

AGENDA

Lynnwood Planning Commission

Thurs., Feb. 10, 2005 — 7:00 pm — City Council Chambers, 19100 – 44th Ave. W., Lynnwood

- A. Call to Order** Chair JOHNSON
 Commissioner BIGLER
 Commissioner DECKER
 Commissioner ELLIOTT
 Commissioner PEYCHEFF
 Commissioner WALTHER
 VACANT
- B. APPROVAL OF MINUTES:**
- Minutes of January 11, 2005
 - Minutes of January 27, 2005
- C. COUNCIL LIAISON REPORT**
- D. CITIZEN COMMENTS** – on matters **not** on tonight's agenda:
- E. COMMISSION MEMBER DISCLOSURES:**
- F. PUBLIC HEARING:**
1. Critical Areas Ordinance – to receive public comments pertaining to proposed amendments to the City's Critical Areas Ordinance.
- G. WORK SESSION:**
1. Manufactured Housing Code Amendment – Review Lynnwood's Zoning Code for compliance with SB-6593 regarding equal treatment of conventional and factory-built housing.
- H. BUSINESS:**
1. Resolution No: 2005-2
- I. DIRECTOR'S REPORT & INFORMATION:**
1. **City Council Actions**
 2. **Upcoming 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 February 10, 2005**

Staff Report

**Agenda Item: E-1
Critical Areas Ordinance**

- Public Hearing
- Joint Public Meeting
- Work Session
- New Business
- Old Business
- Information
- Miscellaneous

Lynnwood Dept. of Public Works — Staff Contact: Jared Bond, Environmental Coordinator

Introduction:

In response to requirements of the Growth Management Act (GMA) the Public Works Department is revising the Sensitive Areas Ordinance (LMC 17.10). GMA requires that the City revise the ordinance to make it consistent with the purpose and goals of GMA, as well use Best Available Science (BAS) in creating the regulations. The City retained the services of the consultant firm Jones and Stokes to create these recommendations.

This draft incorporates BAS, as well as feedback from a variety of stakeholders. We feel this draft encourages greater protection of the environment, while incorporating reasonable development strategies.

Summary of Proposed Changes:

The major proposed amendments include:

1. Altering the wetland categorization method. The new method would use the Washington Department of Ecology's Wetland's Rating System (publication #04-06-025). The existing ordinance has 4 wetland classes, and the proposed rating system would keep 4 wetland classes, but use Ecology's criteria.
2. Increasing the buffer widths for wetlands. The wetland buffer widths are:

	<i>Existing</i>	<i>Proposed</i>
Class I	100' – (no established minimum)	100' – 75'
Class II	50' – (no established minimum)	50' – 37.5'
Class II w / Salmon	N/A	100' – 75'
Class III	25' – (no established minimum)	50' – 37.5'
Class IV	10' – (no established minimum)	25' – 18.75'

3. Increasing the buffer widths for streams. The stream buffer widths are:

	<i>Existing</i>	<i>Proposed</i>
Class I	50' – 25'	100' – 75'
Class II	25' – 10'	60' – 45'
Class II w / Salmon	50' – 25'	N/A
Class III	10' – 5'	35' – 25'

4. Modifying the fish and wildlife priority areas. The proposed regulations expand these areas, but including all areas containing "essential habitat." Essential Habitat is defined as "habitat necessary for the survival of species listed as "threatened" or "endangered" under the federal Endangered Species Act, species listed as "threatened" or "endangered" by the Washington Department of Fish and Wildlife, species listed as "candidate" or "species of concern" by the US Fish and Wildlife Service or NOAA Fisheries, and species listed as "sensitive" or "state candidate" by the Washington Department of Fish and Wildlife."
5. Modifying the geologically hazardous areas regulations. The previous regulations regarding geologically hazardous areas were very confusing and poorly written. The new definition is simplified to include "those areas that have naturally occurring slopes of 40 percent or more, and other areas which the City has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazard."

There are other minor amendments as well, which include (but aren't limited to):

- Definitions updated.
- Establish time frames and performance measures for mitigation work.
- Establish clear 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.
- Requiring a performance and monitoring bond. This bond is for 125% of the total mitigation cost, for a period of 5 years.
- Progressive enforcement such as stop work order, civil remedies and penalties.

Based on feedback from the Parks Commission, staff is also including a section allowing installation of passive use trails within buffers, provided these features are mitigated for. This section has yet to be drafted, and therefore is not included in your copy.

Issues Involved:

The Public Works Department held three stakeholder meetings, most recently on January 27th, to receive comments and feedback on the proposed regulations. The Washington Department of Community, Trade, and Economic Development was given their 60-day review of the proposed changes on January 14, 2005. The draft ordinance is currently undergoing SEPA review.

Public Works staff is meeting with the Washington Department of Ecology to receive their feedback on Wednesday, February 2, 2005. Details of their comments will be supplied at the meeting.

Action and Scheduling:

The Commission is expected to hold the public hearing, receive and consider public comments, and make a recommendation on the proposed changes.

Public Works staff is anticipating taking the drafts before the City Council for another Public Hearing on March 14, 2005. We anticipate adoption of these amendments in late March or early April.

Attachment(s):

Draft Critical Areas Ordinance (strikeout)
Draft Critical Areas Ordinance (non-strikeout)
Jones and Stokes Best Available Science Memo



Chapter 17.10

ENVIRONMENTALLY SENSITIVE 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 Allowed.
- 17.10.049 Reasonable use application and process.
- 17.10.050 Wetland delineation and rating system.
- ~~17.10.051 Wetland rating.~~
- 17.10.052 Wetland buffers.
- ~~17.10.051 - Wetland buffers.~~
- ~~17.10.052 Alterations to wetlands and buffers, allowed.~~
- ~~17.10.053 Wetland and buffer alteration criteria.~~
- ~~17.10.054 Wetland and buffer mitigation plan.~~
- ~~17.10.055 Wetland alteration compensation.~~
- 17.10.056 Increased wetland buffer width.
- 17.10.057 Decreased wetland buffer width.
- 17.10.058 Averaging of wetland buffer widths.
- 17.10.059 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.
- ~~17.10.061 Standard buffer width – Streams buffers.~~
- ~~17.10.062 Stream alteration allowed.~~
- ~~17.10.063 Stream alteration criteria.~~
- ~~17.10.064 Stream mitigation plan.~~
- ~~17.10.065 Culverting.~~
- ~~17.10.063 Measurement of buffer width.~~
- 17.10.066 Increased stream buffer width.
- 17.10.067 Decreased stream buffer width.
- ~~17.10.066 Building setback line – Streams.~~
- ~~17.10.067 Riparian wetland.~~
- 17.10.068 Averaging of stream buffer widths.
- ~~17.10.069 Riparian wetland.~~
- ~~17.10.070 Building setback line – Streams.~~
- ~~17.10.070 Category I streams preservation/alteration.~~
- ~~17.10.072 Category II and Category III streams preservation/alteration.~~
- ~~17.10.073 Culverting.~~

- 1 ~~17.10.074 Stream system and buffer alteration criteria.~~
- 2 ~~17.10.078 Mitigation for loss of stream system functional values.~~
- 3 17.10.080 Fish and wildlife priority habitat.
- 4 17.10.0821 Wildlife habitat assessment.
- 5 17.10.08490 Geologically hazardous ~~Areas of potential geologic~~
- 6 ~~instability – Classification~~Identification.
- 7 17.10.08691 Geologically hazardous ~~Areas of potential geologic~~
- 8 ~~instability – Setbacks.~~
- 9 17.10.08792 Geologically hazardous ~~Areas of potential geologic~~
- 10 ~~instability – Alteration~~ allowed.
- 11 17.10.08893 ~~otential g~~ Geologically hazardous areas ~~instability –~~
- 12 ~~Development~~Alteration conditions.
- 13 17.10.094 Geotechnical report content requirements.
- 14 17.10.100 Buffer credit.
- 15 17.10.110 Minimal use of buffer - Allowed.
- 16 17.10.111 Critical areas signs, monuments and fencing.
- 17 17.10.1120 Appeals.
- 18 17.10.1125 Notice, performance securities, bonds, administration.
- 19 17.10.1230 Unauthorized alterations.
- 20 17.10.1301 Enforcement, violations and penalties.
- 21 17.10.13540 Severability.

22 **17.10.010 Purpose.**

23 The purpose of this chapter is to identify critical areas and to supplement the
 24 development requirements contained in the ~~building code and in the various use~~
 25 ~~classifications in the~~ Lynnwood Municipal Code by providing for additional controls as
 26 required by the Washington State Growth Management Act and other ~~state~~ laws.
 27 Wetlands, streams, fish and wildlife priority habitat ~~conservation~~ areas, and geologically
 28 hazardous ~~areas of geologic hazard, and flood hazard areas~~ as defined in LMC
 29 17.10.030, constitute critical areas that are of special concern to the ~~city~~ City of
 30 Lynnwood. The standards and mechanisms established in this chapter are intended to
 31 protect the functions and values of these environmentally ~~sensitive~~ critical features ~~and to~~
 32 ~~avoid or abate public nuisances~~ for the public benefit, while providing property owners
 33 with reasonable use of their property. By regulating development and alterations to
 34 critical areas this chapter seeks to:

- 35 A. Protect the public health, safety and welfare by preventing adverse
- 36 impacts of development;
- 37 B. Educate the public as to the long-term importance of environmentally
- 38 sensitive critical areas and the responsibilities of the ~~city~~ City to protect and
- 39 preserve the natural environment for future generations;
- 40 C. ~~Preserve and protect~~ Effectively manage environmentally sensitive critical
- 41 areas by regulating development within and adjacent to them;
- 42 D. Mitigate unavoidable impacts to environmentally sensitive critical areas by
- 43 regulating alterations in and adjacent to critical areas;
- 44 E. Prevent, to the extent practicable, adverse cumulative impacts to the water
- 45 quality, wetlands, streams, stream corridors and fish and wildlife habitat;

- 1 F. ~~Restore~~ Improve streams and watercourses, particularly those associated
- 2 with Scriber Creek and Swamp Creek to ~~their~~ a more natural condition
- 3 wherever possible, and ~~reasonable and~~ establish reasonable development
- 4 incentives to encourage such ~~restoration~~ improvement;
- 5 G. Protect the public, and public resources and facilities from injury, loss of
- 6 life, property damage or financial losses due to flooding, erosion,
- 7 landslides, soil subsidence or steep slope failure;
- 8 H. Alert appraisers, assessors, owners and potential buyers or lessees to the
- 9 development limitations of environmentally sensitivecritical areas;
- 10 I. Provide the ~~city~~ City of Lynnwood with information necessary to approve,
- 11 condition, or deny public or private development proposals;
- 12 J. Provide predictability and consistency to the ~~city~~ City of Lynnwood's
- 13 development review process; and
- 14 K. Implement the policies of the State Environmental Policy Act, Chapter
- 15 43.21C RCW, the Growth Management Act, ~~the city of Lynnwood Policy~~
- 16 Plan and all City functional plans and policies.
- 17 (Ord. 2045 §8, 1995; Ord. 1877, 1992)

18 **17.10.015 General provisions.**

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

30 **17.10.020 Applicability.**

31 This chapter establishes regulations for the protection of properties which contain or are

32 adjacent to environmentally sensitivecritical areas. Environmentally sensitivecritical

33 ~~lands areas are include~~ those which ~~are meet the definitions and requirements of this~~

34 chapter. ~~or may be designated by the critical areas inventory maps, or by The City~~ City

35 may inventory critical areas on maps for reference purposes. All critical areas shall be

36 verified by separate studies ~~which to~~ indicate ~~that all or portions~~ the extent of a

37 particular ~~such~~ areas or sites which are environmentally sensitivecritical. Development

38 proposals for properties which contain or are adjacent to designated or regulated

39 environmentally sensitivecritical areas shall comply with the provisions and requirements

40 of this chapter. A permit shall be obtained from the City for any activity which alters or

41 disturbs an environmentally sensitivecritical area or buffer, including but not limited to,

42 clearing, grading, draining, filling, dumping of debris, demolition of structures and

43 installation of utilities. Further, a permit shall be obtained from the City for any proposed

44 activity adjacent to a critical area. ~~##~~ No boundary line adjustments or development

1 permits including subdivisions, short plats, conditional use permits, ~~special use permits,~~
2 ~~development plan approvals,~~ rezones or variances shall be granted for any lot which
3 contains or is adjacent to an environmentally ~~sensitive~~critical area until approvals as
4 required by this chapter have been granted by the ~~C~~city. The provisions of this chapter
5 apply to projects proposed by private and public entities. No permit granted pursuant to
6 this chapter shall remove an applicant's obligation to comply in all respects with the
7 applicable provisions of any other federal, state, or local law or regulation, including but
8 not limited to the acquisition of any other required permit or approval.
9 (Ord. 1877, 1992)

10 **17.10.030 Definitions.**

11 Terms used in this chapter shall have the meaning given to them in this chapter, ~~except~~
12 ~~where otherwise defined, and~~ unless where used the context thereof shall clearly indicate
13 to the contrary. Words and phrases used herein in the past, present or future tense shall
14 include the past, present and future tenses; and phrases used herein in masculine,
15 feminine or neuter gender shall include the masculine, feminine and neuter genders; and
16 words and phrases used herein in the singular or plural shall include the singular and
17 plural; unless the context shall indicate to the contrary.

18 A. "Adjacent" means within 200 feet of an environmentally ~~sensitive~~critical
19 area, measured from the edge of the environmentally ~~sensitive~~critical area.

20 "Adjacent wetland" means the entire area of the wetland under
21 consideration and not just the portion within 200 feet of ~~an a~~
22 environmentally ~~sensitive~~critical area.

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

27 "Areas of special flood hazard" means the land in the flood plain within a
28 community subject to a one percent or greater chance of flooding in any
29 given year.

30 B. "Buffer" means a designated or regulated area adjacent to ~~an area~~
31 ~~designated or regulated as a critical area. part of a stream or wetland that is~~
32 ~~an integral part of the stream or wetland ecosystem; or a designated or~~
33 ~~regulated area adjacent to steep slopes which protects slope stability,~~
34 ~~attenuation of surface water flow, and landslide and erosion hazards~~
35 ~~reasonably necessary to minimize risk.~~

36 C. "CityCity" means the ~~city~~City of Lynnwood.

37 "Clearing" means the ~~cutting or~~removal of vegetation or other organic
38 plant materials by physical, mechanical, chemical or other means.

39 "Compensation" means the replacement, enhancement, or creation of an
40 environmentally ~~sensitive~~critical area equivalent in functions, values and
41 area to those being altered or destroyed.

42 "Creation" means ~~bringing a critical area into existence at a site in which a~~
43 ~~critical area did not formerly exist.~~

44 "Critical areas" means the following areas ~~and ecosystem:~~

- 45 1. Wetlands;

- 1 2. Streams;
2 3. Fish and Wildlife Priority Habitat
3 4. ~~Areas of Potential~~ Geologically Hazardous Areas ~~Instability;~~
4 And any additional areas defined or established as critical areas under the
5 provisions of the Washington State Growth Management Act or the
6 provisions of this chapter.

7 D. “Department” means Department of Public Works.
8 “Development proposal site” means the legal boundaries of the parcel or
9 parcels of land for which the applicant has applied to the city City for
10 development permits.

11 “Director Director” means the director Director of Public Works and/or
12 the director Director’s designee.

13 “Drainage facility” means the system of collecting, conveying, treating,
14 and storing surface and storm water runoff. Drainage facilities shall
15 include but not be limited to all surface and storm water runoff
16 conveyance and containment facilities including streams, pipelines,
17 channels, ditches, infiltration facilities, filtration and treatment facilities,
18 retention/detention facilities, and other drainage structure and
19 appurtenances, both natural and manmade.

20 E. “Enhancement” means an action which increases the functions and values
21 of a stream, wetland or other sensitive critical area or its buffer.

22 “Erosion hazard areas” means those areas containing soils which,
23 according to the U.S. Soil Conservation Service Soil Survey, have severe
24 to very severe erosion hazard potential.

25 “Essential habitat” means habitat necessary for the survival of species
26 listed as federally listed “threatened,” or “endangered” under the federal
27 Endangered Species Act, species listed as “threatened” or “endangered”
28 by the Washington Department of Fish and Wildlife, species listed as
29 “candidate” or “species of concern” by the US Fish and Wildlife Service
30 or NOAA Fisheries, and species listed as “sensitive” or “state candidate”
31 by the Washington Department of Fish and Wildlife and sensitive species
32 and state listed priority species.

33 F. “Functional values” and / or “functions” means the beneficial roles that
34 critical areas and their buffers serve, ~~d by wetlands and streams~~ including
35 but not limited to water quality protection and enhancement, fish and
36 wildlife habitat, food chain support, flood storage, conveyance and
37 attenuation, groundwater recharge and discharge, erosion control, aesthetic
38 values and recreation.

39 G. “Geologically hazardous areas” means those areas-:
40 1. Have naturally occurring slopes of 40 percent or more;
41 2. Other areas which the City has reason to believe are geologically
42 unstable due to factors such as landslide, seismic or erosion hazard.

43 G. that because of their susceptibility to erosion, sliding, earthquake, or other
44 geological events, are not suited to siting commercial, residential, or industrial
45 development consistent with public health or safety concerns.

1 H. “Headwater” means the upstream extent of those areas meeting the definition
2 of a stream, open water body or wetland.

3 H. “Hydrologically connected” means a sensitivecritical area has a surface
4 water connection to another critical area, is within 200 feet of another
5 critical area, or lies within the floodplain of another sensitivecritical area,
6 and whose hydrology is directly affected by changes in the other
7 sensitivecritical area.

8 L. “Lot coverage” has the meaning as defined in Chapter 21.02 LMC.

9 M. “Mitigation” means a negotiated action involving the use of one or more
10 of the following actions:

- 11 1. Avoiding impacts altogether by not taking a certain action or parts
12 of an action;
- 13 2. Minimizing impacts by limiting the degree of magnitude of the
14 action and its implementation, by using appropriate technology, or
15 by taking affirmative steps to avoid or reduce impacts;
- 16 3. Rectifying the impact by repairing, rehabilitating or restoring the
17 affected critical area;
- 18 4. Reducing or eliminating the impact over time by preservation or
19 maintenance operations during the life of the development
20 proposal; or
- 21 5. Compensating for the impact by replacing, enhancing, or providing
22 substitute sensitivecritical areas.

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

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

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

44 O. “Ordinary high water mark” A mark that has been found where the
45 presence and action of waters are common, usual and maintained in an

1 ordinary year, long enough to create a distinction in character between
2 water body and the abutting upland.

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

5 ~~“Priority habitats” means a seasonal range or habitat element with which a given~~
6 ~~species has a primary association, and which, if altered, may reduce the~~
7 ~~likelihood that the species will maintain and reproduce over the long term.~~
8 ~~These might include areas of high relative density or species richness,~~
9 ~~breeding habitat, winter range and movement corridors. These might also~~
10 ~~include habitats that are of limited availability or high vulnerability to~~
11 ~~alteration.~~

12 “Priority species” means those species of concern due to their population
13 status and their sensitivity to habitat manipulation. Priority species include
14 those which are listed as “threatened” or “endangered” under the federal
15 Endangered Species Act, species listed as “threatened” or “endangered”
16 by the Washington Department of Fish and Wildlife, species listed as
17 “candidate” or “species of concern” by the US Fish and Wildlife Service
18 or NOAA Fisheries, species listed as “sensitive” or “state candidate” by
19 the Washington Department of Fish and Wildlife, or state-listed
20 endangered, threatened, and sensitive species, rare species, monitored
21 species and game species are designated as such by the Priority Habitat
22 and Species Program of the Washington Department of Fish and Wildlife.

23 Q. “Qualified professional” means a qualified scientific expert with expertise
24 appropriate to the relevant critical areas as determined by the person’s
25 professional credentials and / or certifications, or as determined by the
26 Director.

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

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

32 ~~S. “Sensitive areas” or “environmentally sensitive areas” means, for the~~
33 ~~purposes of this chapter, those areas defined or established as critical areas~~
34 ~~under the provisions of the Washington State Growth Management Act or~~
35 ~~the provisions of this chapter. “Sensitive areas” do not include any buffer~~
36 ~~established by this chapter.~~

37 S. “Stream” means an area where surface waters flow sufficiently to produce
38 a defined channel or bed. A defined channel or bed is an area which
39 demonstrates clear evidence of the passage of water and includes but is not
40 limited to bedrock channels, gravel beds, sand and silt beds, and defined
41 channel swales. The channel or bed need not contain water year-round.
42 For the purposes of this chapter, streams shall include both natural
43 channels and manmade channels that were constructed to replace a natural
44 stream. This definition is not meant to include irrigation ditches, canals,
45 storm or surface water runoff devices or other entirely artificial

1 watercourses unless they are used by salmonids or used to convey streams
2 naturally occurring prior to construction in such watercourses.

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

6 V. ~~“Variance” means an adjustment in the application of the specific~~
7 ~~regulations of this chapter to a particular piece of property where the~~
8 ~~property, because of special circumstances found to exist on the land, is~~
9 ~~deprived of privileges commonly enjoyed by other properties in the same~~
10 ~~vicinity and zone. The adjustment in the application of regulations shall~~
11 ~~remedy the disparity in privileges.~~

12 W. “Wetlands” means areas that are inundated or saturated by surface water
13 or ground water at a frequency or duration sufficient to support, and under
14 normal circumstances do support, a prevalence of vegetation typically
15 adapted for life in saturated soils conditions. Wetlands generally include
16 swamps, marshes, bogs and similar areas. Wetlands do not include those
17 artificial wetlands intentionally created from nonwetland sites, including,
18 but not limited to, irrigation and drainage ditches, grass-lined swales,
19 canals, detention ponds and landscape amenities. Wetlands do include
20 those artificial wetlands intentionally created from nonwetland areas to
21 mitigate conversion of wetlands, ~~if permitted or required by the city.~~
22 (Ord. 2257 §2, 1999; Ord. 1877, 1992)

23 **17.10.040 Permitted uses.**

24 Uses permitted on properties subject to this chapter shall be the same as those permitted
25 in the zoning district in which the property is located.
26 (Ord. 1877, 1992)

27 **17.10.045 Submittal requirements.**

28 A. ~~SensitiveCritical~~ Areas Permit Application Required. Any application for
29 land use, boundary line adjustments or development proposals by private
30 or public entities, including rezones, subdivisions, building permits,
31 clearing and grading permits, tree permits, or other activities which will
32 result in any alteration or modification within or adjacent to an
33 environmentally ~~sensitivecritical~~ area or its standard buffer width shall
34 include an application for a ~~sensitivecritical~~ areas permit, ~~which indicates~~
35 ~~the location and type of environmentally sensitive area.~~ The
36 ~~sensitivecritical~~ areas permit application shall be submitted to the
37 department of public works for processing as required by LMC 2.44.040.
38 The ~~director~~Director or the ~~director~~Director’s designee shall review the
39 information submitted by the applicant together with any other available
40 information. If the ~~director~~Director determines that there is insufficient
41 environmental information to evaluate the proposal, the applicant shall be
42 notified that additional environmental studies are required. The Director
43 reserves the right to refuse to accept an incomplete application. The
44 ~~director~~Director may waive the requirement for a special study if there is

1 substantial showing that there will be no alteration of the sensitivecritical
2 area or buffer and that there will be no significant adverse impacts on the
3 sensitivecritical area as a result of the proposed development.

4 B. Contents of Special Studies. Special environmental studies shall be
5 prepared by a qualified person with expertise in the area of concern in
6 accordance with the requirements of this chapter and to the satisfaction of
7 the department. Special studies are valid for three years, after such date the
8 CityCity will determine if a revision or additional assesment is necessary.

9 Such studies shall:

- 10 1. Provide a site plan and written report describing of the conditions
11 of the property, illustrating at a scale sufficient to describe the
12 proposed development and the environmentally sensitivecritical
13 area, and a written report; and
- 14 2. Identify and characterize any sensitivecritical area and associated
15 buffer on or adjacent to the site. Such characterizations shall
16 comply with the methods described and accepted in this chapter;
17 and as part of the total development site.
- 18 3. Describe how the proposed development will impact the
19 sensitivecritical area(s) and associated buffer(s) which are present
20 on or which adjoin are adjacent to the property; and
- 21 4. Describe any plans for alteration or modification of the
22 sensitivecritical area (s) and associated buffer(s); and
- 23 5. A statement of any plans to utilize buffer credit, and provide a
24 detail of the calculations; and
- 25 6. A statement of the resources and methodology used in the
26 reporting reflecting the use of "best availabe science;" and
- 27 5-7. Provide recommendations methods for avoiding or mitigating
28 any identified impacts.

29 (Ord. 2076 §21, 1996; Ord. 1877, 1992)

30 **17.10.046 Exemptions allowed.**

31 Certain activities set forth in LMC 17.10.047 are exempt from the requirements of this
32 chapter. while The Director may exempt such activities, as well as other s, activities may
33 be granted specific exceptions or modifications as provided in this chapter, provided:

- 34 1. No person shall conduct any activity within or adjacent to any
35 critical-critical area or sensitivecritical area buffer that is exempted
36 from the provisions of this chapter until such time as such person
37 has given ten (10) days² advance written notice (except for an
38 emergency per LMC 17.10.047(DA)) to the directorDirector. The
39 notice shall identify of the activity to be conducted and the
40 exemption(s) relied upon by the person who intends to conduct
41 such activity; and
- 42 2. Such exeeptions-exemptions shall be verified by cityCity staff and
43 acknowledged on the face of the written notice prior to the
44 commencement of the activity; andinvasion of the sensitive area or
45 sensitive area buffer;

- 1 3. If absolutely unavoidable, impacts to sensitivecritical areas and
2 their buffers are minimized; and
3 4. Disturbed- Impacted areas are immediately restored.
4 (Ord. 1877, 1992)

5 **17.10.047 Exemptions.**

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

- 8 A. Emergency actions necessary to prevent an immediate threat to public
9 health, safety or welfare, or that pose an immediate risk of damage to
10 private or public property, and that require action in a timeframe too short
11 to allow for normal processing of the requirements of this Chapter.
12 After the emergency action is taken, the Director shall be notified of these
13 actions within 7 days. The person or agency relying on this exemption
14 shall then restore and / or mitigate for any impacts to critical areas and or
15 buffers in accordance with an approved critical areas study and / or
16 mitigation plan.
- 17 ~~B.~~ All existing ~~residential, commercial and industrial~~ developments located
18 within sensitivecritical areas or their associated buffers have a legal
19 nonconforming status as to use and setback requirements.
- 20 ~~BC.~~ Existing structures, facilities, landscaping or other improvements that
21 because of their existing location do not meet the requirements of this
22 chapter, may be remodeled, reconstructed or replaced, or maintained or
23 repaired, providing that any such activity does not further intrude into a
24 sensitivecritical area or buffer or adversely affect wetland-critical area
25 functions. Maintenance and repair does not include any modification that
26 changes the use, scope or size of the original structure, facility or
27 improved area, and does not include construction of an additional access
28 maintenance road. Nothing herein releases the site from compliance with
29 the provisions of Chapter 21.12 LMC.
- 30 ~~CD.~~ Normal and routine maintenance of existing drainage ditches, drainage
31 retention/detention facilities, or ornamental landscape ponds; provided,
32 that none of these are part of a sensitivecritical area mitigation plan
33 required by this chapter.
- 34 ~~D.~~ Emergencies that threaten the public health, safety and welfare, as
35 determined by the city.
- 36 ~~E.~~ Category III wetlands less than 2,500 square feet in area located on the
37 site, so long as there are no adjacent wetlands that in combination with the
38 subject wetland exceed 2500 square feet.
- 39 ~~F.~~ Category IV wetlands less than 10,000 square feet in area located on the
40 site, so long as there are no adjacent wetlands that in combination with the
41 subject wetland exceed 10,000 square feet.
- 42 ~~GE.~~ Relocation of electric facilities, lines, equipment, or appurtenances, not
43 including substations, with an associated voltage of 55,000 volts or less,
44 and relocation of natural gas, cable communications, telephone facilities,

1 and water or sewer lines, pipes, mains, equipment or appurtenances, only
2 when required and approved by the cityCity, and subject to the following:

- 3 1. No practical alternative location is available; and
- 4 2. The applicant demonstrates such construction is necessary for
5 gravity flow (if applicable); and
- 6 3. Construction is accomplished using best management practices;
7 and
- 8 4. The wetland and buffer environment is protected to the maximum
9 extent possible during construction and maintenance; and
- 10 5. The original grade is replaced; and
- 11 6. Joint use of a utility corridor by other utilities may be allowed and
12 is strongly encouraged; ~~and~~
- 13 7. ~~Tree removal is permitted pursuant to an approved wetland permit.~~

14 ~~HF.~~ Installation, or construction, replacement, repair, operation or alteration of
15 electric facilities, lines equipment or appurtenances (not including
16 substations) with an associated voltage of 55,000 volts or less in improved
17 cityCity road right-of-way (which may be within or adjacent to a critical
18 area or its buffer), and replacement, operation or alteration, of all electric
19 facilities, lines, equipment or appurtenances, not including substations,
20 with an associated voltage of 55,000 volts or less.

21 ~~IG.~~ Installation, or construction, replacement, repair, operation or alteration of
22 natural gas, cable and telecommunication facilities, water or sewer lines,
23 pipes, mains, equipment or appurtenances in improved cityCity road right-
24 of-way (which may be within or adjacent to a critical area or its buffer),
25 and replacement, operation repair or alteration of all natural gas, cable
26 communications and telephone facilities, water or sewer lines, pipes,
27 mains, equipment or appurtenances.

28 ~~H.~~ Repair or overlay of improved City road right of way, which may be
29 within or adjacent to a critical area or its buffer, so long as it does not
30 further encroach into the critical area or its buffer.

31 ~~I.~~ Minor site investigation work necessary for land use submittals, such as
32 surveys, delineations, soil logs, percolation tests, and other related
33 activities where such activities do not require construction of new access
34 roads or significant amounts of excavation or vegetation removal. In
35 every case, impacts to critical areas and buffers shall be minimized and
36 disturbed areas shall be immediately restored.

37 ~~J.~~ Removal of the following non-native vegetation with hand labor from
38 critical areas and buffers provided that appropriate erosion-control
39 measures are used, and the area is revegetated with native vegetation:
40 1) Himalayan blackberry (Rubus discolor, R. procerus);
41 2) Evergreen blackberry (R. laciniatus);
42 3) English Ivy (Hedera helix);
43 4) Japanese knotweed (Polygonum cuspidatum);
44 5) Any plant identified as noxious on the Washington State Noxious
45 Weed List.

1 K. Isolated Category III and IV wetlands under 2,500 square feet which have
2 80 percent or greater areal cover by invasive species, and have been
3 determined by a qualified professional to be of low function, may be
4 exempted from the requirements of this Chapter, provided that action is
5 taken to mitigate for the lost functions. Adequate and appropriate
6 mitigation measures shall be submitted by the applicant, prepared by a
7 qualified professional, subject to the approval of the Director, and may
8 include, but is not limited to, stormwater quality and quantity treatment,
9 and / or native landscaping enhancements. Please note that state and
10 federal permits may still apply.
11 (Ord. 1877, 1992)

12 **17.10.048 Reasonable use exception – ~~Modification~~ Allowed.**

13 If the application of this chapter would deny all reasonable use of the property,
14 development may be allowed which is consistent with the general purpose of the chapter
15 and the public interest, provided:-

- 16 A. An application for a reasonable use exception containing the elements
17 required in section 17.10.049 of this code shall be filed with the
18 department and shall be considered by the Hearing Examiner at a public
19 hearing employing the procedures set forth in LMC 17.10.110(B) under
20 Process I (LMC 1.35.100 through 1.35.180).
- 21 B. The Hearing Examiner must determine that:
- 22 1. Application of this chapter would deny all reasonable use of the
23 property;
 - 24 2. There is no reasonable use with less impact on the critical area;
 - 25 3. The proposed development does not pose an unreasonable threat to
26 the public health, safety or welfare; and
 - 27 4. Any alteration to the sensitivecritical areas or buffers must be the
28 minimum necessary to allow for the reasonable use of the property;
29 and
 - 30 5. Impacts to critical areas and buffers are mitigated consistent with
31 the purpose and standards of this Chapter to the greatest extent
32 feasible; and
 - 33 6. The hearing examiner must find that the inability of the applicant
34 to derive reasonable use of the property is not the result of actions
35 of the property owner or some predecessor, in interest in
36 subdividing the property or adjusting a boundary line which
37 thereby createding the undevelopable condition after the effective
38 date of this chapter.
- 39 C. The burden of proof shall be on the applicant to provide sufficient
40 information to the Hearing Examiner in support of a decision on the
41 applicant.
- 42 D. If the hearing examiner grants a reasonable use exception, the examiner
43 may impose any condition(s) to ensure that the development is consistent
44 with the intent of this chapter.
45 (Ord. 1877, 1992)

1 **17.10.049 Reasonable use application and process.**

2 Whenever an applicant ~~for a development proposal submits~~ requests a reasonable use
3 exception, they shall submit a complete proposal application to the ~~director~~ Director for
4 review. The applicant is strongly encouraged to schedule a submittal appointment with
5 the Department to submit their application. This meeting will ensure that the applicant
6 has a complete application, containing all of the elements required by this section. The
7 Department may refuse to accept an incomplete application.
8 The Director shall prepare a recommendation to the Hearing Examiner based on review
9 of the submitted information.

10 The ~~proposal~~ reasonable use application shall include the following information, which
11 will be used ~~by the Hearing Examiner~~ to evaluate whether ~~at the~~ criteria for a reasonable
12 use exception shall be allowed:

- 13 A. A complete application and special study, as required by section 17.10.045
14 of ~~description of the areas of the lot which are either environmentally~~
15 sensitive or within setbacks required by this chapter; and
16 B. A mitigation plan specifying the measures taken to mitigate for the
17 impacts; and
18 C. ~~A description map showing~~ of the amount of the lot which is within
19 setbacks required by other standards of the zoning code; and
20 ~~C. An analysis of the minimum amount of development that would be~~
21 ~~considered “reasonable use” of the lot, including a narrative which~~
22 ~~includes an empirical basis for this determination;~~
23 D. An analysis of the impact that the ~~amount of~~ proposed development
24 described in subsection (C) of this section would have on the
25 environmentally sensitive critical area(s) and / or their buffer(s); and
26 ~~E. An analysis of whether any other reasonable use with less impact on the~~
27 ~~environmentally sensitive area(s) and its buffer is possible. This must also~~
28 ~~include an analysis of whether there is any feasible on-site alternative to~~
29 ~~the proposed development with less impact, including reduction in~~
30 ~~density, phasing of project implementation, change in timing of activities,~~
31 ~~revision of lot layout, and/or related site planning considerations that~~
32 ~~would allow a reasonable use with less adverse impacts to the~~
33 ~~environmentally sensitive area(s) and buffers;~~
34 ~~FE.~~ A design of the proposal so that the amount of development proposed as
35 “reasonable use” will have the least impact practicable on the
36 environmentally ~~sensitive~~ critical area(s); and
37 F. ~~A description of the design modifications proposed by the applicant in~~
38 ~~order to minimize impacts on the critical area(s) and buffer(s). This~~
39 ~~includes, but is not limited to a description of the modified building~~
40 ~~footprint, reduced building setback from the buffer, parking modifications,~~
41 ~~reduced total building square feet, modified location to preserve trees, and~~
42 ~~any other measures taken by the applicant; and~~
43 G. An ~~analysis~~ description of the needed modifications to the standards of
44 ~~this~~ all applicable chapters to accommodate the proposed development;
45 and

- 1 H. ~~A description of any modifications needed to the required front, side and~~
2 ~~rear setbacks; building height; and landscape widths to provide for a~~
3 ~~reasonable use while providing greater protection to the environmentally~~
4 ~~sensitive area(s); and~~
5 H. Any other related projects documents, such as permit applications to other
6 agencies, special studies, and environmental documents prepared pursuant
7 to the State Environmental Policy Act; and
8 I. Such other information as the ~~director~~Director or hearing examiner
9 determines is reasonably necessary to evaluate the issue of reasonable
10 economic use as it relates to the proposed development. (Ord. 1877, 1992)

11 **17.10.050 Wetland delineation and rating system.**

- 12 A. Wetlands shall be identified and delineated in accordance with the ~~1989~~
13 ~~Army Corp of Engineers Federal Manual for Identifying and Delineating~~
14 ~~Jurisdictional Wetlands and as modified or supplemented by this~~
15 ~~chapter methodologies detailed in the Washington Administrative Code~~
16 ~~(WAC) 173-22-080.~~
17 B. Wetland delineations are valid for three years, after such date the City
18 will determine if a revision or additional assessment is necessary.
19 ~~BC.~~ The wetland boundaries established by this process shall be used to meet
20 the requirements of this chapter.
21 ~~C. Wetlands shall be rated using the rating system found in LMC 17.10.051;~~
22 ~~wetland buffer widths, replacement ratios and mitigation criteria shall be~~
23 ~~based on these rating systems.~~
24 D. The total area of wetlands shall be used for the purpose of classification
25 regardless of whether a proposed development site includes all or only a
26 portion of the wetland.
27 E. Wetlands shall be categorized using the Department of Ecology's 2004
28 Washington State Wetland Rating System for Western Washington.
29 (Ord. 1877, 1992)

30 **~~17.10.051 Wetland rating.~~**

31 ~~Wetland rating means the placement of wetlands into one of the following categories:~~

- 32 ~~A. Category I Wetlands: wetlands that meet any of the following criteria:~~
33 ~~1. Wetlands closely associated with the Scriber Creek, Swamp Creek and~~
34 ~~Lunds Gulch, Halls Creek and Halls Lake systems. Closely~~
35 ~~associated wetlands mean those wetlands immediately adjacent to~~
36 ~~the stream and those wetlands within the flood plain of the Scriber~~
37 ~~Creek, Swamp Creek, Lunds Gulch or Halls Creek or Halls Lake~~
38 ~~systems; or~~
39 ~~2. The presence of species listed by the federal government or state of~~
40 ~~Washington as endangered, threatened, sensitive, documented~~
41 ~~priority species, or the presence of essential or outstanding actual~~
42 ~~or potential habitat for those species; or~~
43 ~~3. Wetlands equal to or greater than 10 acres in size and having three or~~
44 ~~more wetland classes, one of which is open water; or~~

1 4. High quality, regionally rare wetland communities with irreplaceable
2 ecological function, including sphagnum bogs and fens, and
3 mature forested wetlands.

4 ~~B. Category II Wetlands: wetlands other than Category I wetlands that meet any of
5 the following criteria:~~

6 ~~1. Wetlands that have a surface water connection to the Scriber Creek,
7 Swamp Creek, Lunds Gulch systems or Halls Creek or Halls Lake;
8 or~~

9 ~~2. Wetlands greater than two acres in size; or~~

10 ~~3. Wetlands greater than or equal to one acre that have a forested wetland
11 subclass; or~~

12 ~~4. Wetlands greater than or equal to one acre having 40 percent to 50
13 percent open water in dispersed patches with two or more classes
14 of vegetation; or~~

15 ~~5. Wetlands of any size that do not qualify as Category I wetlands that
16 form the headwaters of a stream system.~~

17 ~~C. Category III Wetlands: wetlands that meet the following criteria:~~

18 ~~1. Wetlands that are equal to or less than two acres in size; and~~

19 ~~2. Have two or fewer wetland classes; and~~

20 ~~3. Have no surface water connection to Scriber Creek, Swamp Creek,
21 Lunds Gulch or Halls Creek or Halls Lake systems.~~

22 ~~D. Category IV Wetlands: wetlands that meet the following criteria:~~

23 ~~1. Hydrologically isolated of any size; and~~

24 ~~2. Have one wetland class, which is not forested. (Ord. 1877, 1992)~~

25 **17.10.052 I Wetland buffers.**

26 ~~A. Buffer areas surrounding wetlands are essential to maintenance and
27 protection of functions and values. Buffer areas protect wetlands from
28 degradation by:~~

29 ~~1. Stabilizing soil and preventing erosion;~~

30 ~~2. Filtering suspended soils, nutrients and harmful or toxic
31 substances;~~

32 ~~3. Moderating impacts of stormwater runoff;~~

33 ~~4. Moderating system microclimate;~~

34 ~~5. Protecting wetland wildlife habitat from adverse impacts;~~

35 ~~6. Maintaining and enhancing habitat diversity and/or integrity;~~

36 ~~7. Supporting and protecting wetland plant and animal species and
37 biotic communities; and~~

38 ~~8. Reducing disturbances to wetland resources caused by the
39 intrusion of humans and domestic animals.~~

40 Wetland buffer zones shall be required for all regulated activities adjacent to regulated
41 wetlands. All buffers shall be measured from the wetland edge as **determined and** marked
42 in the field. **Any wetland restored, relocated, replaced or enhanced because of wetland**
43 **alterations shall have at least the minimum buffer required for the class of wetland**
44 **involved. Except as otherwise permitted under this chapter, wetland buffers shall be**
45 **retained in a natural condition.** The following **standard** buffers **widths shall be required,**

1 unless modified and approved in accordance with the provisions of this chapter~~are~~
2 minimum requirements:

- 3 1. Category I wetlands shall have a 100-foot buffer.
- 4 2a. Category II wetlands shall have a 50-foot buffer.
- 5 2b. Category II wetlands with essential habitat shall have a 100-foot
6 buffer.
- 7 3. Category III wetlands shall have a ~~25~~50-foot buffer.
- 8 4. Category IV wetlands shall have a ~~10~~25-foot buffer.
- 9 (Ord. 1877, 1992)

10 **17.10.052 Alterations to wetlands and buffers, allowed.**

11 Alteration, modification, or enhancement of wetlands and buffers may be allowed by this
12 Chapter, subject to the review and approval by the Director. The applicant shall submit
13 to the department a plan detailing the alteration, modification and / or enhancement
14 proposal, along with any proposed mitigation. This plan shall be prepared by a qualified
15 professional. The plans shall meet the criteria of LMC 17.10.053, 17.10.054, 17.10.055,
16 17.10.111, and 17.10.125 (as applicable).

17 All wetlands and buffers, regardless of category, shall be preserved unless the applicant
18 can demonstrate the following:

- 19 A. There is no feasible and reasonable alternative to making the alteration;
20 and
- 21 B. Alteration will preserve, improve, or protect the functions of the wetland
22 system; and
- 23 C. The alteration will will not decrease the score of the wetland and buffer, as
24 determined by the Wetland Rating Form in the Department of Ecology's
25 2004 Washington State Wetland Rating System for Western Washington;
26 and
- 27 D. The mitigation for such alteration has a high probability of success.

28 **17.10.053 Wetland and buffer alteration criteria.**

- 29 A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter
30 shall be subject to the following requirements:
 - 31 1. Each activity or use shall be designed so as to minimize overall
32 wetland and buffer alteration to the greatest extent reasonably
33 possible; and
 - 34 2. Construction techniques shall be approved by the City prior to any
35 site work; and
 - 36 3. A mitigation plan shall be approved by the City prior to the
37 issuance of any construction permits; and
 - 38 4. Relocated wetlands shall be within the same sub-basin (as defined
39 within the City's comprehensive flood and drainage management
40 plan); and
 - 41 5. All mitigation work shall be timed prior to or concurrent with the
42 proposed alterations; and

1 6. When adding to an existing wetland as a result of compensation for
2 wetland losses, the characteristics of the existing wetland shall be
3 maintained.

4 B. Time for Completion.

5 1. When alteration is allowed, the City may require that the relocated
6 or compensatory wetland and buffer be completed and functioning
7 prior to allowing the existing wetland to be filled or altered.

8 2. Mitigation shall be completed prior to granting of temporary or
9 final occupancy, or the completion or final approval of any
10 development activity for which mitigation measures have been
11 required.

12 3. If the mitigation work is not completed within three years of the
13 City approval of the mitigation plan the City may require that a
14 reevaluation of the plan be conducted by a qualified wetland
15 professional. The City may require additional requirements based
16 on the recommendations. (Ord. 1877, 1992)

17 17.10.054 Wetland and buffer mitigation plan.

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

22 A. Be prepared by a qualified wetland professional using Washington
23 Department of Ecology accepted methodologies; and

24 B. Include a baseline study that quantifies the existing functional values; and

25 C. Specify how functional values will be replaced and when mitigation will
26 occur relative to project construction; and

27 D. Complete a Wetland Rating Form, as found in the Department of
28 Ecology's 2004 Washington State Wetland Rating System for Western
29 Washington, and demonstrate that the mitigation measures proposed do
30 not decrease the score of the wetland and buffer.

31 E. Include provisions for adequate monitoring to ensure success of the
32 mitigation plan. The monitoring plan shall outline the approach for
33 monitoring construction of the mitigation project, and for assessment of
34 the completed project, and shall include a monitoring schedule. A
35 monitoring report shall be submitted annually for a period up to 5 years to
36 the department unless a more frequent time period is required as a
37 condition of the permit, and shall document successes, problems and
38 contingency actions of the mitigation project. Monitoring activities may
39 include, but are not limited to:

40 1. Establishing vegetation monitoring plots to track changes in plant
41 species composition and density over time; and

42 2. Measuring base flow rates and storm water runoff to model and
43 evaluate hydrologic predictions; and

44 3. Sampling fish and wildlife populations to determine habitat
45 utilization, species abundance and diversity; and

1 4. Sampling surface and subsurface waters to determine pollutant
2 loading, and changes from the natural variability of background
3 conditions.

4 F. Include a contingency plan specifying what corrective actions will be
5 taken should the mitigation not be successful; and

6 G. Include provisions for an assurance device, which may include a bond, to
7 assure that work is completed in accordance with the mitigation plan, and
8 to assure that restoration or rehabilitation is performed in accordance with
9 the contingency plan if mitigation fails within five years of
10 implementation.

11 (Ord. 1877, 1992)

12 **17.10.055 Wetland alteration compensation.**

13 As a condition of approving the alteration or relocation of a wetland, the City shall
14 require that an area equal to, or larger than the altered portion of the wetland be provided
15 as compensation for wetland losses. The following ratios apply to creation or restoration
16 of the altered or relocated wetlands. The first number specifies the acreage of
17 replacement wetlands required, and the second number specifies the acreage of wetlands
18 altered or relocated.

19 A. Category I: 6:1

20 B. Category II and III:

21 1. Forested: 3:1

22 2. Scrub-shrub: 2:1

23 3. Emergent: 1.50:1

24 C. Category IV: 1.00:1

25 The City may increase the ratios under the following circumstances:

26 A. Uncertainty as to the probable success of the proposed restoration or
27 creation;

28 B. Significant period of time between destruction and replication of wetland
29 values;

30 C. Projected losses in functional value;

31 D. The relocation is off-site.

32 In all cases, the applicant must demonstrate that recreated wetland will will not decrease
33 the score of the wetland and buffer, as determined by the Wetland Rating Form in the
34 Department of Ecology's 2004 Washington State Wetland Rating System for Western
35 Washington.

36 **17.10.0536 Increased wetland buffer width.**

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

- 1 A. A larger buffer is necessary to maintain viable populations of existing
2 species; or to prevent degradation or alteration of the existing hydro-
3 regime; or
4 B. The wetland ~~is contains~~ used by essential habitat species proposed or listed
5 by the federal governments or the state as endangered, threatened,
6 sensitive or documented priority species, or essential or outstanding
7 potential habitat for those species, or has unusual nesting or resting sites;
8 or
9 C. A trail or utility corridor is proposed within the buffer; or
10 D. The adjacent land is susceptible to severe erosion and ~~erosion control~~
11 measures the standard buffer width will not effectively prevent adverse
12 wetland impacts.
13 (Ord. 1877, 1992)

14 **17.10.0547 Decreased wetland buffer width.**

15 Any wetland restored, relocated, replaced or enhanced because of wetland alterations
16 shall have at least the standard buffer required for the class of wetland involved. For
17 other development proposals, ~~The city Director~~ Director may reduce the standard wetland
18 buffer widths on a case-by-case basis where the applicant demonstrates that:

- 19 A. The proposed development will not result in any area (located on the site)
20 being developed adjacent to the wetland is extensively vegetated, and that
21 no direct or indirect, short-term or long-term, adverse impacts to the
22 wetlands will result; ~~or and~~
23 B. The buffer reduction will not decrease the score of the wetland and buffer,
24 as determined by the Wetland Rating Form in the Department of
25 Ecology's 2004 Washington State Wetland Rating System for Western
26 Washington; and
27 C. The ~~project~~ proposal contains a buffer enhancement plan using native
28 vegetation which demonstrates that the enhanced buffer will improve the
29 functional attributes of the buffer to provide additional protection for
30 wetland functions and values; ~~and~~
31 D. A decreased buffer shall not result in buffer widths less than:
32 1. Category 1 wetlands: 75 feet
33 2a. Category 2 wetlands: 37.5 feet
34 2b. Category 2 wetlands with essential habitat: 75 feet
35 3. Category 3 wetlands: 37.5 feet
36 4. Category 4 wetlands: 18.75 feet
37 (Ord. 1877, 1992)

38 **17.10.0558 Averaging of wetland buffer widths.**

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

- 41 A. The total area contained within the wetland buffer after averaging is no
42 less than that contained within the standard approved buffer prior to
43 averaging; and

1 B. Averaging is necessary to avoid an extraordinary hardship to the applicant
2 caused by circumstances peculiar to the property; and

3 ~~C. The wetland contains variations in sensitivity due to existing physical
4 characteristics; and~~

5 ~~C. Low intensity land uses will be located adjacent to the areas where buffer
6 width is reduced; and~~

7 C. The averaged buffer shall not result in a buffer less than that which is
8 allowed in section 17.10.057 of this chapter, and

9 D. Width averaging will not decrease the score of the wetland and buffer, as
10 determined by the Wetland Rating Form in the Department of Ecology's
11 2004 Washington State Wetland Rating System for Western
12 Washington adversely impact the wetland functional values.

13 (Ord. 1877, 1992)

14 **17.10.056 Disturbance of buffer.**

15 ~~Except as otherwise permitted under this chapter, wetland buffers shall be retained in a
16 natural condition. Where disturbance to the buffer occurs during construction,
17 revegetation according to a planting plan approved by the department shall be required.
18 (Ord. 1877, 1992)~~

19 **17.10.057 — Building setback lines — Wetlands.**

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

25 **17.10.058 — Alterations to wetlands and buffers, allowed.**

26 ~~Alteration or enhancement of wetlands allowed under this section is subject to the review
27 and approval by the department of an alteration, mitigation or enhancement plan prepared
28 by a qualified professional. The plans shall meet the criteria of LMC 17.10.059 and
29 17.10.090.~~

30 ~~A. Category I Wetlands and Adjacent Buffers.~~

31 ~~All Category I wetlands and buffers shall be preserved, unless:~~

32 ~~1. The applicant demonstrates that:~~

33 ~~a. Substantial public benefit will be derived through alteration; and~~

34 ~~b. The public benefit realized will substantially outweigh the public loss
35 occurring through alteration; and~~

36 ~~C. There is no feasible and reasonable alternative to making the alteration;
37 and~~

38 ~~d. Alteration will preserve, improve, or protect the functions of the stream
39 system; or~~

40 ~~2. The applicant demonstrates that the alteration will result in enhancement
41 of the wetland.~~

42 ~~B. Category II Wetlands and Adjacent Buffers.~~

43 ~~All Category II wetlands and buffers shall be preserved unless:~~

1. Alterations will preserve, improve or protect the functions of the wetland; or

2. The 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 department.~~

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 department.~~

(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 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.~~

~~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.~~

1 The city may decrease these ratios if a wetland mitigation plan
2 demonstrates that no net loss of wetland functional values will result from
3 the decreased ratios. In all cases a minimum acreage replacement ratio of
4 1.00:1 shall be required.

5 ~~C. Timing.~~

6 When wetland alteration is allowed, the city may require that the relocated
7 or compensatory wetland be completed and functioning prior to allowing
8 the existing wetland to be filled or altered.

9 **17.10.060 Wetland mitigation plan.**

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

13 A. Be prepared by a qualified wetland professional using accepted
14 methodologies; and

15 B. Include a baseline study that quantifies the existing functional values; and

16 C. Specify how functional values will be replaced and when mitigation will
17 occur relative to project construction; and

18 D. Include provisions for adequate monitoring to ensure success of the
19 mitigation plan. A monitoring plan may be required by the department for
20 its review and approval as part of the mitigation plan. If required, the
21 monitoring plan shall outline the approach for monitoring construction of
22 the mitigation project and for assessment of the completed project, and
23 shall include a schedule. A monitoring report shall be submitted annually
24 to the department unless a more frequent time period is required as a
25 condition of the permit, and shall document successes, problems and
26 contingency actions of the mitigation project. Monitoring activities may
27 include, but are not limited to:

28 1. Establishing vegetation plots to track changes in plant species
29 composition and density over time;

30 2. Measuring base flow rates and storm water runoff to model and
31 evaluate water quality predictions;

32 3. Sampling fish and wildlife populations to determine habitat
33 utilization, species abundance and diversity; and

34 4. Sampling surface and subsurface waters to determine pollutant
35 loading, and changes from the natural variability of background
36 conditions; and

37 E. Include a contingency plan specifying what corrective actions will be
38 taken should the mitigation not be successful; and

39 F. Include an assurance device that work is completed in accordance with the
40 mitigation plan and that rehabilitation is performed if mitigation fails
41 within the period of time of the construction and maintenance bonds
42 required for the project. (Ord. 1877, 1992)

43 **17.10.059 Building setback lines – Wetlands.**

1 A building setback line of 15 feet shall be required from the edge of any wetland buffer.
2 Following construction, this helps to prevent encroachment into the buffer while
3 maintaining such structures. Fences and minor structural intrusions as defined in LMC
4 21.02.105 into the area may be allowed if the department determines that such intrusions
5 will not negatively impact the wetland. The setback shall be identified on the site plan
6 approved by the City.
7 (Ord. 1877, 1992)

8 **17.10.0610 Stream – Rating.**

9 Streams within the City shall receive a rating according to the ~~Rating means the~~
10 ~~placement of streams into one of the~~ following categories:

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

20 **17.10.0621 Standard buffer width—Streams buffers.**

21 Stream buffers shall be required for all regulated activities adjacent to regulated streams.
22 All stream buffers shall be measured from the top of the upper bank or, if that cannot be
23 determined, from the ordinary high water mark as surveyed in the field. In braided
24 channels and alluvial fans, the top of the bank or ordinary high water mark shall be
25 determined so as to include the entire stream feature. Except as otherwise permitted
26 under this chapter, stream buffers shall be retained in a natural, unaltered condition.
27 The following standard buffer widths shall be required, unless modified and approved in
28 accordance with the provisions of this chapter:

- 29 A. Category I streams shall have a 100-foot buffer.
30 B. Category II streams shall have a 60-foot buffer.
31 C. Category III streams shall have a 35-foot buffer.

32 ~~The following minimum buffers of native vegetation shall apply to streams based upon~~
33 ~~category, unless otherwise permitted by LMC 17.10.065:~~

- 34 ~~A. Category I streams shall have a minimum buffer of 50 feet;~~
35 ~~B. Category II streams shall have a minimum buffer of 25 feet; provided, that~~
36 ~~the buffer shall be increased to a minimum of 50 feet in Category II~~
37 ~~streams used by salmonids;~~
38 ~~C. Category III streams shall have a minimum buffer of 10 feet. (Ord. 1877,~~
39 ~~1992)~~

40 **17.10.063 Measurement of buffer width.**

41 ~~All stream buffers shall be measured from the top of the upper bank or, if that cannot be~~
42 ~~determined, from the ordinary high water mark as surveyed in the field. In braided~~

1 ~~channels and alluvial fans, the top of the bank or ordinary high water mark shall be~~
2 ~~determined so as to include the entire stream feature. (Ord. 1877, 1992)~~

3 **17.10.062 Stream alteration allowed.**

- 4 A. All Category I streams shall be preserved. The City may only allow
5 alteration of Category I streams when approved under section 17.10.048
6 and 17.10.049 of this chapter.
7 B. The City may allow alteration of Category II and / or Category III streams
8 when approved under section 17.10.048 and 17.10.049 of this chapter, or
9 the Director may approve alteration of such streams under the following
10 circumstances:
11 1. There is no feasible and reasonable alternative to making the
12 alteration; and
13 2. Alteration will preserve, improve or protect the functions of the
14 stream system; and
15 3. When the applicant can demonstrate that the alteration or rerouting
16 maintains or enhances the functional values of the stream in terms
17 of water quality, erosion control, and / or fish and wildlife habitat.
18 (Ord. 1877, 1992)

19 **17.10.063 Stream alteration criteria.**

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

- 22 A. Each proposal shall be designed so as to minimize overall stream or buffer
23 alteration to the greatest extent reasonably possible; and
24 B. Construction techniques and field marking of areas to be disturbed shall be
25 approved by the City prior to site disturbance to ensure minimal
26 encroachment; and
27 C. When stream relocation or compensation is allowed, the City shall require
28 that the stream relocation be completed and functioning prior to allowing
29 the existing stream to be filled or altered.

30 Additionally, when approving a stream alteration, the City may require:

- 31 A. An area larger than the altered portion of the stream and its buffer be
32 provided as compensation for destruction of the functions of the altered
33 stream and buffer and to assure that such functional values are replaced;
34 and / or
35 B. Development activities be limited to specific months in order to minimize
36 impacts on water quality and wildlife habitat; and / or
37 C. The City may apply additional conditions or restrictions, or require
38 specific construction techniques in order to minimize impacts to stream
39 systems and their buffers.
40 (Ord. 1877, 1992)

41 **17.10.064 Stream mitigation plan.**

42 A mitigation plan shall be approved by the City prior to the issuance of any permits for
43 development activity occurring on a lot upon which stream and / or buffer alteration,

1 reduction, averaging, restoration, creation or enhancement is allowed. The mitigation
2 plan shall:

- 3 A. Be prepared by a qualified professional using accepted methodologies;
4 and
5 B. Include a baseline study that quantifies the existing functional values of
6 the system, as well as functional values that may be lost, and the stream's
7 functional values after mitigation; and
8 C. Specify how functional values will be replaced; and
9 D. Specify when mitigation will occur relative to project construction; and
10 E. Specify any requirements or permits required by other agencies, and the
11 status of those permits; and
12 F. Include provisions for adequate monitoring to ensure success of the
13 mitigation plan. The monitoring plan shall outline the approach for
14 monitoring construction of the mitigation project and for assessment of the
15 completed project, and shall include a schedule. A monitoring report shall
16 be submitted annually for five years to the department unless a more
17 frequent time period is required as a condition of the the permit, and shall
18 document successes, problems and contingency actions of the mitigation
19 project. Monitoring activities may include, but are not limited to:
20 1. Establishing vegetation plots to track changes in plant species
21 composition and density over time;
22 2. Measuring base flow rates and storm water runoff to model and
23 evaluate hydrologic predictions;
24 3. Sampling fish and wildlife populations to determine habitat
25 utilization, species abundance and diversity; and
26 4. Sampling surface and subsurface waters to determine pollutant
27 loading, and changes from the natural variability of background
28 conditions; and
29 G. Include a contingency plan specifying what corrective actions will be
30 taken should the mitigation not be successful; and
31 H. Include provisions for an assurance device, which may include a bond, to
32 assure that work is completed in accordance with the mitigation plan, and
33 to assure that restoration or rehabilitation is performed in accordance with
34 the contingency plan if mitigation fails within five years of
35 implementation.
36 (Ord. 1877, 1992)

37 **17.10.065 Culverting.**

- 38 A. Culverting within a stream shall only be permitted when necessary to
39 provide access to a lot when no other feasible means of access exists.
40 B. Use of common access points shall be required for abutting lots which
41 have no other feasible means of access. Culverting shall be limited to the
42 minimum number of stream crossings required to permit reasonable
43 access.
44 (Ord. 1877, 1992)

1 **17.10.0646 Increased stream buffer width.**

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

- 6 A. The section of stream reach affected by the development proposal, and / or
7 the adjacent riparian corridor contains essential habitat ~~serves as critical~~
8 ~~fish habitat for spawning or rearing as determined by the city using~~
9 ~~information from resource agencies but not limited to the Washington~~
10 ~~State Departments of Fisheries or Wildlife, U.S. Fish and Wildlife Service~~
11 ~~and native tribes; or~~
- 12 ~~B. The stream or adjacent riparian corridor is used by species listed by the~~
13 ~~federal government or the state of Washington as endangered, threatened,~~
14 ~~rare, sensitive, or monitored, or provides critical or outstanding actual or~~
15 ~~potential habitat for those species or has unusual nesting or resting sites~~
16 ~~such as heron rookeries or raptor nesting or lookout trees; or~~
- 17 ~~C. The land adjacent to the stream and its associated buffer is classified as a~~
18 ~~geologically hazardous or unstable area; or~~
- 19 ~~D. The riparian corridor provides a significant source of water, provides~~
20 ~~superior shading of stream waters or contributes organic material~~
21 ~~important to stream habitat areas; or~~
- 22 ~~E. The riparian corridor provides a significant source of water, provides~~
23 ~~shading of stream waters, or contributes organic material important to~~
24 ~~stream habitat areas; or~~
- 25 ~~F. A trail or utility corridor is proposed within the buffer; or~~
- 26 ~~G. A drainage improvement or water quality feature, such as a grass-lined~~
27 ~~swale, is proposed within the buffer; or~~
- 28 F. There has previously been substantial alteration of the adjacent buffer, and
29 an increased buffer is necessary to improve the functions and values of the
30 buffer; or
- 31 ~~H. G. When the minimum buffer for a stream extends into an area with a slope~~
32 ~~of greater than 25 percent, the buffer shall be the greater of:~~
33 1. The minimum buffer for that particular stream type; or
34 2. Twenty-five feet beyond the point where the slope becomes 25
35 percent or less.
36 (Ord. 1877, 1992)

37 **17.10.0657 Decreased stream buffer width.**

38 Any stream which is restored, relocated, replaced or enhanced because of stream
39 alterations shall have at least the standard buffer width required for the class of stream
40 involved. For other development proposals, the Director may reduce the standard stream
41 buffer widths on a case-by-case basis where the applicant demonstrates that:

- 42 A. The buffer is extensively vegetated, has less than a 15 percent slope, and
43 that no adverse impact to the stream will result from the proposed
44 reduction; and

1 B. The proposal includes a buffer enhancement plan using native vegetation
2 which substantiates that an enhanced buffer will improve the functional
3 values of the buffer to provide additional protection of the stream; and

4 C. A decreased buffer shall not result in buffer widths less than:

5 1. Category 1 streams: 75 feet

6 2. Category 2 streams: 45 feet

7 3. Category 3 streams: 25 feet

8 ~~A. The director may reduce the required buffer width on a case-by-case basis~~
9 ~~where it can be demonstrated that:~~

10 ~~1. The adjacent land is extensively vegetated and has less than 15~~
11 ~~percent slopes and that no adverse impact to the stream system will~~
12 ~~result from the proposed reduction; and~~

13 ~~2. The proposal includes a buffer enhancement plan using native~~
14 ~~vegetation which substantiates that an enhanced buffer will~~
15 ~~improve the functional values of the buffer to provide additional~~
16 ~~protection of the stream system. An enhanced buffer shall not~~
17 ~~result in greater than a 50 percent reduction in the buffer width,~~
18 ~~and the reduced buffer shall not be less than 25 feet; and~~

19 ~~3. There has previously been substantial alteration of the buffer for~~
20 ~~the stream on the subject lot and a lesser buffer than that required~~
21 ~~by subsection (A) of this section will incorporate buffer~~
22 ~~enhancement measures which will actually improve the functions~~
23 ~~and values of the existing stream buffer; or~~

24 ~~4. There has previously been substantial alteration of the buffer for~~
25 ~~the stream on adjoining lots and a lesser buffer than that required~~
26 ~~by subsection (A) of this section will not reduce the functions and~~
27 ~~values of the stream system.~~

28 B. When a reduced buffer width is allowed, a mitigation, monitoring and
29 contingency plan consistent with the provisions of LMC 17.10.078~~62~~,
30 17.10.063, 17.10.064, 17.10.111 and 17.10.125 (as applicable) may shall
31 be required by the cityCity.
32 (Ord. 1877, 1992)

33 17.10.068 Averaging of stream buffer widths.

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

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

38 B. Averaging is necessary to avoid an extraordinary hardship to the applicant
39 caused by circumstances peculiar to the property; and

40 C. The averaged buffer shall not result in a buffer less than that which is
41 allowed in section 17.10.067 of this chapter, and

42 D. Width averaging will not adversely impact the stream functional values.
43 (Ord. 1877, 1992)

44 17.10.069 Riparian wetland.

1 Any stream adjoined by a riparian wetland shall have the buffer which applies to the
2 wetland, unless the stream buffer requirement is more protective, in which case the
3 stream buffer requirement shall apply.

4 (Ord. 1877, 1992)

5 **17.10.070 Building setback line – Streams.**

6 A building setback line of 15 feet shall be required from the edge of any stream buffers.
7 Following construction, this helps ~~shall be required~~ to prevent encroachment into the
8 buffer area during and after construction while maintaining such structures. Fences and
9 minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if
10 the department determines that such intrusions will not negatively impact the stream. The
11 setback shall be identified on the site plan approved by the city ~~City~~.

12 (Ord. 1877, 1992)

13 **~~17.10.067 Riparian wetland.~~**

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

17 **~~17.10.068 Averaging of stream buffer width.~~**

18 ~~The city may allow buffer width averaging; provided, that the total area contained within~~
19 ~~the buffer is not decreased. The city may require buffer width averaging in order to~~
20 ~~provide protection to a particular portion of a stream which is especially sensitive. In~~
21 ~~either case, the adjusted minimum buffer width shall not be less than:~~

- 22 ~~A. Category I streams: 25 feet;~~
- 23 ~~B. Category II streams: 10 feet; and~~
- 24 ~~C. Category III streams: 5 feet. (Ord. 1877, 1992)~~

25 **~~17.10.070 Category I streams preservation/alteration.~~**

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

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

38 **~~17.10.072 Category II and Category III streams preservation/alteration.~~**

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

1 A. — Where alteration is allowed as part of a development approved pursuant to
2 LMC 17.10.048.

3 B. — When the applicant can demonstrate that the alteration or rerouting
4 maintains or enhances the functional values of the stream in terms of water
5 quality, erosion control, and/or fish and wildlife habitat. (Ord. 1877, 1992)

6 **17.10.073 — Culverting.**

7 A. — Culverting within a stream shall only be permitted as part of plans
8 approved under LMC 17.10.045 or to provide access to a lot when no
9 other feasible means of access exists.

10 B. — Use of common access points shall be required for abutting lots which
11 have no other feasible means of access. Culverting shall be limited to the
12 minimum number of stream crossings required to permit reasonable
13 access. (Ord. 1877, 1992)

14 **17.10.074 — Stream system and buffer alteration criteria.**

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

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

19 B. — Construction techniques and field marking of areas to be disturbed shall be
20 approved by the city prior to site disturbance to ensure minimal
21 encroachment.

22 C. — In approving alteration or relocation of a stream system or its buffer, the
23 city may require that an area larger than the altered portion of the stream
24 and its buffer be provided as compensation for destruction of the functions
25 of the altered stream system and to assure that such functional values are
26 replaced.

27 D. — When stream system relocation or compensation is allowed, the city shall
28 require that the stream relocation be completed and functioning prior to
29 allowing the existing stream to be filled or altered.

30 E. — The city may limit certain development activities near a stream to specific
31 months in order to minimize impacts on water quality and wildlife habitat.

32 F. — The city may apply additional conditions or restrictions, or require specific
33 construction techniques in order to minimize impacts to stream systems
34 and their buffers. (Ord. 1877, 1992)

35 **17.10.078 — Mitigation for loss of stream system functional values.**

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

40 A. — Be prepared by a qualified person professional using accepted
41 methodologies; and

- 1 B. ~~Include a baseline study that quantifies the existing functional values of~~
2 ~~the system, functional values that will be lost and the stream's functional~~
3 ~~values after mitigation; and~~
4 C. ~~Specify how functional values will be replaced; and~~
5 D. ~~Specify when mitigation will occur relative to project construction and to~~
6 ~~the requirements of permits issued by other agencies; and~~
7 E. ~~Include provisions for adequate monitoring to ensure success of the~~
8 ~~mitigation plan. the mitigated area up to five years to determine whether~~
9 ~~the plan was successful. A monitoring plan may be required by the~~
10 ~~department for its review and approval as part of the mitigation plan. If~~
11 ~~required, the monitoring plan shall outline the approach for monitoring~~
12 ~~construction of the mitigation project and for assessment of the completed~~
13 ~~project, and shall include a schedule. A monitoring report shall be~~
14 ~~submitted annually for five years to the department unless a more frequent~~
15 ~~time period is required as a condition of the the permit, and shall~~
16 ~~document successes, problems and contingency actions of the mitigation~~
17 ~~project. Monitoring activities may include, but are not limited to:~~
18 1. ~~Establishing vegetation plots to track changes in plant species~~
19 ~~composition and density over time;~~
20 2. ~~Measuring base flow rates and storm water runoff to model and~~
21 ~~evaluate water quality predictions;~~
22 3. ~~Sampling fish and wildlife populations to determine habitat~~
23 ~~utilization, species abundance and diversity; and~~
24 4. ~~Sampling surface and subsurface waters to determine pollutant~~
25 ~~loading, and changes from the natural variability of background~~
26 ~~conditions; and~~
27 F. ~~Include a contingency plan specifying what corrective actions will be~~
28 ~~taken should the mitigation not be successful; and~~
29 G. ~~Include provisions for an assurance device including a bond to assure that~~
30 ~~work is completed in accordance with the mitigation plan and that~~
31 ~~restoration or rehabilitation is performed in accordance with the~~
32 ~~contingency plan if mitigation failure results within five years of~~
33 ~~implementation, or lesser time as determined by the department.~~
34 ~~(Ord. 1877, 1992)~~

35 **17.10.080 Fish and wildlife priority habitat.**

36 The following environmentally ~~sensitive~~**critical** areas ~~are~~**may be** considered ~~as~~ priority
37 habitat for the protection of fish and wildlife in the ~~city~~**City**:

- 38 A. Category I and Category II wetlands;
39 B. Category I streams;
40 C. Category II streams if used by salmonids;
41 D. Upland areas if one or more of the following criteria are met:
42 1. ~~The P~~presence of ~~essential habitat~~**essential habitat** ~~species federally or state-listed~~
43 ~~or proposed for listing as threatened, endangered, or sensitive or as~~
44 ~~priority species, or outstanding or potential habitat for those~~
45 ~~species; or~~

- 1 2. Areas contiguous with large blocks of distinct habitat extending
2 outside of the cityCity limits or providing a travel corridor to a
3 significant resource; or
4 3. Areas adjacent to or contiguous with Category I wetlands which
5 enhance the value of those wetlands for wildlife.
6 (Ord. 1877, 1992)

7 **17.10.0821 Wildlife habitat assessment.**

8 If a development is proposed within or adjacent to an identified “priority habitat area,”
9 the applicant shall provide a wildlife habitat assessment prepared by a qualified
10 professional. The assessment shall include an inventory of the priority species, an
11 evaluation of the habitat, and recommendations for protection of the habitat and species
12 of concern shall be provided. The cityCity may ask appropriate resource agencies to
13 review and comment on the proposal’s potential impact on habitat and species. Based
14 upon recommendations from resource agencies and qualified professionals, the cityCity
15 may attach conditions to land use and development permits to prevent, minimize, or
16 mitigate impacts to the habitat area.
17 (Ord. 1877, 1992)

18 **17.10.08490 Geologically hazardous Areas of potential geologic instability –**
19 **Classification Identification.**

20 The following are classified as geologically hazardous areas of potential geological
21 instability or hazard:

- 22 A. Naturally occurring S slopes of 40 percent or more;
23 B. Landslide hazard areas;
24 C. Seismic hazard area;
25 D. Erosion hazard areas; and
26 ~~E.B.~~ Other areas which the cityCity has reason to believe are geologically
27 unstable due to factors such as landslide, seismic or erosion hazards.
28 (Ord. 1877, 1992)

29 **17.10.08691 Geologically hazardous Areas of potential geologic instability –**
30 **Setbacks.**

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

37 **17.10.08792 Geologically hazardous Areas of potential geologic instability –**
38 **Alteration allowed.**

39 Unless associated with a stream or wetland, the cityCity may allow alteration of an area
40 identified as an geologically hazardous area of potential geologic instability, or its
41 setback. In order to perform such alteration, the applicant shall submit to the department
42 a geotechnical report, containing all elements described in section 17.10.094, and must

1 ~~demonstrate: or hazard if the city approves a geotechnical report which demonstrates~~
2 ~~that:~~

- 3 A. The proposed development will not create a hazard to the subject property,
4 surrounding properties, or rights-of-way, ~~nor will it cause severe~~ erosions,
5 or ~~deposit excessive~~ sedimentation to off-site properties or bodies of
6 water; ~~and~~
7 ~~B. The proposal addresses the existing geological constraints of the site,~~
8 ~~including an assessment of soils and hydrology;~~
9 ~~C.~~ B. The proposed method of construction will reduce erosion, landslide, and
10 seismic hazard potential, and will improve or not adversely affect the
11 stability of slopes; ~~and~~
12 ~~D.~~ C. The proposal uses construction techniques which minimize disruption of
13 existing topography and natural vegetation; and
14 ~~E.~~ D. The proposal is consistent with the purposes and provisions of this
15 chapter.
16 (Ord. 1877, 1992)

17 **17.10.093 Geologically hazardous areas – Alteration conditions.**

18 ~~Alteration allowed by this chapter shall be subject to the following requirements:~~

- 19 ~~A. All proposed development be designed and located so as to require the~~
20 ~~minimum amount of modification to areas of potential geologic instability;~~
21 ~~and~~
22 ~~B. All impacts identified in the geotechnical report be adequately mitigated;~~
23 ~~and~~

24 ~~As a condition of any approval of development containing a geologically hazardous area~~
25 ~~or its required setbacks, the City may also require that:~~

- 26 ~~A. The applicant's geotechnical consultant be present on the site during~~
27 ~~clearing, grading, filling and construction activities which may affect~~
28 ~~geological hazard or unstable areas, and provide the City with certification~~
29 ~~that the construction is in compliance with his/her recommendations and~~
30 ~~has met with his/her approval; and~~
31 ~~B. Trees and groundcover be retained and additional vegetation or other~~
32 ~~appropriate soil stabilizing structures and materials be provided.~~
33 ~~(Ord. 1877, 1992)~~

34 **17.10.094 Geotechnical report content requirements.**

35 ~~Geotechnical reports shall be prepared by a geotechnical engineer or geologist, as~~
36 ~~appropriate. Geotechnical reports shall be stamped and signed by an engineer. Based on~~
37 ~~the characteristics of the site, the Director may require any or all of the following items to~~
38 ~~be addressed in the geotechnical report:~~

- 39 ~~A. A site development plan drawn to scale which shows the boundary lines~~
40 ~~and dimensions of the subject property, the geologically hazardous areas,~~
41 ~~the location, size, and type of any existing or proposed structures,~~
42 ~~impervious surfaces, wells, drainfields, drainfield reserve areas, roads,~~
43 ~~easements, and utilities located on site; and~~

- 1 B. A site map identifying the location of springs, seeps, or other surface
- 2 expressions of ground water, and the location of surface water or evidence
- 3 of seasonal surface water runoff or ground water; and
- 4 C. A discussion of the geological properties of the soils, including any fill,
- 5 sediment layers, and / or rocks on the subject property and adjacent
- 6 properties and their effect on the stability of the slope; and
- 7 D. The extent and type of vegetative cover prior to development activity or
- 8 site disturbance; and
- 9 E. The proposed method of drainage and locations of all existing and
- 10 proposed surface and subsurface drainage facilities and patterns, and the
- 11 locations and methods for erosion control; and
- 12 F. A description of the soils in accordance with the Unified Soil
- 13 Classification System; and
- 14 G. Identification of all existing fill areas; and
- 15 H. Information demonstrating compliance with all applicable; and
- 16 I. Evidence showing faults, significant geologic contacts, landslides, or
- 17 downslope soil movement on the subject property and adjacent properties;
- 18 and
- 19 J. A vegetation management and restoration plan, or other means necessary
- 20 for maintaining long-term stability of slopes.

21 **~~17.10.089 — Potential geologic instability — Development conditions.~~**

22 ~~As part of any approval of development on an area of potential geological instability, the~~

23 ~~city shall require:~~

- 24 ~~A. All impacts identified in the geotechnical report be mitigated; and~~
- 25 ~~B. All utilities and access roads or driveways to and within the site be located~~
- 26 ~~so as to require the minimum amount of modification to slopes or area of~~
- 27 ~~potential geological instability;~~
- 28 ~~C. As part of any approval of development on an area of potential geological~~
- 29 ~~instability or within required setbacks, the city may also require that:~~
 - 30 ~~1. The applicant's geotechnical consultant be present on the site~~
 - 31 ~~during clearing, grading, filling and construction activities which~~
 - 32 ~~may affect geological hazard or unstable areas, and provide the~~
 - 33 ~~city with certification that the construction is in compliance with~~
 - 34 ~~his/her recommendations and has met with his/her approval; and~~
 - 35 ~~2. Trees and groundcover be retained and additional vegetation or~~
 - 36 ~~other appropriate soil stabilizing structures and materials be~~
 - 37 ~~provided.~~
 - 38 ~~(Ord. 1877, 1992)~~

39 **~~17.10.090 — Hillside development standards.~~**

40 ~~While slopes of 25 percent or greater are not by themselves defined by this chapter as~~

41 ~~environmentally sensitive areas, improper development or construction on hillsides can~~

42 ~~cause erosion, flooding, property damage and damage to environmentally sensitive areas~~

43 ~~regulated by this chapter. Development on hillsides with slopes of 25 percent or greater~~

44 ~~shall comply with the following requirements regarding disturbance limitations,~~

1 development location, development design, construction techniques and landscaping. For
2 purposes of this section, disturbance shall include clearing, grading, filling, excavation,
3 construction, paving or removal of vegetation.

4 A. Amount of Disturbance Allowed. The following chart sets forth the maximum
5 slope disturbance allowed on a lot, unless other standards in this chapter
6 otherwise prohibit disturbance:

Amount of Slope That		
Slope	Can Be Disturbed	Factor
25—40 percent	30 percent	.50
over 40 percent*	50 percent	.30

7 *See also provisions of LMC 17.10.084

8 The overall amount of disturbance allowed on lots which have any combination of
9 the above slope categories shall be determined by the following formula:

10 (square footage of lot having 25—40% slopes) x 0.50 +
11 (square footage of lot having over 40% slopes) x 0.30 =
12 Total Amount of Allowed Lot Disturbance.

13 B. Development Location.

- 14 1. Structures and improvements shall be clustered to retain as much
15 open space as possible and the natural topographic character of the
16 slope;
- 17 2. Structures and improvements shall conform to the natural contour
18 of the slope; foundations must be tiered to generally conform to the
19 existing topography; and
- 20 3. Structures and improvements shall be located to preserve the most
21 sensitive portion of the site and its natural landforms and
22 vegetation.

23 C. Development Design.

- 24 1. The footprint of buildings and other disturbed areas shall be
25 minimized. The least number of buildings is desirable in order to
26 consolidate the development.
- 27 2. Standard prepared building pads (slab on grade) resulting in
28 grading more than 10 feet outside the building footprint area are
29 prohibited.
- 30 3. Use of common access drives and utility corridors is required
31 where feasible.
- 32 4. Impervious lot coverage shall be minimized. Under structure
33 parking and multi-level structures shall be incorporated where
34 feasible.
- 35 5. Roads, walkways, and parking areas shall be designed to parallel
36 the natural contours of the hillsides while maintaining consolidated
37 areas of natural topography and vegetation. Access shall be located
38 in the least sensitive area feasible.

1 6. Use of retaining walls which allow the maintenance of existing
2 natural slope areas is preferred over graded artificial slopes.

3 ~~D. Construction Techniques.~~

4 1. Use of foundation walls as retaining walls is preferable to rock or
5 concrete walls built separately and away from the building.
6 Freestanding retaining devices are only permitted when they
7 cannot be designed at structural elements of the building
8 foundation.

9 2. Use of pole-type construction which conforms to the existing
10 topography is preferred where desirable.

11 3. Structures shall be tiered to conform to existing topography and
12 to minimize topographic modification. Piled deck support
13 structures are preferable for parking or garages to fill-based
14 construction types.

15 ~~E. Landscaping. The disturbed areas which areas not used for buildings and
16 other improvements shall be landscaped immediately upon completion of
17 construction activities with vegetation which will provide groundcover
18 and erosion control. Native trees and vegetation and self-sustaining
19 landscaping are preferred. Other soil stabilizing techniques which do not
20 disturb the natural topography may be used in conjunction with re-
21 vegetation and landscaping. (Ord. 1877, 1992)~~

22 **17.10.100 Buffer credit.**

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

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

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

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

36 2. Multifamily Residential, Excluding the Duplex Residential Zone.

37 total amount of net development area
38 + total amount of area in buffer = number of dwelling density units
39 maximum zoned dwelling density units ~~units~~

40 3. This credit shall be subject to the following:

41 a. Only that buffer area located within areas required by the
42 city~~City~~ of Lynnwood to be dedicated or reserved as
43 separate tracts shall be counted.

- 1 b. Use of this credit shall not waive nor modify any other
2 required provision of the Lynnwood Municipal Code
3 including, but not limited to, zoning or subdivision
4 regulations or standards, except as noted in subsection
5 (A)(3)(c) of this section.
6 c. To the extent that application of the buffer credit may result
7 in lot sizes less than the minimum allowed in the zone in
8 which the proposal is located:
9 i. In no case shall such lot sizes be less than 90
10 percent of the minimum allowed lot size, except in
11 the RS-7 ~~and RMD~~ zones, which shall be no less
12 than 95 percent; and
13 ii. In order to keep the relationship between lot width
14 and area reasonable, lot width may be up to, but not
15 more than, five feet narrower than the minimum
16 allowed.

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

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

25
26 **17.10.110 Low-impact use of buffer - Allowed.**
27 Installation of low-impact permeable pedestrian trails and viewing platforms in critical
28 areas and their buffers may be approved by the Director. These uses must be mitigated
29 for according to the applicable terms and conditions detailed in this chapter, and
30 according to the type of critical area being affected.

31
32 **17.10.111 Critical areas signs, monuments and fencing.**

- 33 A. The boundary of a critical area will be delineated by survey stakes, and /
34 or tape at the time of the completion of the critical area report. The buffer
35 will be established as measured from that boundary. During construction,
36 the buffer edge will be delineated and identified using plastic tape and silt
37 fence, or any other effective measure to prohibit construction activities
38 from encroaching into the critical area and its associated buffer. Those
39 measures will be maintained until completion of the project.
40 B. Upon completion of the construction of the project, the boundary of the
41 critical area and / or buffer will be designated with permanent signs,
42 monuments and fencing, the design and spacing of which will be left to
43 the discretion of the Public Works Director.
44 C. All critical areas and their buffers which have been protected through the
45 application of this chapter, shall be permanently protected by designating
46 them as native growth protection areas (NGPAs).

1 **17.10.1420 Appeals.**

2 A. ~~Any applicant who objects to the decision of the director under the exceptions~~
3 ~~process of LMC 17.10.105 may file an appeal to the hearing examiner using the~~
4 ~~procedure under Process II (LMC 1.35.200 through 1.35.260).~~ Any person who objects to
5 the final order of the City ~~City~~ under this chapter may file an appeal to the hearing
6 examiner using the procedure under Process II (LMC 1.35.200 through 1.35.260, unless
7 such appeal pertains to the Resonable Use Exception determination, which shall be
8 binding.
9 (Ord. 2076 § 22, 1996; Ord. 1877, 1992)

10 B. ~~The conditions and determinations placed by the city on any development~~
11 ~~proposal subject to the provisions of this chapter may be appealed by the~~
12 ~~applicant to the hearing examiner under Process I (LMC 1.35.100 through~~
13 ~~1.35.180). (Ord. 2076 § 22, 1996; Ord. 1877, 1992)~~

14 **17.10.1425 Notice, performance securities, bonds, administration.**

15 A. Notice. The owner of any property found to contain ~~ing sensitive~~ critical
16 areas or buffers, on which a development project is submitted, shall file
17 for record with Snohomish County a notice approved by the ~~city~~ City. Such
18 notice shall ~~identify~~ provide notice in the public record of the presence of
19 any ~~sensitive~~ critical areas or buffers, the application of this chapter to the
20 property, and state that limitations on actions in or affecting such areas
21 may exist.

22 The owner shall submit proof to the ~~director~~ Director that the notice has
23 been filed for record with Snohomish County before the ~~city~~ City shall
24 approve any development proposal for such site. The notice shall run with
25 the land and failure to provide such notice to any purchaser prior to
26 transferring any interest in the property shall be a violation of this chapter.

27 B. Performance Securities. The ~~director~~ Director may require the applicant of
28 a development proposal to post a cash performance bond or other
29 acceptable security in a form and amount determined sufficient to
30 guarantee satisfactory workmanship, materials, and performance of
31 structures and improvements allowed or required by application of this
32 chapter. The ~~director~~ Director shall release the security upon determining
33 that all ~~structures and improvements~~ requirements established by this
34 chapter have been satisfactorily completed.

35 C. Maintenance / Monitoring Bonds. The ~~director~~ Director may require the
36 applicant whose development proposal is subject to a mitigation plan to
37 post a maintenance / monitoring bond or other security instrument in a
38 form and amount determined sufficient to guarantee satisfactory
39 performance for a period of up to five years. The bond amount shall be no
40 less than 125% of the estimated cost of the mitigation project including
41 any plant materials, soil amendments, temporary irrigation, signs and
42 monuments, and monitoring proposed. The duration of maintenance /
43 monitoring obligations shall be no less than 5 years, unless determined
44 otherwise established by the ~~director~~ Director after consideration of the
45 nature of the proposed mitigation and the likelihood and expense of

1 mitigation failures. The ~~director~~Director shall release the security upon
2 determining that the ~~effectiveness and success of the~~ mitigation plan has
3 ~~been~~ achieved ~~satisfactory~~ success. The performance standards of the
4 mitigation plan shall be agreed upon by the ~~director~~Director and the
5 applicant during the review process and shall be specified in the mitigation
6 plan.
7 (Ord. 1877, 1992)

8 **17.10.12030 Unauthorized alterations.**

9 ~~Illegal Alterations. When E~~environmentally ~~sensitivecritical~~ areas and / or their
10 associated buffers ~~regulated by this chapter which~~ have been illegally altered, the City
11 may require them to be restored to their unaltered condition, and subject them to all terms
12 and conditions of this chapter, including but not limited to increasing the area of the
13 critical area and buffer as compensation for the alteration.
14 ~~(Ord. 1877, 1992) may be developed in accordance with the requirements of this chapter;~~
15 ~~provided, that all environmentally sensitivecritical areas which were illegally altered shall~~
16 ~~remain environmentally sensitivecritical areas, regardless of changed conditions and shall~~
17 ~~be regulated in accordance with this chapter.~~

18 B. ~~Restoration. The city may require that an area larger than the altered~~
19 ~~portion of the wetland be provided as compensation for wetland losses, in~~
20 ~~conformance with compensation ratios set forth in LMC 17.10.059.~~

21 **17.10.1301 Enforcement, violations and penalties.**

22 It shall be unlawful for any person, firm, or corporation to violate any provision of this
23 chapter. The ~~Director~~Director shall have the authority to enforce any and all provisions
24 of this chapter, by proceeding with the following actions in progressive severity, except
25 in cases where a delay would result in further loss and / or degradation of critical
26 areas.~~The provisions set forth in this subsection shall apply to all violations of this~~
27 ~~chapter. Penalty and enforcement provided herein shall not be deemed exclusive, and the~~
28 ~~city may pursue any appropriate remedy or relief.~~

29 A. Stop work orders. For any action which appears to be in violation of this
30 chapter, the Director shall have the authority to order the party in question
31 to immediately stop all work until such time as the Director determines
32 that the action is in compliance with the terms and conditions of this
33 chapter.

34 B. Civil remedies and penalties. Any person, firm corporation, or association
35 or any agent thereof who violates any of the provisions of this chapter may
36 be subject to the following civil penalties:

37 1. The ~~City~~City may issue a notice and order under Chapter 1.40
38 LMC stating any person, firm, corporation or association or any
39 agent thereof who violates any of the provisions of this chapter
40 shall be liable for all damages to public or private property arising
41 from such violation, including the cost of restoring the affected
42 area to an equivalent or improved condition prior to the violation,
43 and set a reasonable amount of time for compliance.

2. The City may require restoration. Restoration may include but is not limited to, the replacement of all improperly removed vegetation with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced or improved to the greatest extent reasonably possible. A study by a qualified expert(s) shall be conducted to determine the conditions which were likely to exist prior to the illegal alteration. Restoration may also include installation and maintenance of erosion control measures.
 3. In addition to requiring restoration, the City may assess civil penalties as provided in LMC 1.01.085.
 4. The City may require a maintenance bond to insure compliance with the City's order, subject to the bonding procedure established in section 17.10.125 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 \$100 per day.
 6. If the noncompliance continues for more than thirty (30) days, civil penalties shall be increased to \$500 per day up to a maximum of \$10,000. Fines shall stop on the day that compliance with the order begins, 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.
(Ord. 1877, 1992)
- ~~A. Fines. Any person, firm corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000. It shall be a separate offense for each and every day or portion thereof during which any violation of any provisions of this chapter is committed.~~
- ~~B. Damages. 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.~~
- ~~C. 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.~~

1 ~~D. — Stop Work Orders. The city shall stop work on any existing permits and~~
2 ~~halt the issuance of any or all future permits or approvals for any activity~~
3 ~~which violates the provisions of this section until the property is fully~~
4 ~~restored in compliance with this chapter and all penalties paid in full.~~

5 **17.10.13540 Severability.**

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

13 (Ord. 1877, 1992)

DRAFT

1 **Chapter 17.10**

2 **ENVIRONMENTALLY CRITICAL AREAS**

3 Sections:

- 4 17.10.010 Purpose.
- 5 17.10.015 General provisions.
- 6 17.10.020 Applicability.
- 7 17.10.030 Definitions.
- 8 17.10.040 Permitted uses.
- 9 17.10.045 Submittal requirements.
- 10 17.10.046 Exemptions allowed.
- 11 17.10.047 Exemptions.
- 12 17.10.048 Reasonable use exception – Allowed.
- 13 17.10.049 Reasonable use application and process.
- 14 17.10.050 Wetland delineation and rating system.
- 15 17.10.051 Wetland buffers.
- 16 17.10.052 Alterations to wetlands and buffers, allowed.
- 17 17.10.053 Wetland and buffer alteration criteria.
- 18 17.10.054 Wetland and buffer mitigation plan.
- 19 17.10.055 Wetland alteration compensation.
- 20 17.10.056 Increased wetland buffer width.
- 21 17.10.057 Decreased wetland buffer width.
- 22 17.10.058 Averaging of wetland buffer widths.
- 23 17.10.059 Building setback lines – Wetlands.
- 24 17.10.060 Stream – Rating.
- 25 17.10.061 Stream buffers.
- 26 17.10.062 Stream alteration allowed.
- 27 17.10.063 Stream alteration criteria.
- 28 17.10.064 Stream mitigation plan.
- 29 17.10.065 Culverting.
- 30 17.10.066 Increased stream buffer width.
- 31 17.10.067 Decreased stream buffer width.
- 32 17.10.068 Averaging of stream buffer widths.
- 33 17.10.069 Riparian wetland.
- 34 17.10.070 Building setback line – Streams.
- 35 17.10.080 Fish and wildlife priority habitat.
- 36 17.10.081 Wildlife habitat assessment.
- 37 17.10.090 Geologically hazardous areas – Identification.
- 38 17.10.091 Geologically hazardous areas – Setbacks.
- 39 17.10.092 Geologically hazardous areas – Alteration allowed.
- 40 17.10.093 Geologically hazardous areas – Alteration conditions.
- 41 17.10.094 Geotechnical report content requirements.
- 42 17.10.100 Buffer credit.
- 43 17.10.110 Minimal use of buffer - Allowed.
- 44 17.10.111 Critical areas signs, monuments and fencing.

- 1 17.10.120 Appeals.
- 2 17.10.125 Notice, performance securities, bonds, administration.
- 3 17.10.130 Unauthorized alterations.
- 4 17.10.131 Enforcement, violations and penalties.
- 5 17.10.140 Severability.

6 **17.10.010 Purpose.**

7 The purpose of this chapter is to identify critical areas and to supplement the
8 development requirements contained in the Lynnwood Municipal Code by providing for
9 additional controls as required by the Washington State Growth Management Act and
10 other laws. Wetlands, streams, fish and wildlife priority habitat areas, and geologically
11 hazardous areas, as defined in LMC 17.10.030, constitute critical areas that are of special
12 concern to the City of Lynnwood. The standards and mechanisms established in this
13 chapter are intended to protect the functions and values of these environmentally critical
14 features for the public benefit, while providing property owners with reasonable use of
15 their property. By regulating development and alterations to critical areas this chapter
16 seeks to:

- 17 A. Protect the public health, safety and welfare by preventing adverse
18 impacts of development;
- 19 B. Educate the public as to the long-term importance of environmentally
20 critical areas and the responsibilities of the City to protect and preserve the
21 natural environment for future generations;
- 22 C. Effectively manage environmentally critical areas by regulating
23 development within and adjacent to them;
- 24 D. Mitigate unavoidable impacts to environmentally critical areas by
25 regulating alterations in and adjacent to critical areas;
- 26 E. Prevent, to the extent practicable, adverse cumulative impacts to the water
27 quality, wetlands, streams, stream corridors and fish and wildlife habitat;
- 28 F. Improve streams and watercourses, particularly those associated with
29 Scriber Creek and Swamp Creek to a more natural condition wherever
30 possible, and establish reasonable development incentives to encourage
31 such improvement;
- 32 G. Protect the public, and public resources and facilities from injury, loss of
33 life, property damage or financial losses due to flooding, erosion,
34 landslides, soil subsidence or steep slope failure;
- 35 H. Alert appraisers, assessors, owners and potential buyers or lessees to the
36 development limitations of environmentally critical areas;
- 37 I. Provide the City of Lynnwood with information necessary to approve,
38 condition, or deny public or private development proposals;
- 39 J. Provide predictability and consistency to the City of Lynnwood’s
40 development review process; and
- 41 K. Implement the policies of the State Environmental Policy Act, , the
42 Growth Management Act, and all City functional plans and policies.
43 (Ord. 2045 §8, 1995; Ord. 1877, 1992)

44 **17.10.015 General provisions.**

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

11 **17.10.020 Applicability.**

12 This chapter establishes regulations for the protection of properties which contain or are
13 adjacent to environmentally critical areas. Environmentally critical areas include those
14 which meet the definitions and requirements of this chapter. The City may inventory
15 critical areas on maps for reference purposes. All critical areas shall be verified by
16 separate studies to indicate the extent of such areas or sites which are environmentally
17 critical. Development proposals for properties which contain or are adjacent to designated
18 or regulated environmentally critical areas shall comply with the provisions and
19 requirements of this chapter. A permit shall be obtained from the City for any activity
20 which alters or disturbs an environmentally critical area or buffer, including but not
21 limited to, clearing, grading, draining, filling, dumping of debris, demolition of structures
22 and installation of utilities. Further, a permit shall be obtained from the City for any
23 proposed activity adjacent to a critical area. No boundary line adjustments or
24 development permits including subdivisions, short plats, conditional use permits, rezones
25 or variances shall be granted for any lot which contains or is adjacent to an
26 environmentally critical area until approvals as required by this chapter have been
27 granted by the C. The provisions of this chapter apply to projects proposed by private and
28 public entities. No permit granted pursuant to this chapter shall remove an applicant's
29 obligation to comply in all respects with the applicable provisions of any other federal,
30 state, or local law or regulation, including but not limited to the acquisition of any other
31 required permit or approval.
32 (Ord. 1877, 1992)

33 **17.10.030 Definitions.**

34 Terms used in this chapter shall have the meaning given to them in this chapter, unless
35 where used the context thereof clearly indicates to the contrary. Words and phrases used
36 herein in the past, present or future tense shall include the past, present and future tenses;
37 and phrases used herein in masculine, feminine or neuter gender shall include the
38 masculine, feminine and neuter genders; and words and phrases used herein in the
39 singular or plural shall include the singular and plural; unless the context shall indicate to
40 the contrary.

- 41 A. “Adjacent” means within 200 feet of an environmentally critical area,
42 measured from the edge of the environmentally critical area.

1 “Adjacent wetland” means the entire area of the wetland under
2 consideration and not just the portion within 200 feet of a environmentally
3 critical area.

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

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

11 B. “Buffer” means a designated or regulated area adjacent to an area
12 designated or regulated as a critical area.

13 C. “City” means the City of Lynnwood.

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

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

19 “Creation” means bringing a critical area into existance at a site in which a
20 critical area did not formerly exist.

21 “Critical areas” means the following areas:

- 22 1. Wetlands;
- 23 2. Streams;
- 24 3. Fish and Wildlife Priority Habitat
- 25 4. Geologically Hazardous Areas;

26 And any additional areas defined or established as critical areas under the
27 provisions of the Washington State Growth Management Act or the
28 provisions of this chapter.

29 D. “Department” means Department of Public Works.

30 “Development proposal site” means the legal boundaries of the parcel or
31 parcels of land for which the applicant has applied to the City for
32 development permits.

33 “Director” means the Director of Public Works and/or the Director’s
34 designee.

35 “Drainage facility” means the system of collecting, conveying, treating,
36 and storing surface and storm water runoff. Drainage facilities shall
37 include but not be limited to all surface and storm water runoff
38 conveyance and containment facilities including streams, pipelines,
39 channels, ditches, infiltration facilities, filtration and treatment facilities,
40 retention/detention facilities, and other drainage structure and
41 appurtenances, both natural and manmade.

42 E. “Enhancement” means an action which increases the functions and values
43 of a critical area or its buffer.

44 “Erosion hazard areas” means those areas containing soils which,
45 according to the U.S. Soil Conservation Service Soil Survey, have severe
46 to very severe erosion hazard potential.

1 “Essential habitat” means habitat necessary for the survival of species
2 listed as “threatened” or “endangered” under the federal Endangered
3 Species Act, species listed as “threatened” or “endangered” by the
4 Washington Department of Fish and Wildlife, species listed as “candidate”
5 or “species of concern” by the US Fish and Wildlife Service or NOAA
6 Fisheries, and species listed as “sensitive” or “state candidate” by the
7 Washington Department of Fish and Wildlife.

8 F. “Functional values” and / or “functions” means the beneficial roles that
9 critical areas and their buffers serve, including but not limited to water
10 quality protection and enhancement, fish and wildlife habitat, food chain
11 support, flood storage, conveyance and attenuation, groundwater recharge
12 and discharge, erosion control, aesthetic values and recreation.

13 G. “Geologically hazardous areas” means those areas:
14 1. Have naturally occurring slopes of 40 percent or more;
15 2. Other areas which the City has reason to believe are geologically
16 unstable due to factors such as landslide, seismic or erosion hazard.

17 H. “Hydrologically connected” means a critical area has a surface water
18 connection to another critical area, is within 200 feet of another critical
19 area, or lies within the floodplain of another critical area, and whose
20 hydrology is directly affected by changes in the other critical area.

21 L. “Lot coverage” has the meaning as defined in Chapter 21.02 LMC.

22 M. “Mitigation” means a negotiated action involving the use of one or more
23 of the following:

- 24 1. Avoiding impacts altogether by not taking a certain action or parts
25 of an action;
26 2. Minimizing impacts by limiting the degree of magnitude of the
27 action and its implementation, by using appropriate technology, or
28 by taking affirmative steps to avoid or reduce impacts;
29 3. Rectifying the impact by repairing, rehabilitating or restoring the
30 affected critical area;
31 4. Reducing or eliminating the impact over time by preservation or
32 maintenance operations during the life of the development
33 proposal; or
34 5. Compensating for the impact by replacing, enhancing, or providing
35 substitute critical areas.

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

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

- 43 A. Areas within a project site which are required to be dedicated for
44 public rights-of-way, or otherwise set aside for roads;

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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 species” means those species of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are listed as “threatened” or “endangered” under the federal Endangered Species Act, species listed as “threatened” or “endangered” by the Washington Department of Fish and Wildlife, species listed as “candidate” or “species of concern” by the US Fish and Wildlife Service or NOAA Fisheries, species listed as “sensitive” or “state candidate” by the Washington Department of Fish and Wildlife, or are designated as such by the Priority Habitat and Species Program of the Washington Department of Fish and Wildlife.

Q. “Qualified professional” means a qualified scientific expert with expertise appropriate to the relevant critical areas as determined by the person's professional credentials and / or certifications, or as determined by the Director.

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. For the purposes of this chapter, streams shall include both natural channels and manmade channels that were constructed to replace a natural stream. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial

1 watercourses unless they are used by salmonids or used to convey streams
2 naturally occurring prior to construction in such watercourses.

- 3 W. “Wetlands” means areas that are inundated or saturated by surface water
4 or ground water at a frequency or duration sufficient to support, and under
5 normal circumstances do support, a prevalence of vegetation typically
6 adapted for life in saturated soils conditions. Wetlands generally include
7 swamps, marshes, bogs and similar areas. Wetlands do not include those
8 artificial wetlands intentionally created from nonwetland sites, including,
9 but not limited to, irrigation and drainage ditches, grass-lined swales,
10 canals, detention ponds and landscape amenities. Wetlands do include
11 those artificial wetlands intentionally created from nonwetland areas to
12 mitigate conversion of wetlands.
13 (Ord. 2257 §2, 1999; Ord. 1877, 1992)

14 **17.10.040 Permitted uses.**

15 Uses permitted on properties subject to this chapter shall be the same as those permitted
16 in the zoning district in which the property is located.
17 (Ord. 1877, 1992)

18 **17.10.045 Submittal requirements.**

- 19 A. Critical Areas Permit Application Required. Any application for land use,
20 boundary line adjustments or development proposals by private or public
21 entities, including rezones, subdivisions, building permits, clearing and
22 grading permits, tree permits, or other activities which will result in any
23 alteration or modification within or adjacent to an environmentally critical
24 area or its standard buffer width shall include an application for a critical
25 areas permit. The critical areas permit application shall be submitted to the
26 department of public works for processing as required by LMC 2.44.040.
27 The Director or the Director’s designee shall review the information
28 submitted by the applicant together with any other available information.
29 If the Director determines that there is insufficient environmental
30 information to evaluate the proposal, the applicant shall be notified that
31 additional environmental studies are required. The Director reserves the
32 right to refuse to accept an incomplete application. The Director may
33 waive the requirement for a special study if there is substantial showing
34 that there will be no alteration of the critical area or buffer and that there
35 will be no significant adverse impacts on the critical area as a result of the
36 proposed development.
- 37 B. Contents of Special Studies. Special environmental studies shall be
38 prepared by a qualified person with expertise in the area of concern in
39 accordance with the requirements of this chapter and to the satisfaction of
40 the department. Special studies are valid for three years, after such date the
41 City will determine if a revision or additional assesment is necessary.
42 Such studies shall:

1. Provide a site plan and written report describing the conditions of the property, illustrating the proposed development and the environmentally critical area; and
 2. Identify and characterize any critical area and associated buffer on or adjacent to the site. Such characterizations shall comply with the methods described and accepted in this chapter; and
 3. Describe how the proposed development will impact the critical area(s) and associated buffer(s) which are present on or which are adjacent to the property; and
 4. Describe any plans for alteration or modification of the critical area(s) and associated buffer(s); and
 5. A statement of any plans to utilize buffer credit, and provide a detail of the calculations; and
 6. A statement of the resources and methodology used in the reporting reflecting the use of “best available science;” and
 7. Provide recommended methods 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. The Director may exempt such activities, as well as others, provided:

1. No person shall conduct any activity within or adjacent to any critical area or critical area buffer that is exempt from the provisions of this chapter until such time as such person has given ten (10) days advance written notice (except for an emergency per LMC 17.10.047(A)) to the Director. The notice shall identify the activity to be conducted and the exemption(s) relied upon by the person who intends to conduct such activity; and
 2. Such exemptions shall be verified by City staff and acknowledged on the face of the written notice prior to the commencement of the activity; and
 3. If absolutely unavoidable, impacts to critical areas and their buffers are minimized; and
 4. Impacted 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. Emergency actions necessary to prevent an immediate threat to public health, safety or welfare, or that pose an immediate risk of damage to private or public property, and that require action in a timeframe too short to allow for normal processing of the requirements of this Chapter. After the emergency action is taken, the Director shall be notified of these actions within 7 days. The person or agency relying on this exemption

1 shall then restore and / or mitigate for any impacts to critical areas and or
2 buffers in accordance with an approved critical areas study and / or
3 mitigation plan.

4 B. All existing developments located within critical areas or their associated
5 buffers have a legal nonconforming status as to use and setback
6 requirements.

7 C. Existing structures, facilities, landscaping or other improvements that
8 because of their existing location meet the requirements of this chapter,
9 may be remodeled, reconstructed or replaced, or maintained or repaired,
10 providing that any such activity does not further intrude into a critical area
11 or buffer or adversely affect critical area functions. Maintenance and
12 repair does not include any modification that changes the use, scope or
13 size of the original structure, facility or improved area, and does not
14 include construction of an additional access road. Nothing herein releases
15 the site from compliance with the provisions of Chapter 21 LMC.

16 D. Normal and routine maintenance of existing drainage ditches, drainage
17 retention/detention facilities, or ornamental landscape ponds; provided,
18 that none of these are part of a critical area mitigation plan required by this
19 chapter.

20 E. Relocation of electric facilities, lines, equipment, or appurtenances, not
21 including substations, with an associated voltage of 55,000 volts or less,
22 and relocation of natural gas, cable communications, telephone facilities,
23 and water or sewer lines, pipes, mains, equipment or appurtenances, only
24 when required and approved by the City, and subject to the following:

- 25 1. No practical alternative location is available; and
- 26 2. The applicant demonstrates such construction is necessary for
27 gravity flow (if applicable); and
- 28 3. Construction is accomplished using best management practices;
29 and
- 30 4. The wetland and buffer environment is protected to the maximum
31 extent possible during construction and maintenance; and
- 32 5. The original grade is replaced; and
- 33 6. Joint use of a utility corridor by other utilities may be allowed and
34 is strongly encouraged.

35 F. Installation, construction, replacement, repair, operation or alteration of
36 electric facilities, lines equipment or appurtenances (not including
37 substations) with an associated voltage of 55,000 volts or less in improved
38 City road right-of-way (which may be within or adjacent to a critical area
39 or its buffer).

40 G. Installation, construction, replacement, repair, operation or alteration of
41 natural gas, cable and telecommunication facilities, water or sewer lines,
42 pipes, mains, equipment or appurtenances in improved City road right-of-
43 way (which may be within or adjacent to a critical area or its buffer).

44 H. Repair or overlay of improved City road right of way, which may be
45 within or adjacent to a critical area or its buffer, so long as it does not
46 further encroach into the critical area or its buffer.

- 1 I. Minor site investigation work necessary for land use submittals, such as
2 surveys, delineations, soil logs, percolation tests, and other related
3 activities where such activities do not require construction of new access
4 roads or significant amounts of excavation or vegetation removal. In
5 every case, impacts to critical areas and buffers shall be minimized and
6 disturbed areas shall be immediately restored.
- 7 J. Removal of the following non-native vegetation with hand labor from
8 critical areas and buffers provided that appropriate erosion-control
9 measures are used, and the area is revegetated with native vegetation:
10 1) Himalayan blackberry (*Rubus discolor*, *R. procerus*);
11 2) Evergreen blackberry (*R. laciniatus*);
12 3) English Ivy (*Hedera helix*);
13 4) Japanese knotweed (*Polygonum cuspidatum*);
14 5) Any plant identified as noxious on the Washington State Noxious
15 Weed List.
- 16 K. Isolated Category III and IV wetlands under 2,500 square feet which have
17 80 percent or greater areal cover by invasive species, and have been
18 determined by a qualified professional to be of low function, may be
19 exempted from the requirements of this Chapter, provided that action is
20 taken to mitigate for the lost functions. Adequate and appropriate
21 mitigation measures shall be submitted by the applicant, prepared by a
22 qualified professional, subject to the approval of the Director, and may
23 include, but is not limited to, stormwater quality and quantity treatment,
24 and / or native landscaping enhancements. Please note that state and
25 federal permits may still apply.
26 (Ord. 1877, 1992)

27 **17.10.048 Reasonable use exception – Allowed.**

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

- 31 A. An application for a reasonable use exception containing the elements
32 required in section 17.10.049 of this code shall be filed with the
33 department and shall be considered by the Hearing Examiner at a public
34 hearing under Process I (LMC 1.35.100 through 1.35.180).
- 35 B. The Hearing Examiner must determine that:
- 36 1. Application of this chapter would deny all reasonable use of the
37 property;
 - 38 2. There is no reasonable use with less impact on the critical area;
 - 39 3. The proposed development does not pose an unreasonable threat to
40 the public health, safety or welfare; and
 - 41 4. Any alteration to the critical areas or buffers must be the minimum
42 necessary to allow for the reasonable use of the property; and
 - 43 5. Impacts to critical areas and buffers are mitigated consistent with
44 the purpose and standards of this Chapter to the greatest extent
45 feasible; and

1 6. The inability of the applicant to derive reasonable use of the
2 property is not the result of actions of the property owner or some
3 predecessor, which thereby created the condition after the effective
4 date of this chapter.

5 C. The burden of proof shall be on the applicant to provide sufficient
6 information to the Hearing Examiner in support of a decision on the
7 applicant.

8 D. If the hearing examiner grants a reasonable use exception, the examiner
9 may impose any condition(s) to ensure that the development is consistent
10 with the intent of this chapter.
11 (Ord. 1877, 1992)

12 **17.10.049 Reasonable use application and process.**

13 Whenever an applicant requests a reasonable use exception, they shall submit a complete
14 application to the Director for review. The applicant is strongly encouraged to schedule a
15 submittal appointment with the Department to submit their application. This meeting
16 will ensure that the applicant has a complete application, containing all of the elements
17 required by this section. The Department may refuse to accept an incomplete application.
18 The Director shall prepare a recommendation to the Hearing Examiner based on review
19 of the submitted information.

20 The reasonable use application shall include the following information, which will be
21 used to evaluate whether a a reasonable use exception shall be allowed:

22 A. A complete application and special study, as required by section 17.10.045
23 of this chapter; and

24 B. A mitigation plan specifying the measures taken to mitigate for the
25 impacts; and

26 C. A map showing the amount of the lot which is within setbacks required by
27 other standards of the zoning code; and

28 D. An analysis of the impact that the proposed development would have on
29 the environmentally critical area(s) and / or their buffer(s); and

30 E. A design of the proposal so that the amount of development proposed as
31 “reasonable use” will have the least impact practicable on the
32 environmentally critical area(s); and

33 F. A description of the design modifications proposed by the applicant in
34 order to minimize impacts on the critical area(s) and buffer(s). This
35 includes, but is not limited to a description of the modified building
36 footprint, reduced building setback from the buffer, parking modifications,
37 reduced total building square feet, modified location to preserve trees, and
38 any other measures taken by the applicant; and

39 G. A description of the needed modifications to the standards of all
40 applicable chapters to accommodate the proposed development; and

41 H. Any other related projects documents, such as permit applications to other
42 agencies, special studies, and environmental documents prepared pursuant
43 to the State Environmental Policy Act; and

1 I. Such other information as the Director or hearing examiner determines is
2 reasonably necessary to evaluate the issue of reasonable economic use as
3 it relates to the proposed development. (Ord. 1877, 1992)

4 **17.10.050 Wetland delineation and rating system.**

- 5 A. Wetlands shall be identified and delineated in accordance with the
6 methodologies detailed in the Washington Administrative Code (WAC)
7 173-22-080.
8 B. Wetland delineations are valid for three years, after such date the City will
9 determine if a revision or additional assessment is necessary.
10 C. The wetland boundaries established by this process shall be used to meet
11 the requirements of this chapter.
12 D. The total area of wetlands shall be used for the purpose of classification
13 regardless of whether a proposed development site includes all or only a
14 portion of the wetland.
15 E. Wetlands shall be categorized using the Department of Ecology's 2004
16 Washington State Wetland Rating System for Western Washington.
17 (Ord. 1877, 1992)

18 **17.10.051 Wetland buffers.**

19 Wetland buffer zones shall be required for all regulated activities adjacent to regulated
20 wetlands. All buffers shall be measured from the wetland edge as determined and marked
21 in the field. Except as otherwise permitted under this chapter, wetland buffers shall be
22 retained in a natural condition. The following standard buffer widths shall be required,
23 unless modified and approved in accordance with the provisions of this chapter:

- 24 1. Category I wetlands shall have a 100-foot buffer.
25 2a. Category II wetlands shall have a 50-foot buffer.
26 2b. Category II wetlands with essential habitat shall have a 100-foot
27 buffer.
28 3. Category III wetlands shall have a 50-foot buffer.
29 4. Category IV wetlands shall have a 25-foot buffer.
30 (Ord. 1877, 1992)

31 **17.10.052 Alterations to wetlands and buffers, allowed.**

32 Alteration, modification, or enhancement of wetlands and buffers may be allowed by this
33 Chapter, subject to the review and approval by the Director. The applicant shall submit
34 to the department a plan detailing the alteration, modification and / or enhancement
35 proposal, along with any proposed mitigation. This plan shall be prepared by a qualified
36 professional. The plans shall meet the criteria of LMC 17.10.053, 17.10.054, 17.10.055,
37 17.10.111, and 17.10.125 (as applicable).

38 All wetlands and buffers, regardless of category, shall be preserved unless the applicant
39 can demonstrate the following:

- 40 A. There is no feasible and reasonable alternative to making the alteration;
41 and
42 B. Alteration will preserve, improve, or protect the functions of the wetland
43 system; and

- 1 C. The alteration will will not decrease the score of the wetland and buffer, as
- 2 determined by the Wetland Rating Form in the Department of Ecology’s
- 3 2004 Washington State Wetland Rating System for Western Washington;
- 4 and
- 5 D. The mitigation for such alteration has a high probability of success.

6 **17.10.053 Wetland and buffer alteration criteria.**

7 A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter

8 shall be subject to the following requirements:

- 9 1. Each activity or use shall be designed so as to minimize overall
- 10 wetland and buffer alteration to the greatest extent reasonably
- 11 possible; and
- 12 2. Construction techniques shall be approved by the City prior to any
- 13 site work; and
- 14 3. A mitigation plan shall be approved by the City prior to the
- 15 issuance of any construction permits; and
- 16 4. Relocated wetlands shall be within the same sub-basin (as defined
- 17 within the City’s comprehensive flood and drainage management
- 18 plan); and
- 19 5. All mitigation work shall be timed prior to or concurrent with the
- 20 proposed alterations; and
- 21 6. When adding to an existing wetland as a result of compensation for
- 22 wetland losses, the characteristics of the existing wetland shall be
- 23 maintained.

24 B. Time for Completion.

- 25 1. When alteration is allowed, the City may require that the relocated
- 26 or compensatory wetland and buffer be completed and functioning
- 27 prior to allowing the existing wetland to be filled or altered.
- 28 2. Mitigation shall be completed prior to granting of temporary or
- 29 final occupancy, or the completion or final approval of any
- 30 development activity for which mitigation measures have been
- 31 required.
- 32 3. If the mitigation work is not completed within three years of the
- 33 City approval of the mitigation plan the City may require that a
- 34 reevaluation of the plan be conducted by a qualified wetland
- 35 professional. The City may require additional requirements based
- 36 on the recommendations. (Ord. 1877, 1992)

37 **17.10.054 Wetland and buffer mitigation plan.**

38 A mitigation plan shall be approved by the City prior to the issuance of any permits for

39 development activity occurring on a lot upon which wetland and / or buffer alteration,

40 reduction, averaging, restoration, creation or enhancement is allowed. The mitigation

41 plan shall:

- 42 A. Be prepared by a qualified wetland professional using Washington
- 43 Department of Ecology accepted methodologies; and
- 44 B. Include a baseline study that quantifies the existing functional values; and

- 1 C. Specify how functional values will be replaced and when mitigation will
 2 occur relative to project construction; and
 3 D. Complete a Wetland Rating Form, as found in the Department of
 4 Ecology's 2004 Washington State Wetland Rating System for Western
 5 Washington, and demonstrate that the mitigation measures proposed do
 6 not decrease the score of the wetland and buffer.
 7 E. Include provisions for adequate monitoring to ensure success of the
 8 mitigation plan. The monitoring plan shall outline the approach for
 9 monitoring construction of the mitigation project, and for assessment of
 10 the completed project, and shall include a monitoring schedule. A
 11 monitoring report shall be submitted annually for a period up to 5 years to
 12 the department unless a more frequent time period is required as a
 13 condition of the permit, and shall document successes, problems and
 14 contingency actions of the mitigation project. Monitoring activities may
 15 include, but are not limited to:
 16 1. Establishing vegetation monitoring plots to track changes in plant
 17 species composition and density over time; and
 18 2. Measuring base flow rates and storm water runoff to model and
 19 evaluate hydrologic predictions; and
 20 3. Sampling fish and wildlife populations to determine habitat
 21 utilization, species abundance and diversity; and
 22 4. Sampling surface and subsurface waters to determine pollutant
 23 loading, and changes from the natural variability of background
 24 conditions.
 25 F. Include a contingency plan specifying what corrective actions will be
 26 taken should the mitigation not be successful; and
 27 G. Include provisions for an assurance device, which may include a bond, to
 28 assure that work is completed in accordance with the mitigation plan, and
 29 to assure that restoration or rehabilitation is performed in accordance with
 30 the contingency plan if mitigation fails within five years of
 31 implementation.
 32 (Ord. 1877, 1992)

33 **17.10.055 Wetland alteration compensation.**

34 As a condition of approving the alteration or relocation of a wetland, the City shall
 35 require that an area equal to, or larger than the altered portion of the wetland be provided
 36 as compensation for wetland losses. The following ratios apply to creation or restoration
 37 of the altered or relocated wetlands. The first number specifies the acreage of
 38 replacement wetlands required, and the second number specifies the acreage of wetlands
 39 altered or relocated.

- 40 A. Category I: 6:1
 41 B. Category II and III:
 42 1. Forested: 3:1
 43 2. Scrub-shrub: 2:1
 44 3. Emergent: 1.50:1
 45 C. Category IV: 1.00:1

1 The City may increase the ratios under the following circumstances:

- 2 A. Uncertainty as to the probable success of the proposed restoration or
3 creation;
- 4 B. Significant period of time between destruction and replication of wetland
5 values;
- 6 C. Projected losses in functional value;
- 7 D. The relocation is off-site.

8 In all cases, the applicant must demonstrate that recreated wetland will will not decrease
9 the score of the wetland and buffer, as determined by the Wetland Rating Form in the
10 Department of Ecology's 2004 Washington State Wetland Rating System for Western
11 Washington.

12 **17.10.056 Increased wetland buffer width.**

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

- 19 A. A larger buffer is necessary to maintain viable populations of existing
20 species; or to prevent degradation or alteration of the existing hydro-
21 regime; or
- 22 B. The wetland contains essential habitat; or
- 23 C. A trail or utility corridor is proposed within the buffer; or
- 24 D. The adjacent land is susceptible to severe erosion and the standard buffer
25 width will not effectively prevent adverse wetland impacts.
26 (Ord. 1877, 1992)

27 **17.10.057 Decreased wetland buffer width.**

28 Any wetland restored, relocated, replaced or enhanced because of wetland alterations
29 shall have at least the standard buffer required for the class of wetland involved. For
30 other development proposals, the Director may reduce the standard wetland buffer widths
31 on a case-by-case basis where the applicant demonstrates that:

- 32 A. The proposed development will not result in any direct or indirect, short-
33 term or long-term, adverse impacts to the wetlands; and
- 34 B. The buffer reduction will not decrease the score of the wetland and buffer,
35 as determined by the Wetland Rating Form in the Department of
36 Ecology's 2004 Washington State Wetland Rating System for Western
37 Washington; and
- 38 C. The proposal contains a buffer enhancement plan using native vegetation
39 which demonstrates that the enhanced buffer will improve the functional
40 attributes of the buffer to provide additional protection for wetland
41 functions and values; and
- 42 D. A decreased buffer shall not result in buffer widths less than:
 - 43 1. Category 1 wetlands: 75 feet
 - 44 2a. Category 2 wetlands: 37.5 feet

- 1 2b. Category 2 wetlands with essential habitat: 75 feet
- 2 3. Category 3 wetlands: 37.5 feet
- 3 4. Category 4 wetlands: 18.75 feet
- 4 (Ord. 1877, 1992)

5 **17.10.058 Averaging of wetland buffer widths.**

6 Standard wetland buffer widths may be modified by averaging buffer widths. Buffer

7 width averaging will be allowed only where the applicant can demonstrate that:

- 8 A. The total area contained within the wetland buffer after averaging is no
- 9 less than that contained within the approved buffer prior to averaging; and
- 10 B. Averaging is necessary to avoid an extraordinary hardship to the applicant
- 11 caused by circumstances peculiar to the property; and
- 12 C. The averaged buffer shall not result in a buffer less than that which is
- 13 allowed in section 17.10.057 of this chapter, and
- 14 D. Width averaging will not decrease the score of the wetland and buffer, as
- 15 determined by the Wetland Rating Form in the Department of Ecology’s
- 16 2004 Washington State Wetland Rating System for Western Washington.
- 17 (Ord. 1877, 1992)

18 **17.10.059 Building setback lines – Wetlands.**

19 A building setback line of 15 feet shall be required from the edge of any wetland buffer.

20 Following construction, this helps to prevent encroachment into the buffer while

21 maintaining such structures. Fences and minor structural intrusions as defined in LMC

22 21.02.105 into the area may be allowed if the department determines that such intrusions

23 will not negatively impact the wetland. The setback shall be identified on the site plan

24 approved by the City.

25 (Ord. 1877, 1992)

26 **17.10.060 Stream – Rating.**

27 Streams within the City shall receive a rating according to the following categories:

- 28 A. Category I. The following streams are classified as Category I: Scriber
- 29 Creek, Swamp Creek, Lunds Creek and Halls Creek.
- 30 B. Category II. Category II streams are streams other than Category I streams
- 31 and that flow year-round during years of normal rainfall or those streams
- 32 that are used by salmonids.
- 33 C. Category III. Category III streams are those streams that are naturally
- 34 intermittent or ephemeral during years of normal rainfall and are not used
- 35 by salmonids.
- 36 (Ord. 1877, 1992)

37 **17.10.061 Stream buffers.**

38 Stream buffers shall be required for all regulated activities adjacent to regulated streams.

39 All stream buffers shall be measured from the top of the upper bank or, if that cannot be

40 determined, from the ordinary high water mark as surveyed in the field. In braided

41 channels and alluvial fans, the top of the bank or ordinary high water mark shall be

1 determined so as to include the entire stream feature. Except as otherwise permitted
2 under this chapter, stream buffers shall be retained in a natural, unaltered condition.
3 The following standard buffer widths shall be required, unless modified and approved in
4 accordance with the provisions of this chapter:

- 5 A. Category I streams shall have a 100-foot buffer.
- 6 B. Category II streams shall have a 60-foot buffer.
- 7 C. Category III streams shall have a 35-foot buffer.

8 **17.10.062 Stream alteration allowed.**

- 9 A. All Category I streams shall be preserved. The City may only allow
10 alteration of Category I streams when approved under section 17.10.048
11 and 17.10.049 of this chapter.
- 12 B. The City may allow alteration of Category II and / or Category III streams
13 when approved under section 17.10.048 and 17.10.049 of this chapter, or
14 the Director may approve alteration of such streams under the following
15 circumstances:
 - 16 1. There is no feasible and reasonable alternative to making the
17 alteration; and
 - 18 2. Alteration will preserve, improve or protect the functions of the
19 stream system; and
 - 20 3. When the applicant can demonstrate that the alteration or rerouting
21 maintains or enhances the functional values of the stream in terms
22 of water quality, erosion control, and / or fish and wildlife habitat.
23 (Ord. 1877, 1992)

24 **17.10.063 Stream alteration criteria.**

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

- 27 A. Each proposal shall be designed so as to minimize overall stream or buffer
28 alteration to the greatest extent reasonably possible; and
- 29 B. Construction techniques and field marking of areas to be disturbed shall be
30 approved by the City prior to site disturbance to ensure minimal
31 encroachment; and
- 32 C. When stream relocation or compensation is allowed, the City shall require
33 that the stream relocation be completed and functioning prior to allowing
34 the existing stream to be filled or altered.

35 Additionally, when approving a stream alteration, the City may require:

- 36 A. An area larger than the altered portion of the stream and its buffer be
37 provided as compensation for destruction of the functions of the altered
38 stream and buffer and to assure that such functional values are replaced;
39 and / or
- 40 B. Development activities be limited to specific months in order to minimize
41 impacts on water quality and wildlife habitat; and / or
- 42 C. The City may apply additional conditions or restrictions, or require
43 specific construction techniques in order to minimize impacts to stream
44 systems and their buffers.

1 (Ord. 1877, 1992)

2 **17.10.064 Stream mitigation plan.**

3 A mitigation plan shall be approved by the City prior to the issuance of any permits for
4 development activity occurring on a lot upon which stream and / or buffer alteration,
5 reduction, averaging, restoration, creation or enhancement is allowed. The mitigation
6 plan shall:

- 7 A. Be prepared by a qualified professional using accepted methodologies;
8 and
- 9 B. Include a baseline study that quantifies the existing functional values of
10 the system, as well as functional values that may be lost, and the stream's
11 functional values after mitigation; and
- 12 C. Specify how functional values will be replaced; and
- 13 D. Specify when mitigation will occur relative to project construction; and
- 14 E. Specify any requirements or permits required by other agencies, and the
15 status of those permits; and
- 16 F. Include provisions for adequate monitoring to ensure success of the
17 mitigation plan. The monitoring plan shall outline the approach for
18 monitoring construction of the mitigation project and for assessment of the
19 completed project, and shall include a schedule. A monitoring report shall
20 be submitted annually for five years to the department unless a more
21 frequent time period is required as a condition of the the permit, and shall
22 document successes, problems and contingency actions of the mitigation
23 project. Monitoring activities may include, but are not limited to:
 - 24 1. Establishing vegetation plots to track changes in plant species
25 composition and density over time;
 - 26 2. Measuring base flow rates and storm water runoff to model and
27 evaluate hydrologic predictions;
 - 28 3. Sampling fish and wildlife populations to determine habitat
29 utilization, species abundance and diversity; and
 - 30 4. Sampling surface and subsurface waters to determine pollutant
31 loading, and changes from the natural variability of background
32 conditions; and
- 33 G. Include a contingency plan specifying what corrective actions will be
34 taken should the mitigation not be successful; and
- 35 H. Include provisions for an assurance device, which may include a bond, to
36 assure that work is completed in accordance with the mitigation plan, and
37 to assure that restoration or rehabilitation is performed in accordance with
38 the contingency plan if mitigation fails within five years of
39 implementation.
40 (Ord. 1877, 1992)

41 **17.10.065 Culverting.**

- 42 A. Culverting within a stream shall only be permitted when necessary to
43 provide access to a lot when no other feasible means of access exists.

- 1 B. Use of common access points shall be required for abutting lots which
2 have no other feasible means of access. Culverting shall be limited to the
3 minimum number of stream crossings required to permit reasonable
4 access.
5 (Ord. 1877, 1992)

6 **17.10.066 Increased stream buffer width.**

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

- 11 A. The section of stream affected by the development proposal, and / or the
12 adjacent riparian corridor contains essential habitat; or
13 B. The land adjacent to the stream and its associated buffer is classified as a
14 geologically hazardous or unstable area; or
15 C. The riparian corridor provides a significant source of water, provides
16 superior shading of stream waters or contributes organic material
17 important to stream habitat areas; or
18 D. A trail or utility corridor is proposed within the buffer; or
19 E. A drainage improvement or water quality feature, such as a grass-lined
20 swale, is proposed within the buffer; or
21 F. There has previously been substantial alteration of the adjacent buffer, and
22 an increased buffer is necessary to improve the functions and values of the
23 buffer; or
24 G. When the minimum buffer for a stream extends into an area with a slope
25 of greater than 25 percent, the buffer shall be the greater of:
26 1. The minimum buffer for that particular stream type; or
27 2. Twenty-five feet beyond the point where the slope becomes 25
28 percent or less.
29 (Ord. 1877, 1992)

30 **17.10.067 Decreased stream buffer width.**

31 Any stream which is restored, relocated, replaced or enhanced because of stream
32 alterations shall have at least the standard buffer width required for the class of stream
33 involved. For other development proposals, the Director may reduce the standard stream
34 buffer widths on a case-by-case basis where the applicant demonstrates that:

- 35 A. The buffer is extensively vegetated, has less than a 15 percent slope, and
36 that no adverse impact to the stream will result from the proposed
37 reduction; and
38 B. The proposal includes a buffer enhancement plan using native vegetation
39 which substantiates that an enhanced buffer will improve the functional
40 values of the buffer to provide additional protection of the stream; and
41 C. A decreased buffer shall not result in buffer widths less than:
42 1. Category 1 streams: 75 feet
43 2. Category 2 streams: 45 feet
44 3. Category 3 streams: 25 feet

1 B. When a reduced buffer width is allowed, a mitigation, monitoring and
2 contingency plan consistent with the provisions of LMC 17.10.062,
3 17.10.063, 17.10.064, 17.10.111 and 17.10.125 (as applicable) shall be
4 required by the City.
5 (Ord. 1877, 1992)

6 **17.10.068 Averaging of stream buffer widths.**

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

- 9 A. The total area contained within the stream buffer after averaging is no less
10 than that contained within the approved buffer prior to averaging; and
- 11 B. Averaging is necessary to avoid an extraordinary hardship to the applicant
12 caused by circumstances peculiar to the property; and
- 13 C. The averaged buffer shall not result in a buffer less than that which is
14 allowed in section 17.10.067 of this chapter, and
- 15 D. Width averaging will not adversely impact the stream functional values.
16 (Ord. 1877, 1992)

17 **17.10.069 Riparian wetland.**

18 Any stream adjoined by a riparian wetland shall have the buffer which applies to the
19 wetland, unless the stream buffer requirement is more protective, in which case the
20 stream buffer requirement shall apply.

21 (Ord. 1877, 1992)

22 **17.10.070 Building setback line – Streams.**

23 A building setback line of 15 feet shall be required from the edge of any stream buffers.
24 Following construction, this helps to prevent encroachment into the buffer while
25 maintaining such structures. Fences and minor structural intrusions as defined in LMC
26 21.02.105 into the area may be allowed if the department determines that such intrusions
27 will not negatively impact the stream. The setback shall be identified on the site plan
28 approved by the City.

29 (Ord. 1877, 1992)

30 **17.10.080 Fish and wildlife priority habitat.**

31 The following environmentally critical areas may be considered priority habitat for the
32 protection of fish and wildlife in the City:

- 33 A. Category I and Category II wetlands;
- 34 B. Category I streams;
- 35 C. Category II streams if used by salmonids;
- 36 D. Upland areas if one or more of the following criteria are met:
 - 37 1. The presence of essential habitat; or
 - 38 2. Areas contiguous with large blocks of distinct habitat extending
39 outside of the City limits or providing a travel corridor to a
40 significant resource; or
 - 41 3. Areas adjacent to or contiguous with Category I wetlands which
42 enhance the value of those wetlands for wildlife.

(Ord. 1877, 1992)

17.10.081 Wildlife habitat assessment.

If a development is proposed within or adjacent to an identified “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, an evaluation of the habitat, and 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)

17.10.090 Geologically hazardous areas – Identification.

The following are classified as geologically hazardous areas:

- 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 hazards.

(Ord. 1877, 1992)

17.10.091 Geologically hazardous areas – Setbacks.

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 (as applicable). 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)

17.10.092 Geologically hazardous areas – Alteration allowed.

Unless associated with a stream or wetland, the City may allow alteration of an area identified as a geologically hazardous area, or its setback. In order to perform such alteration, the applicant shall submit to the department a geotechnical report, containing all elements described in section 17.10.094, and must demonstrate:

- A. The proposed development will not create a hazard to the subject property, surrounding properties, or rights-of-way, nor will it cause severe erosion, or deposit excessive sedimentation to off-site properties or bodies of water; and
- B. The proposed method of construction will reduce erosion, landslide, and seismic hazard potential, and will improve or not adversely affect the stability of slopes; and
- C. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation; and
- D. The proposal is consistent with the purposes and provisions of this chapter.

(Ord. 1877, 1992)

1 **17.10.093 Geologically hazardous areas – Alteration conditions.**

2 Alteration allowed by this chapter shall be subject to the following requirements:

- 3 A. All proposed development be designed and located so as to require the
- 4 minimum amount of modification to areas of potential geologic instability;
- 5 and
- 6 B. All impacts identified in the geotechnical report be adequately mitigated;
- 7 and

8 As a condition of any approval of development containing a geologically hazardous area

9 or its required setbacks, the City may also require that:

- 10 A. The applicant’s geotechnical consultant be present on the site during
- 11 clearing, grading, filling and construction activities which may affect
- 12 geological hazard or unstable areas, and provide the City with certification
- 13 that the construction is in compliance with his/her recommendations and
- 14 has met with his/her approval; and
- 15 B. Trees and groundcover be retained and additional vegetation or other
- 16 appropriate soil stabilizing structures and materials be provided.
- 17 (Ord. 1877, 1992)

18 **17.10.094 Geotechnical report content requirements.**

19 Geotechnical reports shall be prepared by a geotechnical engineer or geologist, as

20 appropriate. Geotechnical reports shall be stamped and signed by an engineer. Based on

21 the characteristics of the site, the Director may require any or all of the following items to

22 be addressed in the geotechnical report:

- 23 A. A site development plan drawn to scale which shows the boundary lines
- 24 and dimensions of the subject property, the geologically hazardous areas,
- 25 the location, size, and type of any existing or proposed structures,
- 26 impervious surfaces, wells, ~~drainfields~~ drain fields, ~~drainfield~~ drain field
- 27 reserve areas, roads, easements, and utilities located on site; and
- 28 B. A site map identifying the location of springs, seeps, or other surface
- 29 expressions of ground water, and the location of surface water or evidence
- 30 of seasonal surface water runoff or ground water; and
- 31 C. A discussion of the geological properties of the soils, including any fill,
- 32 sediment layers, and / or rocks on the subject property and adjacent
- 33 properties and their effect on the stability of the slope; and
- 34 D. The extent and type of vegetative cover prior to development activity or
- 35 site disturbance; and
- 36 E. The proposed method of drainage and locations of all existing and
- 37 proposed surface and subsurface drainage facilities and patterns, and the
- 38 locations and methods for erosion control; and
- 39 F. A description of the soils in accordance with the Unified Soil
- 40 Classification System; and
- 41 G. Identification of all existing fill areas; and
- 42 H. Information demonstrating compliance with all applicable; and
- 43 I. Evidence showing faults, significant geologic contacts, landslides, or
- 44 downslope soil movement on the subject property and adjacent properties;
- 45 and

1 J. A vegetation management and restoration plan, or other means necessary
2 for maintaining long-term stability of slopes.

3 **17.10.100 Buffer credit.**

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

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

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

14
$$\frac{\text{total amount of net development area} + \text{total amount of area in buffer}}{\text{minimum zoned lot size}} = \text{number of lots}$$

17 2. Multifamily Residential, Excluding the Duplex Residential Zone.

18
$$\frac{\text{total amount of net development area} + \text{total amount of area in buffer}}{\text{maximum zoned density units}} = \text{number of density units}$$

21 3. This credit shall be subject to the following:

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

41 B. The following buffer credit shall apply to all nonresidential-zoned areas:
42 In nonresidential-zoned areas, the amount of the site that may be covered
43 under the zoning code shall be calculated by applying the maximum

1 allowed lot coverage to the combination of the net development area and
2 the area in buffers.

3 Use of this credit shall not waive or modify any other required provision of the
4 Lynnwood Municipal Code including, but not limited to, zoning or subdivision
5 regulations or standards. (Ord. 2257 § 1, 1999; Ord. 1877, 1992)
6

7 **17.10.110 Low-impact use of buffer - Allowed.**

8 Installation of low-impact permeable pedestrian trails and viewing platforms in critical
9 areas and their buffers may be approved by the Director. These uses must be mitigated
10 for according to the applicable terms and conditions detailed in this chapter, and
11 according to the type of critical area being affected.
12

13 **17.10.111 Critical areas signs, monuments and fencing.**

- 14 A. The boundary of a critical area will be delineated by survey stakes, and /
15 or tape at the time of the completion of the critical area report. The buffer
16 will be established as measured from that boundary. During construction,
17 the buffer edge will be delineated and identified using plastic tape and silt
18 fence, or any other effective measure to prohibit construction activities
19 from encroaching into the critical area and its associated buffer. Those
20 measures will be maintained until completion of the project.
21 B. Upon completion of the construction of the project, the boundary of the
22 critical area and / or buffer will be designated with permanent signs,
23 monuments and fencing, the design and spacing of which will be left to
24 the discretion of the Public Works Director.
25 C. All critical areas and their buffers which have been protected through the
26 application of this chapter, shall be permanently protected by designating
27 them as native growth protection areas (NGPAs).

28 **17.10.120 Appeals.**

29 Any person who objects to the final order of the City under this chapter may file an
30 appeal to the hearing examiner using the procedure under Process II (LMC 1.35.200
31 through 1.35.260, unless such appeal pertains to the Reasonable Use Exception
32 determination, which shall be binding.
33 (Ord. 2076 § 22, 1996; Ord. 1877, 1992)

34 **17.10.125 Notice, performance securities, bonds, administration.**

- 35 A. Notice. The owner of any property found to contain critical areas or
36 buffers, on which a development project is submitted, shall file for record
37 with Snohomish County a notice approved by the City. Such notice shall
38 identify in the public record the presence of any critical areas or buffers,
39 the application of this chapter to the property, and state that limitations on
40 actions in or affecting such areas may exist.
41 The owner shall submit proof to the Director that the notice has been filed
42 for record with Snohomish County before the City shall approve any
43 development proposal for such site. The notice shall run with the land and

1 failure to provide such notice to any purchaser prior to transferring any
2 interest in the property shall be a violation of this chapter.

3 B. Performance Securities. The Director may require the applicant of a
4 development proposal to post a cash performance bond or other acceptable
5 security in a form and amount determined sufficient to guarantee
6 satisfactory workmanship, materials, and performance of structures and
7 improvements allowed or required by application of this chapter. The
8 Director shall release the security upon determining that all requirements
9 established by this chapter have been satisfactorily completed.

10 C. Maintenance / Monitoring Bonds. The Director may require the applicant
11 whose development proposal is subject to a mitigation plan to post a
12 maintenance / monitoring bond or other security instrument in a form and
13 amount determined sufficient to guarantee satisfactory performance for a
14 period of up to five years. The bond amount shall be no less than 125% of
15 the estimated cost of the mitigation project including any plant materials,
16 soil amendments, temporary irrigation, signs and monuments, and
17 monitoring proposed. The duration of maintenance / monitoring
18 obligations shall be no less than 5 years, unless determined otherwise by
19 the Director after consideration of the nature of the proposed mitigation
20 and the likelihood and expense of mitigation failures. The Director shall
21 release the security upon determining that the mitigation plan has achieved
22 satisfactory success. The performance standards of the mitigation plan
23 shall be agreed upon by the Director and the applicant during the review
24 process and shall be specified in the mitigation plan.

25 (Ord. 1877, 1992)

26 **17.10.130 Unauthorized alterations.**

27 When environmentally critical areas and / or their associated buffers have been illegally
28 altered, the City may require them to be restored to their unaltered condition, and subject
29 them to all terms and conditions of this chapter, including but not limited to increasing
30 the area of the critical area and buffer as compensation for the alteration.

31 (Ord. 1877, 1992)

32 **17.10.131 Enforcement, violations and penalties.**

33 It shall be unlawful for any person, firm, or corporation to violate any provision of this
34 chapter. The Director shall have the authority to enforce any and all provisions of this
35 chapter, by proceeding with the following actions in progressive severity, except in cases
36 where a delay would result in further loss and / or ~~degradation~~ degradation of critical
37 areas:

38 A. Stop work orders. For any action which appears to be in violation of this
39 chapter, the Director shall have the authority to order the party in question
40 to immediately stop all work until such time as the Director determines
41 that the action is in compliance with the terms and conditions of this
42 chapter.

1 B. Civil remedies and penalties. Any person, firm corporation, or association
2 or any agent thereof who violates any of the provisions of this chapter may
3 be subject to the following civil penalties:

- 4 1. The City may issue a notice and order under Chapter 1.40 LMC
5 stating any person, firm, corporation or association or any agent
6 thereof who violates any of the provisions of this chapter shall be
7 liable for all damages to public or private property arising from
8 such violation, including the cost of restoring the affected area to
9 an equivalent or improved condition prior to the violation, and set
10 a reasonable amount of time for compliance.
- 11 2. The City may require restoration. Restoration may include but is
12 not limited to, the replacement of all improperly removed
13 vegetation with species similar to those which were removed or
14 other approved species such that the biological and habitat values
15 will be replaced or improved to the greatest extent reasonably
16 possible. A study by a qualified expert(s) shall be conducted to
17 determine the conditions which were likely to exist prior to the
18 illegal alteration. Restoration may also include installation and
19 maintenance of erosion control measures.
- 20 3. In addition to requiring restoration, the City may assess civil
21 penalties as provided in LMC 1.01.085.
- 22 4. The City may require a maintenance bond to insure compliance
23 with the City's order, subject to the bonding procedure established
24 in section 17.10.125 of this chapter.
- 25 5. If the order requiring restoration is not complied with, then the
26 property owner shall be subject to a civil fine of \$100 per day.
- 27 6. If the noncompliance continues for more than thirty (30) days, civil
28 penalties shall be increased to \$500 per day up to a maximum of
29 \$10,000. Fines shall stop on the day that compliance with the
30 order begins, pending successful completion with the compliance
31 order.
- 32 7. Any person who objects to a final order of the City under this
33 section may file an appeal to the hearing examiner using the
34 procedure under Process II in LMC 1.35.200 through 1.35.260.
- 35 8. Any unpaid civil fines may become a lien against the property, and
36 the City may record said lien.
37 (Ord. 1877, 1992)

38 **17.10.140 Severability.**

39 If any paragraph, clause, sentence, section or part of this chapter or the application
40 thereof to any person or circumstances shall be adjudged by any court of competent
41 jurisdiction to be invalid, such order or judgment shall be confined in its operation to the
42 controversy in which it was rendered and shall not affect or invalidate the remainder of
43 any part thereof to any other person or circumstances and to this end the provisions of
44 each paragraph, clause, sentence, section or part of this chapter are hereby declared to be
45 severable.(Ord. 1877, 1992)



Memorandum

Date: January 6, 2005

To: Jared Bond, City of Lynnwood Public Works

From: Christopher Earle and Lisa Grueter

Subject: City of Lynnwood Best Available Science Review

This memorandum provides a review of Best Available Science (BAS) for portions of the Lynnwood Critical Areas Ordinance (LMC 17.10) that are applicable to wetland and stream critical areas. This review is intended to assist the City of Lynnwood in complying with BAS requirements of the Growth Management Act. This review considered whether:

- Existing City regulations are consistent with BAS.
- Existing regulations adequately protect the functions and values of wetlands, streams, and riparian areas in the City of Lynnwood.

Sources of BAS used in this review are cited in-text and full citations are presented at the end of the document.

This review does not address best available science for flood hazard areas, geological hazard areas or aquifer recharge areas.

The following text identifies as “Code” the code section being commented, and as “Analysis” discusses relevant BAS and states a conclusion as to whether the code is appropriate in the context of BAS. As documented below, the City’s ordinance is generally compliant with BAS for high quality wetlands and streams in western Washington, but contains some significant differences, such as the wetland rating system, the list of exemptions, buffer widths for lower quality wetlands or streams, and the provisions for wetland or stream buffer alterations. We have made several recommendations for additional protections, clarifications, or modifications intended to provide consistency with State requirements or guidelines. Those and other, related recommendations are further detailed in an accompanying memorandum, *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Applicability and Exemptions: Required Studies

Code: Section 17.10.020: Critical Areas are identified on City’s Environmentally Sensitive Areas map. Critical Areas must be verified by separate studies. Contents are identified in Section 17.10.045, and must include statement of resources and methodology used reflecting Best Available Science.

Analysis: This section is consistent with Best Available Science guidance because it relies on site-specific information identified from existing maps and application-specific field studies.

Applicability and Exemptions: Exempt Activities

Code: Section 17.10.046 identifies exempt activities, including:

- Existing residential, commercial, and industrial development
- Maintenance and repairs of existing structures
- Maintenance of drainage ditches and surface water facilities
- Emergency activities
- Relocation or installation of public utilities

Analysis: Relocation and installation of public utilities are treated as “exceptions” in the DCTED example ordinance. The principal distinction here is that by exempting utilities, the City’s code does not contain an evaluation of whether there is a reasonable alternative to siting the utility in a critical area. This can potentially result to greater impacts in such areas than would otherwise occur, with resulting impacts to ecological functions of the affected areas.

Applicability and Exemptions: Small Wetlands

Code: Section 17.10.046 also exempts Category 3 wetlands less than 2,500 sq. ft. and Category 4 wetlands less than 10,000 sq. ft..

Analysis: Small wetlands can provide important wetland functions (Sheldon et al. 2003). Exemptions for small wetlands are not consistent with BAS. However, studies of small wetland functions are limited and detailed investigations have not been completed in Washington State. Since many small wetlands lack the characteristics of those examined in scientific studies, and are often highly modified, many of them may provide few and limited wetland functions.

We recommend the “small wetland” exemption limit be dropped and that wetlands be classified according to the system described by Hruby (2004). As a practical matter, some small Category 3 and 4 wetlands provide few functions and values and the City may prefer not to regulate some of these wetlands. It would therefore be appropriate to provide language whereby the City may, at the Director’s discretion, waive the requirement to comply with wetland provisions of the CAO for wetlands smaller than a certain size (we recommend 1,000 square feet) provided the City determines that the cumulative impacts of such exemptions do not unduly counteract the purposes of the City’s regulations and that some form of mitigation is provided for the lost functions (e.g., stormwater treatment and landscaping). The determination to waive requirements should be published.

Wetland Classification/Rating

Code: Section 17.10.051 provides a classification system for rating wetlands. This system defines Category 1-4 wetlands.

Analysis: Category 1 wetlands are defined partly on the basis of “The essential habitat of species listed by the federal government or State of Washington as endangered, threatened, critical, documented priority species.” This contains several undefined terms, including “essential habitat” and “critical, documented priority species.” As a result, it is possible to interpret the ordinance in such a way that streams and other habitats used by protected species are not considered in assigning a category to a wetland. Since one of the principal functions of a wetland is to provide habitat for such species, this wording is incompatible with the best available science. It is suggested that the criterion be reworded to say “Documented habitat for federal or state listed endangered or threatened species.”

Similarly, there are many state and federal species that are not listed as rare or endangered, but which still are in decline due to human activity or are threatened by human activity, and it is thus appropriate to provide protection for such species by giving their wetland habitat a Category 2 level of protection. Thus it is appropriate to add a Category 2 rating criterion that reads something like “Documented habitat for federal candidate species or species of concern, or for state sensitive or candidate species.”

The federal and state fish and wildlife species listed under these criteria are available at the following web address:

<http://wdfw.wa.gov/wlm/diversty/soc/soc.htm>

The federal and state plant species listed under these criteria are available at the following web address:

<http://www.dnr.wa.gov/nhp/refdesk/lists/plantsxco/snomish.html>

It is recommended, however, that this section be more extensively revised to reflect current Department of Ecology thinking on wetland rating, as described by Hruby (2004). That system emphasizes identifying those wetlands:

- where our ability to replace them is low,
- that are sensitive to adjacent disturbance,
- that are rare in the landscape,
- that perform many functions well,
- that are important in maintaining biodiversity.

The Ecology system considers a much wider array of wetland functions than are considered in the City’s proposed code, and thus will more accurately discriminate between highly-functional and less-functional wetlands. For example, the Ecology system has many indicators that assess wetland potential to improve water quality. Nonpoint-source water quality impairment, chiefly via stormwater runoff, is one of the major impacts on water quality in the Puget Sound region,

November 15, 2004

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and is likely to be especially important in the generally highly urbanized City of Lynnwood. Yet, the City's proposed code does not consider water quality functions in assigning category ratings to wetlands. Similarly, the Ecology system also considers wetland potential to provide hydrologic and habitat functions, which are only superficially treated in the City's proposal; and the Ecology system attaches relatively little importance wetland size, whereas the City's proposal relies heavily on size considerations in assigning category ratings to wetlands.

Note that although Ecology's proposed system is superficially complex (the rating form is 20 pages long), most Lynnwood area wetlands are likely to be similar in many respects and for an experienced practitioner, implementation of Ecology's system would not be onerous. It is likely that the default assignments in the City's proposal, which provide Category 1 or Category 2 protection for wetlands along certain named water bodies, would not change. However, field visits would be required to verify this.

Recommended text for implementing the Ecology system is provided in the DCTED Example Code.

Wetland Buffers: Standard Widths

Code: Section 17.10.052 establishes wetland buffer zones as follows:

- Category 1 wetlands: 100-foot buffer
- Category 2 wetlands: 50-foot buffer
- Category 3 wetlands: 25-foot buffer
- Category 4 wetlands: 15-foot buffer

Analysis: Wetland buffers are intended to protect wetland functions by reducing the potential for adjacent human activities to significantly alter those functions. Best available science demonstrates that buffers are required to protect wetland functions. The City's standard buffer requirements provide some level of protection for all wetland functions (Sheldon et al. 2003, see Chapter 5), but may not comply with BAS for Category 3 and Category 4 buffers, as detailed below.

Wetland buffers are intended to protect three classes of wetland functions: (1) wetland capacity to improve water quality; (2) wetland capacity to detain runoff water and improve hydrologic functions; and (3) wetland role as fish, wildlife and plant habitat. The water quality and hydrologic functions are significant in Lynnwood because the area is highly urbanized; stormwater runoff is required to be treated (in accordance with the 1992 King County stormwater manual), and discharges are generally piped and conveyed to streams and wetlands. Wetland buffers in general play a minor role in hydrological function (Sheldon et al. 2003, page 5-25), and wetland buffers in Lynnwood's case are unlikely to alter water quality because stormwater is customarily conveyed to the wetland via a pipe or stream, rather than by overland flow. Nonetheless, wetland buffers potentially act as infiltration and recharge areas and can thereby contribute to hydrologic functions, especially in highly urbanized areas such as

Lynnwood. However, there is little information available on the effect of buffer width on hydrologic functions. It is known, from the observational experience of Lynnwood planners (Jared Bond and Arnold Kay), that wetlands in Lynnwood commonly experience a loss in function, or even dry up, following development due to the redirection of hydrology into storm sewers. Based on this evidence, it appears appropriate in Lynnwood's case to continue to channel properly treated stormwater to wetlands in order to maintain wetland hydrology.

Lynnwood's wetlands may provide significant wildlife habitat. Sheldon et al. (2003) states that wetland buffers are essential to maintaining viable wildlife habitat because:

- Buffers can provide an ecologically rich and diverse transition zone between aquatic and terrestrial habitats, including necessary terrestrial habitats for many wildlife species that use wetlands.
- Buffers can screen wetland habitat from the disturbances of adjacent human development.
- Buffers may provide connectivity between otherwise isolated habitat areas.

All of these functions are likely to be operative in Lynnwood, although the third function (connectivity) is of limited significance in this highly fragmented urban landscape. Sheldon et al. (2003, page 5-45) states that "there is no simple generalized answer for what constitutes an effective buffer width for wildlife considerations. The width of the buffer is dependent upon the species in question and its life-history needs, whether the goal is to maintain connectivity of habitats across a landscape, or whether one is simply trying to screen wildlife from human interactions."

The array of species deriving benefit from wetland buffers is probably limited, because Lynnwood and adjacent areas are highly urbanized. The principal species of concern are likely to be songbirds, small mammals, amphibians, and, in riparian wetlands, fishes. A wide variety of studies have evaluated the importance of wetland buffers to these organisms, and many of those studies were summarized by Sheldon et al. (2003, Table 5-5). Ecology found that a preponderance of studies advocated buffer widths of 30 m (100 feet) or 60 m (200 feet), although various studies advocated buffers ranging from 15 m (50 feet) to 1,000 m (3,280 feet). A minimum buffer of 15 m (50 feet) was recommended by Milligan (1985), who found this buffer adequate to maintain wetland bird diversity.

In view of these considerations, the buffer width of 100 feet for wetlands supporting habitat for federal and state-listed endangered and threatened species appears to be supported by best available science. The 50-foot buffer for Category 2 streams will not maintain habitat for many special status species that may occupy such wetlands, and in some cases, maintenance of a uniform 50-foot buffer on such wetlands may result in the extirpation of sensitive species. A 100-foot buffer is appropriate if special-status species are present (a wider buffer is allowable, but not required, per §17.10.053). The 25- and 15-foot buffers for Category 3 and 4 wetlands are not protective of wildlife habitat and implementation of such buffers in highly urbanized areas will be expected to result in local extirpation of some plants and wildlife. The affected species are unlikely to represent special status species because the presence of such species would cause a wetland to be rated as Category 1 or 2. However, potential habitat for such species may occur in a Category 3 or 4 wetland buffer. It is recommended that to preserve wildlife habitat and

hydrologic functions, Category 3 and wetlands receive a default buffer of 50 feet, and Category 4 wetlands receive a default buffer of 25 feet. These represent minimum buffer widths necessary for buffer vegetation to provide ecological function, and therefore plantings should be required if necessary to ensure that the buffers of all affected wetlands are fully vegetated by native plant communities. Additionally, to ensure that contaminant filtration functions in wetlands and their buffers are not overstressed, all stormwater discharges authorized into wetlands and their buffers should be compliant with the stormwater treatment specifications of the City's stormwater manual.

Wetland Buffers: Increased Width

Code: Section 17.10.053 - The standard buffers can be increased.

Analysis: As noted above, the presence of federal and state-listed endangered and threatened species habitat results in a Category 1 classification, and in most cases the default buffer width is adequate. The presence of federal candidate species and species of concern, and state candidate and sensitive species, results in a Category 2 classification. Assignment of Category 1 buffers to Category 2 wetlands in such cases would minimize the risk of extirpation of such species and might be explicitly noted in this section.

As in §17.10.051, the terms "essential habitat" and "critical or documented priority species" should be defined or rephrased.

Wider buffers should also be required for wetlands on sites where the buffer is fully vegetated with native trees and shrubs as described in the companion memo: *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Wetland Buffers: Decreased Width

Code: Section 17.10.054 - The standard buffers can be decreased.

Analysis: Provision 17.10.054(A) appears to authorize a reduced buffer width on the basis of conditions outside of the buffer. However, there are no assurances that areas outside the buffer will not be adversely impacted in the future. Thus this provision does not provide for preserving wetland functions and represents a potentially significant reduction in wetland protection. Given the scientific basis for wetland buffer widths presented above, the provision for reduced buffer width as written is likely to result in significant adverse effects on wetland functions, particularly in regard to wildlife habitat value. It is recommended that this provision be stricken or that additional protections, such as a conservation easement, be required to ensure that an area equivalent to the entire standard buffer width receives permanent protection. Also, note that the standard buffer widths assume, per BAS, that the buffer is fully vegetated and fully functional. Anything less than this should be grounds for increasing the buffer requirement, or for requiring mitigation in the form of native vegetation plantings within the buffer.

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Provisions 17.10.054(B) which specifies the maximum reduced width is addressed in the companion memo: *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

While buffer reductions are generally discouraged as discussed above under criteria (A) above, there are other circumstances to consider. It is appropriate to allow buffer reductions on sites where buffer functions are rendered minimal by the presence of intervening roads and structures.

This appears to be the idea behind provisions (C). For example, the City may, based on an applicant's critical area report, reduce the standard buffer subject to criteria that demonstrate:

- The subject property is separated from the [wetland or stream] by existing, intervening, and lawfully created: lots/parcels, public roads, or other substantial existing structures; and
- The intervening lots/parcels, public roads, or other substantial structures are found to separate the subject upland property from the [wetland or stream] due to their height or width; and prevent or impair the delivery of buffer functions to the [wetland or stream].

The reduced buffer width established by the City would then reflect the buffer functions that can be delivered to the wetland or stream.

Section 17.10.054(D) allows buffer width reduction in exchange for enhancing the ecological functions of the reduced buffer. This concept is generally acceptable in the sense that wetland mitigation proposals often involve a trade-off of some kind between acreage and enhancement of ecological functions. However, in the absence of formal resource agency review of such proposals, there is a high risk that the apparent benefits of such a proposal will not be real or long-lasting in comparison with the ecological harm done by approving the reduced buffer width. We recommend that the Ecology wetland rating system discussed above (comments on §17.10.051) be used to quantitatively compare the values of the wetland under current conditions and under conditions proposed for buffer enhancement, with the requirement that the point value of the wetland times the acreage of the wetland plus buffer has to be increased as a result of the proposed enhancements. For example, a 2-acre wetland with a 1-acre buffer and a value of 20 points would have a total value of $(2+1) \times 20 = 60$ points. If the developer proposed to reduce the buffer by half, the wetland and buffer value would have to be enhanced to achieve a minimum of 24 points: $(2+0.5) \times 24 = 60$ points. This buffer reduction strategy should not be allowed for Category 4 wetlands, though, because (1) even the greatest possible enhancement of a Category 4 wetland results in a wetland providing a low level of function, and (2) the standard buffer on a Category 4 wetland is set at the minimum level necessary to allow the wetland to perform necessary functions.

Wetland Buffers: Width Averaging

Code: Section 17.10.055. Averaging of wetland buffer widths.

Analysis: Like buffer enhancement, buffer averaging may significantly impair wetland function if not properly implemented. The City's language commendably provides that width averaging may not adversely impact wetland functional values (§17.10.055(E)). However, it may be difficult

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to enforce or verify that provision in the absence of further provisions requiring that the effect of buffer averaging on wetland functions be verified by a qualified wetland scientist, that this verification meet the requirements of BAS, and the verification should use the Ecology rating system so as to compare the value of the proposed wetland to the existing wetland.

Provision 17.10.055(D) which specifies the maximum reduced width as part of averaging is addressed in the companion memo: *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Building Setbacks

Code: Section 17.10.057 requires a building setback line of 15 feet from the edge of any wetland buffers.

Analysis: The provision correctly recognizes that building construction and maintenance may have effects (such as activity, trampling, materials storage and spills, etc.) that are likely to impair wetland functions. Coupled with the fencing requirement in §17.10.105, the 15 foot setback is adequate to protect the wetland from inadvertent entry.

Alterations to Wetlands and Buffers

Code: Section 17.10.058 specifies that Category 1 and 2 wetlands and buffers will be preserved unless an applicant demonstrates public benefit, preservation, improvement, or protection of wetland functions.

Category 3 and 4 wetlands and buffers may be altered subject to a mitigation or enhancement plan.

As noted in our other memo (*Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*) the language appears to allow an applicant to impair the functioning of a Category 1, 3 or 4 wetland, but not a Category 2 wetland – why is this?

Section 17.10.059 specifies wetland and buffer alteration criteria and the following compensation ratios:

- Category 1 – 6:1
- Category 2 and 3
 - Forested – 3:1
 - Scrub-shrub – 2:1
 - Emergent – 1.5:1
- Category 4 – 1:1

The City may increase these ratios under certain circumstances.

Analysis: The intent of Sections 17.10.058 and 17.10.059 is consistent with Best Available Science goals. The City does not, however, designate any reference standard to be used in determining whether proposed alterations will in fact preserve, improve or protect wetland functions. The City may wish to designate the Ecology (2004) wetland rating system as a quantitative standard that can be used to validate that a proposed action will preserve, improve or protect wetland functions.

The City also does not distinguish between mitigation ratios for creation, rehabilitation and enhancement. Corps of Engineers guidance defines wetland creation as “the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist.” Rehabilitation is “the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland,” and enhancement is “the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present.” Ecology (Hruby et al. 2004) suggests that rehabilitation be allowed at twice the mitigation ratio of wetland creation, and that enhancement be allowed at twice the mitigation ratio of rehabilitation. Such ratios would be more likely to ensure that applicants would pursue wetland creation wherever feasible, thereby achieving a no-net-loss goal. As described by Hruby et al. (2004, Appendix 8-C), it is often possible for wetland mitigation to combine areas of creation, rehabilitation and enhancement, in which case mitigation ratios are calculated in proportion to the areas receiving different treatments. We suggest that the City adopt Ecology’s recommendations.

The proposed replacement ratios, if applied to wetland creation, are predominantly consistent with best available science goals as expressed through the DCTED Example Ordinance and the recent wetland science review by Sheldon et al. (2003). The 1:1 replacement ratio for Category 4 wetlands is probably not adequate to achieve a policy goal of “no net loss” for wetlands, because most studies of wetland mitigation success performed to date have established that replacement ratios in excess of 1:1 are required to compensate for temporal losses (the loss of wetland function between the time impacts occur and the time the mitigation wetland becomes fully functional) and failure risk (the observation that a significant fraction of all wetland mitigation projects fail to compensate for all lost wetland functions). The City may wish to either increase this ratio or (which would probably have greater benefit) require that mitigation wetlands replacing Category 4 wetland impacts achieve at least a Category 3 function per the Ecology rating system.

Lastly, the ordinance should better specify mitigation sequencing (e.g. avoid, minimize, compensate, etc.) as described in the companion memo: *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Wetland Mitigation

Code: Section 17.10.060 requires a mitigation plan to be approved by the city prior to issuance of permits for development activity that will result in wetland or buffer alteration, restoration, creation, or enhancement.

Analysis: The City's mitigation plan requirements are protective and are generally consistent with BAS. The requirement for a performance bond is particularly to be commended and should help to significantly reduce mitigation failure risk. However, the mitigation plan requirements conspicuously lack any performance standards that could be used to assess the progressive attainment of successful mitigation over the course of the monitoring period. Such performance standards should be incorporated in the mitigation plan. This concept is further developed in the *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Stream Ratings

Code: Section 17.10.061 establishes 3 categories of streams.

Analysis: The City's stream categories are consistent with BAS. As with Washington DNR and other widely-used systems, they discriminate streams mainly on the basis of (1) whether they are used by salmonids, and (2) whether they are seasonal or perennial.

Stream Buffers

Code: Section 17.10.062 establishes the following standard minimum stream buffers:

- Category 1: 50 feet
- Category 2: 25 feet, or 50 feet in Category 2 streams used by salmonids
- Category 3: 15 feet

Analysis: There is a particularly extensive literature addressing riparian stream buffers in the Pacific Northwest. Through the mid-1990s, most of this literature addressed the effects of timber harvest on small and medium-sized streams, but more recent literature has also detailed the functional roles of streams in developed (agricultural, residential, and commercial/industrial) landscapes. The literature shows that a variety of different functions affect stream conditions, and that these functions vary somewhat with regard to stream size and channel morphology. This analysis focuses on stream conditions in the fish-bearing streams of Lynnwood, using data collected during the *Stream Habitat Analysis* (Jones & Stokes, 2000).

Stream buffers in Lynnwood may be expected to potentially serve the following functions:

- Salmonid habitat in back channels and during peak flows.
- Filter sediment and pollutants from overland flow during and after rainfall events.

- Large woody debris grows and falls into the stream or falls on the ground in the riparian zone.
- Forest and understory vegetation shade the stream and ameliorate microclimate variability.
- Fine organic particulate matter from soils and vegetation enter the stream and support benthic insect communities.
- Riparian habitat is occupied by and provides a migration corridor for wildlife.
- Shrub and tree roots stabilize streambanks.

Each of these functions achieves its greatest value near the streambank, and its value declines with increasing distance from the edge of the stream. The purpose of a riparian buffer is to preserve an area wide enough to substantially maintain all of the riparian functions listed above. In order to evaluate the functional significance of a riparian buffer, we must consider (1) what is the condition of the existing riparian area? and (2) what is the potential that development in that area will impair riparian function? The optimal buffer is then the buffer that will substantially preserve existing riparian functions.

Salmonid habitat in back channels and during peak flows: This function is irrelevant for most Lynnwood streams because they have narrow channels and do not offer potential habitat in back channels or during peak flows. The principal exception is lower Halls Creek, which is bordered by a riparian wetland that does provide such functions. As such this wetland would be classified as Category 1, receiving a 100-foot buffer. Most studies (Hickman and Raleigh 1982, Raleigh 1982, Raleigh et al. 1984, Raleigh et al. 1986) have recommended a 30 m (100 foot) buffer for this function, so the City's proposal here is consistent with BAS.

Filter sediment and pollutants: There is a wide literature examining these functions. With regard to filtering sediment and nutrients, Ghaffarzadeh et al. (1992) recommend a 30-foot buffer, and Wilson (1967) a 50-foot buffer; both of these studies were evaluating grassy vegetative strips. Lynch et al. (1985) and Terrell and Perfetti (1989), studying forest systems, both recommend a 100-foot buffer. In more urbanized and agricultural systems, Karr and Schlosser (1977) and Wong and McCuen (1982) also found an approximately 100-foot buffer to be largely effective. However, Gilliam and Skaggs (1988), looking at agricultural systems, recommended an 88 m (289 foot) buffer to achieve only 50% effectiveness. With regard to filtering pollutants, nearly all studies have recommended buffers of not more than 100 feet wide, and a variety of studies (Castelle et al. 1991a, Doyle et al. 1997, Lawrence 1992, Madison et al. 1992, Petersen et al. 1992) have found a 15 m (50 foot) buffer adequate for the purpose. Since sediment and pollutants that are not filtered by the riparian zone may be transported downstream to areas used by salmonids, these data suggest that a buffer at least 50 feet wide is required on all streams having vegetated buffers. In Lynnwood, areas 50 feet from the stream are often unvegetated because many of the streams pass through heavily developed areas. Some such streams, though, pass through fully vegetated areas. The City may want to consider providing larger buffers on Category 2 and Category 3 streams on sites where the stream is adjoined by vegetation and thus where the riparian environment may provide significant sediment and pollutant filtration.

Large woody debris: Studies of the riparian effects of timber harvest have made much of the role of large woody debris (LWD) in modifying stream channel condition, channel sediment dynamics, salmon habitat, etc. However, in urban areas it is frequently not feasible to allow large wood to fall into streams and remain there undisturbed. Often such a passive management approach leaves open the possibilities of bank erosion, flooding, and damage to capital improvements. Natural LWD recruitment is usually only possible in parks and undeveloped areas. Instead, it is often necessary to achieve the benefits of LWD by placing stabilized, usually woody structure in the streams. It is appropriate for such LWD placement to be required as mitigation for development activities that occur in proximity to streams. The City's ordinance (Sections 17.10.70 to 17.10.78) provides for mitigation activities in streams. Note that LWD is also ecologically important outside of the stream, in the stream riparian zone, where it provides habitat for amphibians, small mammals, nesting birds, insects, and other plants and wildlife. Removal of such wood should be prohibited within the riparian buffer, and placement of such wood is also a helpful mitigation measure.

Forest and understory vegetation shade: Studies of shade and microclimate effects of vegetation cover have largely dealt with streams affected by timber harvest. However, those studies have documented that forest cover can affect microclimate up to several hundred meters from the stream (Chen et al. 1989). Similarly, forest and understory canopy cover provides shade that may significantly affect stream temperature (Beschta et al. 1988). The studies that have been done have largely addressed the question of how much shade was required, rather than the question of how large a buffer is required to produce shade. Depending on site conditions, a given width buffer might produce full shading of a stream, or no shade at all. For a given buffer width, shade will generally be greater if any of the following contributing factors exist:

- Mature tree vegetation rather than shrubs or young trees.
- Relatively tall trees.
- Conifer rather than hardwood trees.
- Closed tree canopy rather than open tree canopy.
- Full tree crown (branches down to the ground) rather than shallow crown (branches mostly near top of tree).
- Steep slopes rather than a flat site.
- Narrow rather than wide stream.
- Stream flows fed by groundwater rather than surface runoff.

It is therefore helpful if riparian mitigation measures encourage the enhancement or restoration of any of these factors. Nonetheless, there have been some studies directly relating riparian buffer width to stream shading. Brazier and Brown (1973) found that an 11-24 m (36-80 feet) buffer provides 60-80% of full shade. Beschta et al (1988) found that a 30 m buffer will preserve full shade in an old-growth forest environment. Most other studies (Broderson 1973, Corbett and Lynch 1985, Hewlett and Fortson 1982, Steinblums et al. 1984) have advocated an intermediate

buffer width of about 50 feet. The proposed buffers are somewhat less protective, especially along Category 2 and Category 3 streams.

Fine organic particulate matter: Fine organic matter, such as dead leaves, fragments of bark, small twigs, etc. comprise the major nutrient inputs supporting stream invertebrate populations, especially in streams that do not receive significant amounts of direct sunlight. The invertebrate communities that feed on this material are in turn a major food source for rearing salmonids, stream-dwelling amphibians, and other organisms. Most studies (e.g., Roby et al. 1977, Newbold et al. 1980, Erman et al. 1977) have found that a buffer 30m wide is necessary to fully preserve this function. However, these studies have all looked at relatively pristine forested systems that were then disturbed by clearcut logging. The influence of buffer width on fine organic inputs has not been examined for urbanized streams in developed areas, which are ecologically very different from recently cleared forests. In Lynnwood's streams, most waterways have low flow velocities, with an evident abundance of in-stream organic matter (Jones and Stokes 2000). None of Lynnwood's streams appear to be limited with regard to fine particulate organic matter inputs, and most have low invertebrate diversity, probably due to existing water quality impairments that are the legacy of past development and stormwater runoff. In consideration of these factors, the proposed buffer widths are adequate to ensure that streams receive sufficient fine particulate organic matter inputs.

Wildlife habitat: There have been many studies of the use of riparian systems by wildlife. These studies are in general not strictly applicable to Lynnwood for several reasons: most have looked at timber harvest in continuous forest areas, different studies have considered different kinds of wildlife, and few studies have really examined more than one candidate buffer width. Literature reviews by Fischer et al (2000) and McMillan (2000) have concluded that most research indicates a buffer 30-100 m (100-328 feet) wide is fully protective of wildlife needs, but these buffers are plainly unrealistic in Lynnwood, where a 300-foot buffer edge is generally going to be across the street from the nearest stream. Generally, the proposed buffers will be adequately protective of wildlife habitat in Lynnwood. In those unusual cases where a stream buffer is fully vegetated with native trees and shrubs, the City may wish to specify buffers up to 50% wider than default. Such buffers would more fully protect riparian functions in these exceptional areas and would thereby help to offset cumulative impacts of development near the City's riparian areas.

Shrub and tree roots stabilize streambanks: FEMAT (1993) found that tree roots are important in stabilizing streambanks and reducing excessive channel widening, which adversely affects a stream's sediment transport capacity and its suitability as salmonid habitat. They concluded that most tree root effects occur within a distance of one-quarter of a tree height from the stream. It is highly unlikely that trees in such a heavily developed area as Lynnwood will often grow as tall as 200 feet, but even if they did, the proposed buffers would be protective of this function.

Summary:

Function	Effect of City's Proposed Buffer
Salmonid habitat in back channels and during peak flows	100-foot buffer is typical, but this function is largely irrelevant in Lynnwood's streams. All proposed buffers are acceptable.

Filter sediment and pollutants	50- to 100-foot buffer is typical. Wider buffers than proposed are preferable on sites where the stream is adjoined by vegetation.
Large woody debris	Typical buffers are proportional to tree height, but this function cannot be realized on most Lynnwood streams. Mitigation by in-stream placement of LWD should be required in some situations.
Forest and understory vegetation shade	36- to 100-foot buffers are typical. The Category 1 buffer may be adequately protective, but the Category 2 and Category 3 buffers are probably inadequate to ensure stream shading.
Fine organic particulate matter	Field data suggest that Lynnwood's streams are not likely to be limited by availability of fine organic matter, so the proposed buffers are adequately protective.
Wildlife habitat	100- to 300-foot buffers are typical. The proposed buffer is not adequately protective on sites where wildlife use is potentially significant. However, most streams in Lynnwood are in highly urbanized settings where this function has low importance. It would be appropriate to require wider buffers in areas known to support sensitive species.
Shrub and tree roots stabilize streambanks	The proposed buffers are probably adequately protective.

In summary, riparian buffers for Lynnwood can primarily function by providing sediment and pollutant filtration, riparian shade, wildlife habitat and streambank stabilization. As noted in *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*, these functions can be substantially protected by a buffer 100 feet wide on Category 1 (salmonid-bearing streams). Category 2 streams require a buffer 60 feet wide, and Category 3 streams require a buffer 35 feet wide. Note that in Lynnwood's highly urbanized environment, many of these buffers will be drawn on fully developed surfaces; in such situations a goal of "no net loss" of functions can be achieved by enhancement of whatever vegetated areas are closest to the stream.

Alterations to Stream Buffers: Increased Buffers

Code: Standard buffers can be increased based on Section 17.10.064.

Analysis: Provisions 17.10.064(A) should be reworded to use terminology typical of the resource agencies, WDFW, USFWS and NOAA Fisheries. We suggest the wording:

The stream reach affected by the development proposal is used by anadromous salmonids for spawning or rearing as determined by the city using information from resource agencies but not limited to the Washington State Department of Wildlife, U.S. Fish and Wildlife Service, NOAA Fisheries, and native tribes; or

Similarly, we suggest rewording §17.10.064(B) as follows:

The stream or adjacent riparian corridor is used by species listed by the federal government or the state of Washington as endangered threatened, candidate, or sensitive, or provides 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

Additionally, there may arise situations where more than one of the special conditions listed in this Section apply. In such situations it may be reasonable to increase the buffer width by more than 50% relative to standard buffers.

Lastly, as noted in our companion memo, *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*, we recommend that the City provide wider buffers for streams on sites where the stream buffer is fully vegetated with native trees and shrubs.

Alterations to Stream Buffers: Decreased Buffers

Code: Standard buffers can be decreased based on Section 17.10.065.

Analysis: Provision 17.10.065(A)(1) appears to authorize a reduced buffer width on the basis of conditions outside of the buffer. However, there are no assurances that areas outside the buffer will not be adversely impacted in the future. Thus this provision does not provide for preserving riparian functions and represents a potentially significant reduction in riparian protection. Given the scientific basis for riparian buffer widths presented above, the provision for reduced buffer width is likely to result in significant adverse effects on riparian functions, particularly in regard to wildlife habitat value. It is recommended that this provision be stricken or that additional protections, such as a conservation easement, be required to ensure that an area equivalent to the entire standard buffer width receives permanent protection. Also, note that the standard buffer widths assume, per BAS, that the buffer is fully vegetated and fully functional. Anything less than this should be grounds for increasing the buffer requirement, or for requiring mitigation in the form of native vegetation plantings within the buffer.

The most significant provision of this section is the idea in §17.10.065(A)(2) that allows buffer width reduction in exchange for enhancing the ecological functions of the reduced buffer. This concept is generally acceptable in the sense that stream mitigation proposals often involve a trade-off of some kind between acreage and enhancement of stream or riparian functions. However, in the absence of formal resource agency review of such proposals, there is a high risk that the apparent benefits of such proposal will not be real or long-lasting in comparison with the ecological harm done by approving the reduced buffer width. Moreover, Section 17.10.065(B) does not require a monitoring plan for buffer enhancement, and does not require a bond or other security. There is thus significant risk that the intended benefits of the enhancement will not prove viable or will not be permanent. We therefore recommend that stream buffer enhancement require security, and a mitigation and monitoring plan stating performance standards, with return of security conditioned upon meeting performance standards by the completion of the monitoring period. Monitoring should occur for at least 5 years following project completion.

With regard to subsection (A)(3), it is appropriate to allow buffer reductions on sites where buffer functions are rendered minimal by the presence of intervening roads and structures. We suggest language similar to that described under “Wetland Buffers: Decreased Width.”

Lastly, we recommend a monitoring plan and security as noted in our companion memo: *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Alterations to Stream Buffers: Averaged Buffers

Code: Buffers can be averaged based on Section 17.10.068.

Analysis: Like buffer enhancement, buffer averaging may significantly impair stream or riparian function if not properly implemented. The City’s language commendably provides that width averaging may not adversely impact stream functional values (§17.10.068(E)). However, it may be difficult to enforce or verify that provision in the absence of further provisions requiring that the effect of buffer averaging on wetland functions be verified by a qualified biologist, and that this verification meet the requirements of BAS.

Provision 17.10.068(D) which specifies the maximum reduced width as part of averaging is addressed in the companion memo: *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Building Setbacks

Code: Section 17.10.066 requires building setback line of 15 feet from the edge of all stream buffers.

Analysis: The provision correctly recognizes that building construction and maintenance may have effects (such as activity, trampling, materials storage and spills, etc.) that are likely to impair stream and riparian functions. Coupled with the fencing requirement in §17.10.105, the 15 foot setback is adequate to protect stream buffers from inadvertent entry.

Alterations to Streams and Buffers: Category 1

Code: Section 17.10.070 specifies that Category 1 streams will be preserved unless an applicant demonstrates public benefit, preservation, improvement, and protection of stream functions.

Analysis: This is a commendable provision that is well supported by the “universality principle” of Bella (2001) which states that the cumulative effect of outcomes in a dynamic system will be dominated by the most irreversible tendencies within human actions. (For example, forests are often removed to create roads, but roads are seldom removed to create forests; the creation of roads is usually irreversible.)

Alterations to Streams and Buffers: Category 2 and 3

Code: Section 17.10.072 specifies that Category 2 and 3 streams may only be altered 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.

Analysis: Section 17.10.040 requires that a proposal meet both conditions (A) and (B), but this section does not say (A) and (B), nor does it say (A) or (B). If it is worded to say (A) and (B), then it is commendable and fully protective of the resource. If it is (A) or (B), then it may not be adequately protective, depending on the details of the reasonable use exception approved pursuant to §17.10.048.

There are additional concerns regarding this provision that relate to administrative appeals, providing guidance as to reasonable methods and approaches to stream and buffer alteration, and appropriate mitigation measures. These concerns are detailed in the accompanying memorandum, *Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*.

Alterations to Streams and Buffers: Culverts

Code: Section 17.10.073 requires culverting within a stream will only be permitted under an approved plan or to provide access to a lot when no other means of access exists.

Analysis: The provision is not inconsistent with BAS requirements. Additionally, any such project would likely also be subject to review by state agencies, which would require further site-specific information, maintaining the BAS standard.

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Lynnwood Planning Commission
Meeting of February 10th, 2005

Staff Report

Agenda Item: **G-1**
Manufactured Housing
Code Amendment (SB-6593)

File: 2005CAM0002

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

Lynnwood Department of Community Development — Staff Contact: Gina Coccia 425.670.8309

Background/Discussion:

The Planning Commission will review Lynnwood's Zoning Code for compliance with SB-6593 regarding equal treatment of conventional and factory-built housing.

For years, manufactured housing interests have sought to pre-empt local authority to determine where and how manufactured homes are sited. This year they were successful in getting SB-6593 passed by the legislature. Each jurisdiction is now reviewing its regulations to make sure they comply with this new legislation.

In essence, this bill prevents cities from regulating manufactured homes any differently than site built homes. Specifically, homes built to the federal manufactured housing construction standards must be regulated in the same manner as site built homes, other factory built homes, and homes built to any other state construction standard. It is important to note that this bill does not take effect until July 1st, 2005.

Cities and counties may require manufactured housing to be set on a permanent foundation that meets manufacturer standards and may require concrete or a concrete product to be put between the base of the home and the ground, be thermally equivalent to the state energy code, meet local design standards and otherwise meet all other requirements for a designated manufactured home. However, there are some other requirements that are placed on manufactured homes by Lynnwood's zoning code that may not be appropriate.

After review of the zoning code, the following needs to be determined:

- *Is the wording adequate and "No Changes" are needed?*
- *Do any parts of the code need to be removed?*
- *Is there material that needs to be added to the code?*
- *Issues? For example, would additional requirements for manufactured homes result in safer or more attractive? Would additional requirements increase the costs to new (manufactured) homeowners or significantly reduce affordability?*

From the City Attorney's Memo (November 19th, 2004)

The statute does grant cities some limited zoning authority over manufactured housing, by authorizing cities to impose the following requirements:

1. Manufactured homes must be new;
2. Manufactured homes must be placed upon a permanent foundation and the space from the bottom of the home to the ground must be enclosed;
3. Manufactured homes must comply with all local design standards applicable to other homes within the neighborhood;
4. Manufactured homes must be thermally equivalent to the state energy code;
5. Manufactured homes must meet the requirements for a "designated manufactured home" as defined in RCW 35.63.160, including the following:
 - a. Comprised of at least two fully enclosed parallel sections each not less than twelve feet wide by thirty-six feet long;
 - b. Originally constructed with and currently maintains a composition of wood, shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and
 - c. Has siding materials similar in appearance to siding materials commonly used on conventional site-built homes.

Lynnwood's Current Code:

Staff conducted a cursory sweep of the Zoning Code and determined that there are two titles that should be reviewed for compliance with SB-6593:

- LMC 21.02 "Definitions": where manufactured home, mobile home and other associated terms are defined;
- LMC 21.70: "Manufactured Homes, Mobile Homes, Manufactured Home Developments, and Mobile Home Parks": which contains the specific minimum standards for the development of manufactured home developments and mobile home parks.

The following excerpts are from the Zoning Code, with staff's comments below in *italics*.

LMC 21.02 – DEFINITIONS

21.02.290 Dwelling.

"Dwelling," means any building or any portion thereof, which is not an apartment house or hotel as defined in this title which contains one or more apartments or guest rooms, used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied, or which are occupied for living purposes. (Ord. 2020 § 2, 1994; Ord. 190 Art. IV § 404, 1964)

A "One-family Dwelling" is defined as "a detached building designed exclusively for occupancy by one family and containing one dwelling unit."

21.02.300 Dwelling unit.

"Dwelling unit" means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen facilities for use solely by one family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. (Ord. 2051 § 3, 1995; Ord. 2020 § 2, 1994; Ord. 190 Art. IV § 404, 1964)

Comment— *A mobile or manufactured home is, by definition, a single-family detached dwelling unit. There's no need to change these definitions.*

21.02.501 Manufactured home.

A. Manufactured Home. "Manufactured home" means a dwelling unit constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes. All manufactured homes shall bear the appropriate insignia by a state or federal regulatory agency indicating compliance with all applicable construction standards of the U.S. Department of Housing and Urban Development for manufactured homes as adopted by the Washington State Department of Labor and Industries or the Uniform Building Code as adopted by the city of Lynnwood.

B. Designated Manufactured Home. "Designated manufactured home" means a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

1. Is comprised of at least two fully enclosed parallel sections each of not less than 12 feet wide by 36 feet long;
2. Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and
3. Has exterior siding similar in appearance to siding materials commonly used on conventional site-built Uniform Building Code single-family residences. (Ord. 2295 § 2, 2000; Ord. 2020 § 2, 1994; Ord. 1781 § 1, 1990)

Optional wording from the Model Code...

Manufactured home: a single family home which:

- a) is comprised of at least two fully enclosed parallel sections each of not less than 12 feet wide by 36 feet long;*
- b) was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and*
- c) has exterior siding similar in appearance to siding materials commonly used on site-built single family homes built according to the International Building Code.*

Comment— *If the optional "model code" wording is adopted, we could refrain from using the term "designated" and wouldn't need to refer to "state and federal requirements", etc. The optional wording is much simpler while including the same basic development requirements.*

21.02.502 Manufactured home development.

"Manufactured home development" means a site developed as a planned unit development in accordance with Chapter 21.30 LMC exclusively for the permanent placement of manufactured homes. (Ord. 2020 § 2, 1994; Ord. 1781 § 1, 1990)

Comment — *Manufactured Home Developments are "P" (Primary uses) in all single-family and multiple-family zones in Lynnwood. However, they must be approved through the PUD process.*

Comment – *Designated Manufactured Homes are also "P" (Primary uses) in all residential zones and may be placed individually on their own lots, such as in single-family residential subdivisions.*

21.02.503 Mobile home.

"Mobile home" means a transportable dwelling unit manufactured after January 1, 1968, and before June 15, 1976, and bearing an insignia of the Washington State Department of Labor and Industries. All mobile homes without such insignia are nonconforming structures.

Optional wording from the Model Code...

Mobile Home: a transportable, factory-built home designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Housing and Safety Standards Act of 1974. Mobile homes are no longer built, and their placement in this community is prohibited.

21.02.504 Mobile home lot.

"Mobile home lot" means a plot of ground designated on a binding site plan or conditional use permit, which is designed to accommodate one mobile home or manufactured home. (Ord. 2020 § 2, 1994; Ord. 1781 § 1, 1990)

Comment – *"Mobile homes" are no longer permitted in new developments in Lynnwood and we are no longer creating lots for occupancy only by mobile homes through the Conditional Use Permit process. Therefore, this term should be considered for removal from our code.*

21.02.505 Mobile home park.

"Mobile home park" means any plot of ground upon which two or more mobile or manufactured homes are lawfully occupied as dwellings, regardless of whether a charge is made for such accommodation. (Ord. 2020 § 2, 1994; Ord. 1782 § 1, 1990)

Comment – *Lynnwood no longer allows new "mobile home parks." This term refers only to older existing parks that were developed under previous codes. Since Lynnwood still has 17 such parks, there's no need to remove this term.*

LMC 21.70 – MANUFACTURED HOMES, MOBILE HOMES, MANUFACTURED HOME DEVELOPMENTS, AND MOBILE HOME PARKS
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This chapter establishes minimum standards and requirements for the construction and operation of manufactured home developments and mobile home parks. Although new mobile home parks cannot be built in Lynnwood, this section provides standards for internal changes and remodeling of those older parks for purposes of safety or modernization.

Optional wording from the Model Code...

Intent: It is the intent of this chapter to set forth the terms and conditions under which single-family homes may be sited, and to ensure that manufactured homes as defined in LMC 21.02 may be sited in any zone where single-family homes are permitted. However, nothing in this chapter shall be construed as to permit housing designs or construction standards that do not meet the standards of a historic district.

Comment – *The "model code" language minimizes the differences between conventional "stick-built" housing and manufactured housing by simply referring to the siting of single-family homes. This wording may be more appropriate in Chapters 21.42 and 21.43 (Residential Single- and Multi-family Zones).*

21.70.200 General provisions.

A. Location and Occupancy.

1. Designated manufactured homes are permitted on lots which are zoned for residential use, subject to the same development regulations as other forms of single-family housing.
2. Designated and other types of manufactured homes are permitted in mobile home parks or manufactured home developments, and mobile homes are only permitted in mobile home parks.
3. Recreational vehicles are not allowed as permanent year-round dwellings nor as replacement units in mobile home parks or manufactured home developments.
4. All proposed structures shall meet the requirements of the Uniform Building Code as adopted by the city of Lynnwood or bear the appropriate seal of the Washington State Department of Labor and Industries.

B. Use and Density.

1. The uses within new developments, new mobile home parks and expansions of existing developments and parks under this chapter are limited to the uses permitted in the zone in which the development is proposed.
2. Existing mobile home parks are exempt from density limitations, except that any internal redevelopment or alteration shall not exceed the density limit for that park, as shown in Table 21.70.250.
3. Expansion of an existing park beyond current boundaries is allowed, provided the expanded areas comply with all development standards required for new manufactured home parks, including use and density.

Comment – If we use the term "manufactured home", and if the definition of that term includes the basic development guidelines described earlier, then we can drop the term "designated" throughout this section.

21.70.300 Alteration or expansion of mobile home parks.

A. Alteration. Alteration is a change in the configuration, utilities, access or structures which does not increase the area of the mobile home park. An alteration can provide for the phasing in of improvements and need not effect immediate changes to the entire mobile home park. Alteration does not include repair or maintenance to existing facilities. Alteration shall include but not be limited to the following conditions:

1. The terms and conditions of any existing conditional use permit shall continue.
2. All structures within the area of the alteration shall meet the following setbacks:
 - a. No setback required from internal roads;
 - b. Five-foot setback from lot lines;
 - c. Ten-foot setback from any other mobile or manufactured home;
 - d. Five-foot setback from any other structure.
3. The mobile home park owner shall designate an internal, unobstructed road for general access and emergency access, at least 20 feet in width, or as may be approved as adequate in writing by the Lynnwood fire department.
4. All new structures shall meet the requirements of the Uniform Building Code as adopted by the city of Lynnwood or bear the appropriate seal of the Washington State Department of Labor and Industries issued after January 1, 1968.

B. Expansion. Expansion is a change in the area or configuration of the mobile home park which results in an increase in total area or in the number of units. Expansion of existing mobile home parks shall include but not be limited to the following conditions:

1. Expansions shall be coordinated extensions of the existing site;

2. Occupancy of any area added to an existing mobile home park shall be limited to manufactured homes;
3. All proposed structures within the area added to the mobile home park shall meet the setback requirements in subsection (A)(2) of this section;
4. The expanded area shall be served by an internal, unobstructed road for general access and emergency access, at least 20 feet in width, or as may be approved as adequate in writing by the Lynnwood fire department. (Ord. 2433 § 1(Exh. C), 2002; Ord. 2020 § 23, 1994; Ord. 1781 § 9, 1990)

Comment – This section deals with the older existing “mobile home parks”, which will continue to be called mobile home parks because that’s what they were designed for and that’s what they contain. Not a problem. No changes recommended.

21.70.400 Replacement of mobile or manufactured homes in existing mobile home parks.

Mobile or manufactured homes or other types of units which are removed from existing mobile home spaces may only be replaced with a mobile or manufactured home. Recreational vehicles are not allowed as replacement units. (Ord. 2433 § 1(Exh. C), 2002; Ord. 2020 § 23, 1994; Ord. 1781 § 9, 1990)

Comment – *The only place in the City where “mobile homes” can be accommodated is within an existing mobile home park. If we maintain the manufactured home requirement that it must be at least 24 ft. wide, it would be impossible to replace many of the older single-wide mobile homes. However, if we do not require a manufactured home to have any particular dimensions, then a single-wide manufactured home could be used to replace an old mobile home. Yes, contrary to popular belief, they are still making new single-wides.*

21.70.650 Building and lot design criteria for manufactured home developments.

A. The manufactured homes and accessory structures to be located in manufactured home developments shall be described in narrative and/or plans as part of the application in accordance with Chapter 21.30 LMC. “Typical” units are acceptable instead of describing exactly every unit, providing that the units which are installed are generally in conformance with the “typicals” provided in the application.

B. The following minimum criteria shall be considered in the review and approval process:

1. The manufactured home was originally constructed with and now has a composition, wood shake or shingle, coated metal or similar roof of not less than 3:12 pitch;
2. All siding, roofing, and other exterior materials shall be similar in appearance to typical built housing within the city;
3. All roofs shall have a minimum overhang of one foot;
4. The finished first floor level shall be no higher than 12 inches above the exterior finished grade. Except when the manufactured home has a floor level flush with the ground, all manufactured homes shall have a perimeter masonry or concrete foundation or skirting of material similar in type, texture, and color to the siding. (Ord. 2433 § 1(Exh. C), 2002; Ord. 2020 § 23, 1994; Ord. 1781 § 9, 1990)

Comment – This section pertains only to new manufactured home developments and will have no effect on mobile homes. The design guidelines of section “B” are somewhat different than the definition of manufactured home and should be reviewed closely. Should these requirements apply to all single-family housing?

21.70.800 Building plans.

Building and foundation plans and permits are required for installation of any manufactured home, mobile home, additions to a manufactured or mobile home, or for construction of an accessory structure. Installation shall be done in accordance with the manufacturer’s instructions and specification and the requirements of WAC 296-150-200 through 296-150-255. All accessory structures shall meet the

requirements of the Uniform Building Code as adopted by the city of Lynnwood. Installation shall be inspected and approved by the building official. (Ord. 2433 § 1(Exh. C), 2002; Ord. 2020 § 23, 1994; Ord. 1781 § 9, 1990)

Comment – Requiring foundations is okay. This section does not appear to be a problem.

Additional Material From the Model Code...for Consideration:

Minimum siting standards

The following standards apply to the siting of all single-family homes, whether site-built or manufactured homes. Where any conflict arises between these regulations and the adopted building code, the stricter standard shall apply.

- ***Building orientation:*** *all dwellings shall be oriented on the lot so that the front door faces the street*
- ***Foundation:*** *all dwellings shall be placed on permanent foundations.*
- ***Minimum width:*** *a dwelling shall be not less than fourteen (14') feet in width at the narrowest point of its first story.*

Comment – Minimum width is used primarily to ensure that so-called “single-wide” homes are prevented. This standard would apply to all homes, including site-built. Other communities have found some legitimate applications for single-wide homes. Some households, such as singles or retired residents prefer a smaller home and some communities find that single-wide manufactured homes make good accessory dwellings. If Lynnwood doesn’t have a problem with “single-wide” homes, the width restriction should be deleted.

- ***Age of dwelling (for manufactured homes only):*** *no manufactured home more than three years old on the date of installation shall be permitted on any lot.*

Comment – Unless this requirement is also applied to all other types of single-family housing, it may be viewed as discriminatory. It’s not unusual to move an older house to a new location. Where the house was originally constructed shouldn’t matter. So, if there’s an age limitation, it should apply to everyone.

Options:

1. **No Change:** The Zoning Code adequately complies with SB-6593.
2. **Changes:** Amend the Zoning Code to comply with SB-6593 as follows:
 - Change #1 – to be determined.
 - Change #2
 - Change #3

Recommendation:

The administration’s recommendation will be provided at a later date.

Next Steps:

- **Proposal:** The first draft of this code amendment is ready for the Commission's review and discussion. Additional changes and fine-tuning will be necessary.
- **Comments:** Changes to City codes are routed to key staff members and other departments to get their input early in the process. This will be done as soon as the proposed changes are completed in draft form.
- **SEPA Review:** Code changes require environmental review. A SEPA Checklist will be prepared by staff and scheduled for discussion by the Environmental Review Committee (ERC). ERC will make its determination prior to the Commission's public hearing.
- **Planning Commission public hearing:** A public hearing will be scheduled to accept public comments on the proposed changes.
- **60-day Review:** Following the Commission's recommendation, the proposal will be submitted to various agencies for a mandatory 60-day review. The City Council will take action following receipt of those comments.
- **Council Hearing:** The City Council must conduct at least one work session and a public hearing before making its final decision.
- **Adoption:** If approved by the Council, the Zoning Code will be amended by ordinance.

Attachments:

- A. Memo from City Attorney: November 19, 2004.
- B. Manufactured Housing Q & A
- C. Senate Bill 6593

