



**LYNNWOOD**  
WASHINGTON

**ORDINANCE NO. 3193**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE REGULATION OF CRITICAL AREAS; AMENDING SECTIONS 17.10 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.**

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WHEREAS, the Growth Management Act requires local jurisdictions to adopt development regulations that protect critical areas designated in accordance with RCW 36.70A.170; and

WHEREAS, RCW 36.70A.172 requires local jurisdictions to give special consideration to the conservation and protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, critical areas within the City of Lynnwood include wetlands, fish and wildlife habitat conservation areas (FWHCAs), streams, lakes less than 20 acres, habitat for listed and sensitive fish and wildlife species, geologically hazardous areas, landslide, erosion, seismic hazards, frequently flooded areas, and critical aquifer recharge areas; and

WHEREAS, development may result in impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life; and

WHEREAS, in determining the necessary protections for our critical areas, the City has evaluated a wide range of the best available science to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs; and

WHEREAS, the City has conducted stakeholder outreach, public hearings and work sessions, and solicited public comment on the proposed regulations, and have considered the public comments in developing the regulations;

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

40  
41 Section 1. Chapter 17.10 of the Lynnwood Municipal code is hereby repealed.

42  
43 Section 2. A new Chapter 17.10 of the Lynnwood Municipal Code is hereby created as follows:

44  
45 **Chapter 17.10**

46 **ENVIRONMENTALLY CRITICAL AREAS**

- 47 Sections:
- 48 17.10.010 Purpose.
  - 49 17.10.015 General provisions.
  - 50 17.10.020 Applicability.
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  - 52 17.10.040 Submittal requirements.
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  - 57 17.10.045 Allowed low impact uses and activities.
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  - 59 17.10.047 Reasonable use application and process.
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  - 61 17.10.051 Wetland report – Requirements.
  - 62 17.10.052 Standard wetland buffers.
  - 63 17.10.053 Alterations to wetlands and buffers.
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  - 65 17.10.055 Wetland and buffer mitigation plan.
  - 66 17.10.056 Wetland alteration compensation.
  - 67 17.10.057 Increased wetland buffer width.
  - 68 17.10.058 Averaging of wetland buffer widths.
  - 69 17.10.059 Buffer width reductions through enhancement.
  - 70 17.10.060 Building setback lines – Wetlands.
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  - 72 17.10.071 Stream buffers.
  - 73 17.10.072 Stream report – Requirements.
  - 74 17.10.073 Stream alteration allowed.
  - 75 17.10.074 Stream alteration criteria.
  - 76 17.10.075 Stream mitigation plan.
  - 77 17.10.076 Increased stream buffer width.
  - 78 17.10.077 Decreased stream buffer width.
  - 79 17.10.078 Averaging of stream buffer widths.
  - 80 17.10.079 Riparian wetland.
  - 81 17.10.080 Building setback line – Streams.
  - 82 17.10.090 Fish and wildlife priority habitat.
  - 83 17.10.091 Fish and wildlife priority habitat assessment.

- 84 17.10.100 Geologically hazardous areas – Identification.
- 85 17.10.101 Geologically hazardous areas – Setbacks and buffers.
- 86 17.10.102 Geologically hazardous areas – Alteration allowed.
- 87 17.10.103 Geologically hazardous areas – Alteration conditions.
- 88 17.10.104 Geotechnical report content requirements.
- 89 17.10.110 Frequently flooded areas.
- 90 17.10.120 Critical aquifer recharge areas - Identification.
- 91 17.10.121 Critical aquifer recharge areas – Activities allowed.
- 92 17.10.122 Critical aquifer recharge areas – Additional reporting requirements.
- 93 17.10.123 Critical aquifer recharge areas – Performance standards, specific uses.
- 94 17.10.124 Critical aquifer recharge areas – Prohibited uses.
- 95 17.10.130 Critical areas signs, monuments and fencing.
- 96 17.10.135 Appeals.
- 97 17.10.140 Notice, performance securities, bonds, administration.
- 98 17.10.150 Unauthorized alterations.
- 99 17.10.155 Enforcement, violations and penalties.
- 100 17.10.160 Severability.
- 101 \* Editor’s Note: Ordinance 2598 § 4 specifies that the “regulations included in this ordinance
- 102 shall take effect March 13th, 2006...”

103 **17.10.010 Purpose.**

104 The purpose of this chapter is to identify critical areas and to supplement the development  
 105 requirements contained in the Lynnwood Municipal Code by providing for additional controls as  
 106 required by the Washington State Growth Management Act and other laws. Wetlands, streams,  
 107 fish and wildlife priority habitat areas, geologically hazardous areas, frequently flooded areas,  
 108 and critical aquifer recharge areas, as defined in LMC 17.10.030, constitute critical areas that  
 109 are of special concern to the city of Lynnwood. The standards and mechanisms established in  
 110 this chapter are intended to protect the functions and values of these environmentally critical  
 111 features for the public benefit, while providing property owners with reasonable use of their  
 112 property. By regulating development and alterations to critical areas this chapter seeks to:

- 113 A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- 114 B. Educate the public as to the long-term importance of environmentally critical areas and the  
 115 responsibilities of the city to protect and preserve the natural environment for future  
 116 generations;
- 117 C. Effectively manage environmentally critical areas by regulating development within and  
 118 adjacent to them;
- 119 D. Mitigate unavoidable impacts to environmentally critical areas by regulating alterations in  
 120 and adjacent to critical areas;
- 121 E. Protect the city’s critical areas using best available science;
- 122 F. Prevent, to the extent practicable, adverse cumulative impacts to all critical areas;

- 123 G. Encourage improvements to all surface water bodies and watercourses;
- 124 H. Protect the public, and public resources and facilities from injury, loss of life, property
- 125 damage or financial losses due to flooding, erosion, landslides, soil subsidence or steep slope
- 126 failure;
- 127 I. Alert appraisers, assessors, owners and potential buyers or lessees to the potential
- 128 development limitations of environmentally critical areas;
- 129 J. Allow the city of Lynnwood to obtain all information necessary to approve, condition, or deny
- 130 public or private development proposals;
- 131 K. Provide predictability and consistency to the city of Lynnwood's development review
- 132 process; and
- 133 L. Implement the policies of the State Environmental Policy Act, the Growth Management Act,
- 134 and all city functional plans and policies. (Ord. 2598 § 2, 2005)

135 **17.10.015 General provisions.**

- 136 A. Abrogation and Greater Restriction. It is not intended that this chapter repeal, abrogate or
- 137 impair any existing regulation, easements, covenants or deed restrictions. However, where this
- 138 chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- 139 B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in
- 140 their interpretation and application and shall be liberally construed to serve the purposes of
- 141 this chapter.
- 142 C. Rule-Making Authority. The director is authorized to adopt written rules and procedures for
- 143 the implementation of the provisions of this chapter. (Ord. 2598 § 2, 2005)

144 **17.10.020 Applicability.**

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

146 adjacent to environmentally critical areas. Environmentally critical areas include those which

147 meet the definitions and requirements of this chapter. The city may inventory critical areas on

148 maps for reference and potential indicator purposes. All critical areas shall be verified by

149 separate studies to indicate the extent of such areas. Development proposals for properties

150 which contain or are adjacent to designated or regulated environmentally critical areas shall

151 comply with the provisions and requirements of this chapter.

- 152 A. A permit shall be obtained from the city for any activity which alters or disturbs an
- 153 environmentally critical area or buffer, including but not limited to, clearing, grading, draining,
- 154 filling, dumping of debris, demolition of structures and installation of utilities.
- 155 B. A permit shall be obtained from the city for any proposed activity adjacent to a critical area.
- 156 C. No boundary line adjustments or development permits including subdivisions, short plats,
- 157 conditional use permits, rezones or variances shall be granted for any lot which contains or is

158 adjacent to an environmentally critical area until approvals as required by this chapter have  
159 been granted by the city.

160 D. A permit shall be considered valid for two years. The director, upon request by the applicant,  
161 may extend the validity of such permit for an additional year.

162 The provisions of this chapter apply to projects proposed by private and public entities. No  
163 permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all  
164 respects with other federal, State, and local regulations and permit requirements that may be  
165 required, including but not limited to the Washington Department of Fish and Wildlife hydraulic  
166 project approval (HPA), Army Corps of Engineers Section 404 permits, Ecology Section 401  
167 permits, and National Pollution Discharge Elimination System (NPDES) permits. The applicant is  
168 responsible for complying with these requirements, in addition to this chapter. (Ord. 2622 § 2,  
169 2006; Ord. 2598 § 2, 2005)

170 **17.10.030 Definitions.**

171 Terms used in this chapter shall have the meaning given to them in this chapter, unless where  
172 used the context thereof clearly indicates to the contrary. Words and phrases used herein in  
173 the past, present or future tense shall include the past, present and future tenses; and phrases  
174 used herein in masculine, feminine or neuter gender shall include the masculine, feminine and  
175 neuter genders; and words and phrases used herein in the singular or plural shall include the  
176 singular and plural; unless the context shall indicate to the contrary.

177 A. "Adjacent" means within 200 feet of an environmentally critical area, measured from the  
178 edge of the environmentally critical area.

179 "Adjacent wetland" means the entire area of the wetland under consideration and not just the  
180 portion within 200 feet of an environmentally critical area.

181 "Alteration" means any human-induced action which impacts the conditions of a critical area or  
182 buffer. Alterations include but are not limited to grading; filling; dredging; draining;  
183 channelizing; installing a culvert or other crossing structure; clearing; paving; construction;  
184 dumping; demolition, or any other activity that changes the character of the critical area.

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

187 B. "Best available science" means current scientific information used in the process to  
188 designate, protect, or restore critical areas that is derived from a valid scientific process as  
189 defined by WAC 365-195-900 through 365-195-925.

190 "Buffer" means a designated or regulated area contiguous with an area designated or regulated  
191 as a critical area that also maintains the functions and/or structural stability of the critical area.  
192 Buffers are typically well vegetated and do not include areas that are separated and  
193 functionally isolated from a critical area by a legally established structure or use (for example,  
194 areas are separated by a road).

195 C. "City" means the city of Lynnwood.

196 "Clearing" means the removal of vegetation or other organic plant materials by physical,  
197 mechanical, chemical or other means.

198 "Compensation" means the replacement, enhancement, or creation of an environmentally  
199 critical area or buffer equivalent in functions, values and area to those being altered or  
200 destroyed, and includes, but is not limited to the following:

201 1. "Creation" means bringing a critical area and associated buffer into existence at a site in  
202 which a critical area and associated buffer did not formerly exist.

203 2. "Re-establishment" means actions performed to restore processes and functions to an  
204 area that was formerly a wetland or other critical area, where the former critical area was  
205 lost by past alterations and activities.

206 3. "Rehabilitation" means improving or repairing processes and functions to an area that is  
207 an existing wetland or other critical area that is highly degraded because one or more  
208 environmental processes supporting the wetland area have been disrupted.

209 4. "Enhancement" means actions performed to improve the condition of existing degraded  
210 wetlands or other critical areas so that the functions they provide are of a higher quality;  
211 enhancement activities usually attempt to change plant communities within existing  
212 wetlands from non-native communities to native scrub-shrub or forested communities.

213 "Creation" means bringing a critical area into existence at a site in which a critical area did not  
214 formerly exist.

215 "Critical areas" means the following areas:

216 1. Wetlands;

217 2. Streams;

218 3. Fish and wildlife priority habitat;

219 4. Geologically hazardous areas;

220 5. Frequently flooded areas;

221 6. Critical aquifer recharge areas; and

222 7. Any additional areas defined or established as critical areas under the provisions of the  
223 Washington State Growth Management Act or the provisions of this chapter.

224 D. "Department" means the Public Works Department.

225 "Development proposal site" means the legal boundaries of the parcel or parcels of land for  
226 which the applicant has applied to the city for development permits.

227 "Director" means the Director of Public Works and/or the Director's designee.

228 "Drainage facility" means the system of collecting, conveying, treating, and storing surface and  
229 stormwater runoff. Drainage facilities shall include but not be limited to all surface and

- 230 stormwater runoff conveyance and containment facilities including streams, pipelines,  
231 channels, ditches, infiltration facilities, filtration and treatment facilities, retention/detention  
232 facilities, and other drainage structures and appurtenances, both natural and manmade.
- 233 E. "Enhancement" means an action which increases the functions and values of a critical area or  
234 its buffer.
- 235 "Erosion hazard areas" means those areas containing soils which, according to the U.S. Soil  
236 Conservation Service Soil Survey, have severe to very severe erosion hazard potential.
- 237 "Essential habitat" means habitat necessary for the survival of species listed as "threatened" or  
238 "endangered" under the Federal Endangered Species Act, species listed as "threatened" or  
239 "endangered" by the Washington State Department of Fish and Wildlife, species listed as  
240 "candidate" or "species of concern" by the U.S. Fish and Wildlife Service or NOAA Fisheries, and  
241 species listed as "sensitive" or "state candidate" by the Washington State Department of Fish  
242 and Wildlife.
- 243 F. "Functional values" and/or "functions" means the beneficial roles that critical areas and their  
244 buffers serve, including but not limited to water quality protection and enhancement, fish and  
245 wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater  
246 recharge and discharge, erosion control, aesthetic values and recreation.
- 247 G. "Geologically hazardous areas" means those areas that are naturally susceptible to geologic  
248 events such as landslides, seismic activity and severe erosion. Areas shall be designated as  
249 geologically hazardous areas consistent with identification criteria in LMC 17.10.100.
- 250 H. "Hydrologically connected" means a critical area has a surface water connection to another  
251 critical area, is within 200 feet of another critical area, or lies within the flood plain of another  
252 critical area, and whose hydrology is directly affected by changes in the other critical area.
- 253 I. "In-lieu fee program" means a certified program which sells compensatory mitigation credits  
254 to permittees whose obligation to provide compensatory mitigation is then transferred to the  
255 in-lieu fee program sponsor, a governmental or non-profit natural resource management  
256 entity.
- 257 L. "Legally documented" means any legally recorded document, on file with the county, which  
258 designates an area on the site as a critical area or buffer.
- 259 "Lot coverage" has the meaning as defined in Chapter 21.02 LMC.
- 260 M. "Mitigation" means a negotiated action involving the use of one or more of the following:
- 261 1. Avoiding impacts altogether by not taking a certain action or parts of an action;
- 262 2. Minimizing impacts by limiting the degree of magnitude of the action and its  
263 implementation by using appropriate technology, or by taking affirmative steps to avoid or  
264 reduce impacts;
- 265 3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;

- 266 4. Reducing or eliminating the impact over time by preservation or maintenance operations  
267 during the life of the development proposal; or
- 268 5. Compensating for the impact by replacing, enhancing, or providing substitute critical  
269 areas.
- 270 6. Monitoring the impact and taking appropriate corrective measures.
- 271 "Mitigation bank" means a property that has been protected in perpetuity, and approved by  
272 appropriate City, state, and federal agencies expressly for the purpose of providing  
273 compensatory mitigation in advance of authorized impacts through restoration, creation,  
274 and/or enhancement of wetlands and, in exceptional circumstances, preservation of adjacent  
275 wetlands, wetland buffers, and/or other aquatic resources.
- 276 "Monitoring" means evaluating the impacts of development on the biological, hydrologic and  
277 geologic elements of natural systems and assessing the performance of required mitigation  
278 through the collection and analysis of data by various methods for the purposes of  
279 understanding and documenting changes in natural ecosystems and features.
- 280 O. "Ordinary high water mark" means a mark that has been found where the presence and  
281 action of waters are common, usual and maintained in an ordinary year, long enough to create  
282 a distinction in character between a water body and the abutting upland.
- 283 P. "Person" means an individual, firm, partnership, association or corporation, governmental  
284 agency, or political subdivision.
- 285 "Priority species" means those species of concern due to their population status and their  
286 sensitivity to habitat manipulation. Priority species include those which are listed as  
287 "threatened" or "endangered" under the Federal Endangered Species Act, species listed as  
288 "threatened" or "endangered" by the Washington State Department of Fish and Wildlife,  
289 species listed as "candidate" or "species of concern" by the U.S. Fish and Wildlife Service or  
290 NOAA Fisheries, species listed as "sensitive" or "state candidate" by the Washington State  
291 Department of Fish and Wildlife, or are designated as such by the Priority Habitat and Species  
292 Program of the Washington State Department of Fish and Wildlife.
- 293 Q. "Qualified professional" means a qualified scientific expert with expertise appropriate to the  
294 relevant critical areas as determined by the person's professional credentials and/or  
295 certifications, or as determined by the Director.
- 296 R. "Reasonable use" means a mechanism by which a local jurisdiction may grant relief from  
297 code requirements where compliance leaves no reasonable use of the property.
- 298 "Restoration" means actions to return an environmentally critical area to a state in which its  
299 stability, functions and values approach its unaltered state as closely as possible.
- 300 "Riparian" means the lands adjacent to and functionally related to a river or stream.
- 301 S. "Stream" means an area where surface waters flow sufficiently to produce a defined channel  
302 or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage

303 of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds,  
304 and defined channel swales. The channel or bed need not contain water year-round. For the  
305 purposes of this chapter, streams shall include both natural channels and manmade channels  
306 that were constructed to replace a natural stream. This definition is not meant to include  
307 irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial  
308 watercourses unless they are used by salmonids or used to convey streams naturally occurring  
309 prior to development in such watercourses.

310 W. "Wetlands" means areas that are inundated or saturated by surface water or ground water  
311 at a frequency or duration sufficient to support, and under normal circumstances do support, a  
312 prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands  
313 generally include swamps, marshes, bogs and similar areas. Wetlands do not include those  
314 artificial wetlands intentionally created from non-wetland sites, including, but not limited to,  
315 irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater  
316 treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July  
317 1, 1990, that were unintentionally created as a result of the construction of a road, street, or  
318 highway. Wetlands do include those artificial wetlands intentionally created from non-wetland  
319 areas to mitigate conversion of wetlands.

320 "Wood Treatment Facility" means an industrial facility that treats lumber and other wood  
321 products for outdoor use. (Ord. 2622 § 3, 2006; Ord. 2598 § 2, 2005)

322 **17.10.040 Submittal requirements.**

323 A. Critical Areas Permit Application Required. Any application for land use, boundary line  
324 adjustments or development proposals by private or public entities, including rezones,  
325 subdivisions, building permits, clearing and grading permits, tree permits, or other activities  
326 which will result in any alteration or modification within or adjacent to an environmentally  
327 critical area or its standard buffer width shall include an application for a critical areas permit.  
328 The critical areas permit application shall be submitted to the department of public works for  
329 processing as required by LMC 2.44.040. The director or the director's designee shall review the  
330 information submitted by the applicant together with any other available information. If the  
331 director determines that there is insufficient environmental information to evaluate the  
332 proposal, the applicant shall be notified that additional environmental studies are required. The  
333 director reserves the right to refuse to accept an incomplete application. The director may  
334 waive the requirement for a special study if there is substantial evidence showing that there  
335 will be no alteration of the critical area or buffer and that there will be no significant adverse  
336 impacts on the critical area as a result of the proposed development. At all times, critical area  
337 reports and decisions shall rely on the best available science.

338 B. Contents of Special Studies. Special environmental studies shall be prepared by a qualified  
339 person with expertise in the area of concern in accordance with the requirements of this  
340 chapter and to the satisfaction of the department. Special studies are valid for two years; after  
341 such date the city will determine if a revision or additional assessment is necessary. Such  
342 studies shall:

- 343 1. Rely on the best available science; and
- 344 2. Provide a site plan and written report describing the conditions of the property,  
345 illustrating the proposed development and the environmentally critical area; and
- 346 3. Identify and characterize any critical area and associated buffer on or adjacent to the  
347 site. Such characterizations shall comply with the methods described and accepted in this  
348 chapter; and
- 349 4. Describe how the proposed development will impact the critical area(s) and associated  
350 buffer(s) which are present on or which are adjacent to the property; and
- 351 5. Describe any plans for alteration or modification of the critical area(s) and associated  
352 buffer(s), and provide appropriate chapter citations allowing for such alteration or  
353 modification; and
- 354 6. A statement of the resources and methodology used in the reporting reflecting the use  
355 of "best available science"; and
- 356 7. Provide recommended methods for mitigating any identified impacts consistent with  
357 mitigation sequencing steps required by LMC 17.10.041.

358 C. Previous Critical Area Review. Any development proposals which are proposed to occur on  
359 sites that previously underwent critical or sensitive areas review and either; a) have an  
360 established and legally documented critical area buffer; or b) possess a valid critical or sensitive  
361 areas permit issued by a governing municipal agency; shall not be subject to additional critical  
362 areas review and requirements, provided:

- 363 1. The development proposal would not encroach into the previously established buffer or  
364 protection area; and
- 365 2. The development proposal will not increase the existing level of impact on the critical  
366 area or the buffer. (Ord. 2622 § 4, 2006; Ord. 2598 § 2, 2005)

367 **17.10.041 Mitigation sequencing.**

368 Proposed impacts to critical areas and their buffers shall adhere to the mitigation sequencing  
369 steps defined in section LMC 17.10.030. Applicants proposing mitigation are required to  
370 demonstrate that mitigation sequencing steps have been followed.

371 **17.10.042 Variances.**

372 A. Variances from the standards of this title may be authorized through the process of hearing  
373 examiner review in accordance with the procedures set forth in Chapter 21.26 LMC. The  
374 hearing examiner shall review the request and make a written finding that the request meets or  
375 fails to meet variance decision criteria of this section.

376 B. Specific Variance Criteria. A variance may be granted if the applicant demonstrates that the  
377 requested action conforms to all of the following specific criteria:

378 1. Such variance is necessary because of special circumstances relating to the size, shape,  
379 topography, location or surroundings of the subject property to provide it with use rights  
380 and privileges permitted to other properties in the vicinity and in the land use district of the  
381 subject property;

382 2. The special circumstances of the subject property make the strict enforcement of the  
383 provisions of this code an unnecessary hardship to the property owner;

384 3. The special circumstances of the subject property are not the result of the actions of the  
385 applicant or a predecessor in interest;

386 4. The variance requested is the minimum necessary to fulfill the purpose of a variance and  
387 the need of the applicant; provided, granting the variance requested will not confer on the  
388 applicant any special privilege that is denied by this title to other lands, structures, or  
389 buildings under similar circumstances;

390 5. The granting of the variance is consistent with the general purpose and intent of this title,  
391 and will not further degrade the functions or values of the associated critical areas or  
392 otherwise be materially detrimental to the public welfare or injurious to the property or  
393 improvements in the vicinity of the subject property; and

394 6. The decision to grant the variance is based upon the best available science and gives  
395 special consideration to conservation or protection measures necessary to preserve or  
396 enhance anadromous fish habitat.

397 C. Hearing Examiner Review. The city hearing examiner shall review variance applications and  
398 conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny  
399 variance applications based on a proposal's ability to comply with general and specific variance  
400 criteria provided in subsections (A) and (B) of this section.

401 D. Conditions May Be Required. The Hearing Examiner retains the right to prescribe such  
402 conditions and safeguards as are necessary to secure adequate protection of critical areas from  
403 adverse impacts, and to ensure conformity with this title for variances granted through hearing  
404 examiner review.

405 E. Time Limit. The Hearing Examiner shall prescribe a time limit within which the action for  
406 which the variance is required shall be begun, completed, or both. Failure to begin or complete  
407 such action within the established time limit shall void the variance, unless the applicant files an  
408 application for an extension of time before the expiration.

409 F. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in  
410 support of a variance application and upon which any decision has to be made on the  
411 application.

412 **17.10.043 Exemptions criteria.**

413 Certain activities set forth in LMC 17.10.044 are exempt from the requirements of this chapter.  
414 The director may exempt such activities, as well as others, provided:

- 415 A. No person shall conduct any activity within or adjacent to any critical area or critical area  
416 buffer that is exempt from the provisions of this chapter until such person has given 10 days  
417 advance written notice (unless for an emergency per LMC 17.10.044.A) to the director. The  
418 notice shall identify the activity to be conducted and the exemption(s) relied upon by the  
419 person who intends to conduct such activity; and
- 420 B. Such exemptions shall be verified by the Director and acknowledged in a written notice prior  
421 to the commencement of the activity; and
- 422 C. Identified impacts are avoided to the maximum extent feasible; and
- 423 D. Any unavoidable impacts to critical areas and their buffers are minimized; and
- 424 E. Impacted areas are immediately restored. (Ord. 2598 § 2, 2005)

425 **17.10.044 Exemptions.**

426 Subject to the conditions and requirements of LMC 17.10.043, the following situations are  
427 exempt from the operation of this chapter:

428 A. Emergency actions necessary to prevent an immediate threat to public health, safety or  
429 welfare, or that pose an immediate risk of damage to private or public property, and that  
430 require action in a timeframe too short to allow for normal processing of the requirements of  
431 this chapter.

432 After the emergency action is taken, the director shall be notified of these actions within 48-  
433 hours. The director may require the person or agency relying on this exemption to then restore  
434 and/or mitigate for any impacts to critical areas and or buffers in accordance with an approved  
435 critical areas study and/or mitigation plan.

436 B. All existing developed areas located within critical areas or their associated buffers have a  
437 legal nonconforming status as to use and setback requirements.

438 C. Existing structures, facilities, landscaping or other improvements that because of their  
439 existing location do not meet the setback requirements of this chapter, may be remodeled,  
440 reconstructed or replaced, or maintained or repaired, providing that any such activity does not  
441 further intrude or encroach into a critical area or buffer, or adversely affect critical area  
442 functions. Maintenance and repair does not include any modification that increases the amount  
443 of impervious surface, and does not include construction of an additional access road. Nothing  
444 herein releases the site from compliance with the provisions of LMC Title 21.

445 D. Normal and routine maintenance of existing drainage ditches that do not meet the criteria  
446 for being considered a fish and wildlife priority habitat area, drainage retention/detention  
447 facilities, or ornamental landscape ponds; provided, that none of these are part of a critical area  
448 mitigation plan required by this chapter.

449 E. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations,  
450 with an associated voltage of 55,000 volts or less, and relocation of natural gas, cable

451 communications, telephone facilities, and water sewer or storm lines, pipes, mains, equipment  
452 or appurtenances, only when required and approved by the city, and subject to the following:

- 453 1. No practical alternative location is available; and
- 454 2. The applicant demonstrates such construction is necessary for gravity flow (if applicable);  
455 and
- 456 3. Construction is accomplished using best management practices; and
- 457 4. The critical area and buffer environment is protected to the maximum extent possible  
458 during construction and maintenance; and
- 459 5. The original grade is replaced; and
- 460 6. Joint use of a utility corridor by other utilities may be allowed and is strongly encouraged.

461 F. Installation, construction, replacement, repair, operation or alteration of electric facilities,  
462 lines equipment or appurtenances (not including substations) with an associated voltage of  
463 55,000 volts or less in publicly owned right-of-way (which may be within or adjacent to a critical  
464 area or its buffer), subject to full review and approval of the director, including any mitigation  
465 and restoration requirements established by the Director.

466 G. Installation, construction, replacement, repair, operation or alteration of natural gas, cable  
467 and telecommunication facilities, water sewer or storm lines, pipes, mains, equipment or  
468 appurtenances in publicly owned right-of-way (which may be within or adjacent to a critical  
469 area or its buffer), subject to full review and approval of the director, including any mitigation  
470 and restoration requirements established by the Director.

471 H. Repair or overlay of improved public road and trail surfaces, which may be within or adjacent  
472 to a critical area or its buffer, so long as it does not further encroach into the critical area or its  
473 buffer.

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

479 J. Removal of the following non-native vegetation with hand labor from critical areas and  
480 buffers provided that appropriate erosion-control measures are used, and the area is  
481 revegetated with native vegetation. This exemption does not apply to mechanical removal.

- 482 1. Himalayan blackberry (*Rubus discolor*, *R. armeniacus*, *R. procerus*);
- 483 2. Evergreen blackberry (*R. laciniatus*);
- 484 3. English ivy (*Hedera helix*);
- 485 4. Japanese knotweed (*Polygonum cuspidatum*);
- 486 5. Any plant identified as noxious on the Washington State Noxious Weed List.

487 K. Isolated Category III and IV wetlands under 2,500 square feet which have majority cover by  
488 invasive species, are not part of a wetland mosaic, do not contain areas protected as fish and  
489 wildlife priority habitat under this chapter, and have been determined by a qualified  
490 professional to be of low function, may be exempted from the requirements of this chapter,  
491 provided that action is taken to mitigate for the lost functions. Adequate and appropriate  
492 mitigation measures shall be submitted by the applicant, prepared by a qualified professional,  
493 subject to the approval of the director, and may include, but is not limited to, stormwater  
494 quality and quantity treatment, and/or native landscaping enhancements. Please note that  
495 state and federal permits may still apply. (Ord. 2598 § 2, 2005)

496 **17.10.045 Allowed low impact uses and activities.**

497 Certain low impact uses and activities may be approved by the director consistent with this  
498 section. These uses must be mitigated for according to the applicable terms and conditions  
499 detailed in this chapter. The following are allowed low-impact uses and activities:

500 A. Conservation and restoration activities that intend to protect the soil, water, vegetation, or  
501 wildlife.

502 B. Passive recreation and educational facilities within stream buffers and wetland buffers,  
503 including permeable walkways, trails, and viewing platforms.

504 C. Educational and scientific research activities.

505 D. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such  
506 crops and provided the harvesting does not require tilling of soil, planting of crops, chemical  
507 applications, or alteration of the wetland by changing existing topography, water conditions, or  
508 water sources.

509 E. Enhancement of a wetland buffer through the removal of non-native invasive plant species,  
510 and planting beneficial native species. Removal of invasive plant species shall be restricted to  
511 hand removal.

512 **17.10.046 Reasonable use exception.**

513 If the application of this chapter would deny all reasonable economic use of the subject  
514 property, the applicant may apply for a reasonable use exception pursuant to the following  
515 provisions:

516 A. An application for a reasonable use exception containing the elements required in LMC  
517 17.10.047 shall be filed with the department and shall be considered by the hearing examiner  
518 at a public hearing under Process I (LMC 1.35.100 through 1.35.180).

519 B. The hearing examiner must determine that:

520 1. Application of this chapter would deny all reasonable use of the property; and

521 2. There is no reasonable use with less impact on the critical area; and

- 522 3. The proposed development does not pose an unreasonable threat to the public health,  
523 safety or welfare; and
- 524 4. Any alteration to the critical areas or buffers must be the minimum necessary to allow  
525 for the reasonable use of the property; and
- 526 5. Impacts to critical areas and buffers are mitigated consistent with the purpose and  
527 standards of this chapter to the greatest extent feasible; and
- 528 6. The inability of the applicant to derive reasonable use of the property is not the result of  
529 actions of the property owner or some predecessor, which thereby created the condition  
530 after March 13, 2006.

531 C. The burden of proof shall be on the applicant to bring forth substantial evidence in support  
532 of the application for the hearing examiner in support of a decision on the application.

533 D. If the hearing examiner grants a reasonable use exception, the examiner may impose any  
534 condition(s) to ensure that the development is consistent with the intent of this chapter. (Ord.  
535 2622 § 5, 2006; Ord. 2598 § 2, 2005)

536 **17.10.047 Reasonable use application and process.**

537 Whenever an applicant requests a reasonable use exception, the applicant shall submit a  
538 complete application to the director for review. The applicant is strongly encouraged to  
539 schedule a submittal appointment with the department when submitting the application. This  
540 meeting will ensure that the applicant has a complete application, containing all of the  
541 elements required by this section. The department may refuse to accept an incomplete  
542 application.

543 The director shall prepare a recommendation to the hearing examiner based on review of the  
544 submitted information.

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

547 A. A complete application and special study, as required by LMC 17.10.040; and

548 B. A map and narrative describing the development proposal, and proposed impacts and  
549 reductions being requested; and

550 C. A mitigation plan specifying the measures taken to mitigate for the impacts; and

551 D. A map showing the other setbacks required by other standards of the zoning code and any  
552 modification to those standards being requested; and

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

555 F. A design of the proposal so that the amount of development proposed as “reasonable use”  
556 will have the least impact practicable on the environmentally critical area(s), including a  
557 narrative as to why the applicant believes this is so; and

558 G. A description of the design modifications proposed by the applicant in order to minimize  
559 impacts on the critical area(s) and buffer(s). This includes, but is not limited to, a description of  
560 the modified building footprint, reduced building setback from the buffer, parking  
561 modifications, reduced total building square feet, modified location to preserve trees, and any  
562 other measures taken by the applicant; and

563 H. A description of the needed modifications to the standards of all applicable chapters to  
564 accommodate the proposed development, including chapter citations; and

565 I. Any other related projects documents, such as permit applications to other agencies, special  
566 studies, and environmental documents prepared pursuant to the State Environmental Policy  
567 Act; and

568 J. Such other information as the director or hearing examiner determines is reasonably  
569 necessary to evaluate the issue of reasonable economic use as it relates to the proposed  
570 development. (Ord. 2622 § 6, 2006; Ord. 2598 § 2, 2005)

571 **17.10.050 Wetland delineation and rating system.**

572 A. Wetlands shall be identified and delineated in accordance with the approved federal wetland  
573 delineation manual and applicable regional supplements as detailed in the WAC 173-22-035.

574 B. Wetland delineations are valid for three years, after such date the city will determine if a  
575 revision or additional assessment is necessary.

576 C. The wetland boundaries established by this process shall be used to meet the requirements  
577 of this chapter.

578 D. The total area of wetlands shall be used for the purpose of classification regardless of  
579 whether a proposed development site includes all or only a portion of the wetland.

580 E. Wetlands shall be categorized using the Department of Ecology's 2014 Washington State  
581 Wetland Rating System for Western Washington, as detailed in the WAC 365-190-090, or as  
582 revised. (Ord. 2598 § 2, 2005)

583 **17.10.051 Wetland report – Requirements.**

584 A. Critical areas report requirements for wetlands may be met in "stages" or through multiple  
585 reports. The typical sequence of potentially required reports that may in part or in combination  
586 fulfill the requirements of this section include:

587 1. Wetland reconnaissance report documenting the existence and general location of  
588 wetlands in the vicinity of a project area;

589 2. Wetland delineation report documenting the extent and boundary of a jurisdictional  
590 wetland per RCW [36.70A.175](#); and

591 3. Wetland mitigation report documenting potential wetland impacts and mitigation  
592 measures designed to retain or increase the functions and values of a wetland.

593 B. A wetland critical areas report may include one or more of the above three report types,  
594 depending on the information required by the director and the extent of potential wetland  
595 impacts. The Director maintains the authority and discretion to determine which report(s)  
596 alone or combined are sufficient to meet the requirements outlined below and to waive report  
597 requirements based upon site conditions and the potential for project impacts.

598 C. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared  
599 by a qualified professional who is a certified professional wetland scientist or a noncertified  
600 professional wetland scientist with a minimum of five years of experience in the field of  
601 wetland science and with experience preparing wetland reports.

602 D. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical  
603 area report for wetlands:

- 604 1. The project area of the proposed activity;
- 605 2. All wetlands and recommended buffers within 200 feet of the project area; and
- 606 3. All shoreline areas, water features, floodplains, and other critical areas, and related  
607 buffers within 200 feet of the project area. The location and extent of wetlands and  
608 other critical areas existing outside of the project area or subject parcel boundary may  
609 be shown in approximation as practical and necessary to provide an assessment of  
610 potential project effects.

611 E. Wetland Analysis. In addition to the minimum required contents of LMC 17.10.040, Submittal  
612 requirements, a critical areas report for wetlands shall contain an analysis of the wetlands,  
613 including the following site and proposal-related information at a minimum:

- 614 1. A written assessment and accompanying maps of the wetlands and buffers within the  
615 project area as well as a 200 foot area surrounding the project area, including the following  
616 information at a minimum:
  - 617 a. Wetland delineation and required buffers; and
  - 618 b. Existing wetland acreage; and
  - 619 c. Wetland category; and
  - 620 d. Vegetative, faunal, and hydrologic characteristics; and
  - 621 e. Soil and substrate conditions; and
  - 622 f. A discussion of the water sources supplying the wetland and documentation of  
623 hydrologic regime (locations and discussion of contributing upstream water sources  
624 both within the project area and outside of the project area, discussion of downstream  
625 features that could be impacted by changes to wetland hydrologic regime, locations of  
626 inlet and outlet features, water depths throughout the wetland, evidence of water  
627 depths throughout the year: drift lines, algal layers, moss lines, and sediment deposits,  
628 and evidence of recharge or discharge).

629 g. A description of the proposed stormwater management plan for the development  
 630 and consideration of impacts to drainage alterations.

631 The location, extent and analyses of wetlands not contiguous with the subject parcel  
 632 existing outside of the immediate project area may be described in approximation as  
 633 practical and necessary to provide an assessment of potential project effects and  
 634 hydrologic/ecological connectivity to on-site wetlands and other critical areas.

635 2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to  
 636 preserve existing wetlands and restore any wetlands that were degraded prior to the  
 637 current proposed land use activity.

638 3. A habitat and native vegetation conservation strategy that addresses methods to protect  
 639 and enhance on-site habitat and wetland functions.

640 4. Functional evaluation for the wetland and adjacent buffer using a local or state agency  
 641 staff-recognized method and including the reference of the method and all data sheets.

642 5. Proposed mitigation, if needed, including a written assessment and accompanying scale  
 643 maps / drawings of the impacts and mitigation site and adjacent areas consistent with LMC  
 644 17.10.055.

645 **17.10.052 Standard wetland buffers.**

646 Any wetland relocated or replaced because of wetland alterations shall have at least the  
 647 standard buffer width identified in the table below. Standard buffer widths have been  
 648 established in accordance with best available science based on wetland category and habitat  
 649 scores; they shall be as follows:

Wetland Category	Minimum Buffer Width (Wetland scores 3-4 habitat points)	Buffer Width (Wetland scores 5 habitat points)	Buffer Width (Wetland scores 6-7 habitat points)	Buffer Width (Wetland scores 8-9 habitat points)
Category I: Based on total score	75 ft.	105 ft.	165 ft.	225 ft.
Category I: Bogs and Wetlands of High Conservation Value	190 ft.	190 ft.	190 ft.	225 ft.
Category I: Forested	75ft	105 ft.	165 ft.	225 ft.
Category II (all)	75 ft.	105 ft.	165 ft.	225 ft.

Category III (all)	60 ft.	105 ft.	165 ft.	225 ft.
Category IV (all)	40 ft.	40 ft.	40 ft.	40 ft.

650  
651

Measures to minimize the impacts of the land use adjacent to the wetlands shall be applied:

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• immediately adjacent to the out wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 feet of wetlands</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Impact Development techniques (per PSAT publication on LID techniques)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
Disruption of corridors or	<ul style="list-style-type: none"> <li>• Maintain connections to offsite areas that are undisturbed</li> </ul>

Disturbance	Required Measures to Minimize Impacts
connections	<ul style="list-style-type: none"> <li>• Restore corridors or connections to offsite habitats by replanting</li> </ul>

652

653 **17.10.053 Alterations to wetlands and buffers.**

654 Alteration, modification, or enhancement of wetlands and buffers may be allowed by this  
655 chapter, subject to the review and approval by the Director. The applicant shall submit to the  
656 department a plan detailing the alteration, modification and/or enhancement proposal, along  
657 with any proposed mitigation. This plan shall be prepared by a qualified professional. The plans  
658 shall meet the criteria of LMC 17.10.054, 17.10.055, 17.10.056, 17.10.130, and 17.10.140 (as  
659 applicable).

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

- 662 A. There is no feasible and reasonable alternative to making the alteration; and
- 663 B. Alteration will preserve, improve, or protect the functions of the wetland system including  
664 water quality, stormwater detention capabilities, and fish and wildlife habitat; and
- 665 C. The mitigation for such alteration has a high probability of success. (Ord. 2598 § 2, 2005)

666 **17.10.054 Wetland and buffer alteration criteria.**

667 A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter shall be subject to  
668 the following requirements:

- 669 1. Each activity or use shall be designed so as to minimize overall wetland and buffer  
670 alteration to the greatest extent reasonably possible; and
- 671 2. Construction techniques shall be approved by the city prior to any site work; and
- 672 3. A mitigation plan shall be approved by the city prior to the issuance of any construction  
673 permits; and
- 674 4. Compensatory wetland mitigation shall be within the same drainage area (as defined  
675 within the city’s comprehensive flood and drainage management plan) or within the service  
676 area of a certified in-lieu fee program or mitigation bank; and
- 677 5. All mitigation work shall be timed prior to or concurrent with the proposed alterations;  
678 and
- 679 6. When adding to an existing wetland as a result of compensation for wetland losses, the  
680 characteristics of the existing wetland shall be maintained.

681 B. Time for Completion.

- 682 1. When alteration is allowed, the city may require that the relocated or compensatory  
683 wetland and buffer be completed and functioning prior to allowing the existing wetland to  
684 be filled or altered.
- 685 2. Mitigation shall be completed prior to granting of temporary or final occupancy, or the  
686 completion or final approval of any development activity for which mitigation measures  
687 have been required.
- 688 3. If the mitigation work is not completed within three years of the city approval of the  
689 mitigation plan, the city may require that a reevaluation of the plan be conducted by a  
690 qualified wetland professional. The city may require additional requirements based on the  
691 recommendations. (Ord. 2622 § 8, 2006; Ord. 2598 § 2, 2005)

692 **17.10.055 Wetland and buffer mitigation plan.**

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

697 A. Be prepared by a qualified wetland professional using best available science and the  
698 following Washington Department of Ecology accepted guidance: Wetland Mitigation in  
699 Washington State—Part 2: Developing Mitigation Plans (Ecology, 2006); and Selecting Wetland  
700 Mitigation Sites Using a Watershed Approach (Ecology, 2009) as amended; and

701 B. Include a baseline study that quantifies the existing functional values and the relationship to  
702 the watershed and existing hydrologically connected waterbodies; and

703 C. Include baseline information of surface and subsurface hydrologic conditions, and include an  
704 analysis of future hydrologic regime changes from proposed development and proposed  
705 hydrologic regime for enhanced, created, or restored wetland mitigation areas; and

706 D. Specify how functional values will be replaced and when mitigation will occur relative to  
707 project construction; and

708 E. Include provisions for adequate monitoring to ensure success of the mitigation plan. The  
709 monitoring plan shall outline the approach for monitoring construction of the mitigation  
710 project, and for assessment of the completed project, and shall include a monitoring schedule.  
711 A monitoring report shall be submitted annually for a period up to five years to the department  
712 unless a more frequent time period is required as a condition of the permit, or a longer period  
713 is required by an outside agency. The monitoring report shall document successes, problems  
714 and contingency actions of the mitigation project. Monitoring activities may include, but are  
715 not limited to:

- 716 1. Establishing vegetation monitoring plots to track changes in plant species composition  
717 and density over time; and

- 718 2. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic  
719 predictions; and
- 720 3. Sampling fish and wildlife populations to determine habitat utilization, species  
721 abundance and diversity; and
- 722 4. Sampling surface and subsurface waters to determine pollutant loading, and changes  
723 from the natural variability of background conditions.
- 724 F. Include a contingency plan specifying what corrective actions will be taken should the  
725 mitigation not be successful; and
- 726 G. Include provisions for an assurance device, which may include a bond, to assure that work is  
727 completed in accordance with the mitigation plan, and to assure that restoration or  
728 rehabilitation is performed in accordance with the contingency plan if mitigation fails within  
729 five years of implementation. (Ord. 2598 § 2, 2005)

730 **17.10.056 Wetland alteration compensation.**

731 As a condition of approving the alteration or relocation of a wetland (or portion of wetland),  
732 the city shall require that an area equal to or larger than the altered portion of the wetland be  
733 provided as compensation for wetland impacts, so that there is no net loss of wetlands. All  
734 wetlands which are created as mitigation for filling shall be relocated either within the same  
735 drainage basin as defined by the city's comprehensive flood and drainage management plan, or  
736 using mitigation banks and in-lieu fee programs. Mitigation banks and in-lieu fee programs are  
737 preferred as compensation for wetland impacts over permittee-responsible mitigation if the  
738 wetland alteration falls within the service area of an existing mitigation bank of in-lieu fee  
739 program. In the case of permittee responsible mitigation, mitigation actions are preferred to  
740 follow this order: restoration, creation, and enhancement.

741 The ratios listed in the table below apply to creation or re-establishment, rehabilitation only, or  
742 enhancement only of the altered or relocated wetlands. The first number specifies the acreage  
743 of replacement wetlands required, and the second number specifies the acreage of wetlands  
744 altered or relocated.

745

<b><i>Category and Type of Wetland</i></b>	<b><i>Creation or Re-establishment</i></b>	<b><i>Rehabilitation only</i></b>	<b><i>Enhancement only</i></b>
Category IV	1.5:1	3:1	6:1
Category III	2:1	4:1	8:1
Category II	3:1	6:1	12:1
Category I:	4:1	8:1	16:1

Based on functions			
Category I: Mature and old growth forest	6:1	12:1	24:1
Category I: High conservation value / Bog	Not considered possible	Not considered possible	Not considered possible

746

747 The city may increase the ratios under the following circumstances:

- 748 1. Uncertainty as to the probable success of the proposed restoration or creation;
- 749 2. Significant period of time between destruction and replication of wetland values;
- 750 3. Projected losses in functional value;
- 751 4. The compensatory mitigation is off-site. (Ord. 2622 § 9, 2006; Ord. 2598 § 2, 2005)

752 **17.10.057 Increased wetland buffer width.**

753 The director has the authority to increase a wetland buffer width up to 50% if the wetland  
754 contains a threatened or endangered species or the buffer or adjacent uplands has a slope  
755 greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control  
756 measures will not prevent adverse impacts to the wetland and a larger buffer is needed to  
757 protect these critical areas. (Ord. 2598 § 2, 2005)

758 **17.10.058 Averaging of wetland buffer widths.**

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

- 761 A. The total area contained within the wetland buffer after averaging is not less than that  
762 contained within the approved buffer prior to averaging; and
- 763 B. Averaging is necessary to avoid an extraordinary hardship to the applicant as a result of  
764 circumstances peculiar to the property; and
- 765 C. The averaged buffer, at its narrowest point, shall not result in a width less than seventy-five  
766 percent (75%) of the approved buffer width; and
- 767 D. A mitigation and enhancement plan is prepared for the proposed alteration.

768 **17.10.059 Buffer width reductions through enhancement.**

769 At the discretion of the director, and only when buffer averaging would not provide adequate  
770 design flexibility, wetland buffer width reductions may be granted concomitant to the  
771 development and implementation of a wetland buffer enhancement plan for Category III and IV

772 wetlands only. Approval of a wetland buffer reduction with enhancement proposal shall be  
773 limited to a width reduction of not less than seventy-five percent (75%) of the approved buffer  
774 width; provided that:

775 A. The plan provides evidence that wetland functions and values will be:

776 1. Increased or retained through plan implementation for those wetlands where existing  
777 buffer vegetation is generally intact; or

778 2. Increased through plan implementation for those wetlands where existing buffer  
779 vegetation is non-native, or inadequate to protect the functions and values of the wetland;

780 B. The plan requires monitoring and maintenance to ensure success in accordance with LMC  
781 17.10.055; and

782 C. The plan specifically documents methodology and provides performance standards for  
783 assessing increases in wetland buffer functioning as related to:

784 1. Water quality protection;

785 2. Maintenance and/or improvements to wildlife habitat;

786 3. Maintenance of wetland hydrology; and

787 4. Restricting wetland intrusion and disturbance.

788 **17.10.060 Building setback lines – Wetlands.**

789 A building setback line of 15 feet shall be required from the edge of any wetland buffer.  
790 Following construction, this helps to prevent encroachment into the buffer while maintaining  
791 such structures. The setback shall be identified on the site plan approved by the city. Fences  
792 and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the  
793 department determines that such intrusions will not negatively impact the wetland. (Ord. 2598  
794 § 2, 2005)

795 **17.10.070 Stream – Typing.**

796 Streams within the city shall be classified according to the following stream typing system, as  
797 established by the Washington State Administrative Code (WAC) 222-16-030:

798 A. Type S. Type S represents any waters that are considered “Shorelines of the State”.

799 B. Type F. Type F represents all waters (perennial or seasonal) that are known to be used by fish  
800 or contain fish habitat as defined by Department of Natural Resources criteria. This includes  
801 Scriber Creek, Swamp Creek, Lund’s Creek, and Halls Creek.

802 C. Type Np. Type Np represents perennial waters that do not contain fish or fish habitat.

803 D. Type Ns. Type Ns represents intermittent waters that do not contain fish or fish habitat and  
804 have intermittent flows. It does include stream reaches located downstream from any Type Np  
805 water.

806 **17.10.071 Stream buffers.**

807 Stream buffers shall be required for all regulated activities adjacent to regulated streams. Any  
808 stream which is relocated or replaced because of stream alterations shall have at least the  
809 standard buffer width required for the class of stream involved, unless the alteration is a  
810 beneficial restoration project allowed under LMC 17.10.073. All stream buffers shall be  
811 measured from the ordinary high water mark as surveyed in the field. In braided channels and  
812 alluvial fans, the ordinary high water mark shall be determined so as to include the entire  
813 stream feature. Except as otherwise permitted under this chapter, stream buffers shall be  
814 retained in a natural, unaltered condition.

815 The following standard buffer widths shall be required, unless modified and approved in  
816 accordance with the provisions of this chapter:

817 A. Type S streams shall have buffers consistent with LMC Chapter 17.20 (Shoreline Master  
818 Program), or a 150-foot buffer if no buffer is specified by LMC Chapter 17.20.

819 B. Type F streams shall have a 100-foot buffer.

820 C. Type Np streams shall have a 60-foot buffer.

821 D. Type Ns streams shall have a 35-foot buffer. (Ord. 2598 § 2, 2005)

822 **17.10.072 Stream report – Requirements.**

823 A. Preparation by qualified professional. If required by the director, the applicant shall submit a  
824 stream report prepared by a qualified professional as defined herein.

825 B. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical  
826 area report for streams:

827 1. The project area of the proposed activity;

828 2. All streams and recommended buffers within 200 feet of the project area; and

829 3. All shoreline areas, water features, floodplains, and other critical areas, and related  
830 buffers within 200 feet of the project area. The location and extent of streams and other  
831 critical areas existing outside of the project area or subject parcel boundary may be shown  
832 in approximation as practical and necessary to provide an assessment of potential project  
833 effects.

834 C. Stream Analysis. In addition to the minimum required contents of LMC 17.10.040, Submittal  
835 requirements, a critical areas report for streams shall contain an analysis of the streams,  
836 including the following site- and proposal-related information at a minimum:

837 1. A written assessment and accompanying maps of the streams and buffers within 200 feet  
838 of the project area, including the following information at a minimum:

839 a. Stream locations showing the ordinary high water mark(s), and required buffers;

840 b. Stream type;

- 841 c. Vegetative, faunal, and hydrologic characteristics;
- 842 d. Soil and substrate conditions;
- 843 e. A discussion of the water sources draining to the stream; and
- 844 f. A description of the proposed stormwater management plan for the development and
- 845 consideration of impacts to drainage alterations.

846 The location, extent and analyses of streams not contiguous with the subject parcel existing  
 847 outside of the immediate project area may be described in approximation as practical and  
 848 necessary to provide an assessment of potential project effects and hydrologic/ecological  
 849 connectivity to on-site streams, wetlands and other critical areas.

850 2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to  
 851 preserve existing streams and riparian corridors and restore any streams that were  
 852 degraded prior to the current proposed land use activity.

853 3. A detailed description and functional assessment of the stream and stream buffer under  
 854 existing conditions pertaining to the protection of stream functions, fish habitat and, in  
 855 particular, potential anadromous fisheries;

856 4. A habitat and native vegetation conservation strategy that addresses methods to protect  
 857 and enhance on-site habitat and functions.

858 5. Proposed mitigation, if needed, including a written assessment and accompanying scale  
 859 maps / drawings of the impacts and mitigation site and adjacent areas consistent with LMC  
 860 17.10.075.

861 D. Unless otherwise provided, a stream report may be supplemented by or composed, in whole  
 862 or in part, of any reports or studies required by other laws and regulations or previously  
 863 prepared for and applicable to the development proposal site, as approved by the director. A  
 864 stream report may also be combined with a wetland report for sites that contain both critical  
 865 areas.

866 **17.10.073 Stream alteration allowed.**

867 Alteration of natural watercourses and streams shall be avoided, if possible. If unavoidable, the  
 868 director may approve alteration of natural watercourses and streams under the following  
 869 circumstances:

- 870 A. There is no feasible and reasonable alternative to making the alteration; and
- 871 B. Alteration will not result in a loss of any functions of the stream system (including habitat,  
 872 water quality, erosion, etc.); or
- 873 C. Such alteration will be a beneficial restoration project.

874 **17.10.074 Stream alteration criteria.**

875 Whenever stream alteration is proposed, the applicant shall prepare a mitigation plan, shall  
876 follow the mitigation sequencing requirements of LMC 17.10.041, and shall be subject to the  
877 following requirements:

878 A. Each proposal shall be designed so as to minimize overall stream or buffer alteration to the  
879 greatest extent reasonably possible; and

880 B. Construction techniques and field marking of areas to be disturbed shall be approved by the  
881 city prior to site disturbance to ensure minimal encroachment; and

882 C. When stream relocation is allowed, the city shall require that the stream relocation be  
883 completed and functioning prior to allowing the existing stream to be filled or altered; and

884 D. Additionally, when approving a stream alteration, the city may require:

885 1. An area larger than the altered portion of the stream and its buffer be provided as  
886 compensation for destruction of the functions of the altered stream and buffer and to  
887 assure that such functional values are replaced; and/or

888 2. Development activities be limited to specific months in order to minimize impacts on  
889 water quality and wildlife habitat; and/or

890 3. The city may apply additional conditions or restrictions, or require specific construction  
891 techniques in order to minimize impacts to stream systems and their buffers. (Ord. 2598 §  
892 2, 2005)

893 **17.10.075 Stream mitigation plan.**

894 A mitigation plan shall be approved by the city prior to the issuance of any permits for  
895 development activity which proposes stream and/or buffer alteration, reduction, averaging,  
896 restoration, creation or enhancement. The mitigation plan shall:

897 A. Be prepared by a qualified professional using accepted methodologies; and

898 B. Include a baseline study that quantifies the existing functional values of the system, as well  
899 as functional values that may be lost, and the stream's functional values after mitigation; and

900 C. Specify how functional values will be replaced; and

901 D. Specify when mitigation will occur relative to project construction; and

902 E. Specify any requirements or permits required by other agencies, and the status of those  
903 permits; and

904 F. Include provisions for adequate monitoring to ensure success of the mitigation plan. The  
905 monitoring plan shall outline the approach for monitoring construction of the mitigation project  
906 and for assessment of the completed project, and shall include a schedule. A monitoring report  
907 shall be submitted annually for five years to the department unless a more frequent time  
908 period is required as a condition of the permit, and shall document successes, problems and

909 contingency actions of the mitigation project. Monitoring activities may include, but are not  
910 limited to:

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

913 2. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic  
914 predictions;

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

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

919 G. Include a contingency plan specifying what corrective actions will be taken should the  
920 mitigation not be successful; and

921 H. Include provisions for an assurance device, which may include a bond, to assure that work is  
922 completed in accordance with the mitigation plan, and to assure that restoration or  
923 rehabilitation is performed in accordance with the contingency plan if mitigation fails within  
924 five years of implementation. (Ord. 2598 § 2, 2005)

925 **17.10.076 Increased stream buffer width.**

926 The Director may increase the standard buffer width required for the category of stream up to  
927 fifty percent (50%) when necessary to protect streams when the stream is particularly sensitive  
928 to disturbance, or the development poses unusual impacts. Circumstances which may require  
929 buffers beyond minimum requirements include, but are not limited to:

930 A. The section of stream affected by the development proposal, and/or the adjacent riparian  
931 corridor contains essential habitat; or

932 B. The land adjacent to the stream and its associated buffer is classified as a geologically  
933 hazardous or unstable area; or

934 C. The riparian corridor provides a significant source of water, provides superior shading of  
935 stream waters or contributes organic material important to stream habitat areas; or

936 D. A trail or utility corridor is proposed within the buffer; or

937 E. A drainage improvement or water quality feature, such as a grass-lined swale, is proposed  
938 within the buffer; or

939 F. There has previously been substantial alteration of the adjacent buffer, and an increased  
940 buffer is necessary to improve the functions and values of the buffer; or

941 G. When the minimum buffer for a stream extends into an area with a slope of greater than 25  
942 percent, the buffer shall be the greater of:

943 1. The minimum buffer for that particular stream type; or

944 2. Twenty-five feet beyond the point where the slope becomes 25 percent or less. (Ord.  
945 2598 § 2, 2005)

946 **17.10.077 Decreased stream buffer width.**

947 Except for streams which were approved for alteration by this chapter, the director may reduce  
948 the standard stream buffer widths on a case-by-case basis where the applicant demonstrates  
949 that:

950 A. The buffer is currently, or will become extensively vegetated, has less than a 15 percent  
951 slope, and that no adverse impact to the stream will result from the proposed reduction; and

952 B. The proposal includes a buffer enhancement plan (if necessary) using native vegetation  
953 which substantiates that an enhanced buffer will improve the functional values of the buffer to  
954 provide additional protection of the stream; and

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

- 1. Type F streams: 75 feet
- 2. Type Np streams: 45 feet
- 3. Type Ns streams: 25 feet

956  
957 D. When a reduced buffer width is allowed, a mitigation, monitoring and contingency plan  
958 consistent with the provisions of LMC 17.10.072, 17.10.073, 17.10.074, 17.10.075, 17.10.130  
959 and 17.10.140 (as applicable) shall be required by the city. (Ord. 2598 § 2, 2005)

960 **17.10.078 Averaging of stream buffer widths.**

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

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

965 B. Averaging is necessary to avoid an extraordinary hardship to the applicant as a result of  
966 circumstances peculiar to the property; and

967 C. The averaged buffer, at its narrowest point, shall not result in a buffer width less than  
968 seventy-five percent (75%) of the buffer width allowed for that proposal; and

969 D. A mitigation and enhancement plan is prepared for the proposal; and

970 E. Width averaging will not adversely impact the stream functional values. (Ord. 2598 § 2, 2005)

971 **17.10.079 Riparian wetland.**

972 Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland,  
973 unless the stream buffer requirement is more protective, in which case the stream buffer  
974 requirement shall apply. (Ord. 2598 § 2, 2005)

975 **17.10.080 Building setback line – Streams.**

976 A building setback line of 15 feet shall be required from the edge of any stream buffers.  
977 Following construction, this helps to prevent encroachment into the buffer while maintaining  
978 such structures. Fences and minor structural intrusions as defined in LMC 21.02.105 into the  
979 area may be allowed if the department determines that such intrusions will not negatively  
980 impact the stream. The setback shall be identified on the site plan approved by the city. (Ord.  
981 2598 § 2, 2005)

982 **17.10.090 Fish and wildlife priority habitat.**

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

985 A. Category I and Category II wetlands;

986 B. Type F streams

987 C. Upland areas if one or more of the following criteria are met:

988 1. The presence of essential habitat; or

989 2. Areas contiguous with large blocks of distinct habitat extending outside of the city limits  
990 or providing a travel corridor to a significant resource; or

991 3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of  
992 those wetlands for wildlife.

993 D. Areas where endangered, threatened, and sensitive species have a primary association;

994 E. Habitats and species of local importance, as determined by the City of Lynnwood;

995 F. Natural occurring ponds under twenty acres and their submerged aquatic beds that provide  
996 fish or wildlife habitat; (Ord. 2598 § 2, 2005)

997 **17.10.091 Fish and wildlife priority habitat assessment.**

998 For a development proposed within or adjacent to an identified “priority habitat area,” the  
999 applicant shall provide a habitat assessment prepared by a qualified professional. The  
1000 assessment shall include an inventory of the priority species, an evaluation of the habitat, and  
1001 recommendations for protection of the habitat and species of concern. The city may ask  
1002 appropriate resource agencies to review and comment on the proposal’s potential impact on  
1003 habitat and species. Based upon recommendations from resource agencies and qualified  
1004 professionals, the city may attach conditions to land use and development permits to prevent,  
1005 minimize, or mitigate impacts to the habitat area.

1006 In addition to the general critical areas report requirements of LMC 17.10.040, critical area  
1007 reports for fish and wildlife priority habitat areas shall meet the requirements of this section.  
1008 Critical areas reports for two or more types of critical areas shall meet the report requirements  
1009 for each relevant type of critical area.

1010 A. Preparation by a Qualified Professional. A critical areas report for a fish and wildlife priority  
1011 habitat area shall be prepared by a qualified professional who is a biologist with experience  
1012 preparing reports for the relevant type of habitat.

1013 B. Areas Addressed in Critical Areas Report. The following areas shall be addressed in a critical  
1014 areas report for fish and wildlife priority habitat areas:

- 1015 1. The project area of the proposed activity;
- 1016 2. All fish and wildlife habitat conservation areas and recommended buffers within 200 feet  
1017 of the project area;
- 1018 3. All shoreline areas, floodplains, other critical areas, and related buffers within 200 feet of  
1019 the project area; and
- 1020 4. A discussion of the efforts to avoid and minimize potential effects to these resources and  
1021 the implementation of mitigation/enhancement measures as required.

1022 C. Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate  
1023 the potential presence or absence of designated critical fish or wildlife species or habitat. A  
1024 critical areas report for a fish and wildlife priority habitat area shall contain an assessment of  
1025 habitats, including the following site and proposal-related information at a minimum:

- 1026 1. Detailed description of vegetation on and adjacent to the project area and its associated  
1027 buffer;
- 1028 2. Identification of any species of local importance, priority species, or endangered,  
1029 threatened, sensitive, or candidate species that have a primary association with habitat on  
1030 or adjacent to the project area, and assessment of potential project impacts to the use of  
1031 the site by the species;
- 1032 3. A discussion of any federal, state, or local special management recommendations,  
1033 including Washington Department of Fish and Wildlife habitat management  
1034 recommendations, that have been developed for species or habitats located on or adjacent  
1035 to the project area. (Ord. 2598 § 2, 2005)

1036 **17.10.100 Geologically hazardous areas – Identification.**

1037 The following are classified as potentially geologically hazardous areas:

1038 A. Geologically hazardous areas are those areas that are naturally susceptible to geologic events  
1039 such as landslides, seismic activity and severe erosion. Areas susceptible to one or more of the  
1040 following types of hazards shall be designated as geologically hazardous areas:

- 1041 1. Landslide Hazard Areas: Areas with slopes steeper than 40 percent. Areas with slopes  
1042 between 15 to 40 percent that are underlain by soils largely consisting of silt and clay. Areas  
1043 with slopes steeper than 15 percent with zones of emergent water such as groundwater  
1044 seepage or springs. Areas of landslide deposits regardless of slope.

1045 2. Erosion Hazard Areas: Erosion hazards areas are lands underlain by soils identified by the  
1046 U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) as having  
1047 “severe” or “very severe” erosion hazards.

1048 3. Seismic Hazard Areas: Seismic hazard areas are lands that are underlain by soft or loose  
1049 saturated soils that are subject to liquefaction settlement or spreading during earthquake  
1050 induced ground shaking. B. Other areas which the city has reason to believe are geologically  
1051 unstable due to factors such as landslide, seismic or erosion hazards. (Ord. 2598 § 2, 2005)

1052 **17.10.101 Geologically hazardous areas – Setbacks and buffers.**

1053 Development proposals on lots which are designated as or which the city has reason to believe  
1054 are geologically unstable or hazardous shall be set back consistent with the following criteria:

1055 A. Landslide Hazard Areas and Erosion Hazard Areas setback: Except as allowed by LMC  
1056 17.10.102, a minimum of 25 feet from top, toe and sides of such areas. The setback  
1057 requirement may be increased by the City when necessary to protect public health, safety and  
1058 welfare, based upon information contained in a geotechnical report. The size of the setback  
1059 should be determined by the director based on review and consideration of recommendations  
1060 provided in a geotechnical report prepared by a qualified professional.

1061 B. Landslide Hazard Areas and Erosion Hazard Areas buffer: A buffer may be established with  
1062 specific requirements and limitations, including but not limited to, drainage, grading, irrigation,  
1063 and vegetation. Buffer requirements shall be determined by the director based on review and  
1064 consideration of recommendations provided in a geotechnical report prepared by a qualified  
1065 professional.

1066 C. Seismic Hazard Areas: Activities proposed to be located in seismic hazard areas shall not be  
1067 required to establish setbacks or buffers. Activities within seismic hazard areas shall meet the  
1068 standards of LMC Title 16 (Building) and Title 21 (Zoning). (Ord. 2598 § 2, 2005)

1069 **17.10.102 Geologically hazardous areas – Alteration allowed.**

1070 Unless associated with a stream or wetland, the city may allow alteration of an area identified  
1071 as a potentially geologically hazardous area, or its setback. In order to perform such alteration,  
1072 the applicant shall submit to the department a geotechnical report, containing all elements  
1073 described in LMC 17.10.104, and must demonstrate:

1074 A. The proposed development will not create a hazard to the subject property, surrounding  
1075 properties, or rights-of-way, nor will it cause severe erosion, or deposit excessive sedimentation  
1076 to off-site properties or bodies of water; and

1077 B. The proposed method of construction will reduce erosion, landslide, and seismic hazard  
1078 potential, and will improve or not adversely affect the stability of slopes; and

1079 C. The proposal uses construction techniques which minimize disruption of existing topography  
1080 and natural vegetation; and

1081 D. The proposal is consistent with the purposes and provisions of this chapter. (Ord. 2598 § 2,  
1082 2005)

1083 **17.10.103 Geologically hazardous areas – Alteration conditions.**

1084 Alteration allowed by this chapter shall be subject to the following requirements:

1085 A. All proposed development be designed and located so as to require the minimum amount of  
1086 modification to areas of potential geologic instability; and

1087 B. All impacts identified in the geotechnical report be adequately mitigated so as to render the  
1088 site containing a potential geologic hazard as safe as one not containing such a potential  
1089 hazard; and

1090 C. As a condition of any approval of development containing a geologically hazardous area or its  
1091 required setbacks, the city may also require that:

1092 1. The applicant's geotechnical consultant be present on the site during clearing, grading,  
1093 filling and construction activities which may affect geological hazard or unstable areas, and  
1094 provide the city with certification that the construction is in compliance with his/her  
1095 recommendations and has met with his/her approval; and

1096 2. Trees and groundcover be retained and additional vegetation or other appropriate soil  
1097 stabilizing structures and materials be provided.

1098 3. All development proposals on sites containing potential erosion hazard areas shall  
1099 include temporary erosion and sediment control plans consistent with adopted surface  
1100 water design manual and a vegetation management and restoration plan to ensure  
1101 permanent stabilization of the site. (Ord. 2598 § 2, 2005)

1102 **17.10.104 Geotechnical report content requirements.**

1103 Geotechnical reports shall be prepared and stamped by a geotechnical engineer or engineering  
1104 geologist licensed by the State of Washington, as appropriate. Geotechnical reports shall be  
1105 subject to independent (third party) review when determined necessary by the director. Based  
1106 on the characteristics of the site, the director may require any or all of the following items to be  
1107 addressed in the geotechnical report:

1108 A. A site development plan drawn to scale which shows the boundary lines and dimensions of  
1109 the subject property, the geologically hazardous areas, the location, size, and type of any  
1110 existing or proposed structures, impervious surfaces, wells, drain fields, drain field reserve  
1111 areas, roads, easements, and utilities located on site; and

1112 B. A site map identifying the location of springs, seeps, or other surface expressions of ground  
1113 water, the location of surface water or evidence of seasonal surface water runoff or ground  
1114 water, and the location of any subsurface explorations such as test pits or borings; and

- 1115 C. A discussion of the geological properties of the soils, including any fill, sediment layers,  
1116 and/or rocks on the subject property and adjacent properties and their effect on the stability of  
1117 the slope; and
- 1118 D. The extent and type of vegetative cover prior to development activity or site disturbance;  
1119 and
- 1120 E. The proposed method of drainage and locations of all existing and proposed surface and  
1121 subsurface drainage facilities and patterns, and the locations and methods for erosion control;  
1122 and
- 1123 F. A description of the soils in accordance with the Unified Soil Classification System; and
- 1124 G. Identification of all existing fill areas; and
- 1125 H. Evidence showing faults, significant geologic contacts, landslides, or downslope soil  
1126 movement on the subject property and adjacent properties; and
- 1127 I. Slope stability analyses in areas with potential risk of landsliding; and
- 1128 J. Site seismic response evaluation in areas with the potential risk of soil liquefaction (potential  
1129 seismic hazard areas); and
- 1130 K. A vegetation management and restoration plan, or other means necessary for maintaining  
1131 long-term stability of slopes. (Ord. 2598 § 2, 2005)

1132 **17.10.110 Frequently flooded areas.**

1133 Flood hazard areas are those areas of Lynnwood subject to inundation by the one percent (1%)  
1134 chance annual flood, defined as areas of special flood hazard by LMC 16.46. Areas of special  
1135 flood hazard are identified by the Federal Insurance Administration in a scientific and  
1136 engineering report entitled "The Flood Insurance Study for Snohomish County, Washington and  
1137 Incorporated Areas," dated November 9, 1999, as amended, with accompanying flood  
1138 insurance rate maps, as amended. Activities in frequently flooded areas must be in compliance  
1139 with floodplain regulations as described in LMC 16.46.

1140 **17.10.120 Critical aquifer recharge areas - Identification**

1141 A. Critical aquifer recharge areas (CARAs) designation: CARAs are those areas with a critical  
1142 recharging effect on aquifers used for potable water as defined by WAC 365-190-030(3). CARAs  
1143 have prevailing geologic conditions associated with infiltration rates that create a high potential  
1144 for contamination of ground water resources or contribute significantly to the replenishment of  
1145 ground water. In the City of Lynnwood and vicinity, these areas include the following:

- 1146 1. Wellhead Protection Areas: Wellhead protection areas may be defined by the  
1147 boundaries of the ten (10) year time of ground water travel or boundaries established  
1148 using alternate criteria approved by the Washington State Department of Health in  
1149 those settings where ground water time of travel is not a reasonable delineation  
1150 criterion, in accordance with WAC 246-290-135.

1151 2. Susceptible Ground Water Management Areas: Susceptible ground water  
1152 management areas are areas that have been designated as moderately or highly  
1153 vulnerable or susceptible in an adopted ground water management program developed  
1154 pursuant to WAC 173-100,

1155 B. Mapping of CARAs - The approximate location and extent of critical aquifer recharge areas  
1156 are shown on the City critical areas inventory map for CARAs.

1157 **17.10.121 Critical aquifer recharge areas – Activities allowed**

1158 The following activities are allowed in critical aquifer recharge areas pursuant to this Section,  
1159 and do not require submission of a critical area report:

1160 A. Construction of structures and improvements, including additions, resulting in less than five  
1161 percent (5%) or 2,900 square feet (whichever is greater) total site impervious surface area that  
1162 does not result in a change of use or increase the use of a hazardous substance.

1163 B. Development and improvement of parks, recreation facilities, open space, or conservation  
1164 areas resulting in less than five percent (5%) total site impervious surface area that do not  
1165 increase the use of a hazardous substance.

1166 **17.10.122 Critical aquifer recharge areas – Additional reporting requirements**

1167 In addition to the general critical area report requirements of LMC 17.10.040, critical area  
1168 reports for critical aquifer recharge areas must meet the requirements of this Section.

1169 A. Preparation by a Qualified Professional. An aquifer recharge area critical area report shall be  
1170 prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is  
1171 licensed in the state of Washington and has experience in preparing hydrogeologic  
1172 assessments.

1173 B. Hydrogeologic Assessment. For all proposed activities to be located in a critical aquifer  
1174 recharge area, a critical area report shall contain a level one (1) hydrogeological assessment. A  
1175 level two (2) hydrogeologic assessment shall be required for any of the following proposed  
1176 activities:

1177 1. Activities that result in more than five percent (5%) or 2,900 square feet total site  
1178 impervious surface area;

1179 2. Activities that divert, alter, or reduce the flow of surface or ground waters, or  
1180 otherwise reduce the recharging of the aquifer;

1181 3. The use of hazardous substances, other than household chemicals used according to  
1182 the directions specified on the packaging for domestic applications;

1183 4. The use of injection wells proposed as part of a stormwater management system;

1184 5. Any other activity determined by the [director] likely to have an adverse impact on  
1185 ground water quality or quantity or on the recharge of the aquifer.

1186 C. Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the  
1187 following site-and proposal-related information at a minimum:

- 1188 1. Available information regarding geologic and hydrogeologic characteristics of the site  
1189 including the surface location of all critical aquifer recharge areas located on site or  
1190 immediately adjacent to the site, and permeability of the unsaturated zone;
- 1191 2. Ground water depth, flow direction, and gradient based on available information;
- 1192 3. Currently available data on wells and springs within 1,300 feet of the project area;
- 1193 4. Location of other critical areas, including surface waters, within 1,300 feet of the  
1194 project area;
- 1195 5. Available historic water quality data for the area to be affected by the proposed  
1196 activity; and
- 1197 6. Best management practices proposed to be utilized.

1198 D. Level Two Hydrogeologic Assessment. A level two hydrogeologic assessment shall include the  
1199 following site-and proposal-related information at a minimum, in addition to the requirements  
1200 for a level one hydrogeological assessment:

- 1201 1. Historic water quality data for the area to be affected by the proposed activity  
1202 compiled for at least the previous five (5) year period;
- 1203 2. Ground water monitoring plan provisions;
- 1204 3. Discussion of the effects of the proposed project on the ground water quality and  
1205 quantity, including:
  - 1206 a. Predictive evaluation of ground water withdrawal effects on nearby wells and  
1207 surface water features; and
  - 1208 b. Predictive evaluation of contaminant transport based on potential releases to  
1209 ground water.
- 1210 4. A spill plan that identifies equipment and/or structures that could fail, resulting in an  
1211 impact. Spill plans shall include provisions for regular inspection, repair, and  
1212 replacement of structures and equipment that could fail.

1213 **17.10.123 Critical aquifer recharge areas – Performance standards, specific uses**

1214 A. Storage tanks. All storage tanks proposed to be located in a critical aquifer recharge area  
1215 must comply with local building code requirements and must conform to the following  
1216 requirements:

- 1217 1. Underground tanks: All new underground storage facilities proposed for use in the  
1218 storage of hazardous substances or hazardous wastes shall be designed and constructed  
1219 so as to prevent releases due to corrosion or structural failure for the operational life of  
1220 the tank; be protected against corrosion, constructed of noncorrosive material, steel

1221 clad with a noncorrosive material, or designed to include a secondary containment  
1222 system to prevent the release or threatened release of any stored substances; and use  
1223 material in the construction or lining of the tank that is compatible with the substance  
1224 to be stored.

1225 2. Above ground tanks: All new above ground storage facilities proposed for use in the  
1226 storage of hazardous substances or hazardous wastes shall be designed and constructed  
1227 so as to not allow the release of a hazardous substance to the ground; have a primary  
1228 containment area enclosing or underlying the tank or part thereof ground waters, or  
1229 surface waters; and have a secondary containment system either built into the tank  
1230 structure or a dike system built outside the tank for all tanks.

1231 **B. Vehicle Repair and Servicing.**

1232 1. Vehicle repair and servicing must be conducted over impermeable pads and within a  
1233 covered structure capable of withstanding normally expected weather conditions.  
1234 Chemicals used in the process of vehicle repair and servicing must be stored in a manner  
1235 that protects them from weather and provides containment should leaks occur.

1236 2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for  
1237 vehicle repair and servicing. Dry wells existing on the site prior to facility establishment  
1238 must be abandoned using techniques approved by the state Department of Ecology  
1239 prior to commencement of the proposed activity.

1240 **C. Residential Use of Pesticides and Nutrients.** Application of household pesticides, herbicides,  
1241 and fertilizers shall not exceed times and rates specified on the packaging.

1242 **D. State and Federal Regulations.** All of the above listed uses, and other uses where state and  
1243 federal regulations apply, shall be conditioned as necessary to protect critical aquifer recharge  
1244 areas in accordance with the applicable state and federal regulation. In addition, any water  
1245 reuse projects for reclaimed water must be in accordance with the adopted water or sewer  
1246 comprehensive plans that have been approved by the state departments of Ecology and Health,  
1247 and must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter  
1248 90.46.010(10) RCW. The state Department of Ecology may establish additional discharge limits  
1249 in accordance with Chapter 90.46.080(2) RCW.

1250 **17.10.124 Critical aquifer recharge areas – Prohibited Uses**

1251 The following activities and uses are prohibited in critical aquifer recharge areas:

1252 **A. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste,**  
1253 **woodwaste, and inert and demolition waste landfills;**

1254 **B. Wood Treatment Facilities - treatment facilities that allow any portion of the treatment**  
1255 **process to occur over permeable surfaces (both natural and manmade);**

1256 **C. Storage, Processing, or Disposal of Radioactive Substances;**

1257 **D. Other Prohibited Uses or Activities**

- 1258 1. Activities that would significantly reduce the recharge to aquifers currently or  
 1259 potentially used as a potable water source;
- 1260 2. Activities that would significantly reduce the recharge to aquifers that are a source of  
 1261 significant baseflow to a regulated stream; and
- 1262 3. Activities that are not connected to an available sanitary sewer system, prohibited  
 1263 from critical aquifer recharge areas associated with sole source aquifers

1264 **17.10.130 Critical areas signs, monuments and fencing.**

1265 A. The boundary of a critical area will be delineated by survey stakes, and/or tape at the time of  
 1266 the completion of the critical area report. The buffer will be established as measured from that  
 1267 boundary. During construction, the buffer edge will be delineated and identified using plastic  
 1268 tape and construction fence, or any other effective measure to prohibit construction activities  
 1269 from encroaching into the critical area and its associated buffer. Those measures will be  
 1270 maintained until completion of the project.

1271 B. Upon completion of the construction of the project, the boundary of the critical area and/or  
 1272 buffer will be designated with permanent signs, monuments and fencing, the design and  
 1273 spacing of which will be left to the discretion of the director.

1274 C. All critical areas and their buffers which have been protected through the application of this  
 1275 chapter, shall be permanently protected by designating them as native growth protection areas  
 1276 (NGPAs). (Ord. 2598 § 2, 2005)

1277 **17.10.135 Appeals.**

1278 Any person who objects to the decision of the city under this chapter may file an appeal. An  
 1279 appeal of a Process III or other administrative decision is appealable to the hearing examiner  
 1280 using the procedure under Process II (LMC 1.35.200 through 1.35.260). An appeal of a Process I,  
 1281 II, or other hearing examiner decision on a land use permit is appealable to superior court using  
 1282 the procedure under Chapter 36.70C RCW. (Ord. 2957 § 15, 2012; Ord. 2622 § 12, 2006; Ord.  
 1283 2598 § 2, 2005)

1284 **17.10.140 Notice, performance securities, bonds, administration.**

1285 A. Notice. The owner of any property found to contain certain critical areas or buffers, on which  
 1286 a development project is approved, shall file for record with Snohomish County a notice  
 1287 approved by the city. Such notice shall identify in the public record the presence of any critical  
 1288 areas or buffers, the application of this chapter to the property, and state that limitations on  
 1289 actions in or affecting such areas may exist. The notice shall run with the land and failure to  
 1290 provide such notice to any purchaser prior to transferring any interest in the property shall be a  
 1291 violation of this chapter.

1292 B. Performance Securities. The director may require the applicant of a development proposal to  
 1293 post a cash performance bond or other acceptable security in a form and amount determined  
 1294 sufficient to guarantee satisfactory workmanship, materials, and performance of structures and

1295 improvements allowed or required by application of this chapter. The director shall release the  
1296 security upon determining that all requirements established by this chapter have been  
1297 satisfactorily completed.

1298 C. Performance, Maintenance, and Monitoring Bonds. The director may require the applicant  
1299 whose development proposal is subject to a mitigation plan to post a performance,  
1300 maintenance and monitoring bond or other security instrument in a form and amount  
1301 determined sufficient to guarantee satisfactory performance for the period of time of the  
1302 maintenance and monitoring period. The bond amount shall be no less than 125 percent of the  
1303 estimated cost of the mitigation project including any plant materials, soil amendments,  
1304 temporary irrigation, signs and monuments, and monitoring proposed. The duration of  
1305 maintenance and monitoring obligations shall be no less than five years, unless determined  
1306 otherwise by the director after consideration of the nature of the proposed mitigation and the  
1307 likelihood and expense of mitigation failures. The director shall release the security upon  
1308 determining that the mitigation plan has achieved satisfactory success. The performance  
1309 standards of the mitigation plan shall be agreed upon by the director and the applicant during  
1310 the review process and shall be specified in the mitigation plan. (Ord. 2598 § 2, 2005)

1311 **17.10.150 Unauthorized alterations.**

1312 When environmentally critical areas and/or their associated buffers have been illegally altered,  
1313 the city may require them to be restored to their unaltered condition, and subject them to all  
1314 terms and conditions of this chapter, including but not limited to increasing the area of the  
1315 critical area and buffer as compensation for the alteration. (Ord. 2598 § 2, 2005)

1316 **17.10.155 Enforcement, violations and penalties.**

1317 It shall be unlawful for any person, firm, or corporation to violate any provision of this chapter.  
1318 The director shall have the authority to enforce any and all provisions of this chapter, by  
1319 proceeding with the following actions in progressive severity, except in cases where a delay  
1320 would result in further loss and/or degradation of critical areas:

1321 A. Stop Work Orders. For any action which appears to be in violation of this chapter, the  
1322 director shall have the authority to order the party in question to immediately stop all work  
1323 until such time as the director determines that the action is in compliance with the terms and  
1324 conditions of this chapter.

1325 B. Civil Remedies and Penalties. Any person, firm, corporation, or association or any agent  
1326 thereof who violates any of the provisions of this chapter may be subject to the following civil  
1327 penalties:

1328 1. The city may issue a notice and order under Chapter 1.40 LMC stating any person, firm,  
1329 corporation or association or any agent thereof who violates any of the provisions of this  
1330 chapter shall be liable for all damages to public or private property arising from such  
1331 violation, including the cost of restoring the affected area to an equivalent or improved  
1332 condition prior to the violation, and set a reasonable amount of time for compliance.

1333 2. The city may require restoration. Restoration may include but is not limited to, the  
1334 replacement of all improperly removed vegetation with species similar to those which were  
1335 removed or other approved species such that the biological and habitat values will be  
1336 replaced or improved to the greatest extent reasonably possible. A study by a qualified  
1337 expert(s) shall be conducted to determine the conditions which were likely to exist prior to  
1338 the illegal alteration. Restoration may also include installation and maintenance of erosion  
1339 control measures.

1340 3. In addition to requiring restoration, the city may assess civil penalties as provided in LMC  
1341 1.01.085.

1342 4. The city may require a maintenance bond to insure compliance with the city's order,  
1343 subject to the bonding procedure established in LMC 17.10.140.

1344 5. If the order requiring restoration is not complied with, then the property owner shall be  
1345 subject to a civil fine of \$1,000.00 per day.

1346 6. If the noncompliance continues for more than 10 days, civil penalties shall be increased  
1347 to \$2,500.00 per day up to a maximum of \$75,000. Fines shall stop on the day that  
1348 compliance with the order begins, pending successful completion with the compliance  
1349 order.

1350 7. Any person who objects to a final order of the city under this section may file an appeal  
1351 to the hearing examiner using the procedure under Process II in LMC 1.35.200 through  
1352 1.35.260.

1353 8. Any unpaid civil fines may become a lien against the property, and the city may record  
1354 said lien. (Ord. 2598 § 2, 2005)

1355 **17.10.160 Severability.**

1356 If any paragraph, clause, sentence, section or part of this chapter or the application thereof to  
1357 any person or circumstances shall be adjudged by any court of competent jurisdiction to be  
1358 invalid, such order or judgment shall be confined in its operation to the controversy in which it  
1359 was rendered and shall not affect or invalidate the remainder of any part thereof to any other  
1360 person or circumstances and to this end the provisions of each paragraph, clause, sentence,  
1361 section or part of this chapter are hereby declared to be severable. (Ord. 2598 § 2, 2005)

1362  
1363 Section 9. Severability. If any section, sentence, clause or phrase of this ordinance should  
1364 be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or  
1365 unconstitutionality shall not affect the validity or constitutionality of any other section,  
1366 sentence, clause or phrase of this ordinance.

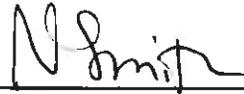
1367  
1368 Section 10. Effective Date. This ordinance or a summary thereof consisting of the title shall  
1369 be published in the official newspaper of the City, and shall take effect and be in full force five  
1370 (5) days after publication.

1371

1372 PASSED BY THE CITY COUNCIL, the 23rd day of May, 2016, and signed in authentication of its  
1373 passage this 25<sup>th</sup> day of May, 2016.

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APPROVED:

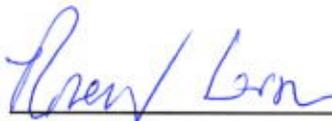
  
\_\_\_\_\_  
Nicola Smith, Mayor

1382 ATTEST / AUTHENTICATED:

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\_\_\_\_\_  
Sonja Springer, Finance Director

APPROVED AS TO FORM:

  
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Rosemary Larson, City Attorney

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1401	FILED WITH ADMINISTRATIVE SERVICES:	05/24/2016
1402	PASSED BY THE CITY COUNCIL:	05/23/2016
1403	PUBLISHED:	05/27/2016
1404	EFFECTIVE DATE:	06/01/2016
1405	ORDINANCE NUMBER:	3193



On the, 23rd day of May, 2016 the City Council of the City of Lynnwood, Washington, passed ordinance 3193. A summary of the content of this ordinance, consisting of the title, provides as follows:

**ORDINANCE NO. 3193**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE REGULATION OF CRITICAL AREAS; AMENDING SECTIONS 17.10 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.**

The full text of this ordinance will be mailed upon request.

  
\_\_\_\_\_  
Debbie Karber, Deputy City Clerk

DATED this 27th day of May, 2016.

# Everett Daily Herald

## Affidavit of Publication

State of Washington }  
County of Snohomish } ss

Kathleen Landis being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of EDH702024 ORDINANCE SUMMARY as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 05/27/2016 and ending on 05/27/2016 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$40.12.

Kathleen Landis

Subscribed and sworn before me on this

27 day of May,  
2014.

Debra Ann Grigg

DEBRA ANN GRIGG  
Notary Public  
State of Washington  
My Commission Expires  
October 31, 2017

Notary Public in and for the State of  
Washington.



CITY OF LYNNWOOD

On the, 23rd day of May, 2016 the City Council of the City of Lynnwood, Washington, passed ordinances 3193 and 3194. A summary of the content of these ordinances, consisting of the title, provides as follows:

ORDINANCE NO. 3193

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE REGULATION OF CRITICAL AREAS; AMENDING SECTIONS 17.10 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

ORDINANCE NO. 3194

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, REPEALING CHAPTER 2.25 LMC, DISSOLVING THE LYNNWOOD LIBRARY BOARD; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

The full text of this ordinance will be mailed upon request.  
DATED this 27th day of May, 2016.

Debbie Karber, Deputy City Clerk  
EDH702024

Published: May 27, 2016.

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**LYNNWOOD**  
WASHINGTON

## **CERTIFICATE**

I, the undersigned, Debra Karber, the duly appointed Deputy City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3193 of the City of Lynnwood, Washington, entitled as follows:

### **ORDINANCE NO. 3193**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE REGULATION OF CRITICAL AREAS; AMENDING SECTIONS 17.10 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.**

That said ordinance was passed by the Council on May 23, 2016 of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on May 27, 2016.

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Debra Karber, Deputy City Clerk