

City of Federal Way  
**PLANNING COMMISSION**

May 1, 2019  
6:30 p.m.

City Hall  
Council Chambers

## **AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES  
April 3, 2019, and April 17, 2019
4. AUDIENCE COMMENT – UNRELATED TO COMMISSION BUSINESS
5. ADMINISTRATIVE REPORT
6. COMMISSION BUSINESS
  - **Public Hearing**  
2019 Shoreline Master Program Update
7. ADDITIONAL BUSINESS
8. ADJOURN

---

**Commissioners**

*Wayne Carlson, Chair*  
*Lawson Bronson*  
*Dawn Meader McCausland*  
*Diana Noble-Gulliford*  
*Eric Olsen, Alternate*

*Tom Medhurst, Vice-Chair*  
*Hope Elder*  
*Tim O'Neil*  
*Dale Couture, Alternate*

**City Staff**

*Robert "Doc" Hansen, Planning Manager*  
*Margaret Clark, Principal Planner*  
*E. Tina Piety, Administrative Assistant*  
253-835-2601

[www.cityoffederalway.com](http://www.cityoffederalway.com)

---

---

**CITY OF FEDERAL WAY  
PLANNING COMMISSION**

April 3, 2019  
6:30 p.m.

City Hall  
City Council Chambers

---

---

**MEETING MINUTES**

Commissioners present: Wayne Carlson, Tom Medhurst, Lawson Bronson, Hope Elder, Tim O'Neil, Diana Noble-Gulliford, Dawn Meader McCausland, Dale Couture, and. Commissioners absent: Eric Olsen (ex).  
City Staff present: Planning Manager Robert "Doc" Hansen, Principal Planner Margaret Clark, Deputy City Attorney Mark Orthmann, and Administrative Assistant E. Tina Piety.

**CALL TO ORDER**

Chair Carlson called the meeting to order at 6:30 P.M.

**APPROVAL OF MINUTES**

The March 20, 2019, minutes were approved with the addition of one sentence as presented to the Commissioners.

**AUDIENCE COMMENT**

None

**ADMINISTRATIVE REPORT**

Planning Manager Hansen informed the Commission that while the city will be amending the sign code in the future, the proposed sign amendment brought to them at the last meeting will not move forward at this time. Chair Carlson informed the Commission that they are welcome to email comments to the City Council and staff, but do not include other Planning Commissioners in the email. Deputy City Attorney Orthmann commented that any email that includes four or more Commissioners is considered a quorum and subject to the open public meetings act. He also warned the Commissioners to be careful to avoid a "chain" email, which may become a quorum as more Commissioners are added to it. He suggested they include staff when emailing the Council so staff will be informed. Chair Carlson requested the Commissioners always copy staff (Planning Manager and Administrative Assistant).

**COMMISSION BUSINESS**

**STUDY SESSION: 2016 SHORELINE MASTER PROGRAM UPDATE**

Manager Hansen led the discussion. He explained the proposed updates are based on the Gap Analysis. The updates are to *Federal Way Revised Code* (FWRC) Title 15, "Shoreline Management," and Chapter 19.145, "Environmentally Critical Areas." It is likely staff will be making changes to the current proposal. Due the complexity of this issue, a second study session with the Commissioners has been scheduled for the next regular Planning Commission meeting of April 17<sup>th</sup>. The public hearing is

scheduled for May 1<sup>st</sup>. In addition to what was emailed to Commissioners, he provided a “blue-lined” copy of proposed changes made since the original documents were sent. This “blue-lined” copy states where in the Gap Analysis the proposed addition/change originates from. He noted that the proposed changes include additions/changes that are required by Ecology and others that are recommended by Ecology. Staff also included their own recommendations.

Commissioner O’Neil asked what happens if the city is not in compliance with the state regulations. Attorney Orthmann replied that the state will be lenient as long as progress is shown, but they will cut off grant funding if a city refuses to follow the state requirements.

The Commission discussed the proposed changes for the environmentally critical areas chapter. Discussion was held regarding the table of what requirements must be met to approve a reduction in buffer width. Some would be problematic to demonstrate they are being met. Staff does recommend including this regulation because it would allow the property owner to minimize their buffer if they meet all the requirements.

It was noted that in some cases, the required buffer width is being reduced. Commission Elder (and others) expressed concern over this. Don’t we want to protect what we have? Chair Carlson and staff explained that Ecology follows the Best Available Science when developing the regulations. This has shown that the lower in significance wetlands will be protected with the reduced buffers, as long as all criteria/regulations are met. The buffers for wetlands of more significance are increased. Chair Carlson noted that different environments have different requirements. The requirements based on Best Available Science for Federal Way are different than those for Ocean Shores.

Discussion was held regarding the shoreline management proposed changes. Most of the proposed changes are not substantive, with the exception of the proposed definition changes. There is a large section of proposed additions dealing with vegetation. These are recommended changes and have been included for the purpose of discussion. Staff intends to make changes to this section. Staff recommends deleting the critical areas section of the shoreline management title because it is a duplication of the city’s environmentally critical areas chapter located in title 19.

Commissioner Meader McCausland asked who decides what areas of the city fall within the purview of the Shoreline Master Program. Manager Hansen replied that the city makes a suggestion to the state and the state makes a determination based on the Best Available Science. She asked how regular maintenance fits into the proposed regulations. Manager Hansen replied that staff is still researching the issue of regular maintenance.

Commissioner Meader McCausland asked how a property owner knows if their property has wetlands or other critical areas. Does the city have a public accessible database and/or map(s)? Staff commented that the city does have some unspecific critical area maps, but no public accessible database. The staff’s database flags parcels that have a potential critical area. Generally, at the time an application is made, staff will hire a consultant (paid for by the applicant) to make a definitive determination as to whether a parcel has a critical area.

Commissioner Noble-Gulliford asked in regards to the landslide definition, if the property is in the right-of-way or a road, does the state have to conform to the same rules. Manager Hansen replied that the state does have to conform to the city’s regulations.

There was a motion to adjourn, which failed. The meeting was opened for public testimony.

*Larry Flesher* – He is concerned with watersheds and how the proposed regulations might affect them. It is his understanding that the government awards grants for research on watersheds and the impacts on them. Does the city have any such grants? Manager Hansen referred him to Surface Water Manager Theresa Thurlow to ask about grants.

*Peter Townsend* – He asked if recent federal regulation changes have affected the city. Manager Hansen replied that nothing has affected the city; most of the proposed regulations have come from the state. Mr. Townsend asked if there is anything from the city's perspective and/or staff experience in the proposal. Manager Hansen replied that is reviewing a number of items in light of our perspective and experience. Staff is also considering comments from the public.

#### **ADDITIONAL BUSINESS**

None

#### **ADJOURN**

The meeting adjourned at 7:45 P.M.

---

**CITY OF FEDERAL WAY  
PLANNING COMMISSION**

April 17, 2019  
6:30 p.m.

City Hall  
City Council Chambers

---

**MEETING MINUTES**

Commissioners present: Tom Medhurst, , Hope Elder, Tim O’Neil, Diana Noble-Gulliford, , Dale Couture, and. Commissioners absent: Wayne Carlson (ex), Lawson Bronson (ex), Dawn Meader McCausland (ex), and Eric Olsen (ex). City Staff present: Planning Manager Robert “Doc” Hansen, Principal Planner Margaret Clark, Deputy City Attorney Mark Orthmann, and Administrative Assistant E. Tina Piety.

**CALL TO ORDER**

Vice-Chair Medhurst called the meeting to order at 6:30 P.M.

**APPROVAL OF MINUTES**

None

**AUDIENCE COMMENT**

None

**ADMINISTRATIVE REPORT**

None

**COMMISSION BUSINESS**

**STUDY SESSION: 2016 SHORELINE MASTER PROGRAM UPDATE**

Planning Manager Hansen led the discussion. He went over the documents distributed at the meeting. He introduced the city’s consultant, Dan Nickel, from the Watershed Company. Manager Hansen went over the proposed major changes (most concern definitions). He went over the changes staff has made to the proposal since the last Planning Commission meeting. Staff removed most of the vegetation section since the proposed regulations do not apply to Federal Way.

Commissioner Noble-Gulliford asked for clarification regarding floating homes; the state does not want us to allow them? Manager Hansen replied that is correct. The ones in Seattle are grandfathered in.

Commissioner O’Neil asked how the proposed definition of appurtenance differs from the real estate law definition. Deputy City Attorney Orthmann replied that the proposed definition is a different term. The real estate law definition refers to a structure that is on the property. The city’s proposed definition makes it clear what the city means in the context of shorelines.

Commissioner O’Neil commented that section 15.05.075 appears vague to him. How would it apply to someone wishing to redevelop their waterfront property? The proposal leaves it up to the planner and/or inspector to determine what kind of plant can be allowed and where, which will not happen until later in the process. If there was a definitive list the applicant could plan out the cost. Manager Hansen stated that the owner will need to prepare a plan of what they want done. Most of the development would occur using current standards; these standards would only apply to portions of the parcel in the shoreline area (200 feet from the ordinary high water).

Commissioner Noble-Gulliford commented that many owners may not be aware if their property is next to an open space and/or green belt. How can they be educated? Manager replied that many potential owners will come in and ask the city if there are any restrictions on the property.

Commissioner Noble-Gulliford asked that when a reference is made to days, please make it clear if the city is referring to working days or calendar days.

Discussion was held regarding issues submitted by Commissioner Meader McCausland regarding fire from the beach side and commercial uses. Manager Hansen commented that the possibility of fire is regulated by the building division and fire department. The section regarding commercial use is confusing (does the Dumas Bay Retreat Center fall within a commercial use definition?); staff will review this section.

Discussion was held about when a bond might be required for maintenance. Attorney Orthmann stated that a bond might be required if the planner determines the likelihood is questionable that the plantings will survive. A bond is required when needed to assure success. Manager Hansen commented that planners use Best Available Science and “No Net Loss” when considering if to require a bond.

Manager Hansen went over the proposed changes to the critical areas chapter. For clarity, staff suggests that regarding buffer widths, the currently proposed Table 1 be moved to Table 3 and the currently proposed Table 3 be moved to Table 1.

Commissioner Noble-Gulliford asked if the city has a map of capture zones (for water wells). Principal Planner Clark replied that information regarding capture zones comes from Lakehaven Water and Sewer. Commissioner Noble-Gulliford asked how long would it take for contamination to reach a well? Principal Planner Clark replied that staff will ask Lakehaven to provide this information.

Commissioner Elder expressed concern that the buffer for one of the wetland categories is changing from 225 to 300 feet. This appears to her to be a “taking” of 75 feet; how is this legal? Attorney Orthmann replied that it would only be ruled a “taking” if the change takes away the entire value of the property down to zero. Manager Hansen noted that the proposed new buffer will just effect improvements and new development. Consultant Nickel commented that this buffer size applies to wetlands with a very high habitat score and those are very rare. The buffer standards are reduced for almost all other wetland categories.

Vice-Chair Medhurst has a concern regarding toxic runoff. How is pesticides defined? Does it include herbicides and fertilizer? If someone states they are not using a pesticide, can they then use an herbicide? Attorney Orthmann stated that anyone using these regulations to reduce the size of the buffer will have to enter into a covenant that will specifically state what can and cannot be done.

Commissioner O’Neil asked if a wetland can be moved. Manager Hansen replied that is allowed in a different section of the FWRC, but it would be a lot of work. Commissioner O’Neil asked if moved, would the wetland have to be relocated in Federal Way. Manager Hansen commented that it could possibly be moved outside the city, but would require negotiations with the other jurisdiction to do so.

#### **ADDITIONAL BUSINESS**

None

#### **ADJOURN**

The meeting adjourned at 7:50 P.M.



## PLANNING COMMISSION STAFF REPORT

April 25, 2019

TO: Wayne Carlson, Federal Way Planning Commission Chair

FROM: Brian Davis, Community Development Director *Brian*  
Robert "Doc" Hansen, Planning Manager *Doc*  
Margaret H. Clark, AICP, Principal Planner *MHC*

SUBJECT: 2019 Periodic Update of the Shoreline Master Program (Non-Project Action)  
Files: 17-105423-UP & 19-101677-SE

MEETING DATE: May 1, 2019

---

### I. BACKGROUND

The City of Federal Way is undertaking a periodic review of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA). The city adopted its current SMP in 2011. The focus of this periodic review is on consistency with changes to state law made since its adoption in 2011. The review will also address consistency with the city's comprehensive plan and development regulations. The goal is to adopt the updated SMP by June 30, 2019.

### II. PROCEDURAL SUMMARY

Steps	Date
Open House	January 30, 2019
Planning Commission Study Session	April 3, 2019
Issuance of Determination of Nonsignificance (DNS) pursuant to the State Environmental Policy Act (SEPA)	April 12, 2019
Planning Commission Study Session	April 17, 2019
Public Hearing before the Planning Commission	May 1, 2019
LUTC Meeting	June 3, 2019
City Council 1st Reading	June 18, 2019
City Council 2nd Reading	July 2, 2019

### III. CONTENTS OF PLANNING COMMISSION PACKET

1. Gap Analysis (Exhibit A) – As a first step in the periodic review process, the city’s current SMP was reviewed by city staff and consultants. The purpose of the Gap Analysis Report is to provide a summary of the review and inform updates to the SMP. This analysis is based on a list of amendments between 2011 and 2017 as summarized by the Washington State Department of Ecology (Ecology) in its Periodic Review Checklist.
2. Amendment to the Critical Areas Regulations (Exhibit B) – The Department of Ecology has issued guidance on their revised rating system issued in 2014. This revised rating system represents the best available science (BAS) as it is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. While local governments are not required to use Ecology’s revised rating system, Ecology encourages local government to use them. The revised rating systems are found on pages 30 - 31 of Exhibit B.
3. Proposed Amendments to the SMP (Exhibit C) – These are proposed amendments to the SMP intended to address gaps in the city’s SMP, related to changes in state law between 2007 and 2017, and to address other issues as part of the periodic update process to produce a more effective SMP.

### IV. SUMMARY OF CHANGES TO *FEDERAL WAY REVISED CODE (FWRC) CHAPTER 19.145, ENVIRONMENTALLY CRITICAL AREAS*

Page	Change	Gap Analysis
6	FWRC 19.145.070(4)(b) - Under the maps and inventories to be used for identifying critical areas and their buffers, reference to the “Lakehaven Utility District capture zone” was struck and replaced with the “Washington State Department of Health Source Water Map.”	Section 3, Comment #2 – This change was made in order to capture all water systems subject to Critical Aquifer Recharge Areas (CARAs) regulations and not just the Lakehaven wells.
30	FWRC 19.145.420(2) - Struck out existing wetland buffer table because the Department of Ecology has issued guidance related to a revised rating system based on best available science (BAS), which is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them.	Section 3, Comment #3 – The Department of Ecology provided revised wetland buffer guidance in July of 2018. The revised guidance indicates that wetlands scoring 5 habitat points may use the same standard buffer width as wetlands scoring 3-4 habitat points.
30	FWRC 19.145.420(2) - If measures to minimize impacts are not implemented, then larger buffers shown in the Table 1 must be provided.	Section 3, Comment #3.
31	FWRC 19.145.420(2) - Replaced the struck-out table with Table 2, which contains reduced buffers which can be used if measures to minimize impacts in Table 3 are implemented.	Section 3, Comment #3 – Wetland buffer impact minimization measures can also be used in allowing buffer averaging for development.
32	FWRC 19.145.420(2) - Added the minimization measures in Table 3.	Section 3, Comment #3.
38 & 39	FWRC 19.145.440(6) & (7) - Struck out existing language to reduce or increase buffers as they have been replaced by the	Section 3, Comment #3.

Page	Change	Gap Analysis
	new provisions related to minimization measures.	
39	FWRC 19.145.460 - Added the following language:  <u>As required by WAC 365-196-(1)(d) (Critical Areas), the city shall protect the quality and quantity of ground water used for public water supplies.</u>  Substituted “Group A and B public water supplies” for “the city’s public water source wells.”	Section 3, Comment #2 – Referenced WAC 365-196-485(1)(d), which requires the protection of the quality and quantity of all ground water used for public water supplies.
46	FWRC 19.145.520(2) - Made the following change to reflect the recent code amendments to regulate floodplains:  (2) Development in frequently flooded areas shall be subject to the provisions in FWRC <del>Title 15</del> Chapter 19.142 Flood Damage Prevention.	N/A

## V. SUMMARY OF CHANGES TO TITLE 15, SHORELINE MANAGEMENT

The city’s periodic review proposes to:

- Revise or add several definitions.
- Incorporate an updated Environmentally Critical Areas Ordinance, repealing the reference to FWRC 15.10 and referencing FWRC 19.145.
- Update language consistent with recent changes in state laws and rules.
- Add a section on shoreline setback vegetation conservation standards.
- Ensure consistency with other city plans and regulations.

Page	Change	Gap Analysis
1	FWRC 15.10 is being deleted and a cross- reference is being made to capture the critical areas regulations within FWRC Chapter 19.145.	Section 3, Comment #1.
3	FWRC 15.05.020(1) - Clarification that the shorelines along Puget Sound and along the lakes governed by the Shoreline Master Plan are not shorelines of statewide significance; only Puget Sound is consider to be of statewide significance.	Section 2, Comment #9 – In 2007, the Department of Ecology amended rules to clarify that comprehensively updated SMPs shall include a list and map of streams and lakes that are in shoreline jurisdiction.
3	FWRC 15.05.030 - Added definition: “Appurtenance, residential” means an improvement necessarily connected to the use and enjoyment of a single-family residence’ e.g., a garage; driveway; utilities; water craft storage (upland); swimming pools; hot tubs; shoreline stabilization; retaining walls; fences; yards; saunas; cabanas; antennas; decks; walkways; and grading which does not exceed 250 cubic yards.	Section 5, Comment #7 – Providing a clear definition of appurtenant structures for single-family accessory structures will reduce the ambiguity when applying for an exemption.
4	FWRC 15.05.030 - Added definition “Date of filing” by referencing FWRC 15.05.180(2), which states that the date of filing for a substantial development permit is the date of actual	N/A

Page	Change	Gap Analysis
	receipt of the decision by the Department of Ecology.	
4	FWRC 15.05.030 - Added the following language to definition of "Development":  <u>Development does not include dismantling or removing structures landward of the OHWM if there is no other associated development or re-development.</u>	Section 2, Comment #3 – In 2017, the Department of Ecology clarified that the definition of "development" does not include dismantling or removing structures.
5	FWRC 15.05.030 - FWRC 15.05.030 - Added definition for "floating homes." Floating homes are not allowed in Federal Way.	Section 2, Comment #15 – Only floating homes that are grandfathered, i.e., have been in existence prior to the adoption of the state SMA in 1972, are allowed. There are no floating homes in Federal Way.
5	FWRC 15.05.030 - Added definition for "floating over-water residence."	Section 2, Comment #12 – The legislature created a new definition and policy for floating on-water residences legally established before 7/1/2014. These types of residences are only allowed for up to two weeks in any six-month period.
5	FWRC 15.05.030 - Added a definition for "floodway."	Section 2, Comment #8 – This definition is based on the most recent Federal Emergency Management Agency (FEMA) maps. There are no FEMA mapped floodways currently documented in the city.
7	FWRC 15.05.030 - Added definitions for "nonconforming development," "nonconforming lot," and "nonconforming structure."	Section 2, Comment #18.
8	FWRC 15.05.030 - Added language related to "temporary transient floating homes" to the definition of "Residential development."	Section 2, Comment #12 – The legislature created a new definition and policy for floating on-water residences legally established before 7/1/2014. These types of residences are only allowed for up to two weeks in any six-month period.
9	FWRC 15.05.030 - Added definition of "Structure" by referencing FWRC 19.05.	N/A
11	FWRC 15.05.040(2) - Added language to "Vegetation Conservation" to reference the development standards table in FWRC 15.05.070(6) and the setback standards provided in FWRC 15.05.075.	N/A. For clarification purposes.
11	FWRC 15.05.040(4) - Changed the reference for "Critical Areas" to Chapter 19.145, Environmentally Critical Areas, and Chapter 19.142 FWRC, Flood Damage Prevention.	Section 3, Comment #1 – FWRC 15.10 is being deleted and cross-referenced to capture the critical areas regulations within the FWRC Chapter 19.145. Also adding a reference to a new code section, added in 2018 about flood damage prevention.

<b>Page</b>	<b>Change</b>	<b>Gap Analysis</b>
12	FWRC 15.05.040(4)(c. (d), (e), & (f)) - References to various articles in Chapter 19.145 FWRC have been corrected.	N/A
14	FWRC 15.05.040(6)(c) - Language added under “Archaeologic and historic resources” to state that if archaeological items are found during excavation, the applicant shall stop work and apply for an Archaeologic Excavation and Removal permit per WAC 25-48.	Section 5, Comment #2 – Language added to clarify the process.
14	FWRC 15.05.040(7) - Under “Public access,” reference to the WAC added to show where the authority for this requirement comes from.	N/A
15	FWRC 15.05.040(8)(d) - Under “Restoration projects,” language added related to under what conditions relief from the development standards of the master program may be granted.	Section 2, Comment #16 – In 2009, the legislature created new “relief” procedures for instances in which a shoreline restoration project within an Urban Growth Area creates a shift in Ordinary High Water Mark.
15	FWRC 15.05.050(1)(b)(i) – For the maximum height of a bulkhead, language was amended to allow the height of a bulkhead along tidal waters to be the minimum necessary height, if supported by both recorded tidal events and geotechnical documentation.	Section 5, Comment #3 – Existing bulkheads on many shoreline properties are taller than the bulkhead height maximum of one foot above mean higher high water mark. Changing bulkhead maximum height from one foot above mean higher high water mark to the minimum necessary for protection of upland structures will help avoid unnecessary variances. Minimum necessary requirements can be supported by recorded tidal events and geotechnical documentation.
16	FWRC 15.05.050(1)(b)(i) – Added the sentence: “The city may employ an outside consultant at the applicant’s expense for third-party review of the report.”	N/A
21	FWRC 15.05.070(5) – Under “Permitted use table,” a change is made to clarify that office and commercial development is not an allowable use in the Urban Conservancy Shoreline Environment.	N/A
22 & 23	FWRC 15.05.070(6) – Language in table amended to be consistent with Section 15.05.050(1)(b)(i).	N/A
23 & 24	FWRC 15.05.075 – Added new section, Shoreline setback vegetation conservation standards.	Section 5, Comment #4 – Needed requirements related to vegetation conservation.
25	FWRC 15.05.080(3)(e) – Deleted language that is already covered in new Section 15.05.075.	Section 5, Comment #4 – Needed requirements related to vegetation conservation.
26	FWRC 15.05.080(5)(i)(C) – Under “Setbacks,” language was added so that the stringline setback provision would now apply equally to single-family residential development on both lake and marine shorelines.	Section 5, Comment #6 – The intent of the stringline setback is to prevent future development from encroaching into previously undisturbed areas, to not affect views from neighboring

Page	Change	Gap Analysis
		properties, and to preserve the no-net-loss goals of the SMP. The stringline requirement was added for marine shorelines for consistency with all shorelines of the state within city limits.
27	FWRC 15.05.080(5)(a)(iv) – Under “Utilities,” language changed to be consistent with the other sub-sections.	N/A
28	FWRC 15.05.080(5)(a)(iv)(E) and (D) – Language deleted due to duplication with language in FWRC 15.05.080(5)(a)(iv).	N/A
29	FWRC15.05.090(3)(e) – Deleted language that is already covered in new Section 15.05.075.	Section 5, Comment #4 – Needed requirements related to vegetation conservation.
30 & 31	FWRC 15.05.090(5)(a)(v) – Deleted office and commercial development as permitted uses to be consistent with Section 15.05.070(5), Permitted use table.	N/A
31	FWRC 15.05.100(3)(e) – Deleted language that is already covered in new Section 15.05.075.	Section 5, Comment #4 – Needed requirements related to vegetation conservation.
33	FWRC 15.05.110(3) - Added the following language:  The city of Federal Way hereby adopts by reference the following sections or subsections of Chapter 173-27, as amended, of the Washington Administrative Code (“WAC”), entitled Shoreline Management Permit and Enforcement Procedures. <u>(3) 173-27-044. Developments not required to obtain shoreline permits or local reviews.</u>	Section 2, Comment #4 – In 2017, the Department of Ecology adopted rules clarifying exceptions to local review under the Shoreline Management Act.
33	FWRC 15.05.110(3) - Added the following language:  The city of Federal Way hereby adopts by reference the following sections or subsections of Chapter 173-27, as amended, of the Washington Administrative Code (“WAC”), entitled Shoreline Management Permit and Enforcement Procedures. <u>(3) 173-27-1254. 90-day review target for WSDOT projects</u>	Section 2, Comment #24 – In 2015, the legislature adopted a 90-day target for local review of Washington State Department of Transportation projects.
33	FWRC 15.05.120(3) – Added language to indicate that the SMP would be effective 14 days after Ecology’s approval letter.	Section 2, Comment #26.
35	FWRC 15.05.140(10)(e) – Language added to reference FWRC 19,142.060 for floodplain development permit requirements.	Section 5, Comment #8 – Staff had commented that it is unclear as to when is a Habitat Assessment is necessary.
35	FWRC 15.05.150(1) – The language addressing the threshold dollar amount associated with a substantial development permit has been changed from an actual dollar amount to the RCW reference which addresses it.	Section 2, Comment #2 – Existing language in FWRC 15.05.150 references an outdated cost threshold (\$5,718) for substantial development; however, the SMP indicates that the cost threshold is updated every five years. A change to reference the RCW

Page	Change	Gap Analysis
		would result in not having to update the code every five years when the dollar amount changes.
37	FWRC 15.05.180(1) – Language added to clarify a final approval of a shoreline permit and any shoreline variances or conditional uses granted must be forwarded to the agencies and persons listed in that section.	Section 2, Comment #2 – Staff had commented that it is unclear when a shoreline decision is routed to the Department of Ecology.
37	FWRC 15.05.180(2) – Clarified that listed days are “calendar” days.	N/A
38	FWRC 15.05.190 - Clarified that listed days are “calendar” days.	N/A
38	FWRC 15.05.220(1)(d) – Added language where minor repairs to non-conforming structures under the monetary threshold for a substantial development permit can apply for a shoreline exemption.	Section 2, Comment #18
39	FWRC 15.05.220(6) – Added language to classify legally established residential structures and appurtenant structures as conforming even if they do not meet dimensional or bulk standards.	Section 2, Comment #19 – In 2011, a change was made to allow SMP’s to classify legally established residential structures and appurtenant structures as conforming even if they do not meet dimensional or bulk standards. Therefore, redevelopment, expansion, and replacement consistent with the SMP would be allowed.

## VI. PUBLIC COMMENTS

The following public comment was received:

The Department of Natural Resources would like more information about under what conditions we would allow bulkheads to be higher than one foot. Is it because of rising sea levels due to climate change?

**Staff Response:** Existing bulkheads on many shoreline properties are taller than the bulkhead height maximum of one foot above mean higher high water mark. Changing bulkhead maximum height from one foot above mean higher high water mark to the minimum necessary for protection of upland structures will help avoid unnecessary variances. Minimum necessary requirements can be supported by recorded tidal events and geotechnical documentation.

## VII. REASON FOR PLANNING COMMISSION ACTION

FWRC Chapter 19.80, "Process VI Council Rezones," establishes a process and criteria for zoning code text amendments. Consistent with Process VI review, the role of the Planning Commission is as follows:

1. To review and evaluate the proposed zoning code text regarding any proposed amendments.
2. To determine where the proposed code text amendments meet the criteria established in FWRC 19.80.130.
3. To forward a recommendation to the City Council regarding adoption of the proposed code text amendments.

## VII. DEVELOPMENT REGULATION AMENDMENT CRITERIA

FWRC 19.80.130 provides criteria for evaluating text amendments. The following section analyzes compliance of the proposed zoning text amendments with the criteria provided by this section. The city may amend the text of the FWRC if it finds that:

- (1) The proposed amendment is consistent with the applicable provisions of the comprehensive plan;

**Staff Response:** The adopted *Federal Way Comprehensive Plan* (FWCP) is to be implemented by development regulations as indicated within the Growth Management Act. The proposed FWRC text amendments are consistent with the following FWCP goals and policies:

### *Goal*

SMPG2 Residential use of shoreline areas should be continued and encouraged in areas that have not been designated as Natural environments by the SMP, allowing a variety of housing types. New development or redevelopment of residential uses should cause no net loss of shoreline ecological function as identified in the SMP's Shoreline Inventory Characterization and Analysis.

### *Policies*

SMPP10 Residential developments should be designed to achieve no net loss of shoreline ecological functions and minimize interference with visual and physical access. Unavoidable impacts to the shoreline environment from residential development should be mitigated to assure no net loss of shoreline ecological functions.

- a. Residential development in designated critical areas or their associated buffers should be regulated as required by the City's SMP regulations.
- b. Residential development on piers or over water is prohibited.
- c. Landfill for residential development that reduces water surface or floodplain capacity

- shall not be permitted.
- d. In residential developments, the water's edge should be kept free of buildings and fences.
- e. Development standards should require the retention of natural shoreline vegetation and other natural features of the landscape to the greatest extent possible during site development and construction.

(2) The proposed amendment bears a substantial relation to public health, safety, or welfare; and

**Staff Response:** The proposed amendment bears a substantial relation to public health, safety, and welfare as its implementation will prevent uncoordinated and piecemeal development while protesting against adverse impacts to public health, the land and its vegetation, and wildlife.

(3) The proposed amendment is in the best interest of the residents of the city.

**Staff Response:** The proposed amendment is in the best interest of the residents of the city because it permits for development of the shorelines where appropriate, while still protecting the shoreline environment. The update process also allows the city to update its code to comply with changes in state law and with the best available science (BAS) as it evolves.

## VIII. MAYOR'S RECOMMENDATION

The Mayor recommends that the code amendment as outlined in Sections IV and V above, and enclosed as *Exhibits B* and *C*, be recommended for approval to the City Council.

## IX. PLANNING COMMISSION ACTION

Consistent with the provisions of FWRC 19.80.240, the Planning Commission may take the following actions regarding the proposed development regulation amendments:

1. Recommend to City Council adoption of the FWRC text amendments as proposed;
2. Modify the proposed FWRC text amendments and recommend to City Council adoption of the FWRC text amendments as modified;
3. Recommend to City Council that the proposed FWRC text amendments not be adopted; or
4. Forward the proposed FWRC text amendments to City Council without a recommendation.

## LIST OF EXHIBITS

Exhibit A Gap Analysis

Exhibit B Proposed Amendments to Chapter 19.145, Environmentally Critical Areas

Exhibit C Proposed Amendments to Title 15, Shoreline Management

K:\Shoreline Master Program\2019 Periodic Update\Planning Commission\050119 Public Hearing\042519 Planning Commission Staff Report.doc

# **Exhibit A**

# City of Federal Way Shoreline Master Program

---

## Gap Analysis Report

Prepared on behalf of:



City of Federal Way  
Community Development Department  
33325 8<sup>th</sup> Ave S  
Federal Way, WA 98003

Prepared by:



750 Sixth Street South  
Kirkland . WA 98033

p 425.822.5242  
f 425.827.8136  
watershedco.com

March 2019  
The Watershed Company Reference Number:  
180415



## Table of Contents

1.	Introduction .....	1
2.	Consistency with State Laws .....	3
3.	Integration of Current Critical Areas Regulations .....	12
4.	Consistency with Comprehensive Plan & Other Development Regulations .....	16
5.	Other Issues to Consider .....	17
6.	References .....	23

## List of Tables

Table 1-1.	Abbreviations used in this document .....	2
Table 2-1.	Summary of consistency with amendments to state laws and potential revisions.	3
Table 3-1.	Summary of gaps in consistency with current critical areas regulations and associated recommended SMP revisions .....	12
Table 3-2.	Wetland buffer widths (in feet) under FWRC Chapter 19.145 and under Ecology's most recent guidance (Ecology 2018). .....	14
Table 3-3.	Wetland buffer impact minimization measures (Ecology 2016). .....	14
Table 4-1.	Summary of recommended SMP and FWRC revisions to improve consistency. ..	16
Table 5-1.	Other issues that could be addressed to produce a more effective SMP .....	17



# 1. Introduction

---

In accordance with the Washington State Shoreline Management Act, local jurisdictions with “Shorelines of the State” are required to conduct a periodic review of their Shoreline Master Programs (SMPs) (Washington Administrative Code [WAC] 173-26-090). The periodic review is intended to keep SMPs current with amendments to state laws, changes to local plans and regulations, changes in local circumstances, and new or improved data and information.

Shorelines of the State in the City of Federal Way (City) include: the Puget Sound, North Lake, Steel Lake, and the northwestern portion of Lake Killarney, with Star Lake, Lake Dolloff, Lake Geneva, Five Mile Lake, and the remainder of Lake Killarney all existing in potential annexation areas, outside City limits.

The City’s most recent update of its SMP took place in 2011 (Ordinance No. 11-705), establishing regulations under Title 15 Shoreline Management within the Federal Way Revised Code (FWRC) and adding a new chapter, Chapter 11 to the City’s Comprehensive Plan. The City’s SMP, Chapter 11, outlines goals and policies for the shorelines of the City. The City’s current SMP has its own critical areas regulations under Chapter 15.10 which were adopted together with the SMP in 2011.

Since adoption of the SMP, the City-wide critical areas regulations were amended by Ordinance No. 15-797 [2015]. The City-wide critical areas regulations are currently codified as FWRC Chapter 19.145 Environmentally Critical Areas. The City anticipates referencing the most recent version of the City-wide critical areas regulations in the updated SMP.

As a first step in the periodic review process, the City’s current SMP was reviewed by City staff and consultants. The purpose of this Gap Analysis Report is to provide a summary of the review and inform updates to the SMP. This report is organized into the following sections:

- **Section 2** identifies gaps in consistency with state laws. This analysis is based on a list of amendments between 2007 and 2017 as summarized by the Washington State Department of Ecology (Ecology) in its Periodic Review Checklist.
- **Section 3** identifies issues with integrating the City’s most recent (2015) critical areas regulations into the updated SMP.
- **Section 4** identifies gaps in consistency and implementation between the updated SMP and the City’s Comprehensive Plan and Zoning Code.
- **Section 5** identifies other issues to consider as part of the periodic update process to produce a more effective SMP.

This report includes several tables that identify potential revision actions. Where potential revision actions are identified, they are classified as follows:

- **“Mandatory”** indicates revisions that are required for consistency with state laws.
- **“Recommended”** indicates revisions that would improve consistency with state laws, but are not strictly required.
- **“None Necessary”** indicates no change to the SMP is required.

This document attempts to minimize the use of abbreviations; however, a select few are used to keep the document concise. These abbreviations are compiled below in Table 1-1.

Table 1-1. Abbreviations used in this document.

<b>Abbreviation</b>	<b>Meaning</b>
City	City of Federal Way
Ecology	Washington State Department of Ecology
FWRC	Federal Way Revised Code
RCW	Revised Code of Washington
SMP	Shoreline Master Program
WAC	Washington Administrative Code

---

## 2. Consistency with State Laws

Table 2-1 summarizes potential revisions to the City’s SMP based on a review of consistency with amendments to state laws identified in the Periodic Review Checklist provided by Ecology. Topics are organized broadly by SMP subject area.

Only a limited number of revisions in Table 2-1 are classified as “mandatory.” Further, the revisions classified as “mandatory” are anticipated to be minor in effect.

Table 2-1. Summary of consistency with amendments to state laws and potential revisions.

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1,2</sup>	Review & Action
<b>Applicability</b>			
1	Legislature raised the cost threshold for requiring a Substantial Development Permit for <b>replacement docks on lakes</b> to \$22,500 (from \$10,000) and \$11,200 <b>for all other docks constructed in fresh waters</b> . This is effective November 4, 2018 per the Ecology letter to City Shoreline Administrators to adjust for inflation. (2018)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>FWRC 15.05.150 Shoreline Substantial Development Permit</li> </ul>	<p><b>Review:</b></p> <p>The SMP references the Substantial Development Permit exemptions in WAC 173-27-040 as amended, which include this revised exemption language.</p> <p><b>Action:</b></p> <p><i>None necessary:</i> As an option, dollar figures can be added for code readability.</p>
2	Office of Financial Management adjusted the <b>cost threshold for substantial development</b> to \$7,047. (2017)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>FWRC 15.05.150 Shoreline Substantial Development Permit</li> </ul>	<p><b>Review:</b></p> <p>In FWRC 15.05.150, the SMP references an outdated cost threshold (\$5,718) for substantial development; however, the SMP indicates that the cost threshold is updated every five years.</p> <p><b>Action:</b></p> <p><i>Recommended:</i> Update the language in FWRC 15.05.150 to reference the RCW 90.58.030.(3)(e) development exemption for development not meeting the cost threshold and the location where the cost threshold can be found.</p>

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1, 2</sup>	Review & Action
3	Ecology permit rules clarified the <b>definition of “development”</b> does not include dismantling or removing structures. (2017)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.030 - Additional definitions</i></li> </ul>	<p><b>Review:</b></p> <p>The SMP does not clarify that removing structures does not constitute development.</p> <p><b>Action:</b></p> <p><b>Recommended:</b> Revise definition of “Development” to clarify that removing structures does not constitute development. Proposed language is as follows,  <i>“Development” does not include dismantling or removing structures landward of the OHWM if there is no other associated development or re-development.</i> (Note: City can opt to amend the existing definition under FWRC 15.05.030 – Additional definitions.)</p>
4	Ecology adopted rules clarifying <b>exceptions to local review under the Shoreline Management Act.</b> (2017)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>Article III. Administrative Procedures, FWRC 15.05.110 – 15.05.240</i></li> </ul>	<p><b>Review:</b></p> <p>The SMP does not refer to exceptions to local review under WAC 173-27-044 or -045 (though it does refer to exemptions under WAC 173-27-040).</p> <p><b>Action:</b></p> <p><b>Recommended:</b> Create a new section that clearly sets forth exceptions to local review. Exemptions listed include remedial hazardous substance cleanup, boatyard stormwater improvements, and WSDOT maintenance and safety projects. Example language from Ecology is available.</p>
5	Ecology amended <b>forestry use regulations</b> to clarify that forest practices that only involves timber cutting are not Shoreline Management Act “developments” and do not require Substantial	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.070 – Summary of uses, approval criteria, and process</i></li> </ul>	<p><b>Review:</b></p> <p>The SMP indicates that forest practices are prohibited and contains no provisions specific to forest practices.</p> <p><b>Action:</b></p> <p><b>None necessary:</b> This change is not</p>

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1,2</sup>	Review & Action
	Development Permits. (2017)		applicable to Federal Way, as forest practices are prohibited by the SMP.
6	Ecology clarified the Shoreline Management Act does not apply to lands under <b>exclusive federal jurisdiction</b> . (2017)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.020 Jurisdiction.</i></li> </ul>	<p><b>Review:</b></p> <p>The SMP does not address lands with exclusive federal jurisdiction.</p> <p><b>Action:</b></p> <p><b>None Necessary:</b> No Federal lands exist within the City's UGA.</p>
7	The Legislature created a new shoreline permit exemption for retrofitting existing structure to comply with the <b>Americans with Disabilities Act</b> . (2016)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.130 Shoreline exemption.</i></li> </ul>	<p><b>Review:</b></p> <p>The SMP references the Substantial Development Permit exemptions in WAC 173-27-040 as amended, which include this revised exemption language.</p> <p><b>Action:</b></p> <p><b>None necessary:</b> Because the SMP references the exemptions in the WAC as amended, the SMP already reflects this revised exemption language.</p>
8	The Legislature clarified <b>options for defining "floodway"</b> as either the area that has been established in Federal Emergency Management Agency maps, or the floodway criteria set in the Shoreline Management Act. (2007)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.030, Additional Definitions</i></li> </ul>	<p><b>Review:</b></p> <p>The definition of "floodway" in the SMP is based on the floodway criteria set in the Shoreline Management Act. This definition is essentially a biological definition.</p> <p><b>Action:</b></p> <p><b>Recommended:</b> Consider revising the definition of "floodway" to reflect the most recent Federal Emergency Management Agency maps. Example language from Ecology is available. <i>(Note: While the City anticipates amending the current "floodway" definition in FWRC 15.05.030, Additional Definitions, as the area established in Federal Emergency Management Agency Maps, there are no FEMA mapped floodways currently documented in the City.)</i></p>
9	Ecology amended rules to clarify that comprehensively updated SMPs shall include a <b>list and map of streams and lakes</b> that are in shoreline	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>Section 11.1 Shoreline Jurisdiction in the Comprehensive Plan (page 8) of Appendix A within</i></li> </ul>	<p><b>Review:</b></p> <p>Section 11.1 Shoreline Jurisdiction (page 8) within Appendix A of Ordinance No. 11-705 identifies all SMP waterbodies.</p> <p><b>Action:</b></p>

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1, 2</sup>	Review & Action
	jurisdiction. (2007)	<i>Ordinance 11-705.</i>	<b>Recommended:</b> Add a list and of shoreline jurisdictional areas under FWRC 15.05.020 to correspond with a map of all lakes and marine shoreline is shown within Appendix A of Ordinance 11-705.
<b>10</b>	Ecology’s rule listing statutory exemptions from the requirement for a Substantial Development Permit was amended to include <b>fish habitat enhancement projects</b> that conform to the provisions of Revised Code of Washington (RCW) 77.55.181. (2007)	<b>Current SMP:</b> • <i>FWRC 15.05.130(2)</i>	<b>Review:</b> The SMP references the Substantial Development Permit exemptions in WAC 173-27-040 as amended, which include this revised exemption language.  <b>Action:</b> <b>None necessary:</b> Because the SMP references the exemptions in the WAC as amended, the SMP already reflects this revised exemption language.
<b>Use and Development</b>			
<b>11</b>	Ecology updated <b>wetlands critical areas guidance</b> including implementation guidance for the 2014 wetlands rating system. (2016)	<b>Current SMP critical areas regulations (2011):</b> • <i>FWRC 15.10.240</i>  <b>Proposed SMP critical areas regulations:</b> • <i>FWRC 19.145.420(1)</i>	<b>Review:</b> FWRC section 15.10.240 refers to the March 1997 Washington State Wetlands Identification and Delineation Manual, Ecology Publication No. 96-94 which also references a WAC section which no longer exists (WAC 173-22-080). The correct reference is found under FWRC 19.145.420(1) which correctly references the most recent 2014 Ecology rating system with updates as needed.  <b>Action:</b> <b>Mandatory:</b> Repeal FWRC 15.10, Critical Areas to reference the current Critical Areas Ordinance found under FWRC section 19.145, Environmentally Critical Areas.
<b>12</b>	The Legislature created a new definition and policy for <b>floating on-water residences</b> legally established before 7/1/2014. (2014)	<b>Current SMP:</b> • <i>FWRC 15.05.030</i> <i>Additional definitions.</i>	<b>Review:</b> City has no floating homes. Residential development is prohibited over water. Moorage of floating homes is prohibited. FWRC 15.05.050(k).  <b>Action:</b> <b>Recommended:</b> Expand the “residential development” definition to prohibit “tiny

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1, 2</sup>	Review & Action
			home” temporary or transient floating homes. In addition, boats mooring or dropping anchor within City shoreline jurisdiction should have a clear time limit for transient habitation of a small cabin located under a boat’s hull.
13	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved <b>federal wetland delineation manual</b> . (2011)	<p><b>Current SMP critical areas regulations (2006):</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.10.240</i></li> </ul> <p><b>Proposed SMP critical areas regulations:</b></p> <p><i>FWRC 19.145.420(1)</i></p>	<p><b>Review:</b></p> <p>Refer to FWRC 19.145.410(1) within the updated CAO which refers to this update.</p> <p><b>Action:</b></p> <p><b>Mandatory:</b> Repeal FWRC 15.10, Critical Areas to reference the Critical Areas Ordinance FWRC section 19.145, Environmentally Critical Areas.</p>
14	Ecology adopted rules for new commercial <b>geoduck aquaculture</b> . (2011)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.050.030</i></li> </ul> <p><i>Additional definitions.</i></p>	<p><b>Review:</b></p> <p>The new Ecology definition clarifies that aquaculture does not include wild geoduck harvest.</p> <p><b>Action:</b></p> <p><b>None necessary:</b> Aquaculture is a prohibited use in all shoreline environments according to FWRC 15.05.070.</p>
15	The Legislature created a new definition and policy for <b>floating homes</b> permitted or legally established prior to January 1, 2011. (2011)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>Not listed under FWRC 15.05.070 Summary of uses, approval criteria, and process.</i></li> <li>• <i>FWRC 15.05.030</i></li> </ul> <p><i>Additional definitions.</i></p>	<p><b>Review:</b></p> <p>The term “floating home” is not used in the SMP.</p> <p><b>Action:</b></p> <p><b>Recommended:</b> Add the “floating home” definition to address ambiguities and steer future development away from this development type through explicitly prohibiting this development type under FWRC 15.05.070. Example language from Ecology is available. See #12 above for a discussion of temporary floating residences.</p>
16	The Legislature created new “relief” procedures for instances in which a <b>shoreline restoration project within an Urban Growth Area</b> creates a shift in Ordinary High Water Mark. (2009)	<p><b>Current SMP:</b></p> <p><i>FWRC 15.05.050 Shoreline Modifications.</i></p>	<p><b>Review:</b></p> <p>The SMP does not address such relief procedures.</p> <p><b>Action:</b></p> <p><b>Recommended:</b> Incorporate Ecology’s rule to provide relief for shoreline restoration projects, referencing WAC 173-27-215 as the parameters for granting such a request.</p>

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1, 2</sup>	Review & Action
17	Ecology adopted a rule for certifying <b>wetland mitigation banks</b> . (2009)	<p><b><u>Current SMP critical areas regulations (2011):</u></b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.10.260</i></li> </ul> <p><b><u>Proposed SMP critical areas regulations:</u></b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 19.145.430(4)(b)</i></li> </ul>	<p><b><u>Review:</u></b></p> <p>The current critical areas regulations allow the use of mitigation banks and requires that they be certified.</p> <p><b><u>Action:</u></b></p> <p><b><i>Required:</i></b> Reference the Critical Areas section which incorporates the certification requirement for mitigation banks.</p>
<b>Nonconformance</b>			
18	Ecology clarified “default” provisions for <b>nonconforming uses and development</b> . (2017)	<p><b><u>Current SMP:</u></b></p> <ul style="list-style-type: none"> <li>• <i>Section 7 – SMP Definitions Resolution 10-597, page 2</i></li> <li>• <i>FWRC 15.05.030 Additional Definitions</i></li> </ul>	<p><b><u>Review:</u></b></p> <p>The SMP meets the definition except for the addition where, “Development” does not include dismantling or removing structures if there is no other associated development or re-development.</p> <p><b><u>Action:</u></b></p> <p><b><i>Recommended:</i></b> Code definitions for Nonconforming development, nonconforming lot and nonconforming structure added to SMP. Provide a provision under FWRC 15.05.220(1), where minor repairs to non-conforming structures under the monetary threshold can apply for a shoreline exemption.</p>
19	SMPs <b>may classify legally established residential structures and appurtenant structures as conforming</b> even if they do not meet dimensional or bulk standards. Redevelopment, expansion, and replacement consistent with the SMP would be allowed. (2011)	<p><b><u>Current SMP:</u></b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.220 Replacement, alteration, or reconstruction of nonconforming use or development</i></li> </ul>	<p><b><u>Review:</u></b></p> <p>The SMP does not currently exercise this option.</p> <p><b><u>Action:</u></b></p> <p><b><i>Recommended:</i></b> The City will adopt these Ecology provisions and classify past permitted non-conforming structures as conforming. Unpermitted non-conforming structures can be enforced upon</p>

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1,2</sup>	Review & Action
			accordingly.
<b>Administration</b>			
20	Ecology amended rules clarifying <b>permit filing procedures</b> consistent with a 2011 statute. Filing replaces date of receipt for shoreline permits sent to Ecology. (2017)	<u><b>Current SMP:</b></u> <ul style="list-style-type: none"> <li>• <i>Article III. Administrative Procedures - FWRC 15.05.110 - Shoreline management permits and enforcement procedures</i></li> </ul>	<u><b>Review:</b></u> The SMP does not describe the filing process, but indicates that filing with Ecology shall be done pursuant to WAC 173-27-130.  <u><b>Action:</b></u> <b>None necessary:</b> SMP consistent with statute.
21	Ecology adopted a new rule creating an <b>optional SMP amendment process</b> that allows for a shared local/state public comment period. (2017)	<u><b>Current SMP:</b></u> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.240 Amendments to this chapter.</i></li> </ul>	<u><b>Review:</b></u> The SMP does includes language regarding the process for SMP amendments through referencing WAC 176-26-110 and 176-26-120.  <u><b>Action:</b></u> <b>None necessary:</b> If the City anticipates using the optional SMP amendment process for joint state and local public comment, no code amendment is required to exercise this option. Therefore, no action will be taken by the City.
22	Ecology adopted rule amendments to clarify the scope and process for conducting <b>periodic reviews</b> . (2017)	<u><b>Current SMP:</b></u> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.240 Amendments to this chapter.</i></li> </ul>	<u><b>Review:</b></u> The SMP does not include language specific to conducting periodic review of the SMP pursuant to RCW 90.58.080 and WAC 173-26-090.  <u><b>Action:</b></u> <b>None necessary:</b> Description of the scope and process for conducting periodic reviews is not required in SMP.
23	<b>Submittal</b> to Ecology of proposed SMP amendments. (2017)	<u><b>Current SMP:</b></u> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.240 Amendments to this chapter.</i></li> </ul>	<u><b>Review:</b></u> SMP already references a description of the SMP amendment submittal process.  <u><b>Action:</b></u> <b>None necessary:</b> FWRC 15.05.240 Amendments to this chapter correctly references WAC 176-26-110 and WAC 176-26-120 where amendments are proposed.

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1, 2</sup>	Review & Action
24	The Legislature adopted a <b>90-day target</b> for local review of Washington State Department of Transportation projects. (2015)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.110 Shoreline management permit enforcement procedures, adoption by reference.</i></li> </ul>	<p><b>Review:</b> The SMP does not address this target.</p> <p><b>Action:</b> <b>Recommended:</b> Add a reference to WAC 173-27-125 under FWRC 15.05.110 to include these target review timelines.</p>
25	The Legislature amended the Shoreline Management Act to clarify <b>SMP appeal procedures</b> . (2012)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.200 Appeals.</i></li> </ul>	<p><b>Review:</b> The SMP does not address SMP appeal procedures (the SMP addresses appeals of shoreline permit decisions, but not the SMP itself).</p> <p><b>Action:</b> <b>None necessary:</b> A Description of SMP appeal procedures is not required in SMP, therefore no change is needed.</p>
26	The Legislature adopted <b>Growth Management Act – Shoreline Management Act clarifications</b> . (2010)	<p>The City has already previously updated its CAO and the SMP and therefore addressed the issue of overlapping critical area regulations. The City’s SMP also includes no net loss provisions. However, the SMP does not indicate the 14-day rule for Ecology approval.</p> <p><b>Current SMP (no net loss statement):</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.040 General development standards.</i></li> </ul>	<p><b>Review:</b> The SMP indicates that critical areas in shorelines must be regulated to assure no net loss of shoreline ecological function.</p> <p><b>Action:</b> <b>Recommended:</b> Update SMP to indicate that it is effective 14 days after Ecology’s approval letter.</p>
27	The Legislature added <b>moratoria authority</b> and procedures to the Shoreline Management Act. (2009)	<p><b>Current SMP:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.110 - Shoreline management permit and enforcement procedures</i></li> </ul>	<p><b>Review:</b> The SMP does not address moratoria.</p> <p><b>Action:</b> <b>None necessary:</b> Moratoria procedures not required to be included in SMP. City may rely on statute: WAC 173-27-085.</p>

<sup>1</sup>This column attempts to capture the primary relevant location(s) of content related to the item described in the Summary of Change column; however, due to length of the SMP, all relevant locations may not be listed.

<sup>2</sup>Locations in italics indicate that the location does not actually address the specific content described in the

#	Summary of Change (Amendment Year)	Relevant Location(s) <sup>1,2</sup>	Review & Action
Summary of Change column; these locations are listed to indicate where generally related content is found.			

### 3. Integration of Current Critical Areas Regulations

The City’s current SMP incorporates the City-wide critical areas and flood damage prevention regulations of Ordinance No. 11-705 (2011) through chapter subsections 15.10 and 15.15, respectively. Since adoption of the SMP, the City-wide critical areas regulations have been amended most recently in 2015 by Ordinance No. 15-797. Flood Damage Prevention FWRC Chapter 15.15 was recently amended in on November 6<sup>th</sup>, 2018, under Ordinance 18-745 to reference FWRC 19.142, removing its duplicate code. The critical areas regulations are codified as FWRC Chapter 19.145 Critical Areas are more current than ones listed within SMP subsection 15.10. Therefore, the City’s current SMP includes critical areas regulations that are out of date and no longer consistent with the critical areas regulations that currently apply in non-shoreline areas of the City.

Accordingly, the City anticipates referencing the current City-wide critical areas and regulations in the updated SMP. However, as with the 2015 critical areas regulations, these critical areas regulations include some regulations that are inconsistent with recent Department of Ecology guidance. The inconsistent regulations need to be identified and resolved as part of the periodic SMP update process.

Table 3-1 below summarizes issues to be resolved both guidance-wise and referencing the City’s current critical areas regulations into the updated SMP. The table is organized by critical areas regulations subject area.

Table 3-1. Summary of gaps in consistency with current critical areas regulations and associated recommended SMP revisions.

#	Issue	Relevant Location(s)	Review & Action
<b>Applicability</b>			
1	<b>Critical Areas</b>	<ul style="list-style-type: none"> <li>Chapters FWRC 15.10 and FWRC 19.145 Critical Areas</li> </ul>	<p><b>Review:</b> FWRC 15.10 can be deleted and cross-referenced to capture the critical areas regulations within the FWRC chapter 19.145.</p> <p><b>Action:</b> <b>Recommended:</b> delete language in FWRC 15.10 and cross reference to FWRC 19.145, Critical Areas.</p>
2	<b>Critical Areas - Wellhead capture zone</b>	<p><b>Zoning Code:</b></p> <ul style="list-style-type: none"> <li>FWRC 19.145.070, FWRC 19.145.460 Classification of wellhead capture zones (FWRC 15.10.290 to be removed).</li> </ul>	<p><b>Review:</b> The current code exclusively calls out the capture zones, or wellhead protection areas (WHPAs), associated with Lakehaven wells, but at the same time, .460 refers to, “the city’s public water source wells”. There are more public water systems than</p>

#	Issue	Relevant Location(s)	Review & Action
			<p>what is listed in code.</p> <p><b>Action:</b>  <b>Recommended:</b> Revise “the city’s public source wells” to “Group A and Group B public water supplies” and reference WAC 365-196-485(1)(d) under FWRC 19.145.460 to capture all water systems subject to Critical Aquifer Recharge Areas (CARAs) regulations. In addition, the Washington State Department of Health Source Water Assessment Program Map is an appropriate citation for providing an inventory of WHPAs over the Lakehaven Utility District capture zone map cited in 19.145.070(4)(b).</p>
<b>Wetlands</b>			
3	Wetland buffer table change.	<p><b>Current critical areas regulations:</b></p> <ul style="list-style-type: none"> <li>• FWRC 19.145.420(2), Wetland rating and buffers</li> </ul>	<p><b>Review:</b>  Department of Ecology provided revised wetland buffer guidance in July of 2018. The revised guidance indicates that wetlands scoring of 5 habitat points may use the same standard buffer width as wetlands scoring 3-4 habitat points.</p> <p><b>Action:</b>  <b>Recommended:</b> Consider revising the existing wetland buffer provisions in FWRC 19.145.420(2) of the critical areas regulations for consistency with Ecology guidance, related to habitat scores and wetland buffers. A discussion is provided below.</p>

Continuing discussion on item #3 in Table 3-1, newly recommended wetland buffer widths are based upon review of wetland category and habitat score, reflecting best available science by Department of Ecology. In a survey of reference wetlands, Ecology determined more were similarly distributed to scoring between 3-5 points for habitat score than 3-4 points as the original low habitat break point (Ecology 2018). Therefore, the breaks and revised wetland buffer table are as follows below under Table 3-2 below.

Wetland buffer impact minimization measures can also be used in allowing buffer averaging for development. The following minimization measures under Table 3-3 allow buffer averaging to no less than 75% of the original buffer requirement (Ecology 2016). A request for buffer averaging requires a wetland report by a qualified professional detailing no net loss of wetland

functions. In addition to applying all minimization measures, if a conservation easement corridor connects WDFW priority habitats within a wetland buffer with moderate habitat scores, a buffer reduction to 110 feet is allowed (Ecology 2018). This change is shown in Table 3-2 below.

To align with the updated guidance, we recommend adopting the revised wetland buffers listed in Table 3-2 below under FWRC 19.145.420 to avoid inconsistent buffer application for future development proposals.

Table 3-2. Wetland buffer widths (in feet) under FWRC Chapter 19.145 and under Ecology’s most recent guidance (Ecology 2018).

Existing FWRC Chapter 19.145					Proposed Per 2018 Ecology Guidance					
Category	Habitat Scores				Without minimization measures			With minimization measures		
	3-4	5	6-7	8	Habitat Score			Habitat Score		
	Minimum Buffer Width				Low	Moderate	High	Low	Moderate	High
1*	190	190	190	225	250	250	300	190	190	225
1^	75	105	165	225	100	150	300	75	110	225
2	75	105	165	225	100	150	300	75	110	225
3	60	105	165	225	80	150	300	60	110	225
4	40	40	40	40	50			40		

\*Bogs and wetlands of high conservation value. ^Forested and based on function score

Table 3-3. Wetland buffer impact minimization measures (Ecology 2016).

Disturbance	Required Measures to Minimize Impacts
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>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</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 wetland</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 Intensity Development (LID) techniques where appropriate (for</li> </ul>

Disturbance	Required Measures to Minimize Impacts
	more information refer to the drainage ordinance and manual)
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>

## 4. Consistency with Comprehensive Plan & Other Development Regulations

Table 4-1 below summarizes recommended revisions to the City’s SMP based on a review of consistency with FWRC Title 19 of the zoning code, outside of Critical Areas Regulations, Section 19.145. The Federal Way Comprehensive Plan is consistent with the SMP as it adopts the goals and policies and places them in the Shoreline Element, Chapter 11 of the Comprehensive Plan.

Table 4-1. Summary of recommended SMP and FWRC revisions to improve consistency.

#	Topic	Relevant Location(s)	Review & Action
1	<p><b>Impervious Surfaces within shoreline setbacks.</b>            Maximum footprint of 150 square feet per structure;            300 square feet total per lot</p>	<p><b>Zoning Code:</b>  <i>FWRC 15.05.070(6)</i>  <i>Standards table.</i>            FWRC 15.05.030</p>	<p><b>Review:</b>            It is unclear if pavers and other types of impervious surfaces (i.e. gravel paths, paths, concrete steps etc.) should be counted towards maximum “footprint”.</p> <p><b>Action:</b>  <b>Recommended:</b>            Add to definition of structure in FWRC 19.05, to include access pathways. Include a definition for footprint under section FWRC 15.05.030 referencing impervious surfaces as pavers, gravel paths, and concrete steps. In addition, make note that grass-grid pavers still count against the maximum footprint of 300 square feet per lot under FWRC 15.05.070(6).</p>

## 5. Other Issues to Consider

In addition to the issues discussed in the previous sections of this report, several other issues in the current SMP could be addressed as part of the periodic update process to produce a more effective SMP. These other issues are described in Table 5-1 below.

Table 5-1. Other issues that could be addressed to produce a more effective SMP.

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
<b>General</b>			
1	<b>Amendments to SMP</b>	<b>Zoning Code:</b> <i>FWRC 15.05.240</i> <i>Amendments to this chapter</i>	<b>Review:</b> Incorrect WAC reference. Should be WAC 173-26-110 and 173-26-120.  <b>Action:</b> <b>Required:</b> Change reference to WAC 173-26-110 and 173-26-120.
<b>Use and Development</b>			
2	<b>Archaeological and historic resources.</b> It is unclear when the City routes to Department of Archeology and Historic Preservation (DAHP) to require an archeologic study.	<b>Zoning Code:</b> <i>FWRC 15.05.040(6)</i> <i>General development standards, Archaeological and historic resources.</i>	<b>Review:</b> In the instance where one or more items of archeological significance are located, a professional archeologist shall be obtained to provide an inadvertent discovery plan.  <b>Action:</b> <b>Recommended:</b> Provide a code requirement for the applicant to apply for an Archeological Excavation and Removal Permit if archeological items are found during excavation, referencing the process in WAC 25-48.
3	<b>Shoreline Modifications.</b> Address height of bulkheads for bluff development. Can there be a more streamlined process for bulkhead development applications?	<b>Zoning Code:</b> • <i>FWRC 15.05.050 Shoreline modifications.</i>	<b>Review:</b> Existing bulkheads on many shoreline properties are taller than the bulkhead height maximum of 1 foot above mean higher high water mark. Therefore, all resulting expansions in height will require a variance. The permitting process also requires a conditional use permit for newly constructed bulkheads in urban conservancy shoreline designations.  This scenario was observed in a past shoreline variance decision (Pallisades Retreat Center Bulkhead and Beach Access

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
			<p>Stair Shoreline Variance, Conditional Use and Substantial Development Permit). Bulkhead height needed to exceed the height maximum to account for “king” tides in the Puget Sound which have otherwise matched the height of the pre-existing bulkhead.</p> <p><b>Action:</b>  <b>Recommended:</b>            The intent is to remove the variance requirement which would otherwise be required for slight increases in bulkhead height. Changing bulkhead maximum height from 1 foot above mean higher high water mark to minimum necessary for protection of upland structures will help avoid unnecessary variances. Minimum necessary requirements can be supported by recorded tidal events and geotechnical documentation.</p>
4	Vegetation Conservation Areas	<p><b>Zoning Code:</b>  <i>FWRC 15.05.070(6) Standards table. FWRC 19.120.130 Tree and vegetation retention standards.</i></p>	<p><b>Review:</b>            Vegetation Conservation Areas do not have clear standards referenced for submittal requirements to demonstrate compliance as part of a development proposal.</p> <p><b>Action:</b>  <b>Recommended:</b>            In addition to the standards listed in FWRC 15.05.070(6), the City should consider referencing Tree revegetation standards under FWRC 19.120.130 for development proposals which may affect vegetation retention standards in the shoreline setback.            In addition, the City should consider a tree management and vegetation in shoreline setback set of standards in an effort to capture no-net-loss requirements of the SMP.</p>

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
	<p><b>Enforcement of Vegetation Conservation Areas</b></p>	<p><b>Zoning Code:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.070(6) Standards table, FWRC 19.120.130 Tree and vegetation retention standards, and FWRC 19.120.220 Revegetation.</i></li> </ul>	<p><b>Review:</b></p> <p>It is unclear if over time when folks have cleared the vegetation conservation area whether they need to rehab the area or not as the City does not monitor the shoreline. It's a question of legal nonconformances.</p> <p><b>Action:</b></p> <p><b>Recommended:</b></p> <p>As a shoreline process advisement, Vegetation Conservation Area requirements can be enforced during development proposals. Using aerials from 2011-12 (SMP Adoption year) as a benchmark for City review, development proposals shall provide a vegetation inventory, referencing tree and vegetation standards prescribed under FWRC 19.120.130 as a footnote beside Vegetation conservation area column within the Shoreline Environment Standards table (FWRC 15.05.070(6)). For sites where vegetation removal has been observed within shoreline setbacks since SMP adoption, development applications shall demonstrate rehabilitation efforts consistent with revegetation provisions FWRC 19.120.220 to restore lost vegetation to the retention percentages prescribed under FWRC 15.05.070(6).</p>
6	<p><b>Setbacks.</b></p> <p>Marine shorelines require a setback of 50 feet from OHWM whereas freshwater require a stringline setback or 50 foot setback, whichever is greater. Consider use of a stringline setback on marine shorelines.</p>	<p><b>Zoning Code:</b></p> <ul style="list-style-type: none"> <li>• <i>FWRC 15.05.080(5)</i></li> </ul>	<p><b>Review:</b></p> <p>The intent of the stringline setback is to prevent future development from encroaching into previously undisturbed areas and to affect views from neighboring properties and preserving the no-net-loss goals of the SMP. There are far less marine vacant parcels according to the SMP Cumulative Impact Analysis, so the use of stringline provisions along the marine shoreline may be more effective during re-development scenarios rather than new development.</p> <p><b>Action:</b></p>

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
			<p><b>Recommended:</b></p> <p>At the City’s discretion, the stringline requirement can be added and can be used if it is greater than the 50-foot buffer from marine shorelines to be consistent with all shorelines of the state within City limits, adjusting this provision under FWRC 15.05.080(5)(C). This provision assists with preserving view impacts associated with new construction along the shoreline.</p>
7	<p><b>Shoreline Exemption Application</b> submittal requirements are unclear.</p>	<p><b>Zoning Code:</b></p> <ul style="list-style-type: none"> <li>FWRC 15.05.070 Summary of Uses, approval criteria, and process, FWRC 15.05.130 Shoreline Exemption, FWRC 15.05.140 Application Requirements.</li> </ul>	<p><b>Review:</b></p> <p>The criteria requirements for a complete application to submit for a shoreline exemption are not readily identified for the single-family homeowner. While prescribed in WAC 173-27-040, no checklist exists to identify whether a project is exempt. Exemptions must also demonstrate consistency with FWRC 15.05.070, specifically FWRC 15.05.070(5) and FWRC 15.05.070(6) Permitted use table and standards table respectively.</p> <p><b>Action:</b></p> <p><b>Recommended:</b></p> <p>The City could provide application requirements as a qualitative list for an applicant to check off each WAC 173-27-040 exemption requirement, the applicable use listed (FWRC 15.05.070) and provide the necessary documentation for siting, design and dimensional requirements (FWRC 15.05.070(6)). This could be done through a separate checklist provided by City staff. The City could also codify scaled site plan requirements under FWRC 15.05.130(2) to document the proposal meets use, setback, vegetation conservation area, height, footprint, and specific design requirements per FWRC 15.05.070(6). (Note: City does not plan to codify submittal requirements for shoreline exemptions.)</p> <p>Furthermore, providing a clear definition</p>

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
			<p>of appurtenant structures for single family accessory structures will reduce the ambiguity when applying for an exemption. An example is as follows, <i>“Appurtenance, residential” means an improvement necessarily connected to the use and enjoyment of a single-family residence when located landward of the OHWM, the perimeter of a wetland and outside their corresponding required buffers. Appurtenances may include, but are not limited to, a garage; driveway; utilities; water craft storage (upland); swimming pools; hot tubs; shoreline stabilization; retaining walls; fences; yards; saunas; cabanas; antennas; decks; walkways; and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of a marine or freshwater OHWM. Appurtenances do not include secondary sleeping areas and accessory dwelling units, which undergo a separate review and are considered exempt from the shoreline substantial development permit. The terms “appurtenant” and “accessory” are synonymous.</i></p>
8	<p><b>Application Requirements.</b>          It is unclear as to when is a Habitat Assessment necessary.</p>	<p><b>Zoning Code:</b>  <i>FWRC 15.05.140 Application requirements.</i></p>	<p><b>Review:</b>          This requirement stems from whether a shoreline project intersects with a WDFW-defined priority habitat species (PHS) mapped location. The requirement for a Habitat Assessment is specifically identified under FWRC 15.05.140(10).</p> <p><b>Action:</b>  <b>Recommended:</b>          Development proposals which expand into critical habitats, as identified by WDFW PHS maps, should provide a Habitat Assessment Plan. Therefore, under FWRC 15.05.140, complete application requirements, subsection (10), consider adding a reference to FWRC 19.142.060</p>

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
			<p>which will subsequently reference WDFW PHS mapping, and the applicable sections of the Fish and Wildlife Habitat Conservation Areas section of the critical areas regulations (FWRC 19.145.260, 19.145.390, and 19.145.400), which refer to actions which trigger a Habitat Assessment study. The City should ultimately confirm whether a Habitat Assessment is needed, utilizing WDFW PHS mapping as a SMP code-identified source.</p>
9	<p><b>Routing Application to Ecology</b>            It is unclear when a shoreline decision is routed to Ecology.</p>	<p><b>Zoning Code:</b>  <i>FWRC 15.05.180 Final approval of shoreline permits.</i></p>	<p><b>Review:</b>            Ecology reviews shoreline conditional use and variance permit applications; these should be forwarded within five days of the City’s decision. As a best practice for benefit of the applicant, it is beneficial to route both shoreline conditional use and shoreline variance applications to Ecology for advance review so that they may review during the notice of application process.</p> <p><b>Action:</b>  <b>Recommended:</b>            Change wording to, ‘notify and forward’ from ‘notify’ for routing the decision to Ecology under FWRC 15.05.180(1). Routing shoreline conditionals use and variance applications for review can occur at notice of application.</p>

<sup>1</sup> This column attempts to capture the primary relevant location(s) of content related to the item described in the Summary of Change column; however, due to length of the SMP, all relevant locations may not be listed.

In addition to the gaps provided by City staff under this section, the issue concerning nonconforming structures in shoreline management areas was introduced. While methods exist to trigger structure conformance, these changes must be weighed in-balance between property owner rights and no-net loss of shoreline ecological functions.

One possible method includes setting an assessed value threshold for redevelopment, where over a certain threshold, the entire structure shall conform with the current SMP. While the City has chosen an approach of allowing non-conforming structures to become legally conforming (see page 7, Section 2: #19), structure redevelopment may give the City an opportunity to

require current SMP regulations be met. Options for addressing nonconforming structures within SMP jurisdiction will be discussed further as the City proceeds with its recommended code amendments.

## 6. References

---

Ecology (Washington State Department of Ecology). July 2018. July 2018 Modifications for Habitat Score Ranges. Modified from Wetland Guidance for CAO Updates: Western Washington Version. Ecology Publication No. 16-06-001. Accessed November 2018. <https://fortress.wa.gov/ecy/publications/parts/1606001part1.pdf>

Ecology (Washington State Department of Ecology). June 2016. Wetland Guidance for CAO Updates: Western Washington Version. Ecology Publication No. 16-06-001. Accessed November 2018. <https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>

# **Exhibit B**

## **Chapter 19.145 ENVIRONMENTALLY CRITICAL AREAS<sup>1</sup>**

Sections:

### Article I. Administrative

- [19.145.010](#) Purpose.
- [19.145.015](#) Administration.
- [19.145.020](#) Applicable provisions.
- [19.145.030](#) Jurisdiction.
- [19.145.040](#) Relationship to other regulations.
- [19.145.050](#) Liability.
- [19.145.060](#) Unauthorized alterations and enforcement.
- [19.145.070](#) Maps and inventories.
- [19.145.080](#) Critical area report.
- [19.145.090](#) Reasonable use of the subject property.
- [19.145.100](#) Bonds.
- [19.145.110](#) Exemptions.
- [19.145.120](#) Partial exemptions.
- [19.145.130](#) Mitigation sequencing.
- [19.145.140](#) Mitigation plan requirements.
- [19.145.150](#) Critical area tracts and designation on site plans.
- [19.145.160](#) Building setbacks.
- [19.145.170](#) Notice on title.
- [19.145.180](#) Critical area markers, signs, and fences.
- [19.145.190](#) Physical barriers.
- [19.145.200](#) Time limitation.
- [19.145.210](#) Other requirements.

### Article II. Geologically Hazardous Areas

- [19.145.220](#) Applicability and designation.
- [19.145.230](#) Landslide hazard areas protection measures.
- [Ty5619.145.240](#) Erosion and seismic hazard areas protection measures.
- [19.145.250](#) Additional report requirements – Geologically hazardous areas.

### Article III. Fish and Wildlife Habitat Conservation Areas

- [19.145.260](#) Applicability, designation, and classification.
- [19.145.270](#) Stream buffers.
- [19.145.280](#) Stream relocation.
- [19.145.290](#) Streambank stabilization.
- [19.145.300](#) Culverts.
- [19.145.310](#) Removal of streams from culverts.
- [19.145.320](#) Stream crossings.
- [19.145.330](#) Intrusion into stream buffers.
- [19.145.340](#) Requirements for clearing and grading.
- [19.145.350](#) Regulated lake buffers.
- [19.145.360](#) Development waterward of the ordinary high water mark of regulated lakes.
- [19.145.370](#) Development within regulated lake buffers.
- [19.145.380](#) Regulated lake bulkheads.
- [19.145.390](#) Fish protection measures.
- [19.145.400](#) Endangered, threatened, and sensitive species protection measures.

### Article IV. Wetlands

- [19.145.410](#) Wetland identification and delineation.
- [19.145.420](#) Wetland rating and buffers.
- [19.145.430](#) Development within wetlands.
- [19.145.440](#) Development within wetland buffers.

### Article V. Critical Aquifer Recharge Areas

- [19.145.450](#) Designation.
- [19.145.460](#) Classification of capture zones.
- [19.145.470](#) General requirements.
- [19.145.480](#) Prohibited development in six-month and one-year capture zones.
- [19.145.490](#) Development within critical aquifer recharge areas.
- [19.145.500](#) Capture zone protection measures.
- [19.145.510](#) Use of pesticides, herbicides, and fertilizers in critical aquifer recharge areas.

### Article VI. Frequently Flooded Areas

- [19.145.520](#) Frequently flooded areas.

## Article I. Administrative

### 19.145.010 Purpose.

---

The purpose of this chapter is to protect the environment, human life, and property from harm and degradation. This is to be achieved by precluding or limiting development in areas where development poses serious or special hazards; by preserving and protecting the quality of drinking water; and by preserving important ecological areas such as steep slopes, streams, lakes and wetlands. The public purposes to be achieved by this chapter include protection of water quality, groundwater recharge, stream flow maintenance, stability of slope areas, wildlife and fisheries habitat maintenance, protection of human life and property and maintenance of natural stormwater storage and filter systems.

(Ord. No. 15-797, § 17, 6-16-15; Ord. No. 07-554, § 5(Exh. A(10)), 5-15-07; Ord. No. 04-468, § 3, 11-16-04; Ord. No. 91-123, § 3(80.10), 12-17-91; Ord. No. 91-105, § 4(80.10), 8-20-91; Ord. No. 90-43, § 2(80.10), 2-27-90. Code 2001 § 22-1221.)

### 19.145.015 Administration.

---

Except as otherwise established in this chapter, if a proposed development activity requires city approval, this chapter will be implemented and enforced as part of that process.

(Ord. No. 15-797, § 18, 6-16-15.)

### 19.145.020 Applicable provisions.

---

The provisions of this division apply throughout the city and must be complied with regardless of any other conflicting provisions of this title. The provisions of this title that do not conflict with the provisions of this division apply to the subject property.

(Ord. No. 07-554, § 5(Exh. A(10)), 5-15-07; Ord. No. 04-468, § 3, 11-16-04; Ord. No. 91-123, § 3(80.15), 12-17-91; Ord. No. 91-105, § 4(80.15), 8-20-91; Ord. No. 90-43, § 2(80.15), 2-27-90. Code 2001 § 22-1222.)

### 19.145.030 Jurisdiction.

---

(1) The city shall regulate all uses, activities, and development within critical areas and the corresponding buffers and setbacks.

(2) Critical areas regulated by the city include the following areas and their corresponding buffers:

- (a) Geologically hazardous areas;
- (b) Fish and wildlife habitat conservation areas;
- (c) Wetlands;
- (d) Critical aquifer recharge areas; and
- (e) Frequently flooded areas.

(Ord. No. 15-797, § 19, 6-16-15; Ord. No. 07-554, § 5(Exh. A(10)), 5-15-07; Ord. No. 04-468, § 3, 11-16-04; Ord. No. 99-353, § 3, 11-16-99; Ord. No. 91-123, § 3(80.20), 12-17-91; Ord. No. 91-105, § 4(80.20), 8-20-91; Ord. No. 90-43, § 2(80.20), 2-27-90. Code 2001 § 22-1223.)

#### **19.145.040 Relationship to other regulations.**

---

(1) Nothing in this chapter in any way limits, or may be construed to limit, the authority of the city under any other applicable law, nor in any way decreases the responsibility of the applicant to comply with all other applicable local, state and federal laws and regulations.

(2) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(3) When any provision of this title or any existing regulation, easement, covenant, or deed restriction conflicts with regulations in this chapter, the regulations that provide greater protection to the critical areas shall apply.

(4) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

(Ord. No. 15-797, § 20, 6-16-15; Ord. No. 07-554, § 5(Exh. A(10)), 5-15-07; Ord. No. 04-468, § 3, 11-16-04; Ord. No. 91-123, § 3(80.25), 12-17-91; Ord. No. 91-105, § 4(80.25), 8-20-91; Ord. No. 90-43, § 2(80.25), 2-27-90. Code 2001 § 22-1224.)

#### **19.145.050 Liability.**

---

(1) The city is not liable for any damage resulting from development activities within critical areas. Prior to issuance of any building permit or other permit by the building official, use process, or subdivision approval, the applicant may be required to enter into an agreement with the city, in a form acceptable to the city attorney, releasing and indemnifying the city from and for any damage or liability resulting from any development activity on the subject property that is related to the physical condition of the critical area. This agreement shall be recorded with the King County recorder's office at the applicant's expense and shall run with the property.

(2) The city may also require the applicant to obtain insurance coverage for damage to city or private property and/or city liability related to any such development activity.

(Ord. No. 15-797, § 21, 6-16-15; Ord. No. 07-554, § 5(Exh. A(10)), 5-15-07; Ord. No. 04-468, § 3, 11-16-04; Ord. No. 91-123, § 3(80.55), 12-17-91; Ord. No. 91-105, § 4(80.55), 8-20-91; Ord. No. 90-43, § 2(80.55), 2-27-90. Code 2001 § 22-1225.)

#### **19.145.060 Unauthorized alterations and enforcement.**

---

(1) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or violator's expense to compensate for violation of provisions of this chapter.

(2) *Restoration plan.* All development work shall remain stopped until a restoration plan is prepared at the expense of the owner or violator and approved by the city. The plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum

requirements described in subsections (2)(a) and (b) of this section. The director may, at the owner or violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the owner or violator for revision and resubmittal.

(a) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area:

- (i) The historic structural and functional values shall be restored, including water quality and habitat functions;
- (ii) The historic soil types and configuration shall be replicated;
- (iii) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and
- (iv) Information demonstrating compliance with FWRC 19.145.140 (Mitigation plan requirements) shall be submitted to the director.

(b) For alterations to frequently flooded areas and geologically hazardous areas, the following minimum performance standards shall be met for the restoration of critical area:

- (i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;
- (ii) Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
- (iii) The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(3) Minimum performance standards identified in subsections (2)(a) and (b) of this section may be modified if the owner or violator can demonstrate that greater functional and habitat values can be obtained.

(4) *Site investigations.* Site investigations necessary to enforce this chapter are authorized pursuant to FWRC 7.03.070.

(5) *Penalties.* Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and be subject to provisions of Chapter 7.03 FWRC. (Ord. No. 15-797, § 22, 6-16-15.)

### **19.145.070 Maps and inventories.**

---

(1) Critical areas maps and inventories generally designate the location of critical areas within the city and are adopted by reference.

(2) Area-wide inventories and documents identifying critical areas may not identify all critical areas designated under this chapter. The provisions of this chapter will apply to all designated critical areas located within the city, including those critical areas not identified on a map or inventory. Whenever there is evidence of a critical area located within or in proximity to a nonexempt action, the director may require a critical area report to determine the extent to which such critical area may exist.

(3) Critical area maps and inventories are to be used for planning level purposes only and the actual presence/absence, type, extent, and boundaries of critical areas shall be identified in the field by a qualified professional according to the procedures and criteria established in this chapter. In the event of any conflict between the critical area location and designation shown on the city's map and the criteria or standards of this chapter, the criteria and standards shall prevail.

(4) The following maps and inventories, as amended, are used for identifying possible critical areas and their buffers:

(a) Federal Way critical areas map;

(b) ~~Lakehaven Utility District capture zone~~ [Washington State Department of Health Source Water](#) map;

(c) Federal Way final wetland inventory report prepared by Sheldon and Associates, Inc., July 19, 1999;

(d) Preliminary stream inventory, Federal Way gap analysis, November 29, 2001;

(e) Washington State Department of Fish and Wildlife priority habitat and species maps; and

(f) Additional state and federal maps and inventories may be used if necessary.

(Ord. No. 15-797, § 22, 6-16-15.)

### **19.145.080 Critical area report.**

---

(1) Unless waived or modified by the director in accordance with subsection (4) of this section, an applicant proposing activities where impacts or alteration of a critical area or its associated buffer and/or setback shall submit a critical areas report that adequately evaluates the proposal and probable impacts.

(2) The critical area report shall be prepared by a qualified professional, incorporate best available science, and include the following items:

- (a) The name and contact information of the applicant, a description of the proposal, and identification of the type of approval (use process, subdivision, building permit) requested;
- (b) Vicinity map;
- (c) The dates, names, and qualifications of the persons preparing the report and documentation of any reconnaissance on site;
- (d) A scaled site plan depicting critical areas, buffers, setbacks, and proposed improvements;
- (e) Photographs of the site and critical areas;
- (f) Identification and characterization of all critical areas adjacent to the proposed improvements;
- (g) A description of efforts made to apply mitigation sequencing pursuant to FWRC 19.145.130 to avoid, minimize, and mitigate impacts to critical areas;
- (h) A copy of the Joint Aquatic Resource Permit Application (JARPA) if applicable;
- (i) Additional information required for the individual critical area; and
- (j) Any additional information determined by the director to adequately review the proposed activity.

(3) Critical area reports may be reviewed by the city's third party consultant at the applicant's expense.

(4) The critical area report may be waived or modified if the director determines:

(a) There will be no alteration of the critical area or buffer; or

(b) The applicant cannot obtain permission to access off-site critical areas or buffers.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.090 Reasonable use of the subject property.**

---

(1) The provisions of this section establish a mechanism whereby the provisions of this chapter may be modified or waived on a case-by-case basis if their implementation would deprive an applicant of all reasonable use of the subject property.

(2) An applicant may apply for a modification or waiver of the provisions of this chapter using process IV; except, that applications for projects on single-family residential lots may use process III.

(3) The city may approve a modification or waiver of the requirements of this chapter on a case-by-case basis based on the following criteria:

(a) The application of the provisions of this chapter eliminates all reasonable use of the subject property;

(b) No feasible and reasonable on-site alternatives to the proposal are possible, such as changes to site layout and/or reduction of impervious improvements;

(c) It is solely the implementation of this chapter, and not other factors, that preclude all reasonable use of the subject property;

(d) The applicant has in no way created or exacerbated the condition that forms the limitation on the use of the subject property, nor in any way contributed to such limitation; and

(e) The waiver or modification will not lead to, create nor significantly increase the risk of injury or death to any person or damage to improvements on or off the subject property.

(4) If the city grants a request under this section, it shall grant the minimum necessary to provide the applicant with some reasonable use of the subject property, considering the factors described in subsections (3)(a) through (e) of this section. Any approval or waiver of requirements shall result in the minimum possible impacts to the function and values and/or risks associated with proposed improvements on affected critical areas. The city may impose limitations, mitigation under an approved mitigation plan, conditions and/or restrictions it considers appropriate to reduce or eliminate any undesirable effects or adverse impacts of granting a request under this section.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.100 Bonds.**

---

The city may require a bond under Chapter 19.25 FWRC to ensure compliance with any aspect of this chapter. (Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.110 Exemptions.**

---

The following activities and developments are exempt from the provisions of this chapter. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. An exemption from this chapter is not an endorsement to degrade a critical area; ignore risk from natural hazards; or otherwise limit the ability of the director to identify and abate such actions that may cause degradation to a critical area.

(1) Activities and development in response to emergencies that, in the opinion of the director, threaten public health, safety or welfare; or that pose an immediate risk of damage to property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter. In the event a person determines that the need to take emergency action is so urgent that there is insufficient time for review by the department, such emergency action may be taken immediately. The person undertaking such

action shall notify the department within one working day of the commencement of the emergency activity. The director will determine what, if any, mitigation shall be required to protect health, safety, welfare, and environment and to repair any resource damage.

(2) Operation, maintenance, or repair of existing public improvements, utilities, public or private roads, parks, trails, or drainage systems if the activity does not further alter or increase impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair, and no new clearing of native vegetation beyond routine pruning.

(3) Development involving or near artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities, and landscape features, except wetlands, streams, or swales created as mitigation or that provide habitat for salmonids.

(4) Normal maintenance and repair, reconstruction or remodeling, and additions to existing structures that do not increase the previously approved building footprint.

(5) Development within the footprint of existing paved surfaces that were previously approved.

(6) Recreation, education, and scientific research activities that do not require grading or placement of structures.

(7) Removal by hand of invasive and noxious vegetation. Removal by hand does not include using mechanical equipment or the use of herbicides.  
(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.120 Partial exemptions.**

---

The following activities are partial exemptions to the provisions of this chapter and require written approval from the director:

(1) Essential public facilities, public utilities and other public improvements. The director may permit the placement of an essential public facility, public utility or other public improvements in a critical area if no practical alternative with less impact on the critical area(s) exists. The specific location and extent of the intrusion into the critical area must constitute the minimum necessary encroachment to meet the requirements of the public facility or utility and not pose an unreasonable threat to the health, safety, or welfare on or off the subject property. The intrusion shall attempt to protect and mitigate impacts to the critical area function and values. The "public utility and other public improvements" shall not include improvements whose primary purpose is to benefit a private development, including without limitation interior roads or privately owned detention facilities installed within or during the construction of a residential subdivision, binding site plan, or

other commercial development. The director may require supporting documentation to demonstrate compliance with partial exemptions.

(2) Site reconnaissance necessary for preparing land use or building permit applications. Any disturbance of the critical area shall be the minimum necessary to conduct the site reconnaissance and the area shall be restored to its previous condition immediately.

(3) Normal maintenance and continuation of existing landscaping and gardens that were legally established prior to city incorporation. This partial exemption shall be documented by photographs, statements, and/or other evidence provided by the applicant.

(4) Demolition of structures. The applicant shall submit a temporary erosion and sedimentation control plan and apply for applicable demolition permit(s).

(5) Restoration and enhancement that does not alter the location, dimensions, or size of the critical area or buffer and does not reduce the existing quality or functions of the critical area or buffer. The applicant shall submit a restoration and/or enhancement plan prepared by a qualified professional or as determined by the director.

(6) Removal of invasive and noxious vegetation with mechanized equipment and/or with the use of herbicides.

(7) Vegetation maintenance such as hazard tree removal, removal of nuisance vegetation, and limited pruning for view preservation. The applicant shall submit a vegetation maintenance plan prepared by a certified arborist or registered landscape architect that includes the following:

(a) A site plan at appropriate scale denoting the extent of the proposed vegetation maintenance activity;

(b) Tree and vegetation location, type, and caliper of each tree within the area subject to the proposed vegetation maintenance activity;

(c) Identification of methods of vegetation maintenance (limited to hand tools and hand powered tools); and

(d) Proposed tree and/or vegetation replacement shown on the site plan.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.130 Mitigation sequencing.**

---

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated in the following order of preference:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- (3) Rectifying the impact to the critical area by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;  
and
- (6) Monitoring the hazard or other required mitigation and taking remedial action when necessary.  
(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.140 Mitigation plan requirements.**

---

When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as a component of the critical area report. The mitigation plan shall include the following as determined to be applicable by the director:

- (1) *Existing conditions and proposed impacts.* A description of existing critical area and/or buffer conditions, functions, and values and a description of the anticipated impacts;
- (2) *Proposed mitigation.* A description of the proposed mitigation actions and mitigation site selection criteria;
- (3) *Environmental goals and objectives.* A description of the goals and objectives of proposed mitigation. The goals and objectives shall be related to the function and values of the impacted critical area and provide an analysis of the likelihood of success of the compensation project;
- (4) *Best available science.* A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed;
- (5) *Performance standards.* A description of specific measurable criteria for evaluating whether the goals and objectives of the mitigation project have been successfully attained and whether the requirements of this chapter have been met;
- (6) *Timing.* Mitigation shall be completed concurrently with project construction, unless a phased schedule that assures completion has been approved by the director;

(7) *Detailed construction plans.* Detailed site diagrams, scaled cross-sectional drawings, topographic maps with slope percentage and final grade elevations, and any other drawing appropriate to show construction techniques or anticipated final outcome. The plans shall include specifications and descriptions of the following:

- (a) Proposed construction sequence, timing, and duration;
- (b) Grading and excavation details;
- (c) Erosion and sediment control features;
- (d) Planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- (e) Measures to protect and maintain plants until established;

(8) *Monitoring program.* The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, success, problems, and contingency actions of the compensation project. The monitoring period shall be five years. The director may require a greater or lesser monitoring period depending on the overall scope of mitigation;

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

(10) *Financial guarantees.* The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with Chapter [19.25](#) FWRC. (Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.150 Critical area tracts and designation on site plans.**

(1) Critical area tracts shall be used to delineate and protect critical areas and buffers for subdivision, short subdivision, or binding site plan proposals. The tracts shall also be recorded on all documents of title of record for the affected lots. The following critical areas are subject to this section:

- (a) All landslide hazard areas and buffers, except those subdivisions utilizing lot size averaging methods pursuant to FWRC [19.120.110](#);
- (b) All wetlands and buffers; and
- (c) All fish and wildlife habitat conservation areas and buffers.

(2) Critical area tracts shall be designated on the plat. A plat note shall include the following restriction:

Native preservation shall be preserved for the purpose of preventing harm to property and the environment, including but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat. Removal or disturbance vegetation and landscaping within the tract is prohibited, except as necessary for maintenance or replacement with approval by the City of Federal Way.

(3) The city may require that any required critical area tract be dedicated to the city; held in an undivided interest by each property owner within the development with the ownership interest passing with the ownership of the lot; or held by an incorporated homeowners' association or other legal entity that ensures the ownership, maintenance, and protection of the tract.

(4) Site plans submitted as part of development proposals use processes I through V and building permits shall include and delineate all critical areas with their associated buffers and building setbacks. Site plans shall be attached to the notice on title required by FWRC 19.145.170.  
(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.160 Building setbacks.**

---

Unless otherwise provided, structures shall be set back a distance of five feet from the edges of a critical area buffer. The following may be allowed in the building setback area:

- (1) Landscaping;
- (2) Building overhangs; and
- (3) Fences and railings six feet and less in height.  
(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.170 Notice on title.**

---

The owner of any property containing critical areas or buffers on which a development proposal is submitted or any property on which mitigation is established as a result of development, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the city with the King County recorder's office. The required contents and form of the notice shall be determined by the director. The notice shall inform the public of the presence of critical areas, buffers or mitigation sites on the property, and that limitations on actions in or affecting such critical areas or buffers may exist. The notice shall run with the land.  
(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.180 Critical area markers, signs, and fences.**

---

(1) *Markers.* Permanent survey stakes delineating the boundary between adjoining property and critical area tracts shall be set, using markers capable of being magnetically located and as established by current survey standards.

(2) *Signs.* Development proposals approved by the city shall require that the boundary between a critical area buffer and contiguous land shall be identified with permanent signs. Permanent signs shall be a city-approved type designed for high durability. Signs must be posted at an interval of one per lot or every 150 feet, whichever is less, and must be maintained by the property owner or homeowners' association in perpetuity. The wording, number and placement of the signs may be modified by the director based on specific site conditions.

(3) *Fencing.* Permanent fencing shall be required at the outer edge of the critical area buffer under the following circumstances:

(a) As part of any development proposal for:

(i) Plats;

(ii) Short plats;

(iii) Parks;

(iv) Other development proposals, including but not limited to multifamily, mixed use, and commercial development where the director determines that such fencing is necessary to protect the functions of the critical area;

(b) When buffer reductions are employed as part of a development proposal;

(c) When buffer averaging is employed as part of a development proposal; and

(d) At the director's discretion to protect the values and functions of a critical area.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.190 Physical barriers.**

---

The applicant shall install a berm, curb, or other physical barrier during construction to prevent direct runoff and erosion from any disturbed area onto or into a critical area. If necessary, the applicant shall install a berm, curb, or other physical barrier following completion of development of the subject property to prevent direct runoff

and erosion from any disturbed area onto or into a critical area.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.200 Time limitation.**

---

The city may limit development activities that involve any clearing and grading to specific months of the year and to a maximum number of continuous days or hours in order to minimize adverse impacts.  
(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.210 Other requirements.**

---

The city may require other construction techniques, conditions, and restrictions on development in order to minimize adverse impacts on critical areas.  
(Ord. No. 15-797, § 22, 6-16-15.)

**Article II. Geologically Hazardous Areas**

**19.145.220 Applicability and designation.**

---

- (1) This article regulates development activities on or within 50 feet of a geologically hazardous area.
- (2) Geologically hazardous areas include areas susceptible to erosion, land sliding, seismic, or other geological events. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas:
  - (a) Landslide hazard;
  - (b) Erosion hazard; and
  - (c) Seismic hazard.
- (3) The director may permit development activities on or within 50 feet of a geologically hazardous area if the development will not be at risk of damage due to the geologic hazard and will not lead to or create any increased slide, seismic or erosion hazard.  
(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.230 Landslide hazard areas protection measures.**

---

- (1) Landslide hazard areas shall have a standard buffer of 50 feet.
- (2) Landslide hazard area buffers shall be measured from the top and toe, and along the sides of the slope.
- (3) The width of the buffer shall reflect the sensitivity of the landslide hazard area and the types and density of uses proposed on or adjacent to the hazard. In determining the appropriate buffer width, the director shall consider the recommendations contained in the critical areas report.

(4) Buffers and setbacks may be reduced or improvements may be located in a landslide hazard area when a qualified professional demonstrates to the director's satisfaction that the improvements will not lead to or create any increased slide hazard or be at risk of damage by the landslide hazard.

(5) The buffer may be increased where the director determines a larger buffer is necessary to prevent risk of damage to proposed and existing improvements.  
(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.240 Erosion and seismic hazard areas protection measures.**

---

(1) Erosion hazard areas and seismic hazard areas do not contain standard buffers.

(2) All proposed improvements within an erosion hazard area or seismic hazard area shall follow the recommendations within the critical area report to ensure the improvements will not adversely affect geologic hazards and the improvements are at minimal risk by the geologic hazard as stated by a geotechnical engineer or engineering geologist licensed in the state, as designed under anticipated conditions.

(3) Proposed improvements within an erosion hazard area shall also demonstrate all of the following via the critical area report:

(a) The improvement will not increase surface water discharge or sedimentation to adjacent properties and/or stormwater systems beyond predevelopment conditions;

(b) The improvement will not decrease slope stability on adjacent properties; and

(c) The improvement will not adversely impact other critical areas.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.250 Additional report requirements – Geologically hazardous areas.**

---

(1) Before approving any development under this article, the city may require the applicant to submit the following information in addition to the critical areas report:

(a) A geotechnical report prepared by a geotechnical engineer or engineering geologist licensed in the state that describes how the proposed development will impact or be impacted by each of the following on the subject property and nearby properties:

(i) Slope stability, landslide hazard, and sloughing;

(ii) Seismic hazards;

(iii) Groundwater;

(iv) Seeps, springs and other surface waters; and

(v) Existing vegetation.

(b) A site plan, in two-foot contours, that identifies the type and extent of geologically hazardous areas on site and off site that are likely to impact or be impacted by the proposal.

(c) Recommended foundation design and optimal location for roadway improvements.

(d) Recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent properties.

(e) Any other information the city determines is reasonably necessary to evaluate the proposal.

(2) If the city approves any development under this section, it may, among other appropriate conditions, impose the following conditions of approval:

(a) The recommendations of the geotechnical report are followed;

(b) A geotechnical engineer or engineering geologist be present on site during all development activities. As an alternative, the city may require minimal site visits by the geotechnical engineer or engineering geologist to establish proper methods, techniques and adherence to plan drawings;

(c) Trees, shrubs and groundcover are retained except where necessary for approved development activities on the subject property;

(d) Additional vegetation is planted in disturbed areas; and

(e) Submit a letter by the geotechnical engineer or engineering geologist stating that they have reviewed the project plan drawings and in their opinion the plans and specifications meet the intent of the geotechnical report.

(Ord. No. 15-797, § 22, 6-16-15.)

### **Article III. Fish and Wildlife Habitat Conservation Areas**

#### **19.145.260 Applicability, designation, and classification.**

---

(1) This article regulates development in fish and wildlife habitat conservation areas ("FWHCA") and their associated buffers. FWHCAs in the city include subsections (2) through (6) of this section. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter and shall be managed consistent with best available science, such as the Washington Department of Fish and Wildlife's Management Recommendations for Priority Habitats and Species.

(2) *Streams*. Streams shall be classified in accordance with the Washington Department of Natural Resources water typing system (WAC 222-16-030), which is hereby adopted in its entirety by reference and summarized as follows:

- (a) Type S: streams inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW;
- (b) Type F: streams that contain fish habitat;
- (c) Type Np: perennial non-fish habitat streams; and
- (d) Type Ns: seasonal non-fish habitat streams.

(3) *Regulated lakes*. Those lakes that are less than 20 acres in size and not regulated as shorelines of the state.

(4) *Areas with state or federally designated endangered, threatened, and sensitive species have a primary association*.

(a) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the NOAA Fisheries that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

(b) State-designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State-designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

(5) *State priority habitats and areas associated with state priority species*. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife.

(6) *Habitats and species of local importance.* Habitats and species of local importance are those identified by the city of Federal Way, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element where a species has a primary association, and, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.270 Stream buffers.**

---

(1) No development may take place within a stream or within the following buffer areas except as allowed within this chapter. Buffer widths shall be measured outward on a horizontal plane from the ordinary high water mark or top of bank if the ordinary high water mark cannot be identified:

(a) Type F stream – 100 feet.

(b) Type Np stream – 50 feet.

(c) Type Ns stream – 35 feet.

(2) The buffer areas established by this section do not apply to any segment of a stream that is presently within a culvert, unless that stream will be taken out of the culvert as part of development of the subject property.

(3) *Trails.* The director may provide written approval for passive pedestrian recreation facilities designed in accordance with an approved critical area report and the following standards:

(a) Trails are composed of pervious surfaces no more than five feet in width. Raised boardwalks and wildlife viewing structures composed of nontreated pilings may also be considered;

(b) Trails are generally located within the outer 25 percent of the buffer; and

(c) Trails shall avoid the removal of mature trees.

(4) *Permanently altered buffer.* The director may provide written approval for a buffer reduction when existing conditions are such that portions of the required buffer exist in a permanently altered state (e.g., roadways, paved parking lots, and permanent structures) and do not provide any buffer function. The buffer may be reduced up to the area where the altered conditions exist.

(5) The director may require increased buffer widths that are necessary to protect habitat, health, safety, and welfare on site specific areas as follows:

(a) When the director determines that the buffer width is insufficient to prevent habitat degradation;

(b) When a channel migration zone is present. The stream buffer width shall be measured from the outer edge of the channel migration zone; or

(c) When the stream buffer area is within an erosion or landslide hazard area.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.280 Stream relocation.**

---

(1) Relocation of a stream will be permitted only as part of a public project for which an essential public facility, public utilities, or other public improvements have been granted a partial exemption from the director or if the relocation is associated with compensatory mitigation or restoration project. Any proposed relocation is subject to all of the conditions and restrictions of this section.

(2) As part of any request under this section, the applicant must submit a stream relocation plan with the critical areas report that shows the following:

- (a) The creation of a natural meander pattern;
- (b) The formation of gentle side slopes, at least two feet horizontally to one foot vertically, and the installation of erosion control features for stream side slopes;
- (c) The creation of a narrow sub-channel, where feasible, against the south or west bank;
- (d) The utilization of natural materials, wherever possible;
- (e) The use of vegetation normally associated with streams, including primarily native riparian vegetation;
- (f) The creation of spawning and nesting areas, wherever appropriate;
- (g) The re-establishment of the fish population, wherever feasible;
- (h) The restoration of water flow characteristics compatible with fish habitat areas, wherever feasible;
- (i) The filling and revegetation of the prior channel; and
- (j) A proposed phasing plan specifying time of year for all project phases.

(3) The city will allow a stream to be relocated only if water quality, habitat and stormwater retention capability of the streams will be the equivalent or improved by the relocation. Convenience to the applicant in order to facilitate general site design shall not be considered.

(4) Prior to diverting water into the new channel, a qualified professional shall inspect the new channel following its completion and issue a written report to the director stating that the channel complies with the requirements of this section.

(5) The amount of flow and velocity of the stream may not be increased or decreased as the stream enters or leaves the subject property.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.290 Streambank stabilization.**

---

(1) Streambank stabilization may not be located in or along a stream except as established in this section.

(2) A request for streambank stabilization in or along the stream will be reviewed and decided upon using process III in Chapter 19.65 FWRC.

(3) A request to install streambank stabilization in or along the stream will only be granted if the naturally occurring movement threatens existing improvements, unique natural resources, or the only feasible access to the subject property.

(4) Streambank stabilization shall be achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.300 Culverts.**

---

(1) Culverts are permitted in streams only if approved under this section. This section applies to culverts not associated with a stream crossing that is regulated under FWRC 19.145.320.

(2) The city will review and decide upon applications under this section using process IV in Chapter [19.70](#) FWRC. Responses to decisional criteria and design requirements within this section shall be included in the critical areas report.

(3) The city will allow a stream to be put in a culvert only if:

(a) Mitigation habitat is equivalent or improved from the preexisting condition; and

(b) It is necessary for some reasonable use of the subject property. Convenience to the applicant in order to facilitate general site design will not be considered. The applicant must demonstrate, by submitting alternative site plans showing the stream in an open condition, that no other reasonable site design exists.

(4) The culvert must be designed and installed consistent with the requirements of the Washington Department of Fish and Wildlife (WDFW, 2013, Water Crossing Design Guidelines, as amended). The culvert must be large enough to accommodate a 100-year storm.

(5) The applicant shall, at all times, keep all culverts on the subject property free of debris so as to allow free passage of water and, if applicable, fish. The city may require a bond under Chapter 19.25 FWRC to ensure maintenance of the culvert approved under this section.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.310 Removal of streams from culverts.**

---

If development of the subject property requires city approval, the city may require the stream to be taken out of the culvert and restored to a natural-like configuration as part of the city's approval of development of the subject property.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.320 Stream crossings.**

---

(1) Stream crossings will be reviewed and decided upon using process III in Chapter 19.65 FWRC. Responses to decisional criteria and design requirements in this section shall be included in the critical areas report.

(2) The use of existing crossings across streams or buffers is preferred to new crossings. New stream crossings may be allowed and may encroach on the required stream buffer if:

(a) Bridges, stream simulation culverts, or other appropriate methods demonstrated to provide fisheries protection shall be used for stream crossings and the applicant shall demonstrate that such methods and their implementation will pose no harm to the stream habitat or inhibit migration of fish;

(b) All crossings are constructed during the summer low flow and are timed to avoid stream disturbance during periods when use is critical to salmonids, if present;

(c) Crossings do not occur over spawning areas used by salmonids unless the city determines that no other possible crossing site exists;

(d) Bridge piers or abutments are not placed within the ordinary high water mark;

(e) Crossings do not diminish the flood-carrying capacity of the stream;

(f) Crossings are consistent with design requirements of the Washington Department of Fish and Wildlife (WDFW, 2013, Water Crossing Design Guidelines, as amended);

(g) Underground utility crossings are laterally drilled and located at a depth of four feet below the maximum depth of scour for the base flood predicted by a civil engineer licensed in the state of Washington. Temporary bore pits to perform such crossings may be permitted within the stream buffer established in this chapter;

(h) The number of crossings is minimized and consolidated to serve multiple purposes and properties whenever possible;

(i) Disturbances to the stream buffer are adequately compensated by a stream buffer enhancement plan; and

(j) No reasonable alternative exists to access the subject property.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.330 Intrusion into stream buffers.**

---

(1) A request for an intrusion into a stream buffer will be reviewed and decided upon using process III in Chapter 19.65 FWRC. Responses to decisional criteria and design requirements in this section shall be included in the critical areas report.

(2) Stream buffer intrusions may be permitted with a buffer enhancement plan. The applicant shall demonstrate that the remaining and enhanced reduced buffer will function at an equivalent or higher level than the standard buffer. The plan shall provide an assessment of the following existing functions and conditions of the buffer and the effects of the proposed modification on those functions:

- (a) Habitat;
- (b) Water quality;
- (c) Stormwater retention capabilities;
- (d) Groundwater recharge; and
- (e) Erosion protection.

(3) The city may approve a stream buffer intrusion based on the following criteria:

- (a) It will not adversely affect water quality;
- (b) It will not adversely affect the existing quality of wildlife habitat within the stream or buffer area;
- (c) It will not adversely affect drainage or stormwater retention capabilities;

- (d) It will not lead to unstable earth conditions nor create erosion hazards;
- (e) It will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole; and
- (f) It is necessary for reasonable development of the subject property.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.340 Requirements for clearing and grading.**

---

Any permitted clearing and grading activities within a stream or stream buffer area shall also comply with following requirements of this section.

- (1) Grading is allowed only during the dry season (May 1st to October 1st). The director may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
- (2) The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
- (3) The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
- (4) Erosion and sediment control that meets requirements of FWRC Title 16.
- (5) All fill material used must be nondissolving and nondecomposing. The fill material must not contain organic or inorganic material that would be detrimental to water quality or the existing habitat.
- (6) The applicant may deposit dredge spoils on the subject property only if part of an approved development on the subject property.
- (7) The applicant shall stabilize all areas left exposed after clearing and grading activities with native vegetation normally associated with the stream or buffer area.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.350 Regulated lake buffers.**

---

- (1) No development may take place within regulated lakes or within buffer areas from regulated lakes except as allowed in this chapter.
- (2) All areas landward 25 feet in every direction from the ordinary high water mark of a regulated lake are within the buffer area from a regulated lake.

(Ord. No. 15-797, § 22, 6-16-15.)

### **19.145.360 Development waterward of the ordinary high water mark of regulated lakes.**

---

This section regulates structures, improvements and activities waterward of the ordinary high water mark of regulated lakes. Responses to decisional criteria and design requirements within this section shall be included in the critical areas report.

(1) *Dredging and filling.* Dredging activities necessary to prevent eutrophication may be authorized by the director with a critical areas report that demonstrates the appropriate need and method of dredging.

(2) *Structures and improvements.* The only structures or improvements that may be located waterward of the ordinary high water mark of a regulated lake are moorage structures. The city will review and decide upon any proposal for a moorage structure waterward of the ordinary high water mark using process III in Chapter [19.65](#) FWRC. The city may grant a request under this section if the moorage structure is accessory to a dwelling unit or public park on the subject property and no significant habitat area will be damaged by its construction or use. A moorage structure, if permitted, may not extend waterward further than is reasonably necessary to function properly, but in no event more than 200 feet waterward of the ordinary high water mark. Moorage structures may not be treated with creosote, oil base or other toxic substances. The top of the moorage structure may not be more than two feet above the elevation of the ordinary high water mark.

(Ord. No. 15-797, § 22, 6-16-15.)

### **19.145.370 Development within regulated lake buffers.**

---

No development may be located or take place within the buffer area from a regulated lake except as allowed in this section. Responses to decisional criteria and design requirements within this section shall be included in the critical areas report.

(1) *Landscaping and clearing and grading.* Except as otherwise specifically permitted in this section, the buffer area from a regulated lake may not be covered with an impervious surface. Installation and maintenance of normal residential or park-like landscaping may take place within the required buffer area; provided, that no fertilizers, pesticides or other chemicals or substances are applied within the buffer area that will degrade water quality or hasten eutrophication of the lake. Development beyond installation and maintenance of normal residential or park-like landscaping may only be permitted within the buffer area if approved through use process III in Chapter 19.65 FWRC based on the following criteria:

- (a) The proposed development is necessary for the reasonable use of the subject property.
- (b) The proposed development will not increase or decrease the size of the regulated lake.
- (c) The proposed development will not change the points where any water enters or leaves the subject property nor in any way change drainage patterns to or from adjacent properties.

(d) The proposed development will not be detrimental to water quality or habitats in or around the lake.

(2) *Minor structures and improvements.* Minor improvements such as walkways, benches, platforms for storage of boats and storage lockers for paddles, oars, life preservers and similar boating equipment may be located within the buffer area if approved through use process I in Chapter 19.55 FWRC based on the following criteria:

(a) The minor improvement will not adversely affect water quality.

(b) The minor improvement will not destroy nor damage a significant habitat area.

(c) The minor improvement will not adversely affect drainage or stormwater retention capabilities.

(d) The minor improvement will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole.

(3) *Other intrusions.*

(a) Where the properties immediately abutting the subject property have dwelling units that extend into the buffer area, the applicant may construct a dwelling unit on the subject property that extends into this buffer area to the extent permitted in subsection (3)(b) of this section.

(b) Where subsection (3)(a) of this section applies, the dwelling unit on the subject property may be no closer to the ordinary high water mark of the regulated lake than the average of the distance of the two dwelling units on the properties immediately abutting the subject property. If one of the properties immediately abutting the subject property does not contain a dwelling unit or the dwelling unit on that abutting property is more than 25 feet from the ordinary high water mark of the regulated lake, the setback of the dwelling unit on that lot will be presumed to be 25 feet for the purposes of calculating the permissible location for the dwelling unit on the subject property under this section.

(4) *Revegetation.* The applicant shall stabilize all areas left exposed after land surface modification with appropriate vegetation.

(Ord. No. 15-797, § 22, 6-16-15.)

### **19.145.380 Regulated lake bulkheads.**

---

(1) *General.* A bulkhead is permitted within or adjacent to a regulated lake subject to the provisions of this section.

(2) *Required permit.* The city will review and decide upon an application under this section using process III in Chapter 19.65 FWRC. Responses to decisional criteria and design requirements within this section shall be included in the critical areas report.

(3) *Criteria.* The city may permit a bulkhead to be constructed only if:

(a) The bulkhead is needed to prevent significant erosion.

(b) The use of vegetation or soft stabilization techniques will not sufficiently stabilize the shoreline to prevent the significant erosion.

(4) *Design features.* A bulkhead may not be located between a regulated lake and a wetland. Changes in the horizontal or vertical configuration of the land must be kept to a minimum. The bulkhead must be designed to minimize the transmittal of wave energy to other properties.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.390 Fish protection measures.**

---

(1) All activities, uses, and alterations proposed to be located in water bodies used by fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, the following standards:

(a) Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife;

(b) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;

(c) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

(2) Structures that prevent the migration of fish shall not be allowed in the portion of water bodies currently or historically used by fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.400 Endangered, threatened, and sensitive species protection measures.**

---

(1) No development shall be allowed within a habitat conservation area or buffer where state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by Washington Department of Fish and Wildlife or applicable state or federal agency.

(2) Whenever activities are proposed adjacent to a habitat conservation area where state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife and other appropriate federal or state agencies.

(Ord. No. 15-797, § 22, 6-16-15.)

## **Article IV. Wetlands**

### **19.145.410 Wetland identification and delineation.**

---

(1) *Generally.* Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

(2) *Evaluation.* If the city determines that a wetland may exist on or within 225 feet of the subject property, the director may require the applicant to submit a wetland report prepared by a qualified professional. The written report and the accompanying plan sheets shall contain the following information:

- (a) Critical area report information identified in FWRC 19.145.080.
- (b) Identification of all local, state, and/or federal wetland related permit(s) required for the proposal.
- (c) Documentation of fieldwork, including field data sheets, rating system forms, and baseline hydrologic data.
- (d) Description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses, including references.
- (e) Identification and characterization of all wetlands and buffers on and within 225 feet of the subject property. For off-site areas with limited or no access, estimate conditions using best available information.
- (f) Provide the following for each wetland identified on and/or within 225 feet of the subject property. Acreage estimates, classifications, and ratings shall be based on entire wetland complexes, not only the portion present on the subject property:

- (i) Wetland rating and score for each function;
  - (ii) Required buffers;
  - (iii) Hydrogeomorphic classification;
  - (iv) Wetland acreage;
  - (v) Cowardin classification of vegetation communities;
  - (vi) Habitat elements;
  - (vii) Soil conditions based on site assessment and/or soil survey information; and
  - (viii) To the extent possible, hydrologic information such as location and condition of inlet/outlets, estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, and flood debris).
- (g) An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.420 Wetland rating and buffers.**

---

(1) *Rating.* Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met:

(a) Category I wetlands represent a unique or rare wetland type; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or provide a high level of function. The following types of wetlands are Category I:

- (i) Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources;
- (ii) Bogs;
- (iii) Wetlands with mature and old growth forests larger than one acre; and
- (iv) Wetlands that perform functions at high levels (wetlands that score 23 points or more based on functions).

(b) Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. Category II wetlands are those wetlands that score between 20 and 22 points based on functions.

(c) Category III wetlands are wetlands with a moderate level of functions that score between 16 and 19 points based on functions.

(d) Category IV wetlands are wetlands with the lowest level of functions (scoring less than 16 points based on functions) and are often heavily disturbed.

(2) Wetland buffers shall be measured perpendicular from the wetland boundary as delineated and marked in the field. Buffer widths are established as follows [in Table 1](#):

<b>Wetland Category</b>	<b>Minimum Buffer Width (wetland scores 3 – 4 habitat points)</b>	<b>Buffer Width (wetland scores 5 habitat points)</b>	<b>Buffer Width (wetland scores 6 – 7 habitat points)</b>	<b>Buffer Width (wetland scores 8 – 9 habitat points)</b>
Category I: Bogs and wetlands of high conservation value	190 feet	190 feet	190 feet	225 feet
Category I: Forested and based on function score	75 feet	105 feet	165 feet	225 feet
Category II	75 feet	105 feet	165 feet	225 feet
Category III	60 feet	105 feet	165 feet	225 feet
Category IV	40 feet	40 feet	40 feet	40 feet

**Table 1**

<b>Wetland Category</b>	<b>Buffer Width (wetland scores 3-5 habitat points)</b>	<b>Buffer Width (wetland scores 6 – 7 habitat points)</b>	<b>Buffer Width (wetland scores 8 – 9 habitat points)</b>
<a href="#">Category I: Bogs and wetlands of high conservation value</a>	<a href="#">250 feet</a>	<a href="#">250 feet</a>	<a href="#">300 feet</a>

<u>Wetland Category</u>	<u>Buffer Width (wetland scores 3-5 habitat points)</u>	<u>Buffer Width (wetland scores 6 – 7 habitat points)</u>	<u>Buffer Width (wetland scores 8 – 9 habitat points)</u>
<u>Category I: Forested and based on function score</u>	<u>100 feet</u>	<u>150 feet</u>	<u>300 feet</u>
<u>Category II</u>	<u>100 feet</u>	<u>150 feet</u>	<u>300 feet</u>
<u>Category III</u>	<u>80 feet</u>	<u>150 feet</u>	<u>300 feet</u>
<u>Category IV</u>	<u>50 feet</u>	<u>50 feet</u>	<u>50 feet</u>

(a) For wetlands that score 6 points or more for habitat function, the buffers under Table 2 can be used if the following criteria are met:

(i) A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats located on the subject property as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>. The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

(ii) If no option for providing a corridor is available, the buffers in Table 2 may be used with the required buffer impact minimization measures under Table 3 alone.

(iii) All wetland buffer impact minimization measures in Table 3, where applicable are required to be implemented.

(b) For wetlands that score 3-5 habitat points, only the measures in Table 3 are required for the use of buffers in Table 2.

If mitigation measures in Table 3 are not provided, or are unable to provide a protected corridor where available, then Table 1 buffers are required.

**Table 2**

<u>Wetland Category</u>	<u>Buffer Width (wetland scores 3-5 habitat points)</u>	<u>Buffer Width (wetland scores 6 – 7 habitat points)</u>	<u>Buffer Width (wetland scores 8 – 9 habitat points)</u>
<u>Category I: Bogs and wetlands of high conservation value</u>	<u>190 feet</u>	<u>190 feet</u>	<u>225 feet</u>
<u>Category I: Forested and based on function score</u>	<u>75 feet</u>	<u>110 feet</u>	<u>225 feet</u>

<u>Wetland Category</u>	<u>Buffer Width (wetland scores 3-5 habitat points)</u>	<u>Buffer Width (wetland scores 6 – 7 habitat points)</u>	<u>Buffer Width (wetland scores 8 – 9 habitat points)</u>
<u>Category II</u>	<u>75 feet</u>	<u>110 feet</u>	<u>225 feet</u>
<u>Category III</u>	<u>60 feet</u>	<u>110 feet</u>	<u>225 feet</u>
<u>Category IV</u>	<u>40 feet</u>	<u>40 feet</u>	<u>40 feet</u>

**Table 3**

<u>Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Lights</u>	<ul style="list-style-type: none"> <li>• <u>Direct lights away from wetland</u></li> </ul>
<u>Noise</u>	<ul style="list-style-type: none"> <li>• <u>Locate activity that generates noise away from wetland</u></li> <li>• <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u></li> <li>• <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10 ft. heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u></li> </ul>
<u>Toxic runoff</u>	<ul style="list-style-type: none"> <li>• <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u></li> <li>• <u>Establish covenants limiting use of pesticides within 150 feet of wetland</u></li> <li>• <u>Apply integrated pest management</u></li> </ul>
<u>Stormwater runoff</u>	<ul style="list-style-type: none"> <li>• <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u></li> <li>• <u>Prevent channelized flow from lawns that directly enters the buffer</u></li> <li>• <u>Use Low Intensity Development (LID) techniques where appropriate (for more information refer to the drainage ordinance and manual)</u></li> </ul>
<u>Change in water regime</u>	<ul style="list-style-type: none"> <li>• <u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u></li> </ul>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> <li>• <u>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u></li> <li>• <u>Place wetland and its buffer in a separate tract or protect with a conservation easement</u></li> </ul>
<u>Dust</u>	<ul style="list-style-type: none"> <li>• <u>Use best management practices to control dust</u></li> </ul>

(3) No wetland buffer is required for those isolated wetlands 1,000 square feet or less in total area.

(4) All compensatory mitigation sites shall have buffers consistent with the buffer requirements of this section. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

(5) Lighting shall be directed away from wetland buffers unless otherwise determined by the director.

(6) All lots approved in a recorded subdivision or binding site plan that contain wetlands and their associated buffer in a native growth protection easement or tract may be improved pursuant to easement or tract boundaries established in the plat regardless of subsequent regulatory buffer increases or natural migration.

(7) All wetland and wetland buffer boundaries shown on an approved use process decision and/or building permit shall be honored regardless of subsequent regulatory buffer increases or natural migration.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.430 Development within wetlands.**

---

(1) *Generally.* No development or improvement may be located within a wetland except as provided in this section.

(2) *Development within wetlands.* The specific location and extent of development within a wetland must constitute the minimum necessary encroachment as determined through application of mitigation sequencing set forth in FWRC 19.145.130. The city will review and decide upon development within a wetland using process IV in Chapter 19.70 FWRC, based on the following criteria:

- (a) It will not adversely affect drainage or stormwater retention capabilities;
- (b) It will not lead to unstable earth conditions nor create erosion hazards;
- (c) It will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole, including the loss of open space;
- (d) It will result in no net loss of wetland area, function or value upon completion of compensatory mitigation;
- (e) The project is in the best interest of the public health, safety or welfare;
- (f) The applicant has demonstrated sufficient scientific expertise and supervisory capability to carry out the project; and
- (g) The applicant is committed to monitoring the project and to making corrections if the project fails to meet projected goals.

(3) *Requirements for compensatory mitigation.* Compensatory mitigation shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1 (Ecology Publication No. 06-06-011b or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication No. 09-06-32).

(4) *Mitigation*. Acceptable methods to mitigate wetland impacts include creation, re-establishment, rehabilitation, and enhancement of in-kind wetland types within the same drainage basin that results in no net loss of wetland area, function, or value. If approved by the city, the applicant may locate a portion or all of the compensatory mitigation using alternative mitigation including, but not limited to, an approved and certified in-lieu fee program or mitigation bank, and/or advanced mitigation if it is determined that off-site, out-of-basin, and/or out-of-kind mitigation would provide a greater overall benefit to the watershed and not result in adverse impacts to the city's stormwater management system and/or wildlife habitat. Alternative mitigation methods are discretionary and may become an option following an operating agreement between the city and mitigation receiving area.

(a) *In-lieu fee*. Credits from an in-lieu fee program approved under state and federal rules may be used at the discretion of the city and when all of the following are met:

- (i) The city determines that it would provide environmentally appropriate compensation for the proposed impacts;
- (ii) The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument; and
- (iii) The compensatory mitigation agreement occurs in advance of the authorized impacts.

(b) *Mitigation bank*. Credits from a wetland mitigation bank that is certified under state rules may be used at the discretion of the city and when all of the following are met:

- (i) The city determines that it would provide environmentally appropriate compensation for the proposed impacts;
- (ii) The proposed use of credits and replacement ratios are consistent with the terms and conditions of the certified bank instrument; and
- (iii) The compensatory mitigation agreement occurs in advance of the authorized impacts.

(c) *Advance mitigation*. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts at the discretion of the city and if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

(5) *Wetland mitigation ratios*. The following are ratios for providing creation, re-establishment, rehabilitation, or enhancement of impacted wetlands. Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment pursuant to Table 1a, Wetland Mitigation

in Washington State – Part 1: Agency Policies and Guidance –Version 1 (Ecology Publication No. 06-06-011a, or as revised). Creation, re-establishment, rehabilitation, and enhancement definitions and intent shall be pursuant to Ecology Publication No. 06-06-011a, or as revised.

<b>Category and Type of Wetland</b>	<b>Creation or Re-establishment</b>	<b>Rehabilitation</b>	<b>Enhancement</b>
Category I: High conservation value and bogs	Not considered possible	Case-by-case	Case-by-case
Category I: Mature and old growth forests greater than one acre	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

Mitigation requirements may also be determined using the credit/debit tool described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication No. 10-06-011, or as revised) if approved by the director.

(6) *Compensatory mitigation plan.* As part of any request under this section, the applicant shall submit a mitigation plan prepared by a qualified professional that includes the following minimum standards:

- (a) Contents of wetland delineation report identified in FWRC 19.145.410(2).
- (b) Compensatory mitigation written report and plan sheets. Full guidance on the following report requirements can be found in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, or as revised):
  - (i) Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands;
  - (ii) Description of the existing wetland and buffer areas proposed to be altered. Include acreage, water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating;

(iii) Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing condition: acreage of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions;

(iv) Description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands;

(v) Description of the proposed mitigation construction activities and timing of activities;

(vi) Discussion of ongoing management practices that will protect wetlands after the subject property has been developed, including proposed monitoring and maintenance programs; and

(vii) Bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency action for a maximum of the total required number of years for monitoring.

(c) Scaled plan sheets for the compensatory mitigation that contains the following contents:

(i) Surveyed edges of the existing wetland and buffer, proposed areas of wetland impacts, location of proposed wetland compensation actions.

(ii) Existing and proposed topography measured at two-foot intervals in the proposed compensation area. Existing and proposed cross sections of the proposed compensation area and impact area measured in one-foot intervals.

(iii) Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.

(iv) Conditions expected from the proposed actions on site, including hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.

(v) Required wetland buffers for existing wetlands and proposed compensation areas.

(vi) Plant schedule for compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.

(vii) Performance standards that provide measurable benchmarks reflective of years post-installation for upland and wetland communities, monitoring schedule, and maintenance schedule.

(d) Alternative mitigation plans (in-lieu fee, mitigation banks, and advanced mitigation) shall provide items (6)(a), (b)(i) and (ii) from this section, responses to subsection (4)(a), (b), or (c) of this section, and any other information deemed necessary by the city to adequately consider the alternative mitigation proposal.

(7) *Monitoring.* Mitigation monitoring shall be required for a minimum of five years to establish that performance standards have been met. The mitigation plan shall include monitoring elements that ensure certainty of success for the proposal's natural resource values and functions. The applicant remains responsible for restoration of the natural resource values and functions if the mitigation goals are not obtained with the five-year monitoring period. Additional monitoring and corrective actions may be required by the director in order to meet goals within the approved mitigation plan.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.440 Development within wetland buffers.**

---

(1) *Generally.* Except as allowed in this section, no development or improvement may be located within a wetland buffer.

(2) *Trails.* The director may provide written approval for passive pedestrian recreation facilities designed in accordance with an approved critical area report and the following standards:

(a) Trails are composed of pervious surfaces no more than five feet in width. Raised boardwalks and wildlife viewing structures composed of non-treated pilings may also be considered;

(b) Trails are generally located parallel to the perimeter of the wetland and within the outer 25 percent of the buffer; and

(c) Trails shall avoid the removal of mature trees.

(3) *Stormwater management facilities.* The director may provide written approval for stormwater management facilities limited to stormwater dispersion outfalls and bioswales within the outer 25 percent of the buffer of

category III and IV wetlands if the location of such facilities will not degrade the functions or values of the wetland.

(4) *Permanently altered buffer.* The director may provide written approval for a buffer reduction when existing conditions are such that portions of the required buffer exist in a permanently altered state (e.g., roadways, paved parking lots, and permanent structures) and do not provide any buffer function. The buffer may be reduced up to the area where the altered conditions exist.

(5) *Buffer averaging.* The city will review and decide upon buffer averaging using process III in Chapter 19.65 FWRC, based on the following criteria that shall be added to the critical areas report:

- (a) The total area of the buffer after averaging is equal to the area required without averaging;
- (b) The buffer is increased adjacent to the higher functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower functioning or less sensitive portion;
- (c) The buffer at its narrowest point is not reduced to less than 75 percent of the required width; and
- (d) Unless authorized in writing by a consenting neighboring property owner, the averaging will remain on the subject property.

~~(6) *Buffer reduction with enhancement.* Buffers may be reduced by up to 25 percent on a case-by-case basis if the project includes a buffer enhancement plan that clearly substantiates that an enhanced buffer will improve and provide additional protection of wetland functions and values. Buffer reductions may not be used in combination with buffer averaging. The city will review and decide upon buffer reductions using process III in Chapter 19.65 FWRC, based on the following criteria:~~

- ~~(a) It will not adversely affect water quality;~~
- ~~(b) It will not adversely affect the existing quality of the wetland or buffer wildlife habitat;~~
- ~~(c) It will not adversely affect drainage or stormwater retention capabilities;~~
- ~~(d) It will not lead to unstable earth conditions nor create erosion hazards;~~
- ~~(e) It will not be materially detrimental to any other property or the city as a whole; and~~
- ~~(f) All exposed areas are stabilized with native vegetation, as appropriate.~~

~~A buffer enhancement plan, prepared by a qualified professional, shall be incorporated into the critical area report. The plan shall assess the habitat, water quality, stormwater retention, groundwater recharge, and~~

erosion protection functions of the existing buffer; assess the effects of the proposed modification on these functions; and address the six approval criteria of this section.

~~(7) Buffer increases. The director shall require increased buffer widths, on a case-by-case basis, when a larger buffer is necessary to protect functions, values or hazards based on site-specific conditions. This determination shall be supported by appropriate documentation showing that additional buffer width is reasonably related to protection of the functions and values of the wetland, and/or protection of public health, safety and welfare. Such determination shall be attached as permit conditions. The determination must include but not be limited to the following criteria:~~

- ~~(a) The wetland contains habitat for species listed as threatened, endangered, candidate, sensitive, monitored, or documented priority species or habitats by state or federal agencies, and additional buffer is necessary to maintain viable functional habitat;~~
- ~~(b) The adjacent land is susceptible to severe erosion, and erosion control measures will not effectively prevent adverse wetland impacts; or~~
- ~~(c) The adjacent land has minimal vegetative cover or slopes greater than 30 percent.~~

(Ord. No. 15-797, § 22, 6-16-15.)

## **Article V. Critical Aquifer Recharge Areas**

### **19.145.450 Designation.**

---

This article regulates development located within designated capture zones. Six-month, one-year, five-year, and 10-year capture zones are designated as critical aquifer recharge areas under the provisions of the Growth Management Act (Chapter 36.70A RCW) and are established based on proximity to and travel time of groundwater to the city's public water source wells.

(Ord. No. 15-797, § 22, 6-16-15.)

### **19.145.460 Classification of capture zones.**

---

[As required by WAC 365-196-485\(1\)\(d\) \(Critical Areas\), the city shall protect the quality and quantity of ground water used for public water supplies.](#)

The Lakehaven Utility District ("LUD") has designated four capture zones based on proximity to and travel time of groundwater to ~~the city's public water source wells~~ [Group A and Group B public water supplies.](#)

(1) Six-month capture zone represents the land area overlaying the six-month time-of-travel zone of any public water source well owned by LUD.

(2) One-year capture zone represents the land area overlaying the one-year time-of-travel zone of any public water source well owned by LUD, excluding the land area contained in the six-month capture zone.

(3) Five-year capture zone represents the land area overlaying the five-year time-of-travel zone of any public water source well owned by LUD, excluding the land area contained in the six-month and one-year capture zones.

(4) Ten-year capture zone represents the land area overlaying the 10-year time-of-travel zone of any public water source well owned by LUD, excluding the land area contained in the six-month, one-year, and five-year capture zones.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.470 General requirements.**

---

(1) Development that will not cause contaminants to enter the aquifer may be permitted in critical aquifer recharge areas.

(2) The city shall impose development conditions to prevent degradation of critical aquifer recharge areas. Development conditions shall be based on all known, available, and reasonable methods of prevention, control and treatment (“AKART”).

(3) The proposed activity must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Ecology, State Department of Health, and Public Health – Seattle and King County.

(4) The proposed activity must be designed and constructed in accordance with the King County Surface Water Design Manual (“KCSWDM”), the Federal Way Addendum to the KCSWDM, and the King County Stormwater Pollution Control Manual (“BMP Manual”), as amended.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.480 Prohibited development in six-month and one-year capture zones.**

---

(1) Development that poses a significant hazard to the city’s groundwater resources resulting from storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances shall be prohibited in six-month and one-year capture zones, except as specified in FWRC 19.30.170. These land uses and activities include, but are not limited to:

(a) On-site community sewage disposal systems as defined in Chapter 248-272 WAC;

(b) Hazardous liquid pipelines as defined in Chapter 81.88 RCW;

- (c) Solid waste landfills;
- (d) Solid waste transfer stations;
- (e) Liquid petroleum refining, reprocessing, and storage;
- (f) The storage or distribution of gasoline treated with the additive methyl tertiary butyl ether;
- (g) Hazardous waste treatment, storage, and disposal facilities (except those defined under permit by rule for industrial wastewater treatment processes per WAC 173-303-802(5)(c));
- (h) Chemical manufacturing, including but not limited to organic and inorganic chemicals, plastics and resins, pharmaceuticals, cleaning compounds, paints and lacquers, and agricultural chemicals;
- (i) Dry cleaning establishments using the solvent perchloroethylene;
- (j) Primary and secondary metal industries that manufacture, produce, smelt, or refine ferrous and nonferrous metals from molten materials;
- (k) Wood treatment facilities, including wood preserving and wood products preserving;
- (l) Mobile fleet fueling operations;
- (m) Mining (metal, sand, and gravel); and
- (n) Other land uses and activities that the city determines would pose a significant groundwater hazard to the city's groundwater supply.

(2) The uses listed in subsection (1)(a) through (n) of this section represent the state of present knowledge and most common description of said uses. As other polluting uses are discovered, or other terms of description become necessary, they will be added to the list of uses prohibited within these zones.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.490 Development within critical aquifer recharge areas.**

---

(1) Any proposed development located in critical aquifer recharge areas shall submit a hazardous materials inventory statement with a permit, land use, or business license application. Ongoing operation and maintenance activities of public wells by public water providers are exempt from these requirements.

(2) The city will review the hazardous materials inventory statement along with the permit, land use, or business license application to determine whether hazardous materials will be used, stored, transported or disposed of in connection with the proposed activity. The city shall make the following determinations and apply the appropriate capture zone protection measures:

- (a) No hazardous materials are involved;
- (b) Hazardous materials are involved; however, existing laws or regulations adequately mitigate any potential impact, and documentation is provided to demonstrate compliance; or
- (c) Hazardous materials are involved and the proposal has the potential to significantly impact critical aquifer recharge areas. The city may require a hydrogeologic assessment with a critical areas report to be prepared by a qualified professional in order to determine the potential impacts of contamination on the aquifer. The report shall include the following site and proposal-related information:

- (i) Information regarding geologic and hydrogeologic characteristics of the site, including the surface location of the capture zone in which it is located and the type of infiltration of the site.

- (ii) Groundwater depth, flow direction, and gradient.

- (iii) Location of other critical areas, including surface waters, within 200 feet of the site.

- (iv) Best management practices and integrated pest management proposed to be used, including:

- (A) Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features;

- (B) Predictive evaluation of contaminant transport based on potential releases to groundwater; and

- (C) Predictive evaluation of changes in the infiltration/recharge rate.

(3) A spill containment and response plan may be required to identify equipment and/or structures that could fail, and shall include provisions for inspection as required by the applicable state regulations.

(4) A groundwater monitoring plan may be required to monitor quality and quantity of groundwater, surface water runoff, and/or site soils. The city may require the owner of a facility to install one or more groundwater monitoring wells to accommodate the required groundwater monitoring. Criteria used to determine the need for site monitoring shall include, but not be limited to, the proximity of the facility to production or monitoring wells, the type and quantity of hazardous materials on site, and whether or not the hazardous materials are stored in underground vessels.

(5) The city may employ an outside consultant at the applicant's expense for third-party review of the critical areas report, hydrogeologic assessment, the spill containment and response plan, and the groundwater monitoring plan.

(Ord. No. 15-797, § 22, 6-16-15.)

**19.145.500 Capture zone protection measures.**

---

(1) Any new or existing use applying for a building permit, land use, or subdivision approval within six-month and one-year capture zones that involves storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances shall comply with the following standards:

(a) *Secondary containment.*

(i) The owner or operator of any facility or activity shall provide secondary containment for hazardous materials or other deleterious substances in quantities specified in the International Fire Code.

(ii) Hazardous materials stored in tanks that are subject to regulation by the Washington State Department of Ecology under Chapter 173-360 WAC (Underground Storage Tank Regulations) are exempt from the secondary containment requirements of this section; provided, that documentation is provided to demonstrate compliance with those regulations.

(b) Design and construction of new stormwater infiltration systems must address site-specific risks of releases posed by all hazardous materials on site. These risks may be mitigated by physical design means, or equivalent best management practices, in accordance with an approved hazardous materials management plan. Design and construction of said stormwater infiltration systems shall also be in accordance with the King County Surface Water Design Manual, as amended by the city of Federal Way, and shall be certified for compliance with the requirements of this section by a professional engineer or engineering geologist registered in the state of Washington.

(c) The following standards shall apply to construction activities occurring where construction vehicles will be refueled on site, and/or hazardous materials will be stored, dispensed, used, or handled on the construction site. As part of the city's project permitting process, the city may require any or all of the following items:

(i) Detailed monitoring and construction standards;

(ii) Designation of a person on site during operating hours who is responsible for supervising the use, storage, and handling of hazardous materials, and who has appropriate knowledge and training to take mitigating actions necessary in the event of a fire or spill;

(iii) Hazardous material storage, dispensing, refueling areas, and use and handling areas shall be provided with secondary containment adequate to contain the maximum release from the largest volume container of hazardous materials stored at the construction site;

(iv) Practices and procedures to ensure that hazardous materials left on site when the site is unsupervised are inaccessible to the public. Locked storage sheds, locked fencing, locked fuel tanks on construction vehicles, or other techniques may be used to preclude access;

(v) Practices and procedures to ensure that construction vehicles and stationary equipment that are found to be leaking fuel, hydraulic fluid, and/or other hazardous materials will be removed immediately, or repaired on site immediately. The vehicle or equipment may be repaired in place, provided the leakage is completely contained;

(vi) Practices and procedures to ensure that storage and dispensing of flammable and combustible liquids from tanks, containers, and tank trucks into the fuel and fluid reservoirs of construction vehicles or stationary equipment on the construction site are in accordance with the International Fire Code; and

(vii) Practices and procedures, and/or on-site materials adequate to ensure the immediate containment and cleanup of any release of hazardous substances stored at the construction site. On-site cleanup materials may suffice for smaller spills

whereas cleanup of larger spills may require a subcontract with a qualified cleanup contractor. Releases shall immediately be contained, cleaned up, and reported if required according to state requirements.

(2) Development within all capture zones, that involves storing, handling, treating, using, producing, recycling, or disposing of hazardous materials, or other deleterious substances, shall comply with the following standards:

(a) Fleet and automotive service station fueling, equipment maintenance, and vehicle washing areas shall have a containment system for collecting and treating all runoff from such areas and preventing release of fuels, oils, lubricants, and other automotive fluids into the soil, surface water, or groundwater. Appropriate emergency response equipment shall be kept on site during

the transfer, handling, treatment, use, production, recycling, or disposal of hazardous materials or other deleterious substances.

(b) Secondary containment or equivalent best management practices, as approved by the director, shall be required at loading and unloading areas that store, handle, treat, use, produce, recycle, or dispose of hazardous materials, or other deleterious substances.

(c) Fill material shall not contain concentration of contaminants that exceed cleanup standards for soil as specified in the Model Toxics Control Act. An imported fill source statement is required for all projects where more than 100 cubic yards of fill will be imported to a site. The city may require analytical results to demonstrate that fill materials do not exceed cleanup standards. The imported fill source statement shall include:

- (i) Source location of imported fill;
- (ii) Previous land uses of the source location; and
- (iii) Whether or not fill to be imported is native, undisturbed soil.

(d) All development or redevelopment shall implement best management practices (“BMPs”) for water quality and quantity, as approved by the director. Such practices include biofiltration swales and use of oil-water separators, BMPs appropriate to the particular use proposed, cluster development, and limited impervious surfaces.

(Ord. No. 15-797, § 22, 6-16-15.)

#### **19.145.510 Use of pesticides, herbicides, and fertilizers in critical aquifer recharge areas.**

Proposed developments with maintained landscaped areas greater than 10,000 square feet in area shall prepare an operations and management manual using best management practices (“BMPs”) and integrated pest management for fertilizer and pesticide/herbicide applications. The BMPs shall include recommendations on the quantity, timing, and type of fertilizers applied to lawns and gardens to protect groundwater quality.

(Ord. No. 15-797, § 22, 6-16-15.)

### **Article VI. Frequently Flooded Areas**

#### **19.145.520 Frequently flooded areas.**

(1) Frequently flooded areas include all areas of special flood hazard as mapped within the city, and other areas that could be threatened by flooding. The areas of special flood hazard are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled “The Flood Insurance Study for

Federal Way,” dated May 16, 1995, and any revisions thereto, with an accompanying flood insurance rate map, and any revisions thereto. Based on the landscape of the city, frequently flooded areas occur only along the Puget Sound shoreline and are within the jurisdiction of the shoreline master program, Chapter 15.05 FWRC, Shoreline Management.

(2) Development in frequently flooded areas shall be subject to the provisions in FWRC ~~Title 15~~. [Chapter 19.142 Flood Damage Prevention](#).

(Ord. No. 15-797, § 22, 6-16-15.)

---

1

**Cross references:** Environmental policy of the city, FWRC Title 14; water quality requirements and surface water, stormwater and other waterways, Chapter 16.45 FWRC; public use easements, FWRC 19.05.330; rezoning of this district to be conducted under the quasi-judicial rezoning procedure, FWRC 19.35.050 et seq.; land modifications, Chapter 19.120 FWRC.

# **Exhibit C**

**Title 15**

**SHORELINE MANAGEMENT**

**Chapters:**

- 15.05 Shoreline Management**
- ~~**15.10 Critical Areas**~~

## Chapter 15.05

### SHORELINE MANAGEMENT

#### Sections:

#### Article I. Generally

- 15.05.010 Purpose and authority.
- 15.05.020 Jurisdiction.
- 15.05.030 Additional definitions.

#### Article II. Shoreline Regulation

- 15.05.040 General development standards.
- 15.05.050 Shoreline modifications.
- 15.05.060 Environmental designations.
- 15.05.070 Summary of uses, approval criteria, and process.
- 15.05.080 Shoreline residential environment.
- 15.05.090 Urban conservancy environment.
- 15.05.100 Natural environment.

#### Article III. Administrative Procedures

- 15.05.110 Shoreline management permit and enforcement procedures, adoption by reference.
- 15.05.120 Permit processing and public notice.
- 15.05.130 Shoreline exemption.
- 15.05.140 Application requirements.
- 15.05.150 Shoreline substantial development permit.
- 15.05.160 Shoreline variance.
- 15.05.170 Conditional uses.
- 15.05.180 Final approval of shoreline permits.
- 15.05.190 Combined hearing authority.
- 15.05.200 Appeals.
- 15.05.210 Permit revisions.
- 15.05.220 Replacement, alteration, or reconstruction of nonconforming use or development.
- 15.05.230 Shoreline environment redesignation.
- 15.05.240 Amendments to this chapter.

#### Article I. Generally

##### **15.05.010 Purpose and authority.**

The city adopts these regulations under the authority of the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended, and the Shoreline Management Guidelines, Chapter 173-26 WAC. The director of the department of community development has the authority to adopt rules and regulations to carry out the provisions of this title and has the authority to administer and enforce this title and any such rules and regulations. It is unlawful to violate or fail to comply with any provision of this title or any such rule or regulation.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

##### **15.05.020 Jurisdiction.**

(1) The provisions of this article shall apply to all development proposed within the areas defined as “shorelines” in RCW 90.58.030(2)(d), and “shorelines of state-wide significance” in RCW 90.58.030(2)(e), and “shorelands” in RCW 90.58.030(2)(f); see FWRC 15.05.030, Additional definitions. The approximate location of these shorelines shall be designated on maps maintained by the department of community development; however, the property owner or applicant shall be responsible for determining the specific location of the shoreline jurisdiction on the subject

property when a permit is filed. The city shall be responsible for verifying shoreline jurisdiction. Washington Department of Ecology may be contacted to delineate the ordinary high water mark (OHWM) on a subject property as per its authority and responsibilities outlined in RCW 90.58.030(2)(f). Shorelines of the state are as follows:

(a) Within city limits: North Lake, Steel Lake, and the northwest portion of Lake Killarney.

(b) Within the city's Potential Annexation Area: Star Lake, Lake Dolloff, Lake Geneva, Five Mile Lake, and the remaining portion of Lake Killarney.

(c) Puget Sound

(2) No development shall be undertaken by any person on the shorelines of the state without obtaining a shoreline permit from the department of community development, or an authorized statement of exemption per WAC 173-27-040 and for developments exempted by RCW 90.58.140(9) and (10).

(3) All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and the city of Federal Way shoreline master program whether or not a permit is required. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.030 Additional definitions.**

Unless otherwise defined in this chapter, the definitions contained in this section, FWRC Title 15, Chapter 90.58 RCW, Chapters 173-26 and 173-27 WAC, Chapter 19.05 FWRC or FWRC 1.05.020 shall apply in that order.

“*Act*” means the Washington State Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

“*Amendment*” means a revision, update, addition, deletion, and/or reenactment to the Federal Way shoreline master program.

“*Appurtenance, residential*” means an improvement necessarily connected to the use and enjoyment of a single-family residence when located landward of the OHWM, the perimeter of a wetland, and outside their corresponding required buffers. Appurtenances may include, but are not limited to: a garage; driveway; utilities; water craft storage (upland); swimming pools; hot tubs; shoreline stabilization; retaining walls; fences; yards; saunas; cabanas; antennas; decks; walkways; and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of a marine or freshwater OHWM. Appurtenances do not include secondary sleeping areas and accessory dwelling units, which undergo a separate review and are considered exempt from the shoreline substantial development permit. The terms “appurtenant” and “accessory” are synonymous.

“*Aquaculture*” means the farming or culturing of food fish, shellfish or other aquatic plants and animals in streams, inlets, and other natural or artificial water bodies. Activities include the hatching, cultivating, planting, feeding, raising and harvesting of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings, and growing areas. Cultivation methods include but are not limited to fish pens, fish traps, or other similar apparatuses.

“*Average grade level*” means, for a structure built on land, the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over the water, “*average grade level*” shall be the elevation of the ordinary high water mark (OHWM). Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

“*Backshore*” means a berm, together with associated marshes or meadows, on marine shores landward of the ordinary high water mark which is normally above high tide level and has been gradually built up by accretion.

“*Bank*” means a steep rise or slope at the edge of a body of water or water course.

“*Beach nourishment*” means the artificial replenishing of a beach by delivery of materials dredged or excavated elsewhere.

“*Berm*” means a ledge or shoulder consisting of mounded earth or rock.

“*Bluff*” means a steep slope which abuts and rises from Puget Sound. Bluffs contain slopes predominantly in excess of 40 percent, although portions may be less than 40 percent. The toe of the bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the slope is either the line of vegetation separating the unvegetated slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than 15 percent.

“*Boating facility*” means a facility or structure providing access in and out of the water for vessels, such as a launching ramp, rails, or lift station open to the public. For purposes of the shoreline master program, boating facilities do not include docks, piers, moorage piles, mooring buoys, or floats associated with single-family residences or other joint-use structures not accessible to the public.

“*Breakwater*” means an off-shore structure, either floating or not, which may or may not be connected to the shore, such structure being designed to absorb and/or reflect back into the water body the energy of the waves.

“*Bulkhead*” means a wall, seawall, embankment, or other structure erected at or near the OHWM and roughly parallel to the shoreline that retains or prevents sliding or erosion of land or protects land and/or structures from wave or current action.

“*Commercial use*” means the uses allowed in the commercial zones and the nonindustrial uses permitted in the commercial enterprise zone.

“*Conditional use*” means a use, development, or substantial development which is classified as a shoreline conditional use or is not classified within the shoreline master program.

“*Critical salmonid habitats*” means habitats that are used by Pacific salmonid species that migrate between fresh water and salt water during their life cycle. These habitats include:

- (1) Gravel bottomed streams used for spawning;
- (2) Streams, lakes, and wetlands used for rearing, feeding, and cover and refuge from predators and high waters;
- (3) Streams and salt water bodies used as migration corridors;
- (4) Shallow areas of salt water bodies used for rearing, feeding, as well as cover and refuge from predators and currents, including, but not limited to, forage fish habitats such as sandy beaches and eelgrass beds; and
- (5) Pocket estuaries including stream mouths and deltas where fresh water mixes with salt water and provides rearing habitat for juvenile salmonids. All salt water shorelines in Federal Way are critical salmonid habitats.

“*Date of filing*” see [FWRC 15.05.180\(2\) \(Final approval of shoreline permits\) for full definition.](#)

“*Department*” means the department of community development services, unless the context indicates otherwise.

“*Development*” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act (Chapter 90.58 RCW) at any state of water level.

[Development does not include dismantling or removing structures landward of the OHWM if there is no other associated development or re-development.](#)

“*Dock*” means all platform structures floating upon water bodies and connected to land to provide moorage or landing for waterborne pleasure craft.

“*Dredging*” means the removal of earth from the bottom of a stream, marine water body, lake or other water body for the purposes of deepening and/or maintaining a navigational channel.

“*Drift cell*” (also referred to as “*drift sector*,” or “*littoral cell*”) means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift.

*“Ecological functions”* means the work performed or role played by the physical, chemical, and biological processes in the shoreline that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.

*“Ecosystem-wide processes”* means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

*“Exemptions”* means those development activities which are not required to obtain a substantial development permit, but which must obtain an authorized statement of exemption and which must otherwise comply with applicable provisions of the Shoreline Management Act and the city’s local shoreline master program.

*“Fair market value”* means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services, and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead, and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment, or materials.

*“Feasible”* means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- (1) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (2) The action provides a reasonable likelihood of achieving its intended purpose; and
- (3) The action does not physically preclude achieving the project’s primary intended legal use. In determining an action’s feasibility, the reviewing agency may weigh the action’s relative public costs and public benefits considered in the short- and long-term time frames.

*“Fill”* means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

*“Float”* means a structure or device which is not a breakwater and which is moored, anchored, or otherwise secured in the waters of Federal Way, and which is not connected to the shoreline.

*“Floating home” means a single-family dwelling unit constructed on a float that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed. Floating homes are prohibited in city shoreline jurisdictions.*

*“Floating over-water residence” means any floating structure other than a floating home, as defined by this chapter that is designed or used primarily as a residence on the water and has detachable utilities. For temporary or transient floating over-water residences, exceptions include short-term boat moorage or dropping anchor within the city’s jurisdiction, provided that such occupancy does not create a public health hazard or nuisance and this occupancy shall not exceed two weeks within any six-month period.*

*“Floodway” means the area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps.*

*“Floodplain”* means the 100-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the Act.

*“Geologically hazardous areas”* means areas which because of their susceptibility to erosion, landslides, seismic, or other geological events are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns. Geologically hazardous areas include the following areas:

(1) Erosion hazard areas are those areas having a severe to very severe erosion hazard due to natural agents such as wind, rain, splash, frost action, or stream flow.

(2) Landslide hazard areas are those areas potentially subject to episodic downslope movement of a mass of soil or rock including, but not limited to, the following areas:

(a) Any area with a combination of:

(i) Slopes greater than 15 percent;

(ii) Permeable sediment, predominately sand and gravel, overlying relatively impermeable sediment or bedrock, typically silt and clay; and

(iii) Springs or groundwater seepage.

(b) Any area which has shown movement during the Holocene epoch, from 10,000 years ago to the present, or which is underlain by mass wastage debris of that epoch.

(c) Any area potentially unstable as a result of rapid stream incision, stream bank erosion, or undercutting by wave action.

(d) Any area located in a ravine or on an active alluvial fan, presently or potentially subject to inundation by debris flows or flooding.

(e) Those areas identified by the United States Department of Agriculture Soil Conservation Service as having a severe limitation for building site development.

(f) Those areas mapped as Class U (unstable), UOS (unstable old slides), and URS (unstable recent slides) by the Department of Ecology.

(g) Slopes having gradients greater than 80 percent subject to rockfall during seismic shaking.

(3) Seismic hazard areas are those areas subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement or soil liquefaction, or surface faulting. These conditions occur in areas underlain by cohesionless soils of low density usually in association with a shallow groundwater table.

(4) Steep slope hazard areas are those areas with a slope of 40 percent or greater and with a vertical relief of 10 or more feet, a vertical rise of 10 feet or more for every 25 feet of horizontal distance. A slope is delineated by establishing its toe and top, and measured by averaging the inclination over at least 10 feet of vertical relief.

*“Geotechnical report” or “geotechnical analysis”* means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology; the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes; conclusions and recommendations regarding the effect of the proposed development on geologic conditions; the adequacy of the site to be developed; the impacts of the proposed development; alternative approaches to the proposed development; and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

*“Grading”* means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

*“Groin”* means a barrier type structure extending from the backshore into the water across the beach. The purpose of a groin is to interrupt sediment movement along the shore.

*“Height”* means that distance measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included; provided further, that temporary construction equipment is excluded in this calculation.

“*Jetty*” means an artificial barrier used to change the natural littoral drift to protect inlet entrances from clogging by excess sediment.

“*Landslide*” means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows.

“*Littoral drift*” means the natural movement of sediment along marine or lake shorelines by wave action in response to prevailing winds.

“*Major stream*” means any stream, and the tributaries to any stream, which contains or supports, or under normal circumstances contains or supports, resident or migratory fish. If there exists a natural permanent blockage on the stream course which precludes the upstream movement of anadromous salmonid fish, then that portion of the stream which is downstream of the natural permanent blockage shall be regulated as a major stream.

“*Marine*” means pertaining to tidally influenced waters, including Puget Sound and the bays, estuaries, and inlets associated therewith.

“*Minor stream*” means any stream that does not meet the definition of a major stream.

“*Mooring buoys*” means a floating object anchored to the bottom of a water body that provides tie-up capabilities for vessels.

“*Native shoreline vegetation*” means trees, shrubs, and other plant species that are indigenous to a specific area or region. Plants native to western Washington are referenced in *Flora of the Pacific Northwest* (Hitchcock and Cronquist). Ornamental landscaping and invasive species shall not be considered native shoreline vegetation.

“*Natural or existing topography*” means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavating or filling.

“*Nearshore*” means either nearshore environment or nearshore habitat and refers generally to an area along the Puget Sound shoreline that extends from the top of bluffs or upland area immediately adjacent to the beach to the point where sunlight penetrates marine waters to a depth where aquatic plant life is supported.

“*Nonconforming development*” means an existing structure that was lawfully constructed when it was built but is no longer fully consistent with present regulations, such as setbacks, buffers, or yards; area; bulk; height or density standards, due to subsequent changes to the master program.

“*Nonconforming lot*” means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth, or area due to subsequent changes to the master program.

“*Nonconforming structure*” See nonconforming development.

“*Nonconforming use or development*” means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or the applicable shoreline master program, or amendments thereto, but which does not conform to present use regulations or standards of the shoreline master program.

“*Non-water-oriented uses*” means those uses that are not water-dependent, water-related, or water-enjoyment, and which have little or no relationship to the shoreline and are not considered priority uses under the Shoreline Management Act. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, multifamily residential development, department stores, and gas stations.

“*Ordinary high water mark (OHWM)*” means the mark on all lakes, streams, and tidal waters that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department of Ecology. In any area

where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“*Permit*” means any substantial development, variance, conditional use permit, or revision authorized under Chapter 90.58 RCW.

“*Pier*” means any fixed platform structure upon water bodies that is supported by piles and connected to land.

“*Primary structure*” means the structure associated with the principal use of the property. If more than one structure is associated with the principal use of the property, the one with the highest value shall be considered the primary structure.

“*Public access*” means the general public’s ability to view, reach, touch, and enjoy the water’s edge and use the state’s public waters, the water/land interface, and associated public shoreline area. Public access also includes actual, physical, unobstructed access from land to the ordinary high water mark or adjacent shorelands.

“*Public utility*” means the facilities of a private business organization such as a public service corporation, or a governmental agency performing some public service and subject to special governmental regulations, the services which are paid for directly by the recipients thereof. Such services shall include but are not limited to: water supply, electric power, telephone, cablevision, natural gas, and transportation for persons and freight. The term also includes broadcast towers, antennas, and related facilities operated on a commercial basis.

“*Recreational development*” means commercial and public facilities designed and used to provide recreational opportunities to the public.

“*Replacement structure*” means the construction of a new structure to perform the same function as an existing structure that can no longer adequately serve its purpose. Additions to or increases in size of existing structures shall not be considered replacement structures.

“*Residential development*” means developments and occupancy in which persons sleep and prepare food, other than developments used for transient occupancy. Residential development includes the creation of new residential lots through subdivision of land. [Temporary or transient floating homes located in a vessel’s cabin, in addition to converted residential appurtenances, otherwise known as tiny homes, are prohibited in shoreline jurisdiction. \(See the residential appurtenance definition above.\) Exceptions include short-term boat moorage or dropping anchor within the city’s jurisdiction, provided, that such occupancy does not create a public health hazard or nuisance and this occupancy shall not exceed two weeks within any six-month period.](#)

“*Restoration*” means, in the context of “ecological restoration,” the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

“*Riprap*” means a layer, facing, or protective mound of angular stones randomly placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

“*Shall*” means a mandate; the action must be done.

“*Shorelands*,” also referred to as “*shoreland areas*,” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways, and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

“*Shoreline administrator*” means the director of the department of community development or his or her designee and is responsible for administering the Federal Way shoreline master program.

“*Shoreline environment designation*” means the categories of shorelines of the state established by the city of Federal Way shoreline management master program to differentiate between areas whose features imply differing objectives regarding their use and future development.

“*Shoreline jurisdiction*” means all “shorelines of the state” and “shorelands” as defined in the Federal Way shoreline master program and RCW 90.58.030.

“*Shoreline master program (SMP)*” means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

“*Shoreline modifications*” means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing and grading.

“*Shoreline stabilization*” means structural and nonstructural actions taken to address erosion impacts to property, dwellings, businesses, or structures caused by natural shoreline processes such as currents, floods, tides, wind, or wave action. Expansion or enlargement of existing stabilization measures is considered new stabilization.

“*Shoreline variance*” means to grant relief from the specific bulk, dimensional, or performance standards in the local shoreline master program, but not a means to vary a “use” of a shoreline.

“*Shorelines*” means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (1) shorelines of statewide significance; (2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and (3) shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“*Shorelines of statewide significance*” means those areas of Puget Sound in the city of Federal Way lying seaward from the line of extreme low tide.

“*Shorelines of the state*” means the total of all “shorelines” and “shorelines of statewide significance” within the city of Federal Way.

“*Should*” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this title, against taking the action.

“*SMA*” means the Shoreline Management Act.

“*SMP*” means the shoreline master program.

“*Soft-shore bank stabilization*” means the use of bioengineering or biotechnical bank stabilization measures where vegetation, logs, rock, and beach nourishment are used to address erosion control and slope stability.

“*Stringline setback*” means a straight line drawn between the points on the primary structures having the greatest projection waterward on the two adjacent properties. If one of the adjacent properties is unimproved, the line shall be drawn to the point of the standard shoreline setback at the side property line of the unimproved lot.

“*Structure*” See [the definition in FWRC 19.05](#).

“*Substantial accessory structure*” means nonprimary structures equal to or larger than 400 square feet and in good repair.

“*Vegetation conservation area*” means an upland area adjacent to the ordinary high water mark or top of bluff where existing native vegetation and native trees shall be retained per the requirements of the Federal Way shoreline master program. The width of the vegetation conservation area is consistent with setback requirements for specific uses and shoreline environment designations.

“*Vessel*” means ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

“*Water quality*” means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this title, the term “*water quantity*” refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of this title, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

“*Water-dependent use*” means a use or portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls.

“*Water-enjoyment use*” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that foster shoreline enjoyment.

“*Water-oriented use*” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

“*Water-related*” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic vitality is dependent upon a waterfront location because:

- (1) Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (2) The use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive and/or more convenient. Examples include professional services serving primarily water-dependent activities and storage of water-transported foods.

“*Wetland*” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.  
(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

## **Article II. Shoreline Regulation**

### **15.05.040 General development standards.**

The following general development standards apply to all uses and activities in all shoreline environments:

(1) *Impact mitigation.*

(a) To the extent the Washington State Environmental Policy Act of 1971 (SEPA), Chapter 43.21C RCW, is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA (FWRC 14.05.010 and Chapter 197-11 WAC). Mitigation for adverse impacts to shoreline functions will be triggered during the SEPA review, shoreline land use permit process, or exemption approval process.

(b) Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority.

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

- (ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- (iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (iv) Reducing or eliminating the impact over time by preservation and maintenance operations;
- (v) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- (vi) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(c) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

(d) Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.

(e) Mitigation actions shall not have a significant adverse impact on other shoreline functions fostered by the policy of the Shoreline Management Act.

(f) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and are located in the immediate vicinity of the impact. However, alternative compensatory mitigation may be authorized if said mitigation occurs within the watershed and addresses limiting factors or identified critical needs for shoreline conservation based on watershed or comprehensive management plans. Authorization of compensatory mitigation measures may require appropriate safeguards, terms, or conditions as necessary to ensure no net loss of ecological functions.

(2) *Vegetation conservation.* Existing shoreline vegetation shall be preserved per development standards established for each shoreline environment designation [as listed in the development standards table in FWRC 15.05.070\(6\), and the setback standards provided in FWRC 15.05.075.](#)

(3) *Water quality/stormwater.* All activities and development within the shoreline jurisdiction shall incorporate water pollution control measures and best management practices (BMPs) for stormwater management. Such measures shall address both temporary impacts to water quality from construction activities as well as the need for permanent stormwater management facilities in compliance with the requirements and restrictions of all applicable city and state regulations.

(4) *Critical areas.* Activities and development in critical areas found within shoreline jurisdiction are required to comply with the development standards outlined in Chapter ~~15.10~~ [19.145](#) FWRC, [Environmentally Critical Areas \(Ordinance 15-797, June 16, 2015\)](#), and Chapter ~~15.15~~ [19.142](#) FWRC, [Flood Damage Prevention \(Ordinance 18-856, November 14, 2018\)](#), for each area described below.

[\(a\) Activities and alterations to critical areas, shorelines of the state, and their buffers shall be subject to the provisions of Chapter 15.05 FWRC \(master program\). The master program defers to the director on determining whether an activity affecting critical areas in shoreline jurisdictions is exempt from shoreline permit requirements, per WAC 173-27-040.](#)

~~(a)~~ **(b)** Any conflict between the standards outlined in Chapter ~~15.10~~ [19.145](#) or ~~15.15~~ [19.142](#) FWRC and the SMP shall be resolved in favor of the standard that is most protective of the shoreline ecological functions. In addition to the development standards outlined in Chapters ~~15.10~~ [19.145](#) and ~~15.15~~ [19.142](#) FWRC, the following minimum requirements shall apply with regard to activities and development in critical areas found within shoreline jurisdiction [with the following clarifications and modifications:](#)

(i) Minimum setbacks from the OHWM established by this chapter shall be maintained in all cases unless a shoreline variance is granted. [Shoreline setbacks are defined in FWRC 15.05.070\(6\) of this chapter.](#)

(ii) When FWRC ~~15.10.270~~ [19.145.440](#) (~~Structures, improvements, and clearing and grading within regulated wetland buffers~~ [Development within wetland buffers](#)), subsections (5) ~~Wetland Buffer Reduction averaging~~, and (6) ~~Modification~~ [Buffer reduction with enhancement](#), are utilized for a project proposal, a shoreline variance permit is required if the overall proposed buffer width reduction exceeds 25 percent.

(iii) The provisions of Federal Way Environmentally Critical Area regulations do not extend shoreline jurisdictions beyond the limits specified in this SMP. For regulations addressing critical area buffers that are outside shoreline jurisdiction, see FWRC 19.145.

(iv) Any provision of the Environmentally Critical Areas Ordinance not consistent with the Shoreline Management Act, Chapter 90.58 RCW, or supporting Washington Administrative Code chapters, the more restrictive regulations shall apply.

**(b c)** *Geologically hazardous areas.* Regulated geologically hazardous areas located in the shoreline jurisdiction include seismic hazard areas, landslide hazard areas, steep slopes, and erosion hazard areas. If a geologically hazardous area is located within the shoreline jurisdiction, all activities on the site shall be in compliance with the requirements and restrictions of Articles I, ~~II, III, and IV~~ of Chapter ~~15.10~~ 19.145 FWRC. In addition to the development standards outlined in Chapter ~~15.10~~ 19.145 FWRC, the following shall apply with regard to activities and development in geologically hazardous areas found within shoreline jurisdiction:

(i) Creation of new lots shall be prohibited where development and use on new lots would cause a foreseeable risk from geological conditions during the life of the development.

(ii) New development that causes risk from geological conditions should not be allowed.

(iii) New development on sites with steep slopes and bluffs is required to be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the project as demonstrated by a geotechnical analysis.

**(e d)** *Streams and wetlands.* If a stream or wetland is located within the shoreline jurisdiction, all activities within the shoreline jurisdiction shall be in compliance with the requirements and restrictions of Articles I, ~~II, III, and IV~~, and VI of Chapter ~~15.10~~ 19.145 FWRC.

**(d e)** *Flood damage reduction.* If an area of special flood hazard is located on or adjacent to a development site within shoreline jurisdiction, all activities on the site shall be in compliance with the requirements and restrictions of Chapter ~~15.15~~ 19.142 FWRC. All activities allowed within the special flood hazard area by the requirements and restrictions of Chapter ~~15.15~~ 19.142 FWRC shall not result in a net loss of ecological function.

**(f e)** *Critical aquifer recharge areas and wellhead protection areas.* If a critical aquifer recharge area or wellhead protection area is located within the shoreline jurisdiction, all activities within the shoreline jurisdiction shall be in compliance with the requirements and restrictions of Articles I, ~~II, III, and VII~~ of Chapter ~~15.10~~ 19.145 FWRC.

**(5)** *Critical salmonid habitats.* All salt water shorelines in Federal Way are critical salmonid habitats. Activities and development in critical salmonid habitats found within the shoreline jurisdiction are required to comply with the following development standards, in addition to those contained in other sections of this chapter:

(a) Structures which prevent the migration of salmon and steelhead are prohibited. Fish bypass facilities shall allow the upstream migration of adult fish. Fish bypass facilities shall prevent fry and juveniles migrating downstream from being trapped or harmed.

(b) Shoreline modification structures may intrude into critical salmonid habitats only where the proponent demonstrates all of the following conditions are met:

(i) An alternative alignment or location is not feasible;

(ii) The project is designed to minimize its impacts on the environment;

(iii) If the project will create unavoidable adverse impacts, the impacts are mitigated by creating in-kind replacement habitat near the project. Where in-kind replacement mitigation is not feasible, rehabilitating degraded habitat may be required as a substitute;

(iv) The project satisfies all provisions of FWRC 15.05.050, Shoreline modifications.

(c) Open pile bridges are the preferred water crossing structures over critical salmonid habitats. If a bridge is not feasible, one of the following water crossing structures may be approved if the impacts can be mitigated: temporary culverts, bottomless arch culverts, elliptical culverts, or other fish-passable round culverts. These structures are listed in priority order, with the first having the highest preference and the last the lowest

preference. In order for a lower priority structure to be permitted, the applicant must show the higher priority structures are not feasible. The project shall be designed to minimize its impacts on the environment.

(d) Bridges and in-water utility corridors may be located in critical salmonid habitats provided the proponent shows that all of the following conditions are met:

- (i) An alternative alignment is not feasible;
- (ii) The project is located and designed to minimize its impacts on the environment;
- (iii) Any alternative impacts are mitigated; and
- (iv) Any landfill is located landward of the ordinary high water mark.

Open piling and piers required to construct the bridge may be placed waterward of the ordinary high water mark, if no alternative method is feasible.

When installing in-water utilities, the installer may be required to place native material on the bed and banks of the water body or wetland to reestablish the preconstruction elevation and contour of the bed. The project shall be designed to avoid and minimize impacts on the environment.

(e) Dredging in critical salmonid habitats shall not be allowed unless the proponent demonstrates all of the following conditions are met:

- (i) The dredging is for a water-dependent or water-related use;
- (ii) An alternative alignment or location is not feasible;
- (iii) The project is designed to minimize its impacts on the environment;
- (iv) The project is in the public interest; and
- (v) If the project will create significant unavoidable adverse impacts, then the impacts are mitigated by creating in-kind replacement habitat near the project. Where in-kind replacement mitigation is not feasible, rehabilitating degraded habitat may be required as a substitute.

(f) In-water dredge spoil disposal sites shall not be located in critical salmonid habitats.

(g) Filling, dumping, discharging (including discharging of stormwater), commercial or industrial wastewater, dredging, channelization, draining, flooding, disturbing the water level, duration of inundation or water tables, and other activities which negatively impact habitat are prohibited in wetlands, ponds, and side channels which are associated with critical salmonid habitats.

(h) Within critical salmonid habitats, permanent channel changes and realignments are prohibited.

(i) The removal of aquatic and riparian vegetation within or adjacent to critical salmonid habitats shall be minimized. Trees which shade side channels, streams, estuaries, ponds, and wetlands associated with critical salmonid habitats shall be maintained consistent with the provisions of this chapter. Areas of disturbed earth shall be revegetated.

(j) Unless removal is needed to prevent hazards to life and property or to enhance critical salmonid habitats, large woody debris below the ordinary high water mark shall be left in the water to provide salmon and steelhead habitat.

*(6) Archaeological and historic resources.*

(a) If any archaeological artifacts are uncovered during excavations in the shoreline, work must stop immediately and the city of Federal Way, the state Department of Archaeology and Historic Preservation, the Muckleshoot Indian Tribe, and the Puyallup Tribe of Indians must be notified.

(b) Proposals for ground disturbing activities in areas known to contain an historic, cultural, or archaeological resource(s) or highly suspected to contain archaeological artifacts and data shall require a site inspection and evaluation by a professional archaeologist or historic preservation professional, as applicable, prior to issuance of a permit or initiation of disturbance. The evaluation shall include recommendations for monitoring of potentially

disruptive activities, data recovery, and/or mitigation measures if warranted. Cost for inspection and evaluation of the site will be the responsibility of the applicant.

(c) If archeological items are found during excavation work, the applicant shall stop work and apply for an Archeological Excavation and Removal Permit, per WAC 25-48.

(7) *Public access.*

(a) In review of all shoreline permits or developments of more than four residential lots or dwelling units per WAC 173-26-240 (j)(v)(A), or subdivision of land into more than four lots, or commercial development, or non-water-dependent uses (including water-enjoyment and water-related uses) consideration of public access and joint use of community recreational facilities shall be required when:

- (i) The development would generate demand for one or more forms of public shoreline access; and/or
- (ii) The development would eliminate, restrict, or otherwise impair existing legal access opportunities or rights. In these instances, public access shall be provided by the development in a form, as detailed by subsection (7)(d) of this section, consistent in character with the existing public access that was eliminated, restricted, or otherwise impaired.

(b) Requirements or conditions for public access shall be consistent with all relevant constitutional and other legal limitations on regulation of private property.

(c) Public access requirements shall not be required when the applicant demonstrates that one or more of the following provisions apply:

- (i) Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
- (ii) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
- (iii) The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long-term cost of the proposed development;
- (iv) Significant environmental impacts would result from the public access that cannot be mitigated; and/or
- (v) Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

(d) Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, or other area serving as a means of view and/or physical approach to shorelines of the state and may include interpretive centers and displays.

(e) Public access locations shall be clearly marked with visible signage.

(f) Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished (RCW 36.87.130).

(g) Shoreline development by any public entities, including the city of Federal Way, state agencies, and public utility districts, shall include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment or other provisions in this section.

(8) *Restoration projects.*

(a) Restoration projects within the shoreline environment consistent with WAC 173-27-080(2)(o) shall be allowed without a shoreline substantial development permit; be reviewed through the shoreline exemption review process; and be designed consistent with the development standards outlined in Chapter ~~15.10~~ 19.145 FWRC – Critical Areas and the provisions of this chapter.

(b) Approval of restoration projects shall be based on a review of a plan containing, at a minimum, an analysis of existing conditions, identification of the area to be restored, proposed corrective actions, including installation of native species, performance standards, monitoring schedule, planting plans, erosion and sedimentation control plans, and grading plans as necessary.

(c) The shoreline administrator shall require an applicant to retain the services of a qualified professional in preparing the restoration plan. Intrusions into regulated steep slopes and associated setbacks will be allowed for purposes of approved restoration projects.

(d) The city may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas as long as such relief is consistent with criteria and procedures in WAC 173-27-215.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.050 Shoreline modifications.**

(1) *Shoreline stabilization.* Shoreline stabilization may be permitted in the shoreline residential environment. Hard armoring (e.g., bulkheads and riprap) is subject to a shoreline conditional use permit in the urban conservancy environment. Soft-shore stabilization may be permitted in the urban conservancy environment. Shoreline stabilization proposals shall address the following:

(a) Shoreline stabilization, including bulkheads, shall not be considered an outright permitted use on the city's shorelines. In order for shoreline stabilization to be permitted the city must find that:

(i) The applicant shall provide a geotechnical report, prepared by a qualified professional, that estimates the rate of erosion and evaluates alternative solutions; and the urgency associated with the specific situation; and

(ii) Soft-shore stabilization alternatives such as slope drainage systems, vegetative growth stabilization, gravel berms, and beach nourishment shall be prioritized over structural options such as bulkheads and riprap. The "softest" effective alternative shall be utilized; and

(iii) In the case of proposed hard armoring stabilization solutions (e.g., bulkheads and riprap), erosion from waves or currents presents a clear and imminent (damage within three years) threat to a legally established primary structure, one or more substantial accessory structures, water-dependent development, ecological restoration/toxic clean-up remediation projects, or public improvements; and

(iv) In the case of bulkheads and riprap, the proposed shoreline stabilization is located landward of the ordinary high water mark; and

(v) The proposed shoreline stabilization is the minimum size necessary to protect existing improvements; and

(vi) The applicant shall demonstrate that impacts to sediment transport are minimized to the greatest extent possible; and

(vii) Shoreline stabilization shall not have an adverse impact on the property of others and shall be designed so as not to create the need for shoreline stabilization elsewhere; and

(viii) Shoreline stabilization shall not significantly interfere with normal surface and/or subsurface drainage into the water body and shall be constructed using an approved filter cloth or other suitable means to allow passage of surface and groundwater without internal erosion of fine material; and

(ix) Shoreline stabilization shall not be used to create new lands; and

(x) Use of chemically treated wood is prohibited for any shoreline stabilization proposal within fresh water lake shorelines; and

(xi) Use of creosote treated wood is prohibited within marine shorelines; and

(xii) Revegetation with native plants is required as part of the shoreline stabilization project; and

(xiii) Shoreline stabilization shall not otherwise result in a net loss of ecological functions.

(b) When a bulkhead or other structural alternative is permitted subject to subsection (1)(a) of this section, the following standards shall apply:

(i) The maximum height of the proposed bulkhead or other stabilization structure is no more than ~~one foot above the elevation of mean higher high water on tidal waters, or one foot in height above the elevation of ordinary high water mark on lakes, measured from grade on the waterward side of the bulkhead or structure;~~ and the minimum necessary to protect the upland structure(s) or development proposal(s) along tidal waters. Minimum necessary bulkhead height requirements must be supported by both recorded tidal events and

geotechnical documentation by a qualified professional. The city may employ an outside consultant at the applicant's expense for third-party review of the report.

(ii) When a bulkhead or other stabilization structure has deteriorated such that the ordinary high water mark has been established by the presence and action of water landward of the existing bulkhead, then the replacement bulkhead or structure must be located at or landward of the ordinary high water mark.

(iii) Repair of an existing bulkhead or other stabilization structure is permitted provided that the repaired bulkhead or structure is not relocated further waterward or increased in height.

(iv) If an existing bulkhead or other stabilization structure is destroyed it may be replaced as it existed prior to destruction, provided application for required permits is made within one year of destruction. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

(v) Soft-shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.

(vi) The project satisfies the provisions of FWRC 15.05.040(5)(b).

(c) Creation of new lots shall be prohibited where development and use on new lots would require structural shoreline stabilization over the life of the development. The following standards shall apply to new development.

(i) New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed.

(ii) New development, including newly created parcels, is required to be designed and located to prevent the need for future shoreline stabilization as documented by a geotechnical analysis.

(iii) New development on steep slopes and bluffs is required to be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the project as demonstrated by a geotechnical analysis.

(2) *Piers, docks, floats, and mooring buoys.* Piers, docks, floats, and mooring buoys may be permitted in the shoreline residential and urban conservancy environments subject to the following conditions:

(a) Public piers and docks shall only be allowed for water-dependent uses and public access subject to a shoreline conditional use permit and the following criteria:

(i) Public's need for such a structure is clearly demonstrated;

(ii) The project, including any required mitigation, will result in no net loss of ecological functions associated with critical salt water habitat;

(iii) The project is consistent with the state's interest in resource protection and species recovery; and

(iv) Moorage at public docks is limited to recreational purposes and shall not extend more than one 24-hour period. Public docks may not be used for commercial or residential moorage.

(b) Residential piers, docks, floats, or mooring buoys may be permitted accessory to a single-family residence, or as common use facilities associated with a subdivision, short subdivision, or multifamily development, in accordance with this chapter and the following limitations:

(i) Residential mooring buoys are preferred over docks and piers on the Puget Sound shoreline. Applicants for a residential dock or pier on the Puget Sound shoreline must demonstrate why a mooring buoy will not provide adequate moorage for recreational watercraft.

(ii) No more than one pier, dock, float, or mooring buoy for each existing residential lot is permitted.

(iii) New residential developments of two or more units, subdivisions, or short subdivisions shall be limited to one shared dock or pier.

(A) The total number of moorage spaces shall be limited to one moorage space for every dwelling unit up to four. For each two dwelling units after four, one additional moorage space is permitted.

(c) All docks and piers shall be subject to the mitigation requirements per FWRC 15.05.040(1) and will result in no net loss of ecological functions associated with critical salt water habitat. A preliminary eelgrass survey as

specified under the Army Corps of Engineers, Regional General Permit, RGP 6 shall be required for new docks or piers on the Puget Sound shoreline.

(d) No dwelling unit may be constructed on a pier or dock.

(e) No covered pier, covered dock, covered moorage, covered float, or other covered structure is permitted waterward of the ordinary high water mark.

(f) Piers, docks, mooring buoys, or floats shall meet the side and rear yard setbacks of the underlying zoning classification, except in the case of shared facilities, in which case no side yard setback is required.

(g) All piers, docks, mooring buoys, floats, or other such structures shall not, during the course of the normal fluctuations of the elevation of the water body, protrude more than five feet above the surface of the water.

(h) Floats cannot rest on the tidal substrate at any time. Stoppers on the piling anchoring the floats or stub piling must be installed such that the bottom of the flotation device is at least one foot above the level of the substrate.

(i) Any pier, dock, mooring buoy, or float must be constructed out of materials that will not adversely affect water quality. Use of chemically treated wood is prohibited in fresh water lake shorelines. Use of creosote treated wood is prohibited in marine shorelines.

(j) Any new pier or dock must be located generally perpendicular to the shoreline, and oriented to minimize shading impacts to the maximum degree feasible.

(k) Live-aboard vessels are prohibited. Moorage not associated with residential development may not extend greater than one 24-hour period without a lease from the Washington Department of Natural Resources.

(l) *Pier and dock dimensions and grating, marine shorelines.*

(i) Where authorized by this chapter, piers and docks located on marine shorelines shall be the minimum size required to provide for moorage. Single-family piers or docks shall not exceed 75 feet in length measured perpendicularly from the OHWM. Shared moorage may extend up to 100 feet in length if demonstrated to be necessary to provide adequate moorage. Docks that cannot meet this standard may request a review under the variance provisions of this program.

(ii) The maximum width of each pier or dock shall be six feet.

(iii) The maximum width of walkway ramps shall be four feet and shall be fully grated.

(iv) The decking of all piers and docks shall be designed to allow a minimum of 45 percent light passage. This may be accomplished through grated decks, space between decking, light prisms, or other means.

(v) Pier skirting is not permitted.

(m) *Pier and dock dimensions and grating, lake shorelines.*

(i) The maximum waterward intrusion of any portion of any pier or dock shall not extend further waterward than the average length of the piers or docks on lots abutting the location of the new dock as measured perpendicularly from the ordinary high water mark unless an alternative dimension is required in order to prevent impacts to critical areas. In no circumstances shall the maximum waterward intrusion of any portion of any pier or dock extend more than 36 feet from the ordinary high water mark, or the point where the water depth is eight feet below the elevation of the ordinary high water mark, whichever is reached first.

(ii) The maximum width of each pier or dock shall be six feet, or up to eight feet wide on joint-use docks where additional mitigation is provided.

(iii) The decking of all piers and docks shall be designed to allow a minimum of 45 percent light passage. This may be accomplished through grated decks, space between decking, light prisms, or other means.

(n) Floats are limited under the following conditions:

(i) One float per single-family residence and no more than one common use float for each new multifamily development, short subdivision, or subdivision is permitted.

(ii) No portion of a float shall be placed more than 45 feet waterward of the ordinary high water mark on lake shorelines.

- (iii) Retrieval lines shall not float at or near the surface of the water.
- (iv) No float shall have more than 100 square feet of surface area.
- (v) Floats shall use grating on at least 30 percent of their surface to allow light penetration.

(3) *Boating facilities – launching ramps, rails, and lift stations.*

(a) Launching ramps, rails, and lift stations may be permitted in parks and public access areas in the shoreline residential and urban conservancy environments subject to a shoreline conditional use permit, where authorized by FWRC 15.05.070 through 15.05.090. The following conditions shall apply:

- (i) No portion of a launching ramp, rail, or lift station shall be placed more than 60 feet waterward of the ordinary high water mark.
- (ii) All portions of a launching ramp, rail, or lift station shall be placed at a depth not to exceed eight feet below the ordinary high water mark.
- (iii) Launching rails or ramps shall be anchored to the ground through the use of tie-type construction. Asphalt, concrete, or other ramps, which solidly cover the bottom or bed of a water body, are prohibited.
- (iv) No more than one launching ramp, rail, or lift station per shoreline development shall be permitted.
- (v) Launching ramps, rails, or lift stations shall not be permitted for shoreline developments that have an existing pier, dock, float, mooring buoy, or other functional moorage. Piers, docks, floats, or other forms of moorage shall not be permitted for shoreline developments that have existing launching ramps, rails, or lift stations.
- (vi) Launching ramps, rails, and lift stations shall be sited and designed to ensure protection of navigation routes and access; shall be aesthetically compatible with or enhance existing shoreline features; and shall be clearly marked and separated from nearby swimming areas.
- (vii) On-shore facilities associated with public boating facilities shall provide adequate off-street parking and loading area, and have adequate facilities for handling of sewage and litter.

(4) *Breakwaters, jetties and groins.*

- (a) Floating breakwaters are permitted in the shoreline residential and urban conservancy environments, with a conditional use permit, when the following conditions apply:
  - (i) Floating breakwaters may be allowed if necessary to protect a public boat launch, when no other alternative with less impact to the environment is feasible.
  - (ii) When permitted, development of floating breakwaters shall include mitigation measures consistent with this chapter as to ensure no net loss of ecological function.
  - (iii) Nonfloating breakwaters are prohibited.
- (b) Jetties are prohibited within all shoreline environments in the city.
- (c) Groins are prohibited in all shoreline environments in the city.

(5) *Dredging and filling.*

- (a) *Dredging.*
  - (i) Dredging activities in shoreline residential or urban conservancy environments require a conditional use permit. Dredging is not permitted in the natural environment.
  - (ii) Dredging activities are allowed only where necessary to protect public safety or for shoreline restoration activities.
  - (iii) Dredging is allowed only where an alternative alignment that would not require dredging is not feasible.
  - (iv) Where allowed, dredging operations must be scheduled so as to not damage shoreline ecological functions or processes.

(v) Where allowed, dredging operations shall avoid and minimize significant ecological impacts to the greatest extent feasible, and shall be mitigated as required by this chapter.

(vi) Siting and design of new development shall avoid the need for new and maintenance dredging.

(vii) Dredging for fill materials shall be prohibited, except for projects associated with MTCA or CERCLA remediation actions, habitat restoration, or any other significant restoration effort approved by a shoreline conditional use permit. In such instances, placement of dredged fill material must be waterward of the OHWM.

(b) *Filling.*

(i) Fill activities waterward of the ordinary high water mark shall only be allowed with a shoreline conditional use permit in association with allowed (permitted) water-dependent use developments; public access; clean-up and disposal of contaminated sediments as part of an interagency environmental clean-up plan; disposal of dredged material in accordance with the DNR Dredged Material Management Program; or expansion or alteration of transportation facilities of statewide significance currently located on the shoreline (if alternatives to fill are shown not feasible). Fill waterward of the ordinary high water mark associated with non-water-dependent uses shall be prohibited.

(ii) Fill waterward of the ordinary high water mark needed to support the following water-dependent uses may be allowed through a conditional use permit in the shoreline residential and urban conservancy environments:

(A) Public access;

(B) Expansion, alteration, or repair of transportation facilities currently located within the shoreline;

(C) Mitigation actions;

(D) Environmental, ecological, or watershed restoration projects;

(E) Beach nourishment or enhancement projects; and

(F) Soft-shore bank stabilization projects.

(iii) Permitted fill activities must comply with the following standards:

(A) Demonstration that alternatives to fill are not feasible;

(B) Demonstration that fill shall be deposited so as to minimize disruption of normal surface and groundwater passage;

(C) Demonstration that fill materials shall be of such quality that they will not adversely affect water quality;

(D) Demonstration that fill shall allow surface water penetration into the groundwater supply, where such conditions existed prior to the fill; and

(E) Demonstration that fill timing will minimize damage to water quality and aquatic life.

(iv) Fill, except for beach nourishment, shall be prohibited in areas of high shoreline erosion potential.

(v) Fill located waterward of the ordinary high water mark that results in a net loss of shoreline function is prohibited.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.060 Environmental designations.**

(1) *Purpose and establishment of designations.*

(a) The purpose of the designations is to differentiate between areas whose geographical, hydrological, topographical, or other features imply differing objectives regarding their use and future development.

Each environment designation represents a particular emphasis in the type of uses and the extent of development that should occur within it. The environmental designation system is designed to encourage uses in each environment that enhance or are compatible with the character of the environment, while at the same time

requiring reasonable standards and restrictions on development so that the character of the environment is not adversely impacted.

(b) *Names of environment designations.* In order to accomplish the purpose of this title, environmental designations have been established as follows:

- (i) Shoreline residential.
- (ii) Urban conservancy.
- (iii) Natural.

(c) *Limits of environment designations.* Each environment designation shall consist of:

- (i) The entire water body within city jurisdiction, including all water below the surface, the land below the water body, the space above the water body, and the shorelands associated with the water body. On the city's marine shoreline, environment designations shall extend waterward from the ordinary high water mark to the line of extreme low tide.
- (ii) The shoreline areas within 200 feet of the ordinary high water mark and additional upland areas where associated wetlands and floodplains extend beyond 200 feet from the ordinary high water mark.

(d) *Establishment of designations.*

- (i) The written descriptions of the boundaries of the shoreline environment designations as adopted by ordinance shall constitute the official legal descriptions of the boundaries of those environment designations.
- (ii) The official maps prepared by the city pursuant to Chapter 173-26 WAC shall constitute the official descriptions of the limits of all shorelands in the city of Federal Way as defined by RCW 90.58.030 and FWRC 15.05.030.
- (iii) The department may, from time to time, as new or improved information becomes available, modify the official maps described in subsection (1)(d)(ii) of this section consistent with state guidelines to more accurately represent, clarify, or interpret the true limits of the shorelines defined herein.

(e) *Location of boundaries.*

- (i) Boundaries indicated as following streets, highways, roads, and bridges shall be deemed to follow the centerline of such facilities unless otherwise specified.
- (ii) Boundaries indicated as following railroad lines and transmission lines shall be deemed to follow the centerline of such rights-of-way or easements unless otherwise specified.
- (iii) Where different environmental designations have been given to a tributary and the main stream at the point of confluence, the environmental designation given to the main stream shall extend for a distance of 200 feet up the tributary.
- (iv) In case of uncertainty as to a wetland or environment boundary, the director of community development services shall determine its exact location pursuant to the criteria of WAC 173-22-040 and RCW 90.58.030, and the provisions of this title.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.070 Summary of uses, approval criteria, and process.**

(1) Uses not addressed in the program shall be conditional uses.

(2) Specific regulations for each use/development are provided in subsequent sections for shoreline residential (FWRC 15.05.080), urban conservancy (FWRC 15.05.090), and natural (FWRC 15.05.100) environments. All permitted and conditional uses may not appear in the permitted use table (subsection (5) of this section). In cases where uses are not listed, or conflicts exist with other section(s) of the program, the text provisions shall control.

(3) *Prohibited uses.*

(a) The following uses are prohibited in all shoreline environments:

- (i) Commercial agriculture.

- (ii) Aquaculture.
- (iii) Forest practices.
- (iv) Industrial uses.
- (v) Mining.

(b) Additional uses are prohibited in specific shoreline environments, as detailed by the permitted use table and FWRC 15.05.080, 15.05.090, and 15.05.100.

(4) *Prohibited shoreline modifications.*

(a) The following shoreline modifications are prohibited in all shoreline environments:

- (i) Jetties.
- (ii) Groins.

(b) Additional shoreline modifications are prohibited in specific shoreline environments, as detailed by the permitted use table and FWRC 15.05.080, 15.05.090, and 15.05.100.

(5) *Permitted use table.* The following table summarizes the permitted, conditional, and prohibited uses for each shoreline environment:

Shoreline Modification	Shoreline Environment		
	Shoreline Residential	Urban Conservancy	Natural
Shoreline Stabilization <sup>1</sup>	P	P/C <sup>2</sup>	X
Piers and Docks	P/C <sup>3</sup>	P/C <sup>3</sup>	X
Mooring Buoys and Floats	P	P	X
Boating Facilities	C	C <sup>4</sup>	X
Floating Breakwaters <sup>4</sup>	C	X	X
Dredging and Filling	P/C <sup>5</sup>	P/C <sup>5</sup>	X
Shoreline Use	Shoreline Residential	Urban Conservancy	Natural
Office and Commercial Development	X	<del>C</del> X	X
Recreational Development	P	P	P/X <sup>9</sup>
Residential Development	P	P	C <sup>8</sup>
Accessory Structures	P	P	C
Utilities <sup>6</sup>	P	P	C
Transportation/Parking Facilities <sup>7</sup>	P	P	C

P = Allowed as exempt from permitting or permitted with substantial development permit

C = May be allowed with shoreline conditional use permit

X = Prohibited

- 
1. Includes bulkheads, bio-engineered erosion control projects, and other shoreline stabilization activities.
  2. Soft-shore stabilization is permitted and hard armoring (e.g., bulkheads, riprap) is subject to a shoreline conditional use permit.
  3. Public piers and docks are allowed with a CUP.
  4. Floating breakwaters are allowed with a shoreline conditional use permit, and only when used to protect a public boat launch. Nonfloating breakwaters are prohibited.
  5. Dredging and all fill waterward of the OHWM requires a conditional use permit.
  6. Solid waste transfer stations and cellular towers are prohibited in all shoreline environments.
  7. Parking as a primary use is prohibited in all shoreline environments, but allowed if serving an allowed shoreline use.

- 8. Multifamily residential development is prohibited within the natural environment.
- 9. Non-water-oriented recreational development is prohibited in the natural environment.

(6) *Standards table.* The following table summarizes siting, design, and dimensional standards of this program, as specified within FWRC 15.05.040, 15.05.050, 15.05.080, 15.05.090, and 15.05.100 for general shoreline regulations, shoreline modifications, and shoreline uses:

	Shoreline Environment		
	Shoreline Residential	Urban Conservancy	Natural
<b>General standards for all development and uses</b> (further detailed by specific use regulations below)			
Height <sup>1</sup>	35 feet	35 feet	35 feet
Shoreline setbacks <sup>2</sup>	50 feet from OHWM or as required for protection of critical areas, whichever is greater	50 feet from OHWM or as required for protection of critical areas, whichever is greater	100 feet from OHWM or as required for protection of critical areas, whichever is greater
Vegetation conservation area <sup>3</sup>	Conserve 70% (minimum) of native vegetation and 70% (minimum) of native trees in setback	Conserve 85% (minimum) of native vegetation and 80% (minimum) of native trees in setback	Conserve 100% of native vegetation and 100% of native trees in setback
<b>Office and commercial development</b>			
Shoreline setbacks <sup>2</sup>	N/A (Prohibited)	75 feet from OHWM or as required for protection of critical areas, whichever is greater <sup>2</sup>	N/A (Prohibited)
Associated overwater structures		Prohibited, unless providing public access	
<b>Residential development</b>			
Shoreline setbacks <sup>2</sup>	Single-family: 50 feet from OHWM or as required for protection of critical areas, whichever is greater <sup>2</sup> Multifamily: 75 feet from OHWM or as required for protection of critical areas, whichever is greater <sup>2</sup>	Single-family: 50 feet from OHWM or as required for protection of critical areas, whichever is greater <sup>2</sup> (no multifamily zoning in this environment)	Single-family only, subject to CUP: 100 feet from OHWM or as required for protection of critical areas, whichever is greater
Density	Subject to underlying zoning (typically 7,000 to 10,000 sq. ft. minimum lot size; limited areas of multifamily residential zoning, 1,800 sq. ft. minimum lot size)	Subject to underlying zoning (7,000 to 10,000 sq. ft. minimum lot size)	Subject to underlying zoning (5-acre minimum lot size)
<b>Residential accessory structures within the required shoreline setback</b>			
Height	8 feet	8 feet	8 feet
Maximum footprint	150 sf per structure <sup>4</sup> ; 300 sf total per lot	150 sf per structure <sup>4</sup> ; 300 sf total per lot	150 sf per structure <sup>4</sup> ; 300 sf total per lot
<b>Shoreline Modifications</b>			
Shoreline stabilization <sup>5,3</sup> (FWRC 15.05.0750(1))			
Design requirements	<ul style="list-style-type: none"> <li>• Nonstructural alternatives prioritized</li> <li>• Creation of new land prohibited</li> <li>• Located at or landward of ordinary high water</li> <li>• Marine: creosote prohibited</li> <li>• Fresh water: chemically treated wood prohibited</li> <li>• Revegetation with native plants required</li> <li>• Maximum height is 1 foot above elevation of <del>mean higher high water (tidal)</del> ordinary high water (lakes) <u>and minimum necessary to</u></li> </ul>		N/A (Prohibited)

	<a href="#">protect the upland structure(s) or development proposal(s) along tidal waters. Minimum necessary bulkhead height requirements must be supported by both recorded tidal events and geotechnical documentation by a qualified professional.</a>	
Piers, docks, mooring buoys, and floats (FWRC 15.05.0750(2))		
Side yard setbacks	Consistent w/underlying zoning, except none when joint use	N/A (Prohibited)
Maximum height	Above water surface level: 5 feet	
Siting and design requirements	<ul style="list-style-type: none"> <li>• Dwelling units prohibited on piers and docks</li> <li>• Covered overwater structures prohibited</li> <li>• Piers and docks oriented perpendicular to the shoreline</li> <li>• Piers and docks: must be constructed from materials that allow light penetration through the structure</li> <li>• Marine: creosote prohibited</li> <li>• Fresh water: chemically treated wood prohibited</li> <li>• Public dock moorage limited to recreational uses</li> <li>• 1 dock per existing residential lot</li> <li>• 1 shared dock per new multifamily development, subdivision, or short subdivision (additional limitations on number of moorage spaces)</li> <li>• 1 float per existing residence/1 shared dock per new multifamily development/subdivision/short subdivision</li> </ul>	
Pier and dock dimensions, lake shorelines	<ul style="list-style-type: none"> <li>• Residential piers and docks: maximum waterward intrusion: based on <a href="#">average</a> length of nearest existing docks on either side of the proposed dock; never to exceed 36 feet from OHWM or length at 8 feet of depth below OHWM, whichever is reached first</li> <li>• 6-foot maximum dock width (8-foot for joint use)</li> </ul>	
Pier and dock dimensions, marine shorelines	<ul style="list-style-type: none"> <li>• Maximum waterward intrusion from OHWM 75 – 100 feet depending on use</li> <li>• 6-foot maximum dock width</li> <li>• Minimum 45% transparency of decking</li> </ul>	N/A (Prohibited)
Float dimensions and standards	<ul style="list-style-type: none"> <li>• Maximum waterward intrusion: 45 feet from OHWM on lakes</li> <li>• Maximum surface area: 100 sq. ft.</li> <li>• Use of grating on at least 30% of surface area</li> </ul>	
Boating facilities: launching ramps, rails, and lift stations (FWRC 15.05.0750(3))		
Dimensions and standards	<ul style="list-style-type: none"> <li>• No more than 60 feet waterward from OHWM</li> <li>• No more than 8 feet below OHWM</li> <li>• No more than 1 ramp per shoreline development</li> <li>• Shall not be allowed for developments with existing pier, dock, float, or other functional moorage. Piers, docks, floats, or other forms of moorage shall not be permitted for developments with existing launch facilities.</li> </ul>	N/A (Prohibited)

1. Maximum heights may be increased pursuant to the shoreline environment-specific regulations of this program (FWRC 15.05.080(3), 15.05.090(3), and 15.05.100(3)).

2. Please refer to the shoreline environment-specific regulations of this program for additional detail related to residential setbacks, including exceptions or modifications to the standard minimum setback (FWRC 15.05.080(3), 15.05.090(3), and 15.05.100(3)).

3. [See Shoreline Vegetation Conservation Standards under FWRC 15.05.075](#)

4. [Grass-grid pavers count towards 50% of the maximum footprint requirement.](#)

5. See additional review and approval criteria and design requirements in FWRC 15.05.050(1).

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

### **15.05.075 Shoreline vegetation conservation standards.**

(1) Purpose. Vegetation conservation provide a means to conserve, protect, and restore shoreline vegetation in order to provide for ecological and habitat functions, as well as human health and safety per WAC 173-26-201(3)(c)(i). Vegetation conservation areas shall consist of a non-clearing area established to protect the integrity, functions, and values of the affected critical area or shoreline, but may also be modified and reduced to accommodate allowed uses when consistent with the Act and this program.

(2) Tree removal and retention

- (a) Trees determined by the city to be hazardous or diseased may be removed.
- (b) Tree Retention Standards in the Shoreline Setback – The director or designee may require site plan alterations to retain trees in the shoreline setback according to FWRC 19.120.130(2), Tree Unit Credits Table. Such alterations include minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustment to the location of walkways, easements, or utilities. The applicant shall be encouraged to retain viable trees in other areas on site.
- (c) The Director may require:
  - (A) A site plan showing the approximate location of existing trees, their size (DBH) and their species, along with the location of existing structures, driveways, access ways, and easements, and the proposed improvements, or.
  - (B) An arborist report stating the size (DBH), species, and assessment of health of all existing trees located within the shoreline setback. This requirement may be waived by the director or designee if it is determined that proposed development activity will not potentially impact existing trees within the shoreline setback.
- (d) An alternative replacement option may be approved if an applicant can demonstrate that:
  - (i) It is not feasible to plant all of the required mitigation trees in the shoreline setback of the subject property, given the existing tree canopy coverage and location of trees on the property, the location of structures on the property, and minimum spacing requirements for the trees to be planted, or;
  - (ii) The required tree replacement will obstruct existing views to the regulated shorelines, at the time of planting or upon future growth that cannot otherwise be mitigated through tree placement or maintenance activities. The applicant shall be responsible for providing sufficient information to the city to determine whether the tree replacement will obstruct existing views to the regulated shorelines, or.
  - (iii) The alternate replacement option is equal to or superior to the provisions of this section in accomplishing the purpose and intent of maintaining shoreline ecological functions and processes by replacing diseased, nuisance, or fallen trees at a ratio of 2:1, or.
  - (iv) The alternative plan is consistent with the standards provided in this subsection, and the director or designee approves the plan or imposes conditions to the extent necessary to make the plan consistent with the provisions. If the alternative mitigation is denied, the applicant shall be informed of the deficiencies that caused its disapproval so as to provide guidance for its revision and re-submittal.
- (3) Responsibility for Regular Maintenance. The applicant, landowner, or successors in interest shall be responsible for the regular maintenance of vegetation required under this section. Plants that die must be replaced in kind or with similar plants contained on the King County Native Plant List, or other native or shoreline appropriate species approved by the director or designee.
  - (a) All required vegetation must be maintained throughout the life of the development.
  - (b) Plantings shall occur in the late fall or early spring to ensure a higher survival rate and shall address the plant installation and maintenance requirements set forth in FWRC 19.120.220, Revegetation and 19.120.240, Performance assurance.; Performance and maintenance standards of a minimum two-year maintenance bond may be required. Plant materials shall be identified with both their scientific and common names. Any required irrigation system must also be shown.

**15.05.080 Shoreline residential environment.**

- (1) *Purpose.* The purpose of the “shoreline residential” environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.
- (2) *Designation criteria.* Designation criteria for the shoreline residential environment are provided in the city’s shoreline master program.
- (3) *General requirements.*

- (a) Development waterward of the ordinary high water mark is prohibited except water-dependent recreational uses, permitted shoreline modifications, and public utilities.
- (b) No structure shall exceed the height allowed by the underlying zoning or 35 feet above average grade level, whichever is less.
  - (i) This requirement may be modified if the view of any neighboring residences will not be obstructed, if permitted by the applicable provisions of the underlying zoning, and if the proposed development is water-related or water-dependent. For any proposed structure with a height exceeding 35 feet, a view analysis shall be completed and approved by the city to ensure that visual public access is not affected consistent with FWRC 15.05.040(7).
- (c) All development shall be required to provide adequate surface water retention, erosion control, and sedimentation facilities during the construction period.
- (d) *Setbacks.* Development shall maintain a minimum shoreline setback of the first 50 feet of property landward from the ordinary high water mark, or other designated minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is greater. This minimum setback area shall be retained as a vegetation conservation area, subject to provisions referenced in subsection (3)(e) of this section.
- (e) *Vegetation conservation area.* The required setback area shall be considered a vegetation conservation area. Within the vegetation conservation area, no more than 30 percent of the area with existing native shoreline vegetation shall be cleared, and a minimum of 70 percent of existing native trees shall be retained. [See FWRC 15.05.075, Shoreline setback vegetation conservation standards for submittal requirements.](#) ~~Trees determined by the city to be hazardous or diseased may be removed. Additionally, the director may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological processes than would be provided by strict application of this section.~~
- (f) *Impact mitigation.* All developments and uses shall result in no net loss of ecological functions and shall be consistent with the impact mitigation requirements of FWRC 15.05.040(1).
- (g) Collection facilities to control and separate contaminants shall be required where stormwater runoff from impervious surfaces would degrade or add to the pollution of recipient waters of adjacent properties.
- (h) All development in the shoreline residential area must comply with applicable regulations identified within the general development standards, shoreline modifications, and all other applicable sections of this chapter.

(4) *Shoreline modifications.*

- (a) Allowed modifications to the shoreline within shoreline residential designated areas include the following:
  - (i) *Shoreline stabilization.* Allowed within the shoreline residential designated areas under the requirements imposed by FWRC 15.05.040 and 15.05.050(1).
  - (ii) *Piers and docks.* Allowed within shoreline residential designated areas under the requirements imposed by FWRC 15.05.040 and 15.05.050(2).
  - (iii) *Mooring buoys and floats.* Allowed within shoreline residential designated areas under the requirements imposed by FWRC 15.05.040 and 15.05.050(2).
  - (iv) *Boating facilities – launching ramps, rails, and lift stations.* Permitted with a conditional use permit in parks and public access areas within the residential environment under the requirements imposed by FWRC 15.05.040 and 15.05.050(3).
  - (v) *Breakwaters.* Floating breakwaters are allowed within the shoreline residential areas with a shoreline conditional use permit under the requirements imposed by FWRC 15.05.040 and 15.05.050(4).
  - (vi) *Dredging and filling.* Allowed within shoreline residential designated areas with a shoreline conditional use permit under the requirements imposed by FWRC 15.05.040 and 15.05.050(5).
- (b) Prohibited modifications to the shoreline within shoreline residential designated areas include the following:
  - (i) Jetties and groins.

(5) *Shoreline uses.*

(a) Allowed uses within shoreline residential designated areas include the following:

(i) *Residential development.* Single-family residential use shall be a priority use in the shoreline environment. Single-family and multiple-family residential development, accessory dwelling units, and home occupations may be permitted in the shoreline residential environment subject to the following:

(A) The proposed use is permitted in the underlying zone classification.

(B) Residential development is prohibited waterward of the ordinary high water mark.

(C) *Setbacks.*

(I) Single-family residential development on marine shorelines shall maintain a minimum shoreline setback of 50 feet from the ordinary high water mark. Single-family residential development on lake [and marine](#) shorelines shall maintain a minimum setback behind the stringline setback or 50 feet from the ordinary high water mark, whichever is greater. If the site contains one or more designated critical areas, the setback shall be the minimum necessary to protect such designated critical areas per FWRC 15.05.040(4), or the stringline setback, or 50 feet from the ordinary high water mark, whichever is greater. Where critical area setbacks do not apply, the standard 50-foot minimum setback may be modified pursuant to the following exception:

(a) If single-family residential development is proposed on a lot where properties on at least one side of the lot are developed in single-family residences located less than 50 feet from the ordinary high water mark, then the proposed residential development may be located the same distance from the ordinary high water mark as the adjacent residences (using the stringline setback method as defined in FWRC 15.05.030), but shall in no case be closer than 30 feet from the ordinary high water mark.

(II) Multifamily residential development on marine shorelines shall maintain a minimum setback of 75 feet from the ordinary high water mark. Multifamily residential development on lake shorelines shall maintain a minimum setback behind the stringline setback or 75 feet from the ordinary high water mark, whichever is greater. If the site contains one or more designated critical areas, the setback shall be the minimum necessary to protect such designated critical areas per FWRC 15.05.040(4), or the stringline setback, or 75 feet from the ordinary high water mark, whichever is greater. Where critical area setbacks do not apply, the standard 75-foot minimum setback may be modified pursuant to the following exception:

(a) If multifamily residential development is proposed on a lot where properties on at least one side of the lot are developed in multifamily residential uses located less than 75 feet from the ordinary high water mark, then the proposed residential development may be located the same distance from the ordinary high water mark as the adjacent residential uses (using the stringline setback method as defined in FWRC 15.05.030) but shall be no closer than 50 feet from the ordinary high water mark.

(D) *Public access.* In review of all shoreline permits or developments of more than four residential lots or dwelling units, or subdivision of land into more than four lots, consideration of public access shall be required consistent with FWRC 15.05.040(7).

(E) Where allowed consistent with underlying zoning, subdivision of land shall be configured through the orientation of lots to:

(I) Prevent the loss of ecological functions at full build-out by providing adequate developable space outside of setbacks; and

(II) Avoid the need for new shoreline stabilization and flood hazard reduction measures.

(ii) *Accessory structures.* Residential accessory structures may be placed within the required shoreline setback, provided:

(A) No accessory structure shall cover more than 150 square feet.

(B) No more than 300 square feet of accessory structures shall be allowed.

(C) No accessory structure shall exceed eight feet in height.

(D) Existing native shoreline vegetation within the shoreline setback is conserved as per general requirements in subsections (3)(d) and (e) of this section.

(iii) *Recreational development.* Recreational development may be permitted in the shoreline residential environment subject to the general requirements of this chapter, provided:

(A) The recreational development is permitted in the underlying zone.

(B) The facilities are located, designed, and operated in a manner consistent with the purpose of the residential environment.

(C) Recreational development that provides public access to and use of the water shall be given priority.

(D) Recreational development shall provide mitigation consistent with the general requirements of this chapter and shall lead to no net loss of ecological functions.

(E) Swimming areas shall be separated from boat launch areas.

(F) Boat launching facilities may be developed, subject to a shoreline conditional use permit, provided:

(I) The parking and traffic generated by such a facility can be safely and conveniently handled by the streets and areas serving the proposed facility.

(II) The facility will not be located on a beach area or cause net loss in shoreline function.

(G) Upland facilities constructed in conjunction with a recreational development shall be set back and/or sited to avoid adverse impacts to the functions of the shorelines of the city.

(H) Public pedestrian and bicycle pathways shall be permitted adjacent to water bodies. Such trails and pathways must be made of pervious materials, if feasible.

(I) Public contact with unique and fragile areas shall be permitted where it is possible without destroying the natural character of the area.

(J) Water viewing, nature study, recording, and viewing shall be accommodated by space, platforms, benches, or shelter consistent with public safety and security.

(iv) *Utilities.* Utility facilities, with the exception of cellular towers, solid waste transfer stations, and production and processing facilities, may be permitted in the shoreline residential environment subject to the requirements of this chapter, provided:

(A) No other practicable alternative location outside of the shoreline jurisdiction with less impact to the environment is available for the facility.

(B) Utility and transmission facilities shall:

(I) Avoid disturbance of unique and fragile areas.

(II) Avoid disturbance of wildlife spawning, nesting, and rearing areas.

(III) Conserve native shoreline vegetation, particularly forested areas, to the maximum extent possible.

(IV) ~~Overhead utility facilities shall not be permitted~~ **Avoid** overhead utility facilities shall not be permitted in public parks, monuments, scenic, recreation, or historic areas.

(V) Minimize visual impact.

(VI) Harmonize with or enhance the surroundings.

(VII) Not create a need for shoreline protection.

(VIII) Utilize to the greatest extent possible natural screening.

(IX) Mitigate for unavoidable impacts to achieve no net loss of shoreline ecological functions.

(X) Be located in existing utility and transportation rights-of-way whenever feasible.

(C) The construction and maintenance of utility facilities shall be done in such a way so as to:

- (I) Maximize the preservation of natural beauty and the conservation of resources.
- (II) Minimize scarring of the landscape.
- (III) Minimize siltation and erosion.
- (IV) Protect trees, shrubs, grasses, natural features, and topsoil.
- (V) Avoid disruption of critical aquatic and wildlife stages.
- (D) Rehabilitation of areas disturbed by the construction and/or maintenance of utility facilities shall:
  - (I) Be accomplished as rapidly as possible to minimize soil erosion and to maintain plant and wildlife habitats.
  - (II) Utilize native trees and shrubs.
- ~~(E) Solid waste transfer stations are prohibited within shoreline jurisdiction.~~
- ~~(F) Cellular or wireless towers are prohibited within shoreline jurisdiction.~~
- (v) *Transportation and parking facilities.* Transportation and parking, except parking facilities associated with detached single-family development, shall conform to the following minimum requirements:
  - (A) Transportation corridors shall be developed consistent with the transportation element of the Federal Way comprehensive plan (FWCP) and designed to provide the best service with the least possible impact on shoreline ecological function. Impacts to functions shall be mitigated to achieve no net loss of ecological functions.
  - (B) New road construction shall be the minimum necessary to serve a permitted shoreline use.
  - (C) New public transportation facilities shall provide turnout areas for scenic stops where feasible.
  - (D) Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate location would have less environmental impact on the shoreline.
  - (E) New surface transportation facilities not related to and necessary for the support of shoreline activities shall be located outside the shoreline jurisdiction if possible, or set back from the ordinary high water mark far enough to make protective measures such as riprap or other bank stabilization, landfill, or substantial site regrade unnecessary.
  - (F) Maintenance, repair, replacement, or other roadway improvements (including but not limited to widening to serve existing or projected volumes, installation of curb and gutter, sidewalks, illumination, signals) to existing surface transportation facilities shall be allowed within shoreline residential designated areas. Improvements that create a need for protective measures such as riprap or other bank stabilization, landfill, or substantial site regrade shall not be permitted unless no alternative exists and impacts to shoreline ecological functions are mitigated.
  - (G) Any new development or expansion of existing development creating greater than six total parking stalls must meet the water quality standards required by the King County surface water manual for “high use” sites and “resource stream protection.”
  - (H) Outdoor parking area perimeter, excluding entrances and exits, must be maintained as a planting area with a minimum width of five feet.
    - (I) One live tree with a minimum height of four feet shall be required for each 30 linear feet of planting area.
    - (II) One live shrub of one-gallon container size, or larger, for each 60 linear inches of planting area shall be required.
    - (III) Additional perimeter and interior landscaping of parking areas may be required, at the discretion of the director, when it is necessary to screen parking areas or when large parking areas are proposed.

(I) Parking as a primary use in shoreline jurisdiction shall be prohibited.

(J) Parking in the shoreline jurisdiction shall directly serve a permitted shoreline use and environmental and visual impacts shall be minimized.

(K) Transportation and parking facilities for subdivision, multifamily residential, and commercial uses shall incorporate low impact development (LID) designs to minimize stormwater runoff.

(L) Transportation facilities shall not adversely impact existing or planned water-dependent uses.

(b) In addition to those uses prohibited in all shoreline environments by FWRC 15.05.070(3), the following uses are prohibited uses within shoreline residential designated areas:

(i) Office and commercial development.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.090 Urban conservancy environment.**

(1) *Purpose.* The purpose of the “urban conservancy” environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. Priority should be given to water-oriented uses over non-water-oriented uses in the urban conservancy environment. Residential development and appurtenant structures should be accommodated in the urban conservancy environment when consistent with existing land use and zoning, and when consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

(2) *Designation criteria.* Designation criteria for the urban conservancy environment are provided in the city’s shoreline master program.

(3) *General requirements.*

(a) Development waterward of the ordinary high water mark is prohibited except water-dependent recreational uses, permitted shoreline modifications, and public utilities.

(b) No structure shall exceed the height allowed by the underlying zoning or 35 feet above average grade level, whichever is less. This requirement may be modified if the view of any neighboring residences will not be obstructed, if permitted by the applicable provisions of the underlying zoning, and if the proposed development is water-related or water-dependent. For any proposed structure with a height exceeding 35 feet, a view analysis shall be completed and approved by the city to ensure that visual public access is not affected consistent with FWRC 15.05.040(7).

(c) All development shall be required to provide adequate surface water retention and sedimentation facilities during the construction period.

(d) *Setbacks.* Development shall maintain a minimum shoreline setback of the first 50 feet of property landward from the ordinary high water mark or other designated minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is greater. This minimum setback area shall be retained as a vegetation conservation area, subject to provisions referenced in subsection (3)(e) of this section.

(e) *Vegetation conservation area.* The required setback area shall be considered a vegetation conservation area. Within the vegetation conservation area, no more than 15 percent of the area with existing native shoreline vegetation shall be cleared, and a minimum of 80 percent of existing native trees shall be retained. [See FWRC 15.05.075, Shoreline setback vegetation conservation standards for submittal requirements.](#)

~~Trees determined by the city to be hazardous or diseased may be removed. Additionally, the director may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological processes than would be provided by strict application of this section.~~

(f) *Impact mitigation.* All developments and uses shall result in no net loss of ecological functions and shall be consistent with the impact mitigation requirements of FWRC 15.05.040(1).

(4) *Shoreline modifications.*

(a) Allowed modifications to the shoreline within urban conservancy designated areas include the following:

(i) *Shoreline stabilization.* Allowed within urban conservancy designated areas under the requirements imposed by FWRC 15.05.040 and 15.05.050(1).

(ii) *Piers and docks.* Allowed within urban conservancy designated areas under the requirements imposed by FWRC 15.05.040 and 15.05.050(2).

(iii) *Mooring buoys and floats.* Allowed within urban conservancy designated areas under the requirements imposed by FWRC 15.05.040 and 15.05.050(2).

(iv) *Boating facilities – launching ramps, rails, and lift stations.* Permitted with a shoreline conditional use permit in parks and public access areas within the urban conservancy environment under the requirements imposed by FWRC 15.05.040 and 15.05.050(3).

(v) *Breakwaters.* Floating breakwaters are allowed within the urban conservancy designated areas with a shoreline conditional use permit under the requirements imposed by FWRC 15.05.040 and 15.05.050(4).

(vi) *Dredging and filling.* Allowed within urban conservancy designated areas with a shoreline conditional use permit under the requirements imposed by FWRC 15.05.040 and 15.05.050(5).

(b) Prohibited modifications to the shoreline within urban conservancy designated areas include the following:

(i) Jetties and groins.

(5) *Shoreline uses.*

(a) Allowed uses within urban conservancy designated areas include the following:

(i) *Residential development.* Allowed within urban conservancy designated areas under the requirements imposed within FWRC 15.05.080(5)(a)(i), with the following additional restrictions:

(A) *Setbacks.* Residential development on marine shorelines shall maintain a minimum setback of 50 feet from the ordinary high water mark, or other established minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is greater. Residential development on lake shorelines shall maintain a setback behind the stringline setback, or 50 feet from the ordinary high water mark, or other established minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is greater. Exceptions to minimum setback requirements included in FWRC 15.05.080(5)(a)(i)(C), for both single-family and multifamily development, shall apply.

(B) *Accessory structures.* Allowed within urban conservancy designated areas under the requirements imposed by FWRC 15.05.080(5)(a)(ii).

(ii) *Recreational development.* Recreational development may be permitted in the urban conservancy environment subject to the general requirements of this chapter and under the requirements imposed by FWRC 15.05.080(5)(a)(iii).

(iii) *Utilities.* Allowed within urban conservancy designated areas under the requirements and restrictions imposed by FWRC 15.05.080(5)(a)(iv).

(iv) *Transportation and parking facilities.* Allowed within urban conservancy designated areas under the requirements imposed by FWRC 15.05.080(5)(a)(v).

~~(v) *Office and commercial development.* Office and commercial development may be allowed with conditional use approval in the urban conservancy environment subject to the requirements of this chapter, provided:~~

~~(A) The office or commercial use or activity is permitted in the underlying zoning classification.~~

~~(B) Public access is provided consistent with the requirements of FWRC 15.05.040(7).~~

~~(C) Non-water oriented office and commercial uses are prohibited unless they meet one or more of the following criteria:~~

~~(I) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit such as providing public access and/or ecological restoration; or navigability is severely limited at the proposed site.~~

~~(II) In areas designated for commercial use, non-water oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right-of-way.~~

~~(III) Office and commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources, and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.~~

~~(D) Office and commercial development on marine shorelines shall maintain a setback of 75 feet from the ordinary high water mark, or other established minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is greater. Office and commercial development on lake shorelines shall maintain a setback behind the stringline setback, or 75 feet from the ordinary high water mark, or other established minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is greater. The minimum setback may be reduced using the stringline method, when applicable, but in no case shall the minimum setback be less than 50 feet from the ordinary high water mark.~~

~~(E) Piers, docks, moorages, buoys, floats, and launching facilities will not be permitted in conjunction with office or commercial development; unless they are developed as part of on-site public access to the shoreline.~~

~~(F) Additional water quality standard must be met as per FWRC 15.05.040(3).~~

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.100 Natural environment.**

(1) *Purpose.* The purpose of the “natural environment” is to protect those shoreline areas that are relatively free of human influence, or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, the city shall plan for restoration of degraded shorelines within this environment.

(2) *Designation criteria.* Designation criteria for the natural environment are provided in the city’s shoreline master program.

(3) *General requirements.*

(a) Development waterward of the ordinary high water mark is prohibited except water-dependent recreational uses and public utilities.

(b) No structure shall exceed the height allowed by the underlying zoning or 35 feet above average grade level, whichever is less. This requirement may be modified if the view of any neighboring residences will not be obstructed, if permitted by the applicable provisions of the underlying zoning, and if the proposed development is water-related or water-dependent. For any proposed structure with a height exceeding 35 feet, a view analysis shall be completed and approved by the city to ensure that visual public access is not affected consistent with FWRC 15.05.040(7).

(c) All development shall be required to provide adequate surface water retention and sedimentation facilities during the construction period.

(d) *Setbacks.* Development shall maintain a minimum shoreline setback of the first 100 feet of property landward from the ordinary high water mark, or other established minimum setback necessary to protect designated critical areas per FWRC 15.05.040(4), whichever is the greater setback, as a vegetation conservation area subject to provisions referenced in subsection (3)(e) of this section.

(e) *Vegetation conservation area.* The required setback area shall be considered a vegetation conservation area. Within the vegetation conservation area, no native shoreline vegetation shall be cleared, and all existing native trees shall be retained. [See FWRC 15.05.075, Shoreline setback vegetation conservation standards.](#) ~~Trees determined by the city to be hazardous or diseased may be removed. Additionally, the director may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological processes than would be provided by strict application of this section.~~

(f) *Impact mitigation.* All developments and uses shall result in no net loss of ecological functions and shall be consistent with the impact mitigation requirements of FWRC 15.05.040(1).

(4) *Shoreline modifications.* The following shoreline modifications are prohibited within the natural designated shoreline areas:

- (a) Shoreline stabilization;
- (b) Piers, docks, moorages, buoys, and floats;
- (c) Boating facilities – launching ramp, rails, and lift stations;
- (d) Breakwaters, jetties, and groins; and
- (e) Dredging and filling.

(5) *Shoreline uses.*

(a) Allowed uses within natural designated areas include:

(i) *Residential development.* Multifamily residential uses are prohibited in the natural environment. Single-family residential development and residential accessory structures may be permitted in the natural environment with a shoreline conditional use permit with the following additional restrictions:

(A) Allowed only where single-family residential development is permitted in the underlying zone classification.

(B) Single-family residential development is prohibited waterward of the ordinary high water mark.

(ii) *Recreational development.* Allowed within the natural designated areas subject to the limitations of subsection (4) of this section and provided:

(A) The recreational development is permitted in the underlying zone.

(B) Non-water-oriented recreational uses and development are prohibited within the natural designated areas.

(C) The recreational development is located, designed, and operated in a manner consistent with the purpose of the natural environment with a focus on passive recreation.

(D) Recreational development shall provide mitigation consistent with the general requirements of this chapter and shall lead to no net loss of shoreline ecological functions.

(E) The parking and traffic generated by such a facility can be safely and conveniently handled by the streets and areas serving the proposed development.

(F) Upland facilities constructed in conjunction with a recreational development shall be set back and/or sited to avoid adverse impacts to the functions of the shorelines of the city.

(G) Public pedestrian and bicycle pathways shall be made of pervious materials.

(iii) *Utilities.* Allowed within the natural designated areas with a shoreline conditional use permit under the requirements and restrictions imposed within FWRC 15.05.080(5)(a)(iv).

(iv) *Transportation and parking facilities.* Allowed in the natural environment only when necessary to serve an allowed use and subject to the approval of a conditional use permit. Approved facilities must, at a minimum, meet the requirements and restrictions imposed within FWRC 15.05.080(5)(a)(v).

(v) *Low intensity public uses.* Low intensity public uses including scientific, historical, cultural, and educational research uses are allowed under the general requirements for the natural environment (subsection (3) of this section); and provided, that ecological impacts are avoided.

(b) In addition to those uses prohibited in all shoreline environments by FWRC 15.05.070(3), the following uses are prohibited uses within natural designated areas:

- (i) Boating facilities;

- (ii) Multifamily residential development;
  - (iii) Office and commercial development.
- (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

### **Article III. Administrative Procedures**

#### **15.05.110 Shoreline management permit and enforcement procedures, adoption by reference.**

The city of Federal Way hereby adopts by reference the following sections or subsections of Chapter 173-27, as amended, of the Washington Administrative Code (“WAC”), entitled Shoreline Management Permit and Enforcement Procedures.

WAC:

- (1) 173-27-020, Purpose.
  - (2) 173-27-040, Developments exempt from substantial development permit requirement.
  - [\(3\) 173-27-044, Developments not required to obtain shoreline permits or local reviews.](#)
  - [\(4\) 173-27-125, 90-day review target for WSDOT projects.](#)
  - (3 [5](#)) 173-27-130, Filing with department.
  - (4 [6](#)) 173-27-270, Order to cease and desist.
  - (5 [7](#)) 173-27-280, Civil penalty.
  - (6 [8](#)) 173-27-290, Appeal of civil penalty.
  - (7 [9](#)) 173-27-300, Criminal penalty.
- (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.120 Permit processing and public notice.**

An application for a shoreline development permit shall be made to the department of community development on forms prescribed by the department. Public notice shall be provided as follows:

- (1) An application for a substantial development permit requires public notice as prescribed in Process III, Chapter 19.65 FWRC.
  - (2) An application for a shoreline conditional use permit or shoreline variance requires public notice as prescribed in Process IV, Chapter 19.70 FWRC.
  - [\(3\) The application for shoreline exemption, substantial development permit, conditional use permit, and/or variance -permit applies to the most current SMP, effective 14 days after Ecology’s approval letter.](#)
- (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.130 Shoreline exemption.**

- (1) The purpose of a shoreline exemption is to provide an approval process for uses and activities which do not trigger the need for a substantial development permit, but require compliance with the shoreline guidelines and the goals, policies, and other provisions of the city’s shoreline master program. A use or activity that qualifies for an exemption may require a shoreline variance (FWRC 15.05.160), or a shoreline conditional use permit (FWRC 15.05.170). An exemption from the substantial development permit process is not an exemption from compliance with any other applicable regulatory requirements.
- (2) To qualify for an exemption, the proposed use, activity, or development must meet the requirements for an exemption as described in WAC 173-27-040.
- (3) If the proposed development meets the requirements for an exemption, the applicant shall submit a request for an exemption to the director of community development services for review and approval. The request shall indicate the specific exemption provision from WAC 173-27-040 that is being applied to the development. The city shall review the request and provide a summary of the analysis demonstrating consistency of the project with the Federal Way shoreline master program and the Shoreline Management Act. The city shall prepare a statement of exemption,

provided the proposal meets exemption criteria. The burden of proof that a development or use is exempt from the permit process is on the applicant. If any part of the development is not eligible for exemption, then a substantial development permit is required for the entire proposed development.

(a) The director may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the Federal Way shoreline master program, per WAC 173-27-040(e). For example, in the case of development subject to a building permit, but exempt from the shoreline permit process, the building official or other permit authorizing official, through consultation with the director, may attach shoreline management terms and conditions to building permits and other permit approvals pursuant to RCW 90.58.140.

(b) Where shoreline development proposals are subject to review, approval, and permitting by a federal or state agency, the director shall prepare a statement of exemption, addressed to the applicant, the federal or state permitting agency, and Ecology.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.140 Application requirements.**

*Complete application.* A complete application for a substantial development, shoreline conditional use, or shoreline variance permit shall contain, as a minimum, the following information:

- (1) The name, address, and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
- (2) The name, address, and phone number of the applicant's representative if other than the applicant.
- (3) The name, address, and phone number of the property owner, if other than the applicant.
- (4) Location of the property. This shall, at a minimum, include the property address, parcel number, and identification of the section, township, and range to the nearest quarter, quarter section, or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
- (5) Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the Act over the project is derived.
- (6) A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
- (7) A general description of the property as it now exists, including its physical characteristics and improvements and structures.
- (8) A general description of the vicinity of the proposed project, including identification of the adjacent uses, structures, and improvements, intensity of development, and physical characteristics.
- (9) A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs, and text, which shall include:
  - (a) The boundary of the parcel(s) of land upon which the development is proposed.
  - (b) The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location; provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to nor within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.
  - (c) Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the

development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

(d) A delineation of all wetland areas that will be altered or used as a part of the development.

(e) A general indication of the character of vegetation found on the site.

(f) The dimensions and locations of all existing and proposed structures and improvements including but not limited to: buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

(g) Where applicable, a landscaping plan for the project.

(h) Where applicable, plans for development of areas on- or off-site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.

(i) Quantity, source, and composition of any fill material that is placed on the site whether temporary or permanent.

(j) Quantity, composition, and destination of any excavated or dredged material.

(k) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments, and uses on adjacent properties.

(l) Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

(m) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

(n) Summary of how the proposal meets relevant decisional criteria.

(o) Additional information as requested by the city.

(10) Where applicable, a shoreline assessment and mitigation report prepared by a qualified professional which, at a minimum, includes the following:

(a) Site plan and cross-sections of development and critical areas and critical salmonid habitat identified.

(b) A detailed description of proposed development.

(c) Identification of any species of local importance, priority species, or endangered, threatened, or sensitive species that have documented or observed habitat on or adjacent to the project area.

(d) An assessment of potential impacts the proposal may have on fish and wildlife species, critical areas, and critical salmonid habitats.

(e) A discussion of any federal, state, or local management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to project area. [See FWRC 19.142.060 for floodplain development permit requirements.](#)

(f) A discussion of mitigation measures that have been implemented to avoid and minimize adverse impacts to fish and wildlife species and habitats, critical areas, and critical salmonid habitat. The mitigation must also include a mitigation plan showing the area of mitigation and detailed mitigation measures, such as habitat features and planting of native vegetation.

(g) A discussion of monitoring, maintenance, and contingency measures to accompany the mitigation plan.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.05.150 Shoreline substantial development permit.**

(1) The purpose of a substantial development permit is to provide an approval process for any development with a total cost or fair market value exceeding ~~\$5,718~~ [the dollar figure set in RCW 90.58.030\(3\)\(e\)](#), or any development which materially interferes with the normal public use of the water or shorelines of the state, except those exempted developments set forth in the preceding section, consistent with WAC 173-27-040. ~~The substantial development dollar threshold on the adoption date of this program is \$5,718.~~ Under current law, the substantial development dollar

threshold will be recalculated every five years by the Washington State Office of Financial Management (OFM). OFM posts updated dollar thresholds in the Washington State Register.

(2) When a substantial development permit is requested, the permit shall be reviewed under the provisions of Process III, Chapter 19.65 FWRC, and the director of community development shall be the final approval authority for the city of Federal Way.

(3) A substantial development permit shall be granted by the director only when the development proposed is consistent with the following:

- (a) Goals, objectives, policies, and use regulations of the Federal Way shoreline master program;
- (b) Federal Way comprehensive plan and city code; and
- (c) The policies, guidelines, and regulations of the Shoreline Management Act (Chapter 90.58 RCW and Chapters 173-26 and 173-27 WAC).

(4) The director may attach conditions to the approval of permits as necessary to assure consistency of the proposal with the above criteria.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.160 Shoreline variance.**

(1) The purpose of a shoreline variance is to grant relief to specific bulk, dimensional, or performance standards set forth in the shoreline master program, where there is an extraordinary or unique circumstance relating to the property such that the strict implementation of the shoreline master program would impose unnecessary hardship on the applicant or thwart the policies of the Shoreline Management Act.

(2) When a variance is requested, the substantial development permit, if required, and the variance, shall be reviewed under the provisions of Process IV, Chapter 19.70 FWRC, and the hearing examiner shall be the final approval authority for the city of Federal Way. The Department of Ecology shall be the final approval authority under WAC 173-27-200.

(3) A variance from the standards of the master program may be granted only when the applicant can demonstrate that all the following conditions will apply:

- (a) That the strict requirements of the bulk, dimensional, or performance standards set forth in the master program preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the master program;
- (b) That the hardship described above is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, and the application of the master program, and not, for example, from deed restriction or the applicant's own actions;
- (c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
- (d) That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties, and will be the minimum necessary to afford relief;
- (e) That the public interest will suffer no substantial detrimental effect;
- (f) That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance when the proposal is for development located waterward of the ordinary high water mark, or within wetlands, estuaries, marshes, bogs, or swamps; and
- (g) That consideration has been given to the cumulative effect of like actions in an area where similar circumstances exist, and whether this cumulative effect would be consistent with shoreline policies or would have substantial adverse effects on the shoreline.

(4) Shoreline variances may not be used to permit a use that is specifically prohibited in an environment, or to vary uses permitted within an environmental designation.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.170 Conditional uses.**

(1) The purpose of the conditional use permit is to provide greater flexibility in varying the application of the use regulations of the shoreline master program in a manner which will be consistent with the policies of Chapter 90.58 RCW, particularly where denial of the application would thwart the policies of the Shoreline Management Act.

(2) When a conditional use is requested, the substantial development permit, if required, and the conditional use, shall be reviewed under the provisions of Process IV, Chapter 19.70 FWRC, and the hearing examiner shall be the final approval authority for the city of Federal Way. The Department of Ecology shall be the final approval authority under WAC 173-27-200.

(3) Conditional uses have unique and special characteristics which require a special degree of control to make the uses compatible with other existing or permitted uses in the same environment, and to assure that the use is in the public interest. In authorizing a conditional use permit, special conditions may be attached to the permit by the hearing examiner to prevent undesirable effects or mitigate environmental impacts of the proposed use.

(4) Conditional use permits shall be authorized only when they are consistent with the following criteria:

- (a) The proposed use is consistent with the policies of RCW 90.58.020 and the policies of the shoreline master program;
- (b) The use will not interfere with normal use of public shorelines;
- (c) The use will cause no unreasonable adverse effects on the shoreline or surrounding properties or uses, and is compatible with other permitted uses in the area;
- (d) The public interest will suffer no substantial detrimental effect;
- (e) Consideration has been given to cumulative impact of additional requests for like actions in the area.

(5) Other uses not set forth in the shoreline master program may be authorized through a conditional use permit if the applicant can demonstrate that other uses are consistent with the purpose of the shoreline environmental designation and compatible with existing shoreline improvements, or that extraordinary circumstances preclude reasonable use of the property; however, uses specifically prohibited by the master program may not be authorized.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.180 Final approval of shoreline permits.**

(1) The director of community development shall notify [and forward to](#) the following agencies or persons within five days of the final approval of a shoreline permit and any shoreline variances or conditional uses granted:

- (a) The applicant;
- (b) The state Department of Ecology;
- (c) Any person who has submitted written comments on the application; and
- (d) Any person who has requested notification in writing prior to final approval of the permit.

(2) No work may commence on a site requiring a shoreline substantial development, shoreline variance, or shoreline conditional use permit until 21 [calendar](#) days following the “date of filing” or until all review proceedings before the shoreline hearings board have terminated.

(a) “*Date of filing*” for a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.

(b) “*Date of filing*” for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the city and the applicant/proponent.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.190 Combined hearing authority.**

In those cases when development proposed in the shorelines may require a public hearing under the authority of other chapters of this Code, the hearings may be combined.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.200 Appeals.**

All appeals of any final permit decision are governed by the procedures established in RCW 90.58.140(6) and 90.58.180, and Chapter 481-03 WAC, the rules and procedures of the shoreline hearings board. All appeals of any final permit decision must be made to the shoreline hearings board within 21 calendar days of the date of filing of the city's final decision concerning the substantial development permit, or formal approval to revisions of the permit. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.210 Permit revisions.**

- (1) A permit revision is required whenever an applicant proposes substantive changes to the design, terms, or conditions of a project from that which was approved in the permit. When a revision of a shoreline permit is sought, the applicant shall submit detailed plans and text describing the proposed changes in the permit and demonstrating compliance with the minimum standards pursuant to WAC 173-27-100.
  - (2) If the proposed changes are determined by the director to be within the scope and intent of the original permit, and are consistent with the Shoreline Management Act (Chapter 90.58 RCW), the guidelines in Chapter 173-26 WAC, and the Federal Way shoreline master program, the revision shall be approved.
  - (3) A new permit shall be required if the proposed revision would constitute development that is beyond the scope and intent of the original approval. "*Within the scope and intent of the original approval*" means all of the following:
    - (a) No additional overwater construction is involved except that a pier, dock, or floating structure may be increased by 10 percent over that approved under the original approval; provided, that the revision does not exceed the maximum size requirements of this chapter except as authorized under a variance granted for the original development;
    - (b) Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback, or any other requirements of this chapter except as authorized under a variance granted for the original development;
    - (c) Additional or revised landscaping is consistent with any conditions attached to the original approval and with the Federal Way shoreline master program;
    - (d) The use authorized pursuant to the original approval is not changed; and
    - (e) The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.
- (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.220 Replacement, alteration, or reconstruction of nonconforming use or development.**

- (1) Applications for substantial development or building permits to modify a nonconforming use or development, as defined in this chapter, may be approved only if:
  - (a) The modifications will make the use or development less nonconforming; or
  - (b) The modifications will not make the use or development more nonconforming; and
  - (c) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers, or yards; area; bulk; height; or density may be maintained and repaired and may be enlarged or expanded; provided, that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.
  - [\(d\) Minor repairs to non-conforming structures under the monetary threshold listed in FWRC 15.05.150 \(RCW 90.58.030\[3\]\[e\]\) can apply for a shoreline exemption.](#)
- (2) An existing use or development, not conforming to existing regulations, which is destroyed may be replaced (per "replacement structure" as defined in this chapter) as it existed prior to destruction, provided application for required permits is made within one year of destruction.
- (3) If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming.

(4) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or the Federal Way shoreline master program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the FWRC and so long as such development conforms to all other requirements of the Federal Way shoreline master program and the Act.

(5) An existing mechanical improvement, not conforming to existing regulations, which breaks and cannot be repaired may be replaced, provided the replacement is no more nonconforming and application for required permits is made within one year of failure.

(6) Existing legally established nonconforming residential structures, not including bulkheads, are classified as conforming. Redevelopment, expansion, and replacement is allowed so long as it is consistent with Chapter 15.05, Shoreline Management.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.230 Shoreline environment redesignation.**

Shoreline environments designated by the master program may be redesignated by the city council upon finding that such redesignation will be consistent with:

- (1) The policies of Section 2 of the Shoreline Management Act of 1971.
- (2) The goals, objectives, and policies of the shoreline master program.
- (3) The designation criteria of the shoreline environment designation requested.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**15.05.240 Amendments to this chapter.**

Amendments to this chapter shall be pursuant to state review and approval as per WAC 1763-26-110 and 1763-26-120.

(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

**Chapter 15.10**

**~~CRITICAL AREAS~~**

**Sections:**

~~Article I. Generally~~

- ~~15.10.010 Purpose.~~
- ~~15.10.020 Applicable provisions.~~
- ~~15.10.030 Jurisdiction.~~
- ~~15.10.040 Other authority and jurisdiction.~~
- ~~15.10.050 Liability.~~

~~Article II. Administration~~

- ~~15.10.060 Administration.~~
- ~~15.10.070 Maps adopted.~~
- ~~15.10.080 Basis for determination.~~
- ~~15.10.090 Bonds.~~
- ~~15.10.100 Dedication.~~
- ~~15.10.110 Certain activities not subject to critical area standards.~~

~~Article III. General Site Design Requirements~~

- ~~15.10.120 Responsibility of applicant.~~
- ~~15.10.130 Vehicle circulation areas.~~
- ~~15.10.140 Time limitation.~~
- ~~15.10.150 Other requirements.~~

~~Article IV. Geologically Hazardous Areas Development~~

- ~~15.10.160 Limitations.~~

~~Article V. Streams~~

- ~~15.10.170 Stream setbacks.~~
- ~~15.10.180 Relocation.~~
- ~~15.10.190 Culverts.~~
- ~~15.10.200 Removal of streams from culverts.~~
- ~~15.10.210 Rehabilitation.~~
- ~~15.10.220 Intrusion into stream setbacks.~~
- ~~15.10.230 Additional requirements for clearing and grading.~~

~~Article VI. Regulated Wetlands~~

- ~~15.10.240 Determination of wetland and regulated wetland.~~
- ~~15.10.250 Wetland categories and standard buffers.~~
- ~~15.10.260 Structures, improvements, and clearing and grading within regulated wetlands.~~
- ~~15.10.270 Structures, improvements, and clearing and grading within regulated wetland buffers.~~

~~Article VII. Critical Aquifer Recharge Areas and Wellhead Protection Areas~~

- ~~15.10.280 Limitations.~~
- ~~15.10.290 Classification of wellhead capture zones.~~
- ~~15.10.300 General requirements.~~
- ~~15.10.310 Prohibited activities in Wellhead Capture Zone 1.~~
- ~~15.10.320 Regulation of facilities handling and storing hazardous materials.~~

~~15.10.330 — Performance standards.~~

~~15.10.340 — Use of pesticides, herbicides, and fertilizers in critical aquifer recharge areas and wellhead protection areas.~~

### **Article I. Generally**

#### **15.10.010 — Purpose.**

~~The purpose of this chapter is to protect the environment, human life, and property from harm and degradation within the shoreline jurisdiction in the city of Federal Way. This is to be achieved by precluding or limiting development in areas where development poses serious or special hazards; by preserving and protecting the quality of surface water; and by preserving important ecological areas such as steep slopes, streams, and wetlands. The public purposes to be achieved by this chapter include protection of water quality, groundwater recharge, shoreline stabilization, stream-flow maintenance, stability of slope areas, wildlife and fisheries habitat maintenance, protection of human life and property, and maintenance of natural stormwater storage systems.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

#### **15.10.020 — Applicable provisions.**

~~(1) The provisions of this chapter apply throughout designated shoreline areas under the shoreline master plan and must be complied with regardless of any other conflicting provisions of FWRC Titles 14 and 19.~~

~~(2) Any conflict between the standards outlined in this chapter and Chapter 15.05 FWRC shall be resolved in favor of the standard that is most protective of the shoreline ecological functions. In addition to the development standards outlined in this chapter, the following minimum requirements shall apply with regard to activities and development in critical areas located within shoreline jurisdiction:~~

~~(a) Minimum setbacks from the top of marine bluffs specified in FWRC 15.05.040(4)(b)(iii) shall be maintained in all cases unless a shoreline variance is granted.~~

~~(b) Minimum setbacks from the OHWM established in FWRC 15.05.080, 15.05.090, and 15.05.100 shall be maintained in all cases unless a shoreline variance is granted.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

#### **15.10.030 — Jurisdiction.**

~~This chapter applies to the subject property if it:~~

~~(1) Contains or is within 25 feet of a geologically hazardous area;~~

~~(2) Contains or is within 100 feet of a wellhead;~~

~~(3) Contains or is within 100 feet of the ordinary high water mark of a major stream;~~

~~(4) Contains or is within 50 feet of the ordinary high water mark of a minor stream;~~

~~(5) Contains or is within 200 feet of the edge of any regulated wetland, including regulated wetlands associated with any major stream, minor stream, or regulated lake; or~~

~~(6) Is located within a critical recharge area or a wellhead protection area (one-, five-, or 10-year wellhead capture zone).~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

#### **15.10.040 — Other authority and jurisdiction.**

~~Nothing in this chapter in any way limits, or may be construed to limit, the authority of the city under any other applicable law, nor in any way decreases the responsibility of the applicant to comply with all other applicable local, state, and federal laws and regulations.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

**15.10.050—Liability.**

(1) Prior to issuance of any building permit or other permit by the building official, the applicant may be required to enter into an agreement with the city, in a form acceptable to the city attorney, releasing and indemnifying the city from and for any damage or liability resulting from any development activity on the subject property which is related to the physical condition of the steep slope, stream, or regulated wetland. This agreement shall be recorded in the county, at the applicant's expense, and shall run with the property.

(2) The city may also require the applicant to obtain insurance coverage for damage to city or private property and/or city liability related to any such development activity.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**Article II. Administration**

**15.10.060—Administration.**

Except as otherwise established in this chapter, this chapter will be implemented and enforced as part of the city's review of any development activity on the subject property. If the development activity requires approval through Process I, II, III, or IV, the provisions of this chapter will be implemented as part of these processes. If the development activity does not require approval through Process I, II, or III, the provisions of this chapter will be implemented through site plan review under Chapter 19.60 FWRC.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**15.10.070—Maps adopted.**

The city hereby adopts the June 19, 1999, city of Federal Way final wetland inventory report, to show the locations of certain regulated wetlands in the designated shoreline areas of the shoreline master plan. The city hereby adopts the Lakehaven utility district wellhead one, five, and 10 year capture zone maps, as now existing or amended.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**15.10.080—Basis for determination.**

The determinations regarding whether the subject property is regulated under this chapter, as well as the extent and nature of the regulations that will apply to the subject property, will be determined based on environmental information and mapping possessed by the city as well as other information and mapping provided by or through the applicant. The city may require the applicant, at the applicant's expense, to provide any information, mapping, studies, materials, inspections, or reviews that are reasonably necessary to implement this chapter and to require that such information, studies, mapping, materials, inspections, and reviews be provided or performed by a qualified professional acceptable to the city. Other provisions of this chapter detail other information and inspections that may be required in some instances.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**15.10.090—Bonds.**

The city may require a bond under Chapter 19.25 FWRC to ensure compliance with any aspect of this chapter.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**15.10.100—Dedication.**

The city may require the applicant to dedicate development rights or an open space easement to the city to ensure protection of steep slopes, wells, streams, and regulated wetlands and other areas within the jurisdiction of this chapter.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**15.10.110—Certain activities not subject to critical area standards.**

(1) The following activities are not subject to the provisions of this chapter:

- (a) Emergencies that, in the opinion of the shoreline administrator, threaten the public health, safety, and welfare, where impacts to critical areas and their buffers are mitigated to the extent feasible following the emergency actions;
- (b) Normal and routine maintenance and repair of the following facilities, for which a maintenance plan has been approved by the public works director; provided, that impacts to critical areas and their buffers are mitigated to the extent feasible:

- (i) Existing drainage ditches; provided, however, that this exception shall not apply to any ditches used by salmonids other than to permit free migration of salmonids to their spawning grounds;
- (ii) Surface water facilities; provided, that such activities shall not involve conversion of any regulated wetland not currently being used for such activity;
- (iii) Existing public facilities and utility structures or rights-of-way.

The maintenance plan may be designed to address individual facilities or facility components, area wide facilities, or city wide systems. The maintenance plan shall identify the nature of the potential maintenance or repair activities, specifications for work which may occur within potential sensitive areas, specifications for restoring and/or mitigating impacts, specifications for timing of maintenance or repair activities, and process for contacting or notifying the city of pending maintenance or repair activities to ensure compliance with the approved plan. The public works director may require that an appropriate bond or security be maintained with the city to ensure restoration of disturbed areas.

(2) Any activities not subject to the provisions of this chapter are still subject to the requirements of Chapter 15.05 FWRC. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

### **Article III. General Site Design Requirements**

#### **15.10.120 — Responsibility of applicant.**

The applicant shall locate all improvements on subject property to minimize adverse impacts to geologically hazardous areas, wells, streams, regulated wetlands, and critical aquifer recharge and wellhead protection areas. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.10.130 — Vehicle circulation areas.**

The applicant shall locate all parking and vehicle circulation areas as far as possible from any geologically hazardous area, wellhead, stream, and regulated wetland. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.10.140 — Time limitation.**

The city may limit development activities which involve any clearing and grading activity to specific months of the year and to a maximum number of continuous days or hours in order to minimize adverse impacts. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

#### **15.10.150 — Other requirements.**

The city may require other construction techniques, conditions, and restrictions on development in order to minimize adverse impacts on geologically hazardous areas, wells, critical aquifer recharge areas and wellhead protection areas, streams, or regulated wetlands. (Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)

### **Article IV. Geologically Hazardous Areas Development**

#### **15.10.160 — Limitations.**

(1) This section regulates development activities and clearing and grading on or within 25 feet of a geologically hazardous area. Refer to FWRC 15.05.040(4)(b)(iii) for additional requirements related to properties with steep slopes and bluffs.

(2) Development activities, clearing and grading, or the installation and maintenance of landscaping normally associated with residential, commercial, or park use may not occur on or within 25 feet of a geologically hazardous area unless no reasonable alternative exists and then only if the development activity or clearing and grading will not lead to or create any increased slide, seismic, or erosion hazard.

(3) Before approving any development activity or clearing and grading under this section, the city may require the applicant to submit the following information:

- (a) A soils report prepared by a qualified professional engineer licensed in the state which describes how the proposed development will impact each of the following on the subject property and nearby properties:

- ~~(i) Slope stability, landslide hazard, and sloughing.~~
  - ~~(ii) Seismic hazards.~~
  - ~~(iii) Groundwater.~~
  - ~~(iv) Seeps, springs, and other surface waters.~~
  - ~~(v) Existing vegetation.~~
  - ~~(b) Recommended foundation design and optimal location for roadway improvements.~~
  - ~~(c) Recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent properties.~~
  - ~~(d) Any other information the city determines is reasonably necessary to evaluate the proposal.~~
- ~~(4) If the city approves any development activity or clearing and grading under this section, it may, among other appropriate conditions, impose the following conditions of approval:~~
- ~~(a) That the recommendations of the soils report be followed.~~
  - ~~(b) That the applicant must pay for the services of a qualified professional engineer selected and retained by the city to review the soils report and other relevant information.~~
  - ~~(c) That a qualified professional engineer be present on site during all clearing and grading activities.~~
  - ~~(d) That trees, shrubs, and groundcover be retained except where necessary for approved development activities on the subject property.~~
  - ~~(e) That additional vegetation be planted in disturbed areas.~~
- ~~(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)~~

#### **Article V. Streams**

##### **15.10.170 — Stream setbacks.**

- ~~(1) No clearing and grading or improvements may take place or be located in a stream or within the following stream setback areas except as allowed within this chapter:~~
- ~~(a) The stream setback area for a major stream includes all areas within 100 feet outward from the ordinary high water mark of a major stream.~~
  - ~~(b) The stream setback area for a minor stream includes all areas within 50 feet outward from the ordinary high water mark of a minor stream.~~
- ~~(2) The stream setback areas established by this section do not apply to any segment of a stream that is presently within a culvert, unless that stream will be taken out of the culvert as part of development of the subject property.~~
- ~~(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)~~

##### **15.10.180 — Relocation.**

- ~~(1) Relocation of a stream on the subject property is permitted subject to all of the conditions and restrictions of this section.~~
- ~~(2) A proposal to relocate a stream will be reviewed and decided upon using Process IV per Chapter 19.70 FWRC.~~
- ~~(3) As part of any request under this section, the applicant must submit a stream relocation plan, prepared by a qualified professional approved by the city, that shows the following:~~
- ~~(a) The creation of a natural meander pattern.~~
  - ~~(b) The formation of gentle side slopes, at least two feet horizontally to one foot vertically, and the installation of erosion control features for stream side slopes.~~
  - ~~(c) The creation of a narrow subchannel, where feasible, against the south or west bank.~~

- ~~(d) The utilization of natural materials, wherever possible.~~
- ~~(e) The use of vegetation normally associated with streams, including primarily native riparian vegetation.~~
- ~~(f) The creation of spawning and nesting areas, wherever appropriate.~~
- ~~(g) The reestablishment of the fish population, wherever feasible.~~
- ~~(h) The restoration of water flow characteristics compatible with fish habitat areas, wherever feasible.~~
- ~~(i) The filling and revegetation of the prior channel.~~
- ~~(j) A proposed phasing plan specifying time of year for all project phases.~~

~~(4) The city will allow a stream to be relocated only if water quality, habitat, and stormwater retention capability of the streams will be significantly improved by the relocation. Convenience to the applicant in order to facilitate general site design may not be considered.~~

~~(5) Prior to diverting water into the new channel, a qualified professional approved by the city shall inspect the new channel following its completion and issue a written report to the shoreline administrator stating that the channel complies with the requirements of this section.~~

~~(6) The amount of flow and velocity of the stream may not be increased or decreased as the stream enters or leaves the subject property.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

#### **15.10.190 — Culverts.**

~~(1) Culverts are permitted in streams within the shoreline jurisdiction of the city only if approved under this section.~~

~~(2) The city will review and decide upon applications under this chapter using Process III per Chapter 19.65 FWRC.~~

~~(3) The city will allow a stream to be put in a culvert only if:~~

- ~~(a) No significant habitat area will be destroyed; and~~
- ~~(b) No other feasible site design alternative exists which allows the stream to remain in an open condition. Convenience to the applicant in order to facilitate general site design will not be considered.~~

~~(4) The culvert must be designed and installed to allow passage of fish inhabiting or using the stream. The culvert must be large enough to accommodate a 100 year storm.~~

~~(5) The applicant shall, at all times, keep all culverts on the subject property free of debris and sediment so as to allow free passage of water and, if applicable, fish. The city shall require a bond under Chapter 19.25 FWRC to ensure maintenance of the culvert approved under this section.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

#### **15.10.200 — Removal of streams from culverts.**

~~If development of the subject property requires approval through Process I, II, or III of FWRC Title 19, the city may require the stream to be taken out of the culvert and restored to a natural channel configuration as part of the city's approval of development of the subject property.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

#### **15.10.210 — Rehabilitation.**

~~The shoreline administrator may permit or require the applicant to rehabilitate or maintain a stream by requiring the removal of detrimental materials such as debris, sediment, and invasive, nonnative vegetation. Approval of stream rehabilitation shall be based on a review of a plan containing, at a minimum, an analysis of existing conditions, identification of the source, if possible, of the degradation of the stream or riparian zone, proposed corrective actions, including installation of native species within the riparian corridor, performance standards, monitoring schedule, planting plans, erosion and sedimentation control plans, and grading plans as necessary. The shoreline administrator shall require an applicant to retain the services of a qualified professional in preparing the restoration plan. These actions may be permitted or required at any time that a condition detrimental to water quality, stability of stream~~

~~banks, degradation of existing naturally vegetated buffers, or in stream habitat exists. Intrusions into regulated steep slopes and associated setbacks will be allowed for purposes of approved stream rehabilitation projects. (Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

**15.10.220 — Intrusion into stream setbacks.**

~~(1) *Essential public facilities, public utilities, and other public improvements.* The shoreline administrator may permit the placement of an essential public facility, public utility, or other public improvements in a setback from a stream if he or she determines that the line or improvement must traverse the setback area because no feasible alternative location exists based on an analysis of technology and system efficiency. The specific location and extent of the intrusion into the setback area must constitute the minimum necessary encroachment to meet the requirements of the public facility or utility. “*Public utility and other public improvements*” shall not include improvements whose primary purpose is to benefit a private development, including without limitation interior roads or privately owned detention facilities installed within or during the construction of a residential subdivision, binding site plan, or other commercial development.~~

~~(2) *Minor improvements.* Minor improvements such as footbridges crossing the stream, walkways, and benches may be located within the setback area if approved through Process III per Chapter 19.65 FWRC, based on the following criteria:~~

- ~~(a) It will not adversely affect water quality;~~
- ~~(b) It will not adversely affect the existing quality of wildlife habitat within the stream or setback area;~~
- ~~(c) It will not adversely affect drainage or stormwater retention capabilities;~~
- ~~(d) It will not lead to unstable earth conditions nor create erosion hazards;~~
- ~~(e) It will not be materially detrimental to any other property nor to the city as a whole; and~~
- ~~(f) It is necessary to correct any one of the adverse conditions specified in subsections (2)(a) through (e) of this section.~~

~~(3) *Other intrusions.* Other than as specified in subsections (1) and (2) of this section, the city may approve any request to locate an improvement or engage in clearing and grading activities within stream setback areas only through Process IV per Chapter 19.70 FWRC, based on the following criteria:~~

- ~~(a) It will not adversely affect water quality;~~
- ~~(b) It will not adversely affect the existing quality of wildlife habitat within the stream or setback area;~~
- ~~(c) It will not adversely affect drainage or stormwater retention capabilities;~~
- ~~(d) It will not lead to unstable earth conditions nor create erosion hazards;~~
- ~~(e) It will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole, including the loss of significant open space; and~~
- ~~(f) It is necessary for reasonable development of the subject property not otherwise prohibited by the shoreline master program.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

**15.10.230 — Additional requirements for clearing and grading.**

If any clearing and grading is permitted within the stream or stream setback area, the applicant shall comply with the following additional requirements:

- ~~(1) All fill material used must be nondissolving and nondecomposing. The fill material must not contain organic or inorganic material that would be detrimental to water quality or the existing habitat.~~
- ~~(2) The applicant may deposit dredge spoils on the subject property only if part of an approved development on the subject property.~~
- ~~(3) The applicant shall stabilize all areas left exposed after clearing and grading with native vegetation normally associated with the stream or setback area.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

## Article VI. Regulated Wetlands

### **15.10.240—Determination of wetland and regulated wetland.**

(1) *Generally.* The March 1997 Washington State Wetlands Identification and Delineation Manual (Department of Ecology Publication No. 96-94) as set forth in WAC 173-22-080, as it exists as of November 1, 1999, or as subsequently amended, will be used for identification and delineation of wetlands within the city. Although a site-specific wetland may not meet the criteria described above, it will be considered a regulated wetland if it is functionally related to another wetland that meets the criteria. Where vegetation has been removed, a wetland may be determined by the presence of hydric soils, as well as other documentation of the previous existence of wetland-vegetation such as aerial photographs.

(2) *Evaluation.* If the city determines that a wetland may exist on or within 200 feet of the subject property, the shoreline administrator shall require the applicant to submit a wetland report, prepared by a qualified professional approved by the city, that includes the information set forth in subsections (2)(a) through (g) and (3) of this section. The shoreline administrator shall use the information required by subsections (2)(a) and (b) of this section to determine if the area is a regulated wetland and, if so, shall use the information required by subsections (2)(c) through (g) and (3) of this section to determine the category and the precise boundaries of that regulated wetland.

(a) An evaluation of whether the area in question is a regulated wetland based upon the definition of a wetland and the size thresholds outlined in FWRC 15.10.250.

(b) An overview of the methodology used to conduct the study.

(c) A description of the wetland and plant communities found therein, a map delineating the edge of the wetland and location of plant communities, and a detailed description of the method used to identify the wetland edge.

(d) The wetland classification, according to the U.S. Fish and Wildlife Service "Classification of Wetlands and Deep Water Habitats in the U.S."

(e) A list of observed plant and wildlife species, using both scientific and common names, and a description of their relative abundance.

(f) A list of potential plant or animal species based on signs or other observation.

(g) An evaluation and assessment of the existing or potential functions and values of the wetland based on the following factors: surface water control; wildlife habitat; pollution and erosion control; groundwater exchange; open space and recreation; and educational and cultural opportunities.

(3) *Drainage facilities.* Surface water ponds, drainage ditches, and other such facilities which were designed to impound or convey water for an engineered purpose are not considered regulated wetlands under this chapter, provided they meet all of the following criteria:

(a) The drainage facility must have been intentionally human created. This is to differentiate from those wetland sites that are accidental consequences of development actions, such as road construction or culvert placement. Such sites may be considered regulated wetlands by the director upon a review, under subsection (2)(g) of this section, of the ecological functions and values of the site.

(b) The drainage facility must have been originally constructed on uplands (nonwetland areas). If the drainage facility is located within a straightened, channelized, or otherwise disturbed natural watercourse, it may be considered a regulated wetland by the director upon a review, under subsection (2)(g) of this section, of the ecological functions and values of the site.

(c) The facility must be actively operated as a surface water drainage facility. Abandoned drainage facilities may be considered regulated wetlands by the director upon a review, under subsection (2)(g) of this section, of the ecological functions and values of the site.

(d) Wetland conditions have not expanded beyond the originally constructed drainage facility boundary. In such a case, the expanded area may be considered a regulated wetland by the director upon review, under subsection (2)(g) of this section, of the ecological functions and values of the site.

(e) The drainage facility was not designed or constructed as a requirement to mitigate previous wetland impacts.

~~(f) The director finds that limited ecological functions and values do not warrant application of the city's wetland regulations.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

**15.10.250 — Wetland categories and standard buffers.**

~~(1) Wetlands are classified into the following categories:~~

~~(a) Category I wetlands meet one of the following criteria:~~

~~(i) Contain the presence of species or documented habitat recognized by state or federal agencies as endangered, threatened, or potentially extirpated plant, fish, or animal species; or~~

~~(ii) Contain the presence of plant associations of infrequent occurrence, irreplaceable ecological functions, or exceptional local significance including but not limited to estuarine systems, peat bogs and fens, mature forested wetlands, groundwater exchange areas, significant habitat, or unique educational sites; or~~

~~(iii) Have three or more wetland classes, one of which is open water.~~

~~(b) Category II wetlands are greater than 2,500 square feet in area, do not exhibit the characteristics of Category I wetlands, and meet one of the following criteria:~~

~~(i) Are contiguous with water bodies or tributaries to water bodies which under normal circumstances contain or support a fish population, including streams where flow is intermittent; or~~

~~(ii) Are greater than one acre in size in their entirety; or~~

~~(iii) Are less than or equal to one acre in size in their entirety and have two or more wetland classes, with neither class dominated by nonnative invasive species.~~

~~(c) Category III wetlands are greater than 2,500 square feet in area and do not exhibit those characteristics of Category I or II wetlands.~~

~~(2) Standard buffer widths for regulated wetlands are established as follows:~~

~~(a) Category I wetlands shall have a standard buffer width of 200 feet.~~

~~(b) Category II wetlands shall have a standard buffer width of 100 feet.~~

~~(c) Category III wetlands shall have a standard buffer width of 50 feet for wetlands that are greater than 10,000 square feet in area, and shall have a standard buffer width of 25 feet for wetlands that are between 2,500 to 10,000 square feet in area.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

**15.10.260 — Structures, improvements, and clearing and grading within regulated wetlands.**

~~(1) *Generally.* No clearing and grading may take place and no structure or improvement may be located in a regulated wetland except as provided in this section.~~

~~(2) *Public park.* The city may allow pedestrian access through a regulated wetland in conjunction with a public park. The access, if approved, must be designed to the maximum extent feasible to protect the wetland from any adverse effects or impacts of the access and to limit the access to the defined access area.~~

~~(3) *Rehabilitation.* The shoreline administrator may permit or require an applicant to rehabilitate and maintain a regulated wetland by removing detrimental material such as debris and inappropriate vegetation and by requiring that native vegetation be planted. These actions may be required at any time that a condition detrimental to water quality or habitat exists.~~

~~(4) *Modification.* Other than as specified in subsections (2) and (3) of this section, the city may approve any request to locate an improvement or engage in clearing and grading within a regulated wetland using Process IV per Chapter 19.70 FWRC. The specific location and extent of the intrusion into the regulated wetland must constitute the minimum necessary encroachment. Approval of a request for improvements or clearing and grading within a regulated wetland through Process IV of FWRC Title 19 shall be based on the following criteria:~~

~~(a) It will not adversely affect water quality.~~

- ~~(b) It will not adversely affect the existing quality of the wetland's or buffer's wildlife habitat.~~
- ~~(c) It will not adversely affect drainage or stormwater retention capabilities.~~
- ~~(d) It will not lead to unstable earth conditions nor create erosion hazards.~~
- ~~(e) It will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole, including the loss of open space.~~
- ~~(f) It will result in no net loss of wetland area, function, or value.~~
- ~~(g) The project is in the best interest of the public health, safety, or welfare.~~
- ~~(h) The applicant has demonstrated sufficient scientific expertise and supervisory capability to carry out the project.~~
- ~~(i) The applicant is committed to monitoring the project and to making corrections if the project fails to meet projected goals.~~

(5) *Required information.* As part of any request under this section, the applicant shall submit a report, prepared by a qualified professional approved by the city, that includes the following information:

(a) *Mitigation plan.* A mitigation plan shall include the following elements:

- (i) Environmental goals and objectives.
- (ii) Performance standards.
- (iii) Detailed construction plans.
- (iv) Timing.
- (v) Monitoring program for a minimum of five years.
- (vi) Contingency plan.
- (vii) Subject to the applicant's election of timing alternatives provided in subsection (5)(d) of this section, a performance and maintenance bond in an amount of 120 percent of the costs of implementing the mitigation plan or the contingency plan, whichever is greater.

(b) *Mitigation.* Mitigation of wetland impacts shall be restricted to restoration, creation, or enhancement, within the same basin, of in kind wetland type which results in no net loss of wetland area, function or value. Where feasible, mitigation measures shall be designed to improve the functions and values of the impacted wetland.

(c) *Minimum acreage mitigation ratio.* The following are ratios for providing restoration, creation, or enhancement of impacted wetland areas. The first number of the ratio specifies the acreage of wetland requiring restoration, creation, or replacement and the second specifies the acreage of wetlands impacted.

Wetland Category	Creation and Restoration	Enhancement
Category I (all types)	6:1	12:1
Category II:	-	-
Forested	3:1	6:1
Scrub/Shrub	2:1	4:1
Emergent	2:1	4:1
Category III:	-	-
Forested	2:1	4:1
Scrub/Shrub	1.5:1	3:1
Emergent	1.25:1	2.5:1

The director may permit or require the above replacement ratios to be increased or decreased based on the following criteria:

- (i) Probable success of the proposed mitigation.
- (ii) Projected losses in function or value.
- (iii) Findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under an alternative ratio.
- (iv) In no case shall the minimum acreage replacement ratio be less than 1.25:1.

(d) *Timing.* All required wetland mitigation improvements, including monitoring, shall be completed and accepted by the shoreline administrator prior to beginning activities that will disturb regulated wetlands, or the applicant shall provide the performance and maintenance bond specified in subsection (5)(a)(vii) of this section. In either event, the applicant may not take any action that disturbs a regulated wetland or its buffer until the director has reviewed and approved the mitigation plan. All wetland or buffer disturbing activities, and all mitigation, shall be timed to reduce impacts to existing plants and animals.

(e) *Inspections.* The applicant shall pay for services of a qualified professional selected and retained by the city to review the wetland mitigation report and other relevant information, conduct periodic inspections, issue a written report to the shoreline administrator stating that the project complies with requirements of the mitigation plan, and to conduct and report to the director on the status of the monitoring program.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

#### **15.10.270 — Structures, improvements, and clearing and grading within regulated wetland buffers.**

(1) *Generally.* Except as allowed in this section, no clearing and grading may take place and no structure or improvement may be located within a regulated wetland buffer.

(2) *Wetland buffer averaging.* Wetland buffers may be averaged only when the wetland or the buffer which is proposed to be reduced contains habitat types which have been so permanently impacted that reduced buffers do not pose a detriment to the existing or expected habitat functions. Through Process III per Chapter 19.65 FWRC, the applicant must demonstrate to the satisfaction of the shoreline administrator that the proposed buffer averaging will meet all of the following criteria:

- (a) Reduced buffers will not affect the water quality entering a wetland or stream;
- (b) Reduced buffers will not adversely affect the existing quality of wildlife habitat within the wetland or the buffer;
- (c) Reduced buffers will not result in unstable earth conditions nor create erosion hazards; and
- (d) Reduced buffers will not be detrimental to any other public or private properties, including the loss of open space.

At no point shall the buffer width be reduced to less than 50 percent of the required standard buffer width, unless the buffer, in existing conditions, has already been permanently eliminated by previous, legally permitted actions. The total area contained within the buffer after averaging shall be equal to the area required for standard buffer dimensions.

(3) *Essential public facilities, public utilities, and other public improvements.* The shoreline administrator may permit the placement of an essential public facility, public utility, or other public improvements in a regulated wetland buffer if he or she determines that the line or improvement must traverse the buffer because no feasible or alternative location exists based on an analysis of technology and system efficiency. The specific location and extent of the intrusion into the buffer must constitute the minimum necessary encroachment to meet the requirements of the public facility or utility.

(4) *Minor improvements.* Minor improvements such as footbridges, walkways, and benches may be located within the buffer from a regulated wetland if approved through Process III per Chapter 19.65 FWRC, based on the following criteria:

- (a) It will not adversely affect water quality;
- (b) It will not adversely affect the existing quality of the wetland's or buffer's wildlife habitat;

- ~~(c) It will not adversely affect drainage or stormwater retention capabilities;~~
- ~~(d) It will not lead to unstable earth conditions nor create erosion hazards; and~~
- ~~(e) It will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole.~~

~~(5) *Wetland buffer reduction.* Through Process III per Chapter 19.65 FWRC, the shoreline administrator may reduce the standard wetland buffer width by up to 50 percent, but in no case to less than 25 feet, on a case by case basis, if the project includes a buffer enhancement plan which utilizes appropriate native vegetation and clearly substantiates that an enhanced buffer will improve and provide additional protection of wetland functions and values, and where one of the following conditions can be demonstrated:~~

- ~~(a) Existing conditions are such that the required standard buffer exists in a permanently altered state (e.g., roadways, paved parking lots, permanent structures, etc.) which does not provide any buffer function, then the buffer can be reduced for that portion where the intrusions are existing.~~
- ~~(b) Except for Category I wetlands, existing conditions are such that the wetland has been permanently impacted by adjacent development activities, as evidenced by such things as persistent human alterations or the dominance of nonnative invasive species.~~

~~The director shall have the authority to determine if buffer averaging is warranted on the subject property and, if so, may require additional buffer area on other portions of the perimeter of the sensitive area.~~

~~(6) *Modification.* Other than as specified in subsections (2) and (3) of this section, the city may approve any request to locate an improvement or engage in clearing and grading within the buffer from a regulated wetland through Process IV per Chapter 19.70 FWRC, based on the following criteria:~~

- ~~(a) It will not adversely affect water quality;~~
- ~~(b) It will not adversely affect the existing quality of the wetland's or buffer's wildlife habitat;~~
- ~~(c) It will not adversely affect drainage or stormwater retention capabilities;~~
- ~~(d) It will not lead to unstable earth conditions nor create erosion hazards; and~~
- ~~(e) It will not be materially detrimental to any other property in the area of the subject property nor to the city as a whole, including the loss of open space.~~

~~Any modification under this subsection shall not reduce the standard buffer by more than 50 percent, and in no case shall the remaining buffer be less than 25 feet. The city may require, as a condition to any modification granted under this subsection, preparation and implementation of a wetland buffer enhancement plan to protect wetland and buffer functions and values.~~

~~(7) *Revegetation.* The applicant shall stabilize all areas left exposed after clearing and grading with native vegetation normally associated with the buffer.~~

~~(8) *Wetland buffer increases.* The director shall require increased environmentally sensitive area buffer widths on a case by case basis when the director determines that a larger buffer is necessary to protect environmentally sensitive area functions, values, or hazards based on site specific conditions. This determination shall be supported by appropriate documentation showing that additional buffer width is reasonably related to protection of environmentally sensitive area functions and values, or protection of public health, safety, and welfare. Such determination shall be attached as permit conditions. The determination shall demonstrate that at least one of the following factors is met:~~

- ~~(a) There is habitat for species listed as threatened or endangered by state or federal agencies present within the sensitive area and/or its buffer, and additional buffer is necessary to maintain viable functional habitat;~~
- ~~(b) There are conditions or features adjacent to the buffer, such as steep slopes or erosion hazard areas, which over time may pose an additional threat to the viability of the buffer and/or the sensitive area. In such circumstances, the city may choose to impose those buffers, if any, associated with the condition or feature posing the threat in addition to, or to a maximum beyond, the buffer required for the subject sensitive area.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11-1-11.)~~

## **Article VII. Critical Aquifer Recharge Areas and Wellhead Protection Areas**

### **15.10.280 — Limitations.**

This division regulates any development activity, or division of land, which requires review under FWRC Title 14, Environmental Policy, and which is located within designated wellhead capture zones. Wellhead Capture Zones 1, 2, and 3 are designated as critical aquifer recharge areas under the provisions of the Growth Management Act (Chapter 36.70A RCW) and are established based on proximity to and travel time of groundwater to the city's public water source wells. This division shall not apply to projects that have received a letter of completeness prior to the effective date of the amendments.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

### **15.10.290 — Classification of wellhead capture zones.**

The Lakehaven utility district (LUD) has designated three wellhead capture zones based on proximity to and travel time of groundwater to the city's public water source wells.

(1) Wellhead Capture Zone 1 represents the land area overlaying the one year time of travel zone of any public water source well owned by LUD.

(2) Wellhead Capture Zone 2 represents the land area overlaying the five year time of travel zone of any public water source well owned by LUD, excluding the land area contained in Wellhead Capture Zone 1.

(3) Wellhead Capture Zone 3 represents the land area overlaying the 10 year time of travel zone of any public water source well owned by LUD, excluding the land area contained in Wellhead Capture Zone 1 or 2.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

### **15.10.300 — General requirements.**

(1) Activities may only be permitted in a critical aquifer recharge area and wellhead protection area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer.

(2) The city shall impose development conditions to prevent degradation of the critical aquifer recharge and wellhead protection areas. All conditions to permits shall be based on known, available, and reasonable methods of prevention, control, and treatment (AKART).

(3) The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, state Department of Ecology, state Department of Health, and the King County health department.

(4) The proposed activity must be designed and constructed in accordance with the King County surface water design manual (KCSWDM), the Federal Way addendum to the KCSWDM, and the King County stormwater pollution control manual (BMP manual).

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

### **15.10.310 — Prohibited activities in Wellhead Capture Zone 1.**

(1) Land uses or activities for development that pose a significant hazard to the city's groundwater resources resulting from storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances shall be prohibited in Wellhead Capture Zone 1, except as specified in FWRC 19.30.170. These land uses and activities include, but are not limited to:

(a) On site community sewage disposal systems as defined in Chapter 248 272 WAC;

(b) Hazardous liquid pipelines as defined in Chapter 81.88 RCW;

(c) Solid waste landfills;

(d) Solid waste transfer stations;

(e) Liquid petroleum refining, reprocessing, and storage;

(f) The storage or distribution of gasoline treated with the additive MTBE;

- ~~(g) Hazardous waste treatment, storage, and disposal facilities (except those defined under permit by rule for industrial wastewater treatment processes per WAC 173-303-802(5)(c));~~
- ~~(h) Chemical manufacturing, including but not limited to organic and inorganic chemicals, plastics and resins, pharmaceuticals, cleaning compounds, paints and lacquers, and agricultural chemicals;~~
- ~~(i) Dry cleaning establishments using the solvent perchloroethylene;~~
- ~~(j) Primary and secondary metal industries that manufacture, produce, smelt, or refine ferrous and nonferrous metals from molten materials;~~
- ~~(k) Wood treatment facilities, including wood preserving and wood products preserving;~~
- ~~(l) Mobile fleet fueling operations;~~
- ~~(m) Mining (metal, sand, and gravel); and~~
- ~~(n) Other land uses and activities that the city determines would pose a significant groundwater hazard to the city's groundwater supply.~~

~~(2) The uses listed in subsection (1) of this section represent the state of present knowledge and most common description of said uses. As other polluting uses are discovered, or other terms of description become necessary, they will be added to the list of uses prohibited within this zone.~~

~~(Ord. No. 11-705, § 5 (Exh. B), 11-1-11.)~~

**15.10.320 — Regulation of facilities handling and storing hazardous materials.**

~~(1) Any development activity or division of land which requires review under FWRC Title 14, Environmental Policy, located in critical aquifer recharge areas (Wellhead Capture Zones 1, 2, and 3), shall submit a hazardous materials inventory statement with a development permit application. Ongoing operation and maintenance activities of public wells by public water providers are exempt from these requirements.~~

~~(2) The development review committee will review the hazardous materials inventory statement along with the land use application, to determine whether hazardous materials meeting the definition of Chapter 19.05 FWRC will be used, stored, transported, or disposed of in connection with the proposed activity. The development review committee shall make the following determination:~~

~~(a) No hazardous materials are involved.~~

~~(b) Hazardous materials are involved; however, existing laws or regulations adequately mitigate any potential impact, and documentation is provided to demonstrate compliance.~~

~~(c) Hazardous materials are involved and the proposal has the potential to significantly impact critical aquifer recharge areas and wellhead capture zones; however, sufficient information is not available to evaluate the potential impact of contamination. The city may require a hydrogeologic critical area assessment report to be prepared by a qualified groundwater scientist in order to determine the potential impacts of contamination on the aquifer. The report shall include the following site and proposal related information, at a minimum:~~

~~(i) Information regarding geologic and hydrogeologic characteristics of the site, including the surface location of the wellhead capture zone in which it is located and the type of infiltration of the site.~~

~~(ii) Groundwater depth, flow direction, and gradient.~~

~~(iii) Location of other critical areas, including surface waters, within 200 feet of the site.~~

~~(iv) Best management practices (BMPs) and integrated pest management (IPM) proposed to be used, including:~~

~~(A) Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features;~~

~~(B) Predictive evaluation of contaminant transport based on potential releases to groundwater; and~~

~~(C) Predictive evaluation of changes in the infiltration/recharge rate.~~

~~(3) A spill containment and response plan may be required to identify equipment and/or structures that could fail, and shall include provisions for inspection as required by the applicable state regulations.~~

(4) A groundwater monitoring plan may be required to monitor quality and quantity of groundwater, surface water runoff, and/or site soils. The city may require the owner of a facility to install one or more groundwater monitoring wells to accommodate the required groundwater monitoring. Criteria used to determine the need for site monitoring shall include, but not be limited to, the proximity of the facility to production or monitoring wells, the type and quantity of hazardous materials on site, and whether or not the hazardous materials are stored in underground vessels.

(5) The city may employ an outside consultant at the applicant's expense for third party review of the hydrogeologic critical area assessment report, the spill containment and response plan, and the groundwater monitoring plan. (Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)

**15.10.330 — Performance standards.**

(1) Any new or existing use applying for a development permit, or subdivision approval which requires review under FWRC Title 14, Environmental Policy, within Wellhead Capture Zone 1, which involves storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances meeting the definition of Chapter 19.05 FWRC shall comply with the following standards:

(a) *Secondary containment.*

(i) The owner or operator of any facility or activity shall provide secondary containment for hazardous materials or other deleterious substances in quantities specified in the International Fire Code.

(ii) Hazardous materials stored in tanks that are subject to regulation by the Washington State Department of Ecology under Chapter 173 360 WAC (Underground Storage Tank Regulations) are exempt from the secondary containment requirements of this section; provided, that documentation is provided to demonstrate compliance with those regulations.

(b) Design and construction of new stormwater infiltration systems must address site-specific risks of releases posed by all hazardous materials on site. These risks may be mitigated by physical design means, or equivalent best management practices, in accordance with an approved hazardous materials management plan. Design and construction of said stormwater infiltration systems shall also be in accordance with the KCSWDM, as amended by the city of Federal Way, and shall be certified for compliance with the requirements of this section by a professional engineer or engineering geologist registered in the state of Washington.

(c) The following standards shall apply to construction activities occurring where construction vehicles will be refueled on site, and/or hazardous materials meeting the definition of Chapter 19.05 FWRC will be stored, dispensed, used, or handled on the construction site. As part of the city's project permitting process, the city may require any or all of the following items:

(i) Detailed monitoring and construction standards;

(ii) Designation of a person on site during operating hours who is responsible for supervising the use, storage, and handling of hazardous materials, and who has appropriate knowledge and training to take mitigating actions necessary in the event of a fire or spill;

(iii) Hazardous material storage, dispensing, refueling areas, and use and handling areas shall be provided with secondary containment adequate to contain the maximum release from the largest volume container of hazardous materials stored at the construction site;

(iv) Practices and procedures to ensure that hazardous materials left on site when the site is unsupervised are inaccessible to the public. Locked storage sheds, locked fencing, locked fuel tanks on construction vehicles, or other techniques may be used to preclude access;

(v) Practices and procedures to ensure that construction vehicles and stationary equipment that are found to be leaking fuel, hydraulic fluid, and/or other hazardous materials will be removed immediately, or repaired on site immediately. The vehicle or equipment may be repaired in place, provided the leakage is completely contained;

(vi) Practices and procedures to ensure that storage and dispensing of flammable and combustible liquids from tanks, containers, and tank trucks into the fuel and fluid reservoirs of construction vehicles or stationary equipment on the construction site are in accordance with the International Fire Code; and

~~(vii) Practices and procedures, and/or on-site materials, adequate to ensure the immediate containment and clean-up of any release of hazardous substances stored at the construction site. On-site clean-up materials may suffice for smaller spills, whereas clean-up of larger spills may require a subcontract with a qualified clean-up contractor. Releases shall immediately be contained, cleaned up, and reported according to state requirements.~~

~~(2) Any development activity, or division of land, which requires review under FWRC Title 14, Environmental Policy, within all wellhead capture zones (1, 2, and 3), which involves storing, handling, treating, using, producing, recycling, or disposing of hazardous materials, or other deleterious substances, meeting the definition of Chapter 19.05 FWRC shall comply with the following standards:~~

~~(a) Fleet and automotive service station fueling, equipment maintenance, and vehicle washing areas shall have a containment system for collecting and treating all runoff from such areas and preventing release of fuels, oils, lubricants, and other automotive fluids into the soil, surface water, or groundwater. Appropriate emergency-response equipment shall be kept on site during the transfer, handling, treatment, use, production, recycling, or disposal of hazardous materials or other deleterious substances.~~

~~(b) Secondary containment or equivalent best management practices, as approved by the director of community development services, shall be required at loading and unloading areas that store, handle, treat, use, produce, recycle, or dispose of hazardous materials, or other deleterious substances, meeting the definition of Chapter 19.05 FWRC.~~

~~(c) Fill material shall not contain concentrations of contaminants that exceed clean-up standards for soil as specified in the Model Toxics Control Act (MTCA). An imported fill source statement is required for all projects where more than 100 cubic yards of fill will be imported to a site. The city may require analytical results to demonstrate that fill materials do not exceed clean-up standards. The imported fill source statement shall include:~~

~~(i) Source location of imported fill;~~

~~(ii) Previous land uses of the source location; and~~

~~(iii) Whether or not fill to be imported is native soil.~~

~~(d) All development or redevelopment shall implement best management practices (BMPs) for water quality and quantity, as approved by the director of community development services. Such practices include biofiltration swales and use of oil-water separators, BMPs appropriate to the particular use proposed, cluster development, and limited impervious surfaces.~~

~~(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)~~

**15.10.340 — Use of pesticides, herbicides, and fertilizers in critical aquifer recharge areas and wellhead protection areas.**

Proposed developments with maintained landscaped areas greater than 10,000 square feet in area which require review under FWRC Title 14, Environmental Policy, shall prepare an operations and management manual using best management practices (BMPs) and integrated pest management (IPM) for fertilizer and pesticide/herbicide applications. The BMPs shall include recommendations on the quantity, timing, and type of fertilizers applied to lawns and gardens to protect groundwater quality.

(Ord. No. 11 705, § 5 (Exh. B), 11 1 11.)