sewer lines, pipes, mains, equipment or appurtenances. (Ord. 1877, 1992)

17.10.048 Reasonable use exception – Modification.

If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of the chapter and the public interest.

- A. An application for a reasonable use exception shall be filed with the department and shall be considered by the hearing examiner at a public hearing under Process I (LMC 1.35.100 through 1.35.180).
- B. The hearing examiner must determine that:
 1. Application of this chapter would deny all reasonable use of the property;
 2. There is no reasonable use with less impact on the critical area;
 3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and
 4. Any alteration to the critical area must be the minimum necessary to allow for the reasonable use of the property.
- C. The hearing examiner must find that the inability of the applicant to derive reasonable use of the property is not the result of actions of the property owner or some predecessor in interest in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this chapter.
- D. If the hearing examiner grants a reasonable use exception, the examiner may impose conditions to ensure that the development is consistent with the intent of this chapter.
(Ord. 1877, 1992)

17.10.049 Reasonable use application.

Whenever an applicant for a development proposal submits a reasonable use proposal to the director, the proposal shall include the following information which will be used by the hearing examiner to evaluate the criteria for reasonable use exception:

- A. A description of the areas of the lot which are either environmentally critical or within setbacks required by this chapter;
- B. A description of the amount of the lot which is within setbacks required by other standards of the zoning code;
- C. An analysis of the minimum amount of development that would be considered “reasonable use” of the lot, including a narrative which includes an empirical basis for this determination;
- D. An analysis of the impact that the amount of development described in subsection (C) of this section would have on the environmentally critical area(s);
- E. An analysis of whether any other reasonable use with less impact on the environmentally critical area(s) and its buffer is possible. This must also include an analysis of whether there is any feasible on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable use with less adverse impacts to the environmentally critical area(s) and buffers;
- F. A design of the proposal so that the amount of development proposed as “reasonable use” will have the least impact practicable on the environmentally critical area(s);
- G. An analysis of the needed modifications 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 landscape widths to provide for a reasonable use while providing greater protection to the environmentally critical area(s); and
- I. Such other information as the director or hearing examiner determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development. (Ord. 1877, 1992)

17.10.050 Wetland delineation.

- A. Wetlands shall be identified and delineated in accordance with the 1987 Army Corp of Engineers Federal Manual for Identifying and Delineating Jurisdictional Wetlands as required by RCW 36.70.A.175 and 90.58.380 and as modified or supplemented by this chapter.
- B. Wetland delineations are valid for three years, after such date the City will determine if a revision or additional assessment is necessary.
- C. The wetland boundaries established by this process shall be used to meet the requirements of this chapter.
- D. Wetlands shall be rated using the rating system found in LMC 17.10.051; wetland buffer widths, replacement ratios and mitigation criteria shall be based on these rating systems.

- E. The total area of wetlands shall be used for the purpose of classification regardless of whether a proposed development site includes all or only a portion of the wetland.
(Ord. 1877, 1992)

17.10.051 Wetland rating.

Wetland rating means the placement of wetlands into one of the following categories.

- A. Category I Wetlands: wetlands that meet any of the following criteria:
 - 1. Wetlands closely associated with the Scriber Creek, Swamp Creek and Lunds Gulch, Halls Creek and Halls Lake systems. Closely associated wetlands mean those wetlands immediately adjacent to the stream and those wetlands within the flood plain of the Scriber Creek, Swamp Creek, Lunds Gulch or Halls Creek or Halls Lake systems; or
 - 2. The essential habitat of species listed by the federal government or State of Washington as endangered, threatened, critical, documented priority species; or
 - 3. Wetlands equal to or greater than 10 acres in size and having three or more wetland classes, one of which is open water; or
 - 4. High quality, regionally rare wetland communities with irreplaceable ecological function, including sphagnum bogs and fens, and mature forested wetlands.
- B. Category II Wetlands: wetlands other than Category I wetlands that meet any of the following criteria:
 - 1. Wetlands that have a surface water connection to the Scriber Creek, Swamp Creek, Lunds Gulch systems or Halls Creek or Halls Lake; or
 - 2. Wetlands greater than two acres in size; or
 - 3. Wetlands greater than or equal to one acre that have a forested wetland subclass; or
 - 4. Wetlands greater than or equal to one acre having 40 percent to 50 percent open water in dispersed patches with two or more classes of vegetation; or
 - 5.
- C. Category III Wetlands: wetlands that meet the following criteria:
 - 1. Wetlands that are equal to or less than two acres in size; and
 - 2. Have two or fewer wetland classes; and
 - 3. Have no surface water connection to Scriber Creek, Swamp Creek, Lunds Gulch or Halls Creek or Halls Lake systems.
- D. Category IV Wetlands: wetlands that meet the following criteria:
 - 1. Hydrologically isolated of any size; and
 - 2. Have one wetland class, which is not forested. (Ord. 1877, 1992)

17.10.052 Wetland buffers.

- A. Buffer areas surrounding wetlands are essential to maintenance and protection of functions and values. Buffer areas protect wetlands from degradation by:
 1. Stabilizing soil and preventing erosion;
 2. Filtering suspended soils, nutrients and harmful or toxic substances;
 3. Moderating impacts of stormwater runoff;
 4. Moderating system microclimate;
 5. Protecting wetland wildlife habitat from adverse impacts;
 6. Maintaining and enhancing habitat diversity and/or integrity;
 7. Supporting and protecting wetland plant and animal species and biotic communities; and
 8. Reducing disturbances to wetland resources caused by the intrusion of humans and domestic animals.
- B. Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. All buffers shall be measured from the wetland edge as marked in the field. Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall have at least the minimum buffer required for the class of wetland involved. The following buffers are minimum requirements:
 1. Category I wetlands shall have a 100-foot buffer.
 2. Category II wetlands shall have a 50-foot buffer.
 3. Category III wetlands shall have a 25-foot buffer.
 4. Category IV wetlands shall have a 15-foot buffer. (Ord. 1877, 1992)

17.10.053 Increased wetland buffer width.

The buffer width required for the category of wetland may be increased up to 50 percent when necessary to protect wetland function and values, based on local conditions. The requirement to increase buffer widths shall be supported by appropriate documentation based on a site-specific wetland analysis showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall be attached as a permit condition and shall demonstrate that:

- A. A larger buffer is necessary to maintain viable populations of existing species; or to prevent degradation or alteration of the existing hydro-regime; or
- B. The wetland is essential habitat for species proposed or listed by the federal governments or the state as endangered, threatened, critical or documented priority species; or
- C. A trail or utility corridor is proposed within the buffer; or
- D. A drainage improvement or water quality feature, such as a grass-lined swale, is proposed within the buffer; or
- E. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts. (Ord. 1877, 1992)

17.10.054 Decreased wetland buffer width.

The Director may reduce the standard wetland buffer widths on a case-by-case basis where the applicant demonstrates that:

- A. The area (located on the site) being developed adjacent to the wetland is extensively vegetated, and that no direct or indirect, short-term or long-term, adverse impacts to the wetlands will result; and
 - B. A decreased buffer shall not result in greater than a fifty percent (50%) reduction in the buffer width and the minimum buffer shall not be less than 10 feet; and
 - C. There has previously been substantial alteration of the buffer for the wetland on the subject lot and a lesser buffer than those specified in Section 17.10.052 will incorporate buffer mitigation measures which will actually improve the functions and values of the existing wetland buffer; and
 - D. The project contains a buffer enhancement plan using native vegetation which demonstrates that the enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functions and values.
- (Ord. 1877, 1992)

17.10.055 Averaging of wetland buffer widths.

Standard wetland buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where the applicant can demonstrate that:

- A. The total area contained within the wetland buffer after averaging is no less than that contained within the approved buffer prior to averaging; and
 - B. Averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property; and
 - C. Low intensity land uses will be located adjacent to the areas where buffer width is reduced; and
 - D. An averaged buffer shall not result in greater than a fifty percent (50%) reduction in the standard buffer width and the minimum buffer shall not be less than 10 feet, and
 - E. Width averaging will not adversely impact the wetland functional values.
- (Ord. 1877, 1992)

17.10.057 Building setback lines – Wetlands.

A building setback line of 15 feet is required from the edge of any wetland buffer to prevent encroachment into the buffer area during and after construction for maintenance of such structures. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions will not negatively impact the wetland. The setback shall be identified on the site plan approved by the city. (Ord. 1877, 1992)

17.10.058 Alterations to wetlands and buffers, allowed.

Alteration or enhancement of wetlands allowed under this section is subject to the review and approval by the department of an alteration, mitigation or enhancement plan prepared by a qualified professional. The plans shall meet the criteria of LMC 17.10.059 and 17.10.115.

- A. Category I Wetlands and Adjacent Buffers.
All Category I wetlands and buffers shall be preserved, unless:
 - 1. The applicant demonstrates that:
 - a. Substantial public benefit will be derived through alteration; and
 - b. The public benefit realized will substantially outweigh the public loss occurring through alteration; and
 - c. There is no feasible and reasonable alternative to making the alteration; and
 - d. Alteration will preserve, improve, or protect the functions of the wetland system; and
 - 2. The applicant demonstrates that the alteration will result in enhancement of the wetland.
- B. Category II Wetlands and Adjacent Buffers.
All Category II wetlands and buffers shall be preserved unless:
 - 1. The applicant demonstrates that alterations will preserve, improve or protect the functions of the wetland; or
 - 2. The applicant demonstrates that alteration will result in enhancement of the wetland.
- C. Category III Wetland and Adjacent Buffers.
Alteration to Category III wetlands and buffers may be allowed subject to a mitigation or enhancement plan approved by the City.
- D. Category IV Wetland and Adjacent Buffers.
Category IV wetland and buffers may be altered subject to a mitigation or enhancement plan approved by the City.
(Ord. 1877, 1992)

17.10.059 Wetland and buffer alteration criteria.

- A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter shall be subject to the following requirements:
 - 1. Each activity or use shall be designed so as to minimize overall wetland and buffer alteration to the greatest extent reasonably possible;
 - 2. Construction techniques shall be approved by the city prior to any site work;
 - 3. A mitigation plan shall be approved by the city prior to the issuance of any construction permits.
- B. Compensation Ratios. As a condition of approving the alteration or relocation of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensation for wetland losses. The following ratios apply to creation or restoration which is in-kind, within the same sub-basin (as defined within the city's

comprehensive flood and drainage management plan), timed prior to or concurrent with alteration, and which has a high probability of success. The first number specifies the acreage of replacement wetlands required and the second number specifies the acreage of wetlands altered.

1. Category I 6:1
2. Category II and III
 - a. Forested 3:1
 - b. Scrub-shrub 2:1
 - c. Emergent 1.50:1
3. Category IV 1.00:1
4. When adding to an existing wetland as a result of compensation for wetland losses, the characteristics of the existing wetland shall be maintained.
5. The city may increase the ratios under the following circumstances:
 - a. Uncertainty as to the probable success of the proposed restoration or creation;
 - b. Significant period of time between destruction and replication of wetland values;
 - c. Projected losses in functional value;
 - d. The relocation is off-site.
6. The city may decrease these ratios if a wetland mitigation plan demonstrates that no net loss of wetland functional values will result from the decreased ratios.
7. In all cases a minimum acreage replacement ratio of 1.00:1 shall be required.

C. D

1. Time for Completion.
 1. When wetland relocation or compensation is allowed, the city may require that the relocated or compensatory wetland be completed and functioning prior to allowing the existing wetland to be filled or altered. (Ord. 1877, 1992)
 2. Mitigation shall be completed prior to granting of temporary or final occupancy, or the completion or final approval of any development activity for which mitigation measures have been required.
 3. If the mitigation work is not completed within five years of the city approval of the mitigation plan the city may require that a reevaluation of the plan be conducted by a qualified wetland professional. The city may require additional requirements based on the recommendations.

17.10.060 Wetland mitigation plan.

A mitigation plan shall be approved by the city prior to the issuance of any permits for development activity occurring on a lot upon which wetland and/or buffer alteration, restoration, creation or enhancement is allowed. The mitigation plan shall:

- A. Be prepared by a qualified wetland professional using accepted methodologies; and
- B. Include a baseline study that quantifies the existing functional values; and
- C. Specify how functional values will be replaced and when mitigation will occur relative to project construction; and
- D. Include provisions for adequate monitoring to ensure success of the mitigation plan. A monitoring plan may be required by the department for its review and approval as part of the mitigation plan. If required, the monitoring plan shall outline the approach for monitoring construction of the mitigation project and for assessment of the completed project, and shall include a schedule. A monitoring report shall be submitted annually for a period up to 5 years to the department unless a more frequent time period is required as a condition of the permit, and shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:
 - 1. Establishing vegetation plots to track changes in plant species composition and density over time;
 - 2. Measuring base flow rates and storm water runoff to model and evaluate water quality predictions;
 - 3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and
 - 4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions; and
- E. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and
- F. Include provisions for an assurance device including a bond to assure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation, or lesser time as determined by the department.. (Ord. 1877, 1992)

17.10.061 Stream – Rating.

Rating means the placement of streams into one of the following categories:

- A. Category I. The following streams are classified as Category I: Scriber Creek, Swamp Creek, Lunds Creek and Halls Creek.
- B. Category II. Category II streams are streams other than Category I streams and that flow year-round during years of normal rainfall or those streams that are used by salmonids in any portion of the stream system.
- C. Category III. Category III streams are those streams that are naturally intermittent or ephemeral during years of normal rainfall and are not used by salmonids in any portion of the stream system. (Ord. 1877, 1992)

17.10.062 Standard buffer width – Streams.

The following minimum buffers of native vegetation to exist along both sides of the stream shall apply to streams based upon category, unless otherwise permitted by LMC 17.10.065:

- A. Category I streams shall have a minimum buffer of 50 feet;
- B. Category II streams shall have a minimum buffer of 25 feet; provided, that the buffer shall be increased to a minimum of 50 feet in Category II streams used by salmonids;
- C. Category III streams shall have a minimum buffer of 15 feet. (Ord. 1877, 1992)

17.10.063 Measurement of buffer width.

All stream buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high water mark shall be determined so as to include the entire stream feature. (Ord. 1877, 1992)

17.10.064 Increased stream buffer width.

The buffer width required for the category of stream may be increased up to 50 percent when necessary to protect streams when the stream is particularly critical to disturbance, or the development poses unusual impacts. Circumstances which may require buffers beyond minimum requirements include, but are not limited to:

- A. The stream reach affected by the development proposal serves as critical fish habitat for spawning or rearing as determined by the city using information from resource agencies but not limited to the Washington State Departments of Fisheries or Wildlife, U.S. Fish and Wildlife Service and native tribes; or
- B. The stream or adjacent riparian corridor is used by species listed by the federal government or the state of Washington as endangered, threatened, rare, critical, or monitored, or provides critical or outstanding actual or potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting or lookout trees; or
- C. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area; or
- D. The riparian corridor provides a significant source of water, provides shading of stream waters or contributes organic material important to stream habitat areas; or
- E. The riparian corridor provides a significant source of water, provides shading of stream waters, or contributes organic material important to stream habitat areas; or
- F. A trail or utility corridor is proposed within the buffer; or
- G. A drainage improvement or water quality feature, such as a grass-lined swale, is proposed within the buffer; or
- H. When the minimum buffer for a stream extends into an area with a slope of greater than 25 percent, the buffer shall be the greater of:
 - 1. The minimum buffer for that particular stream type; or

2. Twenty-five feet beyond the point where the slope becomes 25 percent or less. (Ord. 1877, 1992)

17.10.065 Decreased stream buffer width.

- A. The director may reduce the required buffer width on a case-by-case basis where it can be demonstrated that:
 1. The adjacent land is extensively vegetated and has less than 15 percent slopes and that no adverse impact to the stream system will result from the proposed reduction; and
 2. The proposal includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the functional values of the buffer to provide additional protection of the stream system. An enhanced buffer shall not result in greater than a 50 percent reduction in the buffer width, and the reduced buffer shall not be less than 25 feet; and
 3. There has previously been substantial alteration of the buffer for the stream on the subject lot and a lesser buffer than those specified in Section 17.10.062 will incorporate buffer mitigation measures which will actually improve the functions and values of the existing stream buffer.
- B. When a reduced buffer width is allowed, a monitoring and contingency plan consistent with the provisions of LMC 17.10.078 may be required by the city. (Ord. 1877, 1992)

17.10.066 Building setback line – Streams.

A building setback of 15 feet from the edge of all stream buffers shall be required to prevent encroachment into the buffer area during and after construction for maintenance of such structures. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions will not negatively impact the stream. The setback shall be identified on the site plan approved by the city. (Ord. 1877, 1992)

17.10.067 Riparian wetland.

Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply. (Ord. 1877, 1992)

17.10.068 Averaging of stream buffer width.

criticalStandard stream buffer widths may be modified by averaging buffer widths. The city may allow buffer width averaging in order to provide protection to a particular portion of a stream which is especially critical. Buffer width averaging will be allowed only where the applicant can demonstrate that:

- A. The total areas contained within the stream buffer after averaging is no less than that contained within the approved buffer prior to averaging; and

- B. Averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances particular to the property; and
- C. Low intensity land uses will be located adjacent to the areas where buffer width is reduced; and
- D. An averaged buffer shall not result in greater than a fifty percent (50%) reduction in standard buffer width and the minimum buffer width shall not be less than 10 feet; and
- E. Width averaging will not adversely impact the stream functional values.

17.10.070 Category I streams preservation/alteration.

All Category I streams shall be preserved. The city may allow alteration of Category I streams under the following circumstances:

- A. Where alteration is allowed as part of a development approved pursuant to LMC 17.10.048; and
- B. When it can be demonstrated by the applicant that:
 1. Substantial public benefit will be derived through alteration; and
 2. The public benefit realized will substantially outweigh the public loss occurring through alteration; and
 3. There is no feasible and reasonable alternative to making the alteration; and
 4. Alteration will preserve, improve or protect the functions of the stream system. (Ord. 1877, 1992)

17.10.072 Category II and Category III streams preservation/alteration.

Alteration of a Category II or Category III stream shall be allowed only under the following circumstances:

- A. Where alteration is allowed as part of a development approved pursuant to LMC 17.10.048.
- B. When the applicant can demonstrate that the alteration or rerouting maintains or enhances the functional values of the stream in terms of water quality, erosion control, and/or fish and wildlife habitat. (Ord. 1877, 1992)

17.10.073 Culverting.

- A. Culverting within a stream shall only be permitted as part of plans approved under LMC 17.10.045 or to provide access to a lot when no other feasible means of access exists.
- B. Use of common access points shall be required for abutting lots which have no other feasible means of access. Culverting shall be limited to the minimum number of stream crossings required to permit reasonable access. (Ord. 1877, 1992)

17.10.074 Stream system and buffer alteration criteria.

Whenever stream system or buffer alteration is proposed, the applicant shall prepare a mitigation plan and shall be subject to the following requirements:

- A. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent reasonably possible.

- B. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
- C. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensation for destruction of the functions of the altered stream system and to assure that such functional values are replaced.
- D. When stream system relocation or compensation is allowed, the city shall require that the stream relocation be completed and functioning prior to allowing the existing stream to be filled or altered.
- E. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.
- F. The city may apply additional conditions or restrictions, or require specific construction techniques in order to minimize impacts to stream systems and their buffers. (Ord. 1877, 1992)

17.10.078 Mitigation for loss of stream system functional values.

Mitigation shall be required for the loss of stream system functional values. All required mitigation shall be specified in a mitigation plan, which shall be approved by the city prior to any development activity occurring on a site upon which stream system alteration is proposed. The mitigation plan shall:

- A. Be prepared by a qualified professional using accepted methodologies; and
- B. Include a baseline study that quantifies the existing functional values of the system, functional values that will be lost and the stream's functional values after mitigation; and
- C. Specify how functional values will be replaced; and
- D. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies; and
- E. Include provisions for adequate monitoring to ensure success of the mitigation plan. A monitoring plan may be required by the department for its review and approval as part of the mitigation plan. If required, the monitoring plan shall outline the approach for monitoring construction of the mitigation project and for assessment of the completed project, and shall include a schedule. A monitoring report shall be submitted annually for five years to the department unless a more frequent time period is required as a condition of the the permit, and shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:
 1. Establishing vegetation plots to track changes in plant species composition and density over time;
 2. Measuring base flow rates and storm water runoff to model and evaluate water quality predictions;
 3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

- 4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions; and
- F. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and
- G. Include provisions for an assurance device including a bond to assure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation, or lesser time as determined by the department. (Ord. 1877, 1992)

17.10.080 Fish and wildlife priority habitat.

The following environmentally critical areas may be considered as priority habitat for the protection of fish and wildlife in the city:

- A. Category I and Category II wetlands;
- B. Category I streams;
- C. Category II streams if used by salmonids;
- D. Upland areas if one or more of the following criteria are met:
 - 1. Essential Habitat of species federally or state-listed or proposed for listing as threatened, endangered, or critical or as priority species, or outstanding or potential habitat for those species; or
 - 2. Areas contiguous with large blocks of distinct habitat extending outside of the city limits or providing a travel corridor to a significant resource; or
 - 3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of those wetlands for wildlife.
 (Ord. 1877, 1992)

17.10.082 Wildlife habitat assessment.

If a development is proposed within or adjacent to an indicated priority habitat area, the applicant shall provide a wildlife habitat assessment prepared by a qualified professional. The assessment shall include an inventory of the priority species and an evaluation of the habitat. If it is determined that the site is a priority habitat recommendations for protection of the habitat and species of concern shall be provided. The city may ask appropriate resource agencies to review and comment on the proposal's potential impact on habitat and species. Based upon recommendations from resource agencies and qualified professionals, the city may attach conditions to land use and development permits to prevent, minimize, or mitigate impacts to the habitat area. (Ord. 1877, 1992)

17.10.084 Areas of potential geologic instability – Classification.

The following are classified as areas of potential geological instability or hazard:

- A. Naturally occurring slopes of 40 percent or more;

- B. Other areas which the city has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazard. (Ord. 1877, 1992)

17.10.086 Areas of potential geologic instability – Setbacks.

- A. Development proposals on lots which are designated as or which the city has reason to believe are geologically unstable or hazardous shall be set back a minimum of 25 feet from top, toe and sides of such areas.
- B. Increased Setbacks. The setback requirement may be increased by the city when necessary to protect public health, safety and welfare, based upon information contained in a geotechnical report. (Ord. 1877, 1992)

17.10.087 Areas of potential geologic instability – Alteration.

Unless associated with a stream or wetland, the city may allow alteration of an area identified as an area of potential geologic instability or hazard if the city approves a geotechnical report which demonstrates that:

- A. The proposed development will not create a hazard to the subject property, surrounding properties, or rights-of-way, erosions, or sedimentation to off-site properties or bodies of water;
- B. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;
- C. The proposed method of construction will reduce erosion, landslide, and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
- D. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation; and
- E. The proposal is consistent with the purposes and provisions of this chapter.
(Ord. 1877, 1992)

17.10.088 Geotechnical report content requirements.

Geotechnical reports shall be prepared by a geotechnical engineer or geologist, as appropriate. Geotechnical reports shall be stamped and signed by an engineer. Based on the site characteristics and the information submitted by the applicant, the director may require all or a portion of the following to be included in a geotechnical report for the subject property:

- A. A site development plan drawn to scale which shows the boundary lines and dimensions of the subject property, the location, size, and type of any existing or proposed structures, impervious surfaces, wells, drainfields, drainfield reserve areas, roads, easements, and utilities on site;
- B. The location of springs, seeps, or other surface expressions of ground water, and the location of surface water or evidence of seasonal surface water runoff or ground water;
- C. A discussion of the geological and engineering properties of the soils, sediments, and/or rocks on the subject property and adjacent properties and their effect on the stability of the slope;

- D. The extent and type of vegetative cover prior to development activity or site disturbance;
- E. The proposed method of drainage and locations of all existing and proposed surface and subsurface drainage facilities and patterns, and the locations and methods for erosion control;
- F. A description of the soils in accordance with the Unified Soil Classification System;
- G. An identification of all existing fill areas;
- H. Information demonstrating compliance with all applicable codes and ordinances for the underlying permit;
- I. A vegetation management and restoration plan or other means for maintaining long-term stability of slopes; and
- J. Evidence showing faults, significant geologic contacts, landslides, or downslope soil movement on the subject property and adjacent properties.

17.10.089 Potential geologic instability – Development conditions.

As part of any approval of development on an area of potential geological instability, the city shall require:

- A. All impacts identified in the geotechnical report be mitigated; and
- B. All utilities and access roads or driveways to and within the site be located so as to require the minimum amount of modification to slopes or area of potential geological instability;
- C. As part of any approval of development on an area of potential geological instability or within required setbacks, the city may also require that:
 - 1. The applicant’s geotechnical consultant be present on the site during clearing, grading, filling and construction activities which may affect geological hazard or unstable areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval; and
 - 2. Trees and groundcover be retained and additional vegetation or other appropriate soil stabilizing structures and materials be provided.

(Ord. 1877, 1992)

17.10.100 Buffer credit.

Where buffers around critical areas are required by this chapter, the number of allowable lots or potential dwelling units in residential development proposals, and the amount of lot coverage in nonresidential proposals, may be increased as stated in subsections (A) and (B) of this section. This buffer credit is designed to provide incentives for the preservation of critical areas, flexibility in design, and consistent treatment of different types of development proposals.

- A. The following buffer credit calculations shall apply to all residential zones:

1. Single-Family Residential and Duplex Residential Zones with Minimum Lot Standards.

total amount of net development area
+ total amount of area in buffer = number of lots
minimum zoned lot size

2. Multifamily Residential, Excluding the Duplex Residential Zone.

total amount of net development area
+ total amount of area in buffer = number of density units
maximum zoned density units

3. This credit shall be subject to the following:

- a. Only that buffer area located within areas required by the city of Lynnwood to be dedicated or reserved as separate tracts shall be counted.
- b. Use of this credit shall not waive nor modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards, except as noted in subsection (A)(3)(c) of this section.
- c. To the extent that application of the buffer credit may result in lot sizes less than the minimum allowed in the zone in which the proposal is located:
 - i. In no case shall such lot sizes be less than 90 percent of the minimum allowed lot size, except in the RS-7 and zone, which shall be no less than 95 percent; and
 - ii. In order to keep the relationship between lot width and area reasonable, lot width may be up to, but not more than, five feet narrower than the minimum allowed.

- B. The following buffer credit shall apply to all nonresidential-zoned areas: In nonresidential-zoned areas, the amount of the site that may be covered under the zoning code shall be calculated by applying the maximum allowed lot coverage to the combination of the net development area and the area in buffers.

Use of this credit shall not waive or modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards. (Ord. 2257 § 1, 1999; Ord. 1877, 1992)

17.10.101 Disturbance of Buffer.

Except as otherwise permitted under this chapter, critical areas buffers shall be retained in a natural condition. Where disturbance to the buffer occurs whether or not permitted by this Chapter during construction, revegetation according to a planting plan approved by the department shall be required. (Ord. 1877, 1992)

17.10.105 Critical Areas Signs, Monuments and Fencing.

- A. The boundary of a critical area will be delineated by survey stakes and tape at the time of the completion of the critical area report. The boundary will be maintained until completion of the project. The required buffer edge will be delineated by plastic tape, and silt fence, or any other effective marker to prohibit construction activities from encroaching into the critical area and its associated buffer.
- B. Upon completion of the project the boundary of the critical area will be delineated by permanent signs, monuments and fencing, the design and spacing of which will be left to the discretion of the public works director.
- C. All streams and wetlands regulated under this chapter and their required buffers shall be permanently protected by designating them as native growth protection areas (NGPAs).

17.10.110 Appeals.

- A. Any person who objects to the final order of the City under this chapter may file an appeal to the hearing examiner using the procedure under Process II (LMC 1.35.200 through 1.35.260). Unless such appeal pertains to the Reasonable Use Exception determination under Process I (LMC 1.35.175).

17.10.115 Notice, performance securities, bonds, administration.

- A. Notice. The owner of any property containing critical areas or buffers on which a development project is submitted shall file for record with Snohomish County a notice approved by the city. Such notice shall provide notice in the public record of the presence of any critical areas or buffers, the application of this chapter to the property, and state that limitations on actions in or affecting such areas may exist.
The owner shall submit proof to the director that the notice has been filed for record with Snohomish County before the city shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this chapter.
- B. Performance Securities. The director may require the applicant of a development proposal to post a cash performance bond or other acceptable security in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by application of this chapter. The director shall release the security upon determining that all structures and improvements have been satisfactorily completed.
- C. Maintenance/Monitoring Bonds. The director may require the applicant whose development proposal is subject to a mitigation plan to post a maintenance/monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory performance for a period of up to five years. The bond amount shall be 125% of the estimated cost of the mitigation project including any plant materials, soil

amendments, temporary irrigation, signs and monuments, and monitoring proposed. The duration of maintenance/monitoring obligations shall be established by the director after consideration of the nature of the proposed mitigation and the likelihood and expense of mitigation failures. The director shall release the security upon determining that the effectiveness and success of the mitigation plan has been satisfactory. The performance standards of the mitigation plan shall be agreed upon by the director and the applicant during the review process and shall be specified in the mitigation plan. (Ord. 1877, 1992)

17.10.120 Unauthorized alterations.

- A. Illegal Alterations. Environmentally critical areas and associated buffers regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this chapter; provided, that all environmentally critical areas which were illegally altered shall remain environmentally critical areas, regardless of changed conditions and shall be regulated in accordance with this chapter.
- B. Restoration. The city may require that an area larger than the altered portion of the wetland be provided as compensation for wetland losses, in conformance with compensation ratios set forth in LMC 17.10.059.

17.10.130 Enforcement, violations and penalties.

It shall be unlawful for any person, firm, or corporation to violate any provision of this chapter. The Director shall have the authority to enforce provisions of this chapter, by proceeding with the following actions in progressive severity, except in cases where a delay would result in the loss of additional critical areas:

- A. Stop work orders. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this section until the property is fully restored in compliance with this chapter and all penalties paid in full.
- B. Civil remedies and penalties. Any person, firm corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the following civil penalties:
 - 1. The City may issue a notice and order under Chapter 1.40 LMC stating any person, firm, corporation or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation, and set a reasonable amount of time for compliance.
 - 2. The City may require restoration. Restoration shall include but not be limited to, the replacement of all improperly removed groundcover with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced to the greatest extent reasonably possible. Studies by qualified experts shall be conducted to determine the conditions

which were likely to exist on the lot prior to the illegal alteration. Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored site complies with city requirements.

3. In addition to requiring restoration, the City may assess civil penalties as provided in LMC 1.01.085.
4. The City shall require a maintenance bond to insure compliance with the City's order, subject to the bonding procedure established in section 17.10.115.C of this chapter.
5. If the order requiring restoration is not complied with, then the property owner shall be subject to a civil fine of \$25 per day.
6. If the noncompliance continues for more than thirty (30) days, civil penalties shall be increased to \$100 per day up to a maximum of \$5,000. Fines shall stop on the day that compliance with the order is achieved, pending successful completion with the compliance order.
7. Any person who objects to a final order of the City under this section may file an appeal to the hearing examiner using the procedure under Process II in LMC 1.35.200 through 1.35.260.
8. Any unpaid civil fines may become a lien against the property, and the City may record said lien.

17.10.135 Severability.

If any paragraph, clause, sentence, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each paragraph, clause, sentence, section or part of this chapter are hereby declared to be severable.

