

CITY OF MAPLE VALLEY, WASHINGTON

ORDINANCE NO. 0-06-333

AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON, REPEALING MVMC CHAPTER 18.60 CRITICAL AREAS REGULATIONS (AS ADOPTED IN 1999 AND REVISED IN 2001) AND REPLACING IT WITH MVMC CHAPTER 18.60 CRITICAL AREAS PROTECTION REGULATIONS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the state Growth Management Act requires cities and counties to designate and protect critical areas;

WHEREAS, the state Growth Management Act defines critical areas as: wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and critical aquifer recharge areas; and,

WHEREAS, the state Growth Management Act requires cities to update their critical areas ordinances to include “best available science” methods to make local regulations more flexible and predictable when determining the values and functions of wetlands; and,

WHEREAS, the City of Maple Valley encouraged public participation in the review of the draft Critical Area Protection Regulations (“CAPR”), including: extensive Planning Commission review; a Public Hearing on November 4, 2004; and detailed City Council review during regular meetings in February and March 2005; and,

WHEREAS, the City of Maple Valley submitted the draft CAPR to the Washington State Department of Community, Trade and Economic Development (CTED) on March 11, 2005 for its sixty-day state agency review; and,

WHEREAS, the City of Maple Valley issued a SEPA threshold determination of non-significance (DNS) for the elements on March 15, 2005; and,

WHEREAS, the appeal period for the SEPA threshold determination concluded on March 29, 2005 and no appeals were filed; and,

WHEREAS, the City of Maple Valley took under advisement comment letters received from the Master Builders of King and Snohomish Counties, the Department of Ecology, and the Department of Community Trade and Economic; and,

WHEREAS, as suggested by state agencies, the City of Maple Valley delayed adoption of the draft CAPR until issuance of the Central Puget Sound Growth Management Hearings Board (Hearings Board) decision on the state’s challenge to the City of Kent’s CAO; and,

WHEREAS, the Hearings Board determined that the City of Kent CAO was in noncompliance with the Growth Management Act with regard to its outdated wetland rating system and associated buffer widths; and,

WHEREAS the City of Maple Valley CAR contained a similar rating system which has subsequently been revised by the City to comply with the Growth Management Act; and

WHEREAS, the City of Maple Valley CAPR has met the requirements of the State Environmental Policy Act, and the City desires to adopt the final Critical Areas Protection Regulations;

NOW, THEREFORE, THE CITY COUNCIL OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Critical Areas Protection Regulations Adopted. The City of Maple Valley hereby adopts by reference MVMC Chapter 18.60 Critical Areas Protection Regulations. Copies of the elements are incorporated herein by this reference as if set forth in full and referenced under Clerk's Receiving No. _____.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 28TH DAY OF AUGUST, 2006.

Date of Publication: September 6, 2006
Effective Date: September 11, 2006

CRITICAL AREAS REGULATIONS

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18.60.010 Purpose.

The purpose of this chapter is to implement the goals and policies of the Washington State Growth Management Act, and specifically section RCW 36.70A.060 which requires each local jurisdiction to adopt rules for protection of environmentally critical areas. This chapter also implements elements of the Washington State Environmental Policy Act, Chapter 43.21C RCW, and the Maple Valley comprehensive plan which call for protection of the natural environment and the public health and safety. The provisions of this chapter are designed to accomplish the following:

- A. Establishing development standards to protect defined critical areas;
- B. Protecting members of the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, seismic events, soil subsidence or steep slope failures;
- C. Protecting unique, fragile and valuable elements of the environment including, but not limited to, wildlife and its habitat;
- D. Requiring mitigation of unavoidable impacts on environmentally critical areas by regulating alterations in or near critical areas;
- E. Preventing cumulative adverse environmental impacts on water availability, water quality, ground water, wetlands and streams;
- F. Measuring the quantity and quality of wetland and stream resources and preventing overall net loss of wetland and stream functions;
- G. Protecting the public trust as to navigable waters and aquatic resources;
- H. Alerting members of the public including, but not limited to, appraisers, owners, potential buyers or lessees to the development limitations of critical areas; and
- I. Providing City officials with sufficient information to protect critical areas. (Ord. O-99-109 § 1).

18.60.020 Applicability.

A. The provisions of this chapter shall apply to all land uses in the City of Maple Valley, and all persons, projects or agencies within the City shall comply with the requirements of this chapter.

B. The City of Maple Valley shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.

C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

D. When any provision of any other chapter of the Maple Valley Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides more protection to environmentally critical

areas shall apply unless specifically provided otherwise in this chapter or unless such provision conflicts with federal or State laws or regulations.

E. The provisions of this chapter shall apply to all forest practices over which the City has jurisdiction pursuant to Chapter 76.09 RCW and Title 222 WAC. (Ord. O-99-109 § 1).

18.60.030 Definitions.

A. **“Critical areas”** means any of those areas which are subject to natural hazards or those land features which support unique, fragile or valuable natural resources including fishes, wildlife and other organisms and their habitat and such resources which carry, hold or purify water in their natural state. Critical areas include coal mine hazard areas, erosion hazard areas, flood hazard areas, landslide hazard areas, seismic hazard areas, steep slope hazard areas, critical aquifer recharge areas, streams, wildlife habitat conservation areas, and wetlands.

B. **“Critical aquifer recharge areas”** (CARA) means those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARA include:

1. Those areas that have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.

2. Wellhead protection areas defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

3. Those critical aquifer recharge areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.

4. Susceptible ground water management areas as designated pursuant to Chapters 173-100 WAC.

5. Special protection areas as defined by WAC 173-200-090.

6. Those aquifer recharge areas meeting the criteria for susceptibility or vulnerability established by the state Department of Ecology.

7. Sole source aquifers as designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer Protection Plan authorized by Section 1424(e) of the Safe Drinking Water Act of 1974.

C. **“Director”** means the Director of the Community Development Department or designee.

D. **“Erosion”** means the process by which soil particles are mobilized and transported by natural agents such as wind, rainsplash, frost action or surface water flow.

E. **“Erosion hazard areas”** means those areas underlain by soils which are subject to severe erosion when disturbed. Such soils include, but are not limited

to, those classified as having a severe to very severe erosion hazard according to the USDA Natural Resources Conservation Service, These soils include, but are not limited to, any occurrence of River Wash (“Rh”) or Coastal Beaches (“Cb”) and the following when they occur on slopes 15 percent or steeper: Alderwood Gravelly Sandy Loam (AgD), Alderwood and Kitsap (AkF), Beausite Gravelly Sandy Loam (BeD and BeF), Ovall Gravelly Loam (OvD and OvF), Ragnar Fine Sandy Loam (RaD), and Ragnar-Indianola association (RdE).

F. “**Flood hazard areas**” means those areas subject to a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland waters and/or

2. The unusual and rapid accumulation of runoff of surface waters from any source.

G. “**Hazardous substance processing or handling**” means the use, storage, manufacture, or other land use activity involving hazardous substances, but does not include individually packaged consumer products or quantities of hazardous substances less than five (5) gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Ch. 173-303 WAC, and any pertinent local ordinances, such as sewer discharge standards.

H. “**Hazardous waste**” means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Ch. 70.105 RCW, Ch. 173-303 WAC.

1. “Dangerous waste” means any discarded, useless, unwanted or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or combinations of such wastes:

- a. Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

- b. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

2. “Extremely hazardous waste” means any waste which:

- a. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife, and

- b. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.

I. “**Landslide**” means episodic downslope movement of a mass including, but not limited to, vegetation, soil and rock.

J. “**Landslide hazard area**” means those areas subject to severe risks of landslides, including the following:

1. Any area with a combination of:

- a. Slopes steeper than 15 percent;

b. Impermeable soils, such as silt and clay, frequently interbedded with granular soils, such as sand and gravel; and

c. Springs or ground water seepage;

2. 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 from that epoch;

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

4. Any area located on an alluvial fan, presently subject to or potentially subject to inundation by debris flows or deposition of stream-transported sediments.

K. **“Qualified professional”** for purposes of Chapter 18.60 MVMC, means a person with experience and training in the applicable critical area. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or related field, and two years of related work experience.

1. A qualified professional for watercourses, wetlands, and wildlife habitat conservation areas must have a degree in biology or related field and relevant professional experience.

2. A qualified professional for preparing geotechnical reports and geotechnical design recommendations must be a professional geotechnical engineer, licensed in the state of Washington, as defined under WAC 16-210-010(5). Identification and evaluation of geologic hazards may be performed by geologists or other geology professionals with experience identifying geologic hazards.

L. **“Seismic hazard areas”** means those areas subject to severe risk of earthquake damage as a result of soil liquefaction in areas underlain by cohesionless soils of low density and usually in association with a shallow groundwater table or of other seismically induced settlement.

M. **“Steep slope hazard areas”** means those areas on slopes 40 percent or steeper within a vertical elevation change of at least 10 feet. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief. For the purpose of this definition:

1. The toe of a slope is a distinct topographic break in slope which separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet; and

2. The top of a slope is a distinct, topographic break in slope which separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the top of a steep slope is the upper most limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

N. **“Stream functions”** means natural processes performed by streams including functions which are important in facilitating food chain production, providing habitat for nesting, rearing and resting sites for aquatic, terrestrial and

avian species, maintaining the availability and quality of water, such as purifying water, acting as recharge and discharge areas for groundwater aquifers, moderating surface and stormwater flows and maintaining the free flowing conveyance of water, sediments and other organic matter.

O. “**Streams**” means those areas where surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water run-off devices or other entirely artificial watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction in such watercourses.

For the purpose of this definition, a defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales.

The channel or bed need not contain water year-round.

For the purpose of defining the following categories of streams, normal rainfall is rainfall that is at or near the mean of the accumulated annual rainfall record, based upon the water year as recorded at the Seattle-Tacoma International Airport:

1. Streams With Fish are those used by salmonids;
2. Streams Without Fish are those streams not used by salmonids that flow year-round during years of normal rainfall ; and
3. Intermittent Streams are those streams that are intermittent or ephemeral during years of normal rainfall and that are not used by salmonids.

P. “**Wetland edge**” means the line delineating the outer edge of a wetland, consistent with the Washington State Wetlands Identification and Delineation Manual (Publication #96-94), March 1997.

Q. “**Wetland functions**” means natural processes performed by wetlands including functions which are important in facilitating food chain production, providing habitat for nesting, rearing and resting sites for aquatic, terrestrial and avian species, maintaining the availability and quality of water, acting as recharge and discharge areas for groundwater aquifers and moderating surface and stormwater flows, as well as performing other functions including, but not limited to, those set forth in 33 CFR 320.4(b)(2), 1988.

R. “**Wetland, isolated**” means a wetland which has a total size less than 5,000 square feet excluding buffers, which is hydrologically isolated from other wetlands or streams does not have permanent open water, and is determined to be of low function.

S. “**Wetlands**” means those areas which are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and 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, or other artificial features intentionally created to mitigate conversions of wetlands pursuant to wetlands mitigation banking.

Wetlands do not include artificial features created from nonwetland areas 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.

Where the vegetation has been removed or substantially altered, a wetland shall be determined by the presence or evidence of hydric or organic soil, as well as by other documentation, such as aerial photographs, of the previous existence of wetland vegetation.

Wetlands shall be rated according to the categorization of wetlands described below. When the areas of any wetlands are hydrologically connected to each other, they shall be added together to determine which of the following categories of wetlands apply:

1. Category I Wetlands: Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions. In Western Washington, these include estuarine wetlands greater than an acre in size, natural heritage wetlands, bogs, mature and old growth forested wetlands, wetlands in coastal lagoons, and wetlands that perform many functions very well.

2. Category II Wetlands: Category II wetlands are difficult, though not impossible, to replace and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. In Western Washington, Category II wetlands include estuarine wetlands smaller than an acre in size (or if disturbed, larger than an acre), interdunal wetlands greater than an acre in size, and wetland that perform functions well.

3. Category III Wetlands: Category III wetlands are 1) wetlands with a moderate level of functions and 2) interdunal wetlands between 0.1 and 1 acre in size.

4. Category IV Wetlands: Category IV wetlands have the lowest levels of functions and often are disturbed. These wetlands can be replaced and in some cases improved.

T. **“Wildlife habitat conservation areas”** means those areas that are essential for the preservation of critical habitat and species. All areas within the City of Maple Valley meeting one or more of the following criteria are designated wildlife habitat conservation areas:

1. Areas with which non-aquatic state or federally designated endangered, threatened, and sensitive species have a primary association.

a. Federally designated endangered and threatened species are those wildlife species identified by the U.S. Fish and Wildlife Service that are in danger of extinction or are threatened to become endangered.

b. State designated endangered, threatened, and sensitive non-aquatic wildlife species are those 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).

2. Habitats and species of local importance. Habitats and species of local importance are those identified by the city council, including those that possess unusual or unique habitat warranting protection, or land areas found by the city council to be essential for preserving connections between habitat blocks and open spaces.

18.60.040 Appeals.

Any decision to approve, condition or deny a development proposal based on the requirements of this chapter may be appealed according to and as part of the appeal procedure for the permit or approval involved. (Ord. O-99-109 § 1).

18.60.050 Critical area rules.

The Director of Community Development is authorized to adopt such administrative rules and regulations as are necessary and appropriate to implement the provisions of this chapter. (Ord. O-99-109 § 1).

18.60.060 Complete exemptions.

The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. Exemption does not give permission to degrade a critical area or ignore risk from natural hazards. Any part of a critical area or buffer that is subject to subject to an exempted alteration shall be promptly restored, rehabilitated or replaced by the party responsible for performing the alterations.

A. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the Department immediately. The Director shall confirm that an emergency exists

and determine what, if any, mitigation shall be required to protect the health, safety, welfare and environment and to repair any resource damage.

B. Public water, electric and natural gas distribution, public sanitary sewer, cable communications, telephone utility and related activities undertaken pursuant to approved best management practices, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;

2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency which approves the new location of the facilities;

3. Replacement, operation, repair, modification or installation or construction in existing, developed utility corridors, an improved right-of-way or authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations;

4. Relocation of public sewer local collection, public water local distribution, electric, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by a local governmental agency which approves the new location of the facilities;

5. Replacement, operation, repair, modification, installation or construction of public sewer and water, electric, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City authorized private roadway;

C. Maintenance, operation, repair, modification or replacement of publicly improved roadways as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way;

D. Maintenance, operation or repair of publicly improved recreation areas as long as any such alteration does not involve the expansion of improvements into previously unimproved recreation areas;

E. Public agency development proposals only to the extent of any construction contract awarded prior to adoption of critical areas regulations on November 27, 1990; provided, that any law or regulation in effect at the time of such award shall apply to the proposal;

18.60.070 Partial exemptions.

The following developments, activities, and associated uses shall be exempt from the review process of this chapter and any administrative rules promulgated

thereunder provided such activities are otherwise consistent with the purpose of this chapter and other applicable regulations. The Director may apply conditions to an underlying permit or approval to ensure that the uses are consistent with the provisions of this chapter.

A. Structural modification of, addition to or replacement of structures, except single detached residences, in existence prior to adoption of critical areas regulations on November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the structure lying within the above-described building setback area, critical area or buffer;

B. Structural modification of, addition to or replacement of single-family detached residences in existence prior to adoption of critical areas regulations on November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 1,000 square feet over that existed prior to adoption of critical areas regulations on November 27, 1990 and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is in the critical area, extends farther into the critical area; and

C. Maintenance or repair of structures which do not meet the development standards of this chapter for coal mine, landslide or seismic hazard areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair.

D. A permit or approval sought as part of a development proposal for which multiple permits are required if:

1. The City previously reviewed all critical areas on the site;
2. There is no material change in the development proposal since the prior review;
3. There is no new information available which is important to any critical area review of the site or particular critical area;
4. The permit or approval under which the prior review was conducted has not expired or, if no expiration date, no more than five years lapsed since the issuance of that permit or approval; and
5. The prior permit or approval, including any conditions, has been complied with. (Ord. O-99-109 § 1).

18.60.080 Exceptions.

A. Public Agency/Utility Exception. If the application of this chapter would prohibit a development proposal by a public agency or utility, the agency or utility may apply for an exception pursuant to this subsection:

1. The public agency or utility shall apply to the Department and shall make available to the Department other related project documents such as permit applications to other agencies, special studies and SEPA documents.

2. The Department shall review the application based on the following criteria and may approve the application only if:

a. There is no other practical alternative to the proposed development with less impact on the critical area;

b. The proposal minimizes the impact on critical areas; and

c. The proposal results in no net loss to fish and wildlife resources.

3. The department shall process exceptions, provide public notice, and provide opportunity for the public to request a public hearing, and provide an appeal process consistent with the provisions of Process 2.

4. This exception shall not allow the use of the following critical areas for regional retention/detention facilities except where there is a clear showing that the facility will protect public health and safety or repair damaged natural resources:

a. Class 1 streams or buffers;

b. Class 1 wetlands or buffers with plant associations of infrequent occurrence; or

c. Class 1 or 2 wetlands or buffers which provide critical or outstanding habitat for herons, raptors or State or federal designated endangered or threatened species unless clearly demonstrated by the applicant that there will be no impact on such habitat.

B. Reasonable Use Exception. If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection:

1. The applicant may apply for a reasonable use exception pursuant to Process 2 without first having applied for a variance. The applicant shall apply to the department, and the department shall make a final decision based on the following criteria:

a. The application of this chapter would deny all reasonable use of the property;

b. There is no other reasonable use with less impact on the critical area;

c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

d. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property; and any authorized alteration of a critical area under this subsection shall be subject to conditions established by the department including, but not limited to, mitigation under an approved mitigation plan.

2. The Director of Community Development shall review the application in consultation with the City Attorney and the Public Works Department and shall approve the application only if the following criteria are met:

a. The application of this chapter would deny all reasonable use of the property;

b. There is no other reasonable use with less impact on the critical area;

c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

d. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property. (Ord. O-99-109 § 1).

18.60.090 Modification or waiver of critical area requirements for single-family residential.

The purpose of this section is to provide an alternative to the exception process and to minimize impacts to critical areas by allowing minor modifications which allow single-family residences on existing, legal lots without requiring a variance or exception. The Director shall have the discretion to modify or waive some or all of the requirements of this chapter in accordance with the provisions of this section.

A. The applicant for the modification or waiver of critical area requirements shall submit any critical area special studies following a preapplication review meeting as well as such other documents or studies, as requested by the Director.

B. The Director may grant a modification or waiver of critical area requirements for single-family residence applications provided:

1. The proposal is the minimum necessary to accommodate the building footprint and access. In no case, however, shall the area of alteration exceed 5,000 square feet, including access.

2. Access is located so as to have the least impact on the critical area and its buffer.

3. The proposal preserves the functions and values of wetlands and streams to the maximum extent possible.

4. Adverse impacts resulting from alterations of steep slopes are minimized.

5. The proposal includes on-site mitigation to the maximum extent possible.

6. The proposal will not significantly affect drainage capabilities, flood potential, erosion hazard areas, and steep slopes and landslide hazards on neighboring properties; and

7. The proposal first develops noncritical area land, then the critical area buffer before the critical area itself is developed.

C. The Director shall require on-site or off-site mitigation measures to compensate for the loss of the functions and values of the critical areas and may

impose mitigating conditions to the modification or waiver in order to meet the standards of this subsection.

D. Modifications pursuant to this chapter that relate only to the buffer or building setback requirements for Single-Family Residential Permits shall be reviewed and decided using Process 1 in conjunction with the Building Permit application. Modifications that would impinge upon the critical area itself shall be reviewed and decided using Process 2.

E. This section shall not apply to the following critical areas:

1. Steep slope hazard areas that are unmitigatable landslide hazard areas;
2. Steep slope hazard areas of slope greater than 70 percent where either the lot or slope are abutting and above a class 1 or 2 wetland stream, and associated buffer, or an open stormwater conveyance system;
3. Class 1 and Class 2 streams and associated buffers; and
4. Class 1 and Class 2 wetlands and associated buffers. (Ord. O-99-109 § 1).

18.60.100 Disclosure by applicant.

A. The applicant shall disclose to City the presence of critical areas on the development proposal site and any mapped or identifiable critical areas within 100 feet of the applicant's property to the extent known by, or readily available to the applicant.

B. If the development proposal site contains or is within a critical area, the applicant shall submit a statement which declares whether the applicant has knowledge of any illegal alteration to any or all critical areas on the development proposal site and whether the applicant previously has been found in violation of this chapter. If the applicant previously has been found in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the City. (Ord. O-99-109 § 1).

18.60.110 Critical area review.

A. The City shall perform a critical area review for any development proposal permit application or other request for permission to proceed with an alteration on a site which includes a critical area or is within an identified critical area buffer or building setback area.

B. As part of the critical area review, the City shall:

1. Determine whether any critical area exists on the property and confirm its nature and type;
2. Determine whether a critical area special study is required;
3. Evaluate the critical area special study;

4. Determine whether the development proposal is consistent with this chapter;

5. Determine whether any proposed alteration to the critical area is necessary; and

6. Determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety and welfare, consistent with the goals, purposes, objectives and requirements of this chapter. (Ord. O-99-109 § 1).

18.60.120 Critical area special study requirement.

A. When review is required, an applicant for a new development proposal which includes a critical area or is within an identified critical area buffer shall submit a critical area special study to adequately evaluate the proposal and all probable impacts.

B. The City may waive the requirement for a special study if the applicant shows, to the City's satisfaction, that any of the following are met:

1. There will be no alteration of the critical area or buffer;

2. The development proposal will not have an impact on the critical area in a manner contrary to the goals, purposes, objectives and requirements of this chapter; and

3. The minimum standards required by this chapter are met.

C. If necessary to insure compliance with this chapter, the City may require additional information from the applicant, separate from the special study. (Ord. O-99-109 § 1).

18.60.130 Contents of critical area special study.

A. The critical area special study shall be in the form of a written report that has been prepared by a qualified professional and shall contain the following, as applicable:

1. Identification and characterization of all critical areas on or encompassing the development proposal site;

2. Assessment of the impacts or risks of any alteration proposed for a critical area or buffer, assessment of the impacts of any alteration on the development proposal, other properties and the environment, and/or assessment of the impacts to the development proposal resulting from development in the critical area or buffer;

3. Studies which propose adequate mitigation, maintenance, monitoring and contingency plans and bonding measures;

4. A scale map of the development proposal site; and

5. Detailed studies on habitat value, hydrology, geological hazard, erosion and sedimentation and/or water quality. Such detailed studies shall include specific recommendations for mitigation which may be required as a condition of

any development proposal approval. The recommendations may include, but are not limited to, construction techniques or design, drainage or density specifications.

6. Other detailed studies, as required by the Director.

B. A critical area special study may be combined with any studies required by other laws and regulations; and

C. If the development proposal will affect only a part of the development proposal site, the City may limit the scope of the required special study to include only that part of the site which may be affected by the development. (Ord. O-99-109 § 1).

18.60.140 Mitigation, maintenance, monitoring and contingency.

A. As determined by the City, mitigation, maintenance and monitoring measures shall be in place to protect critical areas and buffers from alterations occurring on the development proposal site.

B. Where monitoring reveals a significant deviation from predicted impacts or a failure of mitigation or maintenance measures, the applicant shall be responsible for appropriate corrective action which, when approved, shall be subject to further monitoring. (Ord. O-99-109 § 1).

18.60.150 Financial guarantees.

Financial guarantees may be required by the Director in the form of bonds, letters of credit, assignment of savings accounts, or similar performance or maintenance security devices. (Ord. O-99-109 § 1).

18.60.160 Vegetation management plan.

A. For all development proposals where preservation or enhancement of existing vegetation is required by this chapter or by conditions of approval for a Process 2, 3, or 4 application, a vegetation management plan shall be submitted and approved prior to issuance of the permit or other request for permission to proceed with an alteration.

B. The vegetation management plan shall identify the proposed clearing limits for the project and any areas where vegetation in a critical area or its buffer is proposed to be disturbed.

C. Where clearing includes cutting any merchantable stand of timber, as defined in WAC 222-16-010(28), the vegetation management plan shall include a description of proposed logging practices which demonstrates how all critical areas will be protected in accordance with the provisions of this chapter.

D. Clearing limits as shown on the plan shall be marked in the field in a prominent and durable manner. Proposed methods of field marking shall be reviewed and approved by City prior to any site alteration. Field marking shall remain in place until the Certificate of Occupancy or final project approval is granted.

E. The vegetation management plan may be incorporated into a temporary erosion and sediment control plan or landscaping plan where either of these plans is required by other laws or regulations.

F. Submittal requirements for vegetation management plans shall be set forth in administrative rules. (Ord. O-99-109 § 1).

18.60.170 Critical area tract markers and signs.

A. Permanent survey stakes delineating the boundary between adjoining property and critical area tracts shall be set, using iron or concrete markers as established by current survey standards.

B. The boundary between a critical area tract and contiguous land shall be identified with permanent signs at intervals as required by the Director. (Ord. O-99-109 § 1).

18.60.180 Notice on title.

A. The owner of any property containing critical areas or buffers on which a development proposal is approved, 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 Records and Elections division. The required contents and form of the notice shall be set forth in administrative rules. The notice shall inform the public of the presence of critical areas or buffers on the property, of the application of this chapter to the property and that limitations on actions in or affecting such critical areas or buffers may exist. The notice shall run with the land.

B. The applicant shall submit proof that the notice has been filed for public record before the City shall issue permits for any development proposal for the property or, in the case of subdivisions, short subdivisions and binding site plans, at or before recording the final plat or final bind site plan. (Ord. O-99-109 § 1).

18.60.190 Critical area tracts and designations on site plans.

A. Critical area tracts shall be used to delineate and protect those critical areas and buffers listed below in development proposals for subdivisions, short subdivisions or binding site plans and shall be recorded on all documents of title of record for all affected lots:

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1. All landslide hazard areas and buffers which are one acre or greater in size;
2. All steep slope hazard areas and buffers which are one acre or greater in size;
3. All wetlands and buffers; and
4. All streams and buffers.

B. Any required critical area tract shall be held in an undivided interest by each owner of a building lot within the development with this ownership interest passing with the ownership of the lot or shall be held by an incorporated homeowner's association or other legal entity which assures the ownership, maintenance and protection of the tract.

C. Site plans submitted as part of development proposals for Building Permits, master plan developments and Clearing and Grading Permits shall include and delineate all landslide, and steep slope hazard areas, streams and wetlands, buffers and building setbacks. (Ord. O-99-109 § 1).

18.60.200 Alteration.

Any human activity which results or is likely to result in an impact upon the existing condition of a critical area is an alteration which is subject to specific limitations as specified for each critical area. Alterations include, but are not limited to, grading, filling, dredging, draining, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except stormwater, grazing domestic animals, paving, constructing, applying gravel, modifying for surface water management purposes, cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity which results or is likely to result in an impact to existent vegetation, hydrology, wildlife or wildlife habitat.

Alterations do not include walking, fishing or any other passive recreation or other similar activities. (Ord. O-99-109 § 1).

18.60.210 Building setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 15 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- A. Landscaping;
- B. Uncovered decks;
- C. Building overhangs if such overhangs do not extend more than 18 inches into the setback area; and

D. Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to special drainage provisions. (Ord. O-99-109 § 1).

18.60.220 Erosion hazard areas.

A. Clearing on an erosion hazard area is allowed only from April 1st to September 1st, except that:

1. Up to 15,000 square feet may be cleared on any lot, subject to any other requirement for vegetation retention and subject to any Clearing and Grading Permit required by the MVMC; and

2. Timber harvest may be allowed pursuant to an approved Forest Practice Permit issued by the Washington Department of Natural Resources.

B. All development proposals on sites containing erosion hazard areas shall include a temporary erosion control plan consistent with this section and other laws and regulations prior to receiving approval. Specific requirements for such plans shall be set forth by the Director.

C. All subdivisions, short subdivisions or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:

1. Except as provided in this section, existing vegetation shall be retained on all lots until Building Permits are approved for development on individual lots;

2. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant shall be required to submit a restoration plan to the City for review and approval. Following approval, the applicant shall be required to implement the plan;

3. Clearing of vegetation on lots may be allowed without a separate Clearing and Grading Permit if the City determines that:

a. Such clearing is a necessary part of a large scale grading plan;

b. It is not feasible to perform such grading on an individual lot basis; and

c. Drainage from the graded area will meet water quality standards to be established by administrative rules.

D. Where the City determines that erosion from a development site poses a significant risk of damage to downstream receiving waters, based either on the size of the project, the proximity to the receiving water or the sensitivity of the receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. If the project does not meet water quality standards established by law or administrative rules, the City may suspend further development work on the site until such standards are met.

E. The use of hazardous substances, pesticides and fertilizers in erosion hazard areas shall be prohibited unless specifically approved on a case-by-case basis by the City. (Ord. O-99-109 § 1).

18.60.230 Landslide hazard areas.

A development proposal on a site containing a landslide hazard area shall meet the following requirements:

A. A minimum buffer of 50 feet shall be established from all edges of the landslide hazard area. The buffer shall be extended as required to mitigate a steep slope or erosion hazard or as otherwise necessary to protect the public health, safety and welfare;

B. Unless otherwise provided herein or as part of an approved alteration, removal of any vegetation from a landslide hazard area or buffer shall be prohibited, except for limited removal of vegetation necessary for surveying purposes and for the removal of hazard trees determined to be unsafe according to tree selection rules promulgated pursuant to this chapter. Notice to the City shall be provided prior to any vegetation removal permitted by this subsection;

C. Vegetation on slopes within a landslide hazard area or buffer which has been damaged by human activity or infested by noxious weeds may be replaced with vegetation native to the City pursuant to an enhancement plan approved by the City. The use of hazardous substances, pesticides and fertilizers in landslide hazard areas and their buffers may be prohibited by the City; and

D. Alterations to landslide hazard areas and buffers may be allowed only as follows:

1. A landslide hazard area located on a slope 40 percent or steeper may be altered only if the alteration meets the standards and limitations set forth for steep slope hazard areas in MVMC [18.60.250](#);

2. A landslide hazard area located on a slope less than 40 percent may be altered only if the alteration meets the following requirements:

a. The development proposal will not decrease slope stability on contiguous properties; and

b. Mitigation based on the best available engineering and geological practices is implemented which either eliminates or minimizes the risk of damage, death or injury resulting from landslides; and

3. Neither buffers nor a critical area tract shall be required if the alteration meets the standards of this subsection (D). (Ord. O-99-109 § 1).

18.60.240 Seismic hazard areas.

A development proposal on a site containing a seismic hazard area shall meet the following requirements:

A. Unless exempt, development proposals shall be subject to review standards based on two occupancy types: critical facilities and other structures. The review standards for critical facilities shall be based on longer earthquake reoccurrence

intervals. The review standards for both occupancy types shall be set forth in administrative rules;

B. Alterations to seismic hazard areas may be allowed only as follows:

1. The evaluation of site-specific subsurface conditions shows that the proposed development site is not located in a seismic hazard area; or

2. Mitigation based on the best available engineering and geological practices is implemented which either eliminates or minimizes the risk of damage, death or injury resulting from seismically induced settlement or soil liquefaction; and

3. Mobile homes may be placed in seismic hazard areas without performing special studies to address the seismic hazard. Such mobile homes may be subject to special support and tie-down requirements. These requirements shall be set forth in administrative rules;

C. Buildings with less than 2,500 square feet of floor area or roof area (whichever is greater) that contain no living quarters and that are not used as places of employment or public assembly are exempt from the provisions of this section. (Ord. O-99-109 § 1).

18.60.250 Steep slope hazard areas.

A development proposal on a site containing a steep slope hazard area shall meet the following requirements:

A. A minimum buffer of 50 feet shall be established from the top, toe and along all sides of any slope 40 percent or steeper. The buffer shall be extended as required to mitigate a landslide or erosion hazard or as otherwise necessary to protect the public health, safety and welfare. The buffer may be reduced to a minimum of 10 feet if, based on a special study, the City determines that the reduction will adequately protect the proposed development and the critical area. For single-family residential Building Permits only, the City may waive the special study requirement if other development in the area has already provided sufficient information or if such information is otherwise readily available. The City may authorize buffer reductions to no less than 10 feet if the City determines that the reduction will adequately protect the proposed development and the critical area pursuant to the requirements for a special study under Maple Valley Municipal Code 18.60.130.

B. Unless otherwise provided herein or as part of an approved alteration, removal of any vegetation from a steep slope hazard area or buffer shall be prohibited, except for limited removal of vegetation necessary for surveying purposes and for the removal of hazard trees determined to be unsafe according to tree selection rules promulgated pursuant to this chapter. Notice to the City shall be provided prior to any vegetation removal permitted by this subsection;

C. Vegetation on steep slopes within steep slope hazard areas or their buffers which has been damaged by human activity or infested by noxious weeds may be replaced with vegetation native to the City pursuant to a vegetation management plan approved by the City. The use of hazardous substances, pesticides and fertilizers in steep slope hazard areas and their buffers may be prohibited by the City;

D. Alterations to steep slope hazard areas and buffers may be allowed only as follows:

1. Approved surface water conveyances, as specified in the King County Surface Water Design Manual or other reference source or manual in use by the City, may be allowed on steep slopes if they are installed in a manner to minimize disturbance to the slope and vegetation;

2. Public and private trails may be allowed on steep slopes as approved by the City. Under no circumstances shall trails be constructed of concrete, asphalt or other impervious surfaces which will contribute to surface water runoff, unless such construction is necessary for soil stabilization or soil erosion prevention or unless the trail system is specifically designed and intended to be accessible to handicapped persons. Additional requirements for trail construction may be set forth in administrative rules;

3. Utility corridors may be allowed on steep slopes if a special study shows that such alteration will not subject the area to the risk of landslide or erosion;

4. Limited trimming and pruning of vegetation may be allowed on steep slopes pursuant to an approved vegetation management plan for the creation and maintenance of views if the soils are not disturbed and the activity is subject to administrative rules;

5. Approved mining and quarrying activities may be allowed;

6. Stabilization of sites where erosion or landsliding threaten public or private structures, utilities, roads, driveways or trails, or where erosion and landsliding threatens any lake, stream, wetland or shoreline. Stabilization work shall be performed in a manner which causes the least possible disturbance to the slope and its vegetative cover;

7. Reconstruction, remodeling, or replacement of existing structures;

8. Reconstruction, remodeling, or replacement of an existing structure upon another portion of an existing impervious surface which was established pursuant to City laws and regulations may be allowed provided:

a. If within the buffer, the structure is located no closer to the steep slope than the existing structure;

b. The existing impervious surface within the buffer or steep slope is not expanded as a result of the reconstruction or replacement.

E. The following are exempt from the provisions of this section:

1. Slopes which are 40 percent or steeper with a vertical elevation change of up to 20 feet if no adverse impact will result from the exemption based on the City's review of and concurrence with a soils report prepared by a geologist or geotechnical engineer; and

2. The approved regrading of any slope which was created through previous legal grading activities. Any slope which remains 40 percent or steeper following site development shall be subject to all requirements for steep slopes. (Ord. O-99-109 § 1).

18.60.255 Critical Aquifer Recharge Areas.

Development on or adjacent to a critical aquifer recharge area shall meet the following requirements:

A. For projects where the construction of structures and improvements, including additions, results in more than fifty percent (50%) total site impervious surface area, the applicant shall provide surface water infiltration according to a surface water management plan that mitigates impacts to the aquifer recharge process, or shall submit a hydrogeologic assessment, that indicates the proposal will not impact the recharge effect of the aquifer. Surface water management plans and hydrogeologic assessments shall be subject to review and approval by the Director.

B. For development that includes hazardous substance processing or handling, or significant diversion, alteration or reduction to the flow of surface or ground waters, or otherwise significantly reduces the recharging of the aquifer, the development must be designed and constructed in accordance with a critical areas study that includes a hydrogeologic assessment of ground water vulnerability, including an assessment of predicted impacts to groundwater recharge and ground water quality. Applications for development that will significantly affect groundwater recharge or quality shall be denied, if such impacts cannot be adequately mitigated.

C. The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, state Department of Health, and Seattle-King County Public Health.

D. **Storage Tanks.** The Fire Marshal specifically regulates and authorizes permits for underground storage tanks, and the Washington Department of Ecology also regulates and authorizes permits for underground storage tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

1. **Underground Tanks.** All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

a. Prevent releases due to corrosion or structural failure for the operational life of the tank;

b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary

containment system to prevent the release or threatened release of any stored substances; and,

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

2. **Aboveground Tanks.** All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

b. Have a primary containment area enclosing or underlying the tank or part thereof; and

c. For all tanks, a secondary containment system either built into the tank structure or a dike system built outside the tank.

E. Vehicle repair and servicing

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

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

F. Uses prohibited from critical aquifer recharge areas. The following activities and uses are prohibited in critical aquifer recharge areas, provided expansion of existing uses may be allowed by the city if the applicant demonstrates through a special study that the proposed expansion will not negatively impact groundwater quality or recharge:

1. Waste transfer stations, landfills, and disposal of hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and demolition waste;

2. Junk yards.

3. Inoperative vehicles. Storage of wrecked or inoperative vehicles, except as an accessory to an allowed use when stored over impervious paving with drainage controls designed to prevent ground water contamination.

4. Underground injection wells.

a. Class I wells

b. Class III wells

c. Class IV wells

d. Class V well subclasses 5F01 (Agricultural Drainage Wells), 5D03 (Improved Sinkholes), 5F04 5W09 (Untreated Sewage Waste Wells), 5W10 (Cesspools), 5W11 (Septic Systems – Undifferentiated Disposal Method), 5W31 (Septic Systems – Well Disposal Method), 5X13 (Mining, Sand, or Other Backwells), 5X14 (Solution Mining Wells), 5X15 (In situ Fossil Fuel

Recovery Wells), 5W20, 5X28 (Motor Vehicle Waste Disposal Wells), and 5N24 (Radioactive Waste Disposal Wells);

5. Mining

- a. Metals and hard rock mining.
- b. Sand and gravel mining.

6. Wood treatment facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

7. Storage, processing, or disposal of radioactive substances. Facilities that store, process, or dispose of radioactive substances; and

8. Other

- a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
- b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;
- c. Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers, this includes residential developments on septic systems, as well as other commercial or industrial uses that may drain to underground reservoirs.

G. State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Statutes, Regulations, and Guidance Pertaining to Ground Water Impacting Activities

| Activity | Statute - Regulation - Guidance |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Above Ground Storage Tanks | Chapter 173-303 -640 WAC |
| Automobile Washers | Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56) |
| Below Ground Storage Tanks | Chapter 173-360 WAC |
| Chemical Treatment Storage and Disposal Facilities | Chapter 173-303-182 WAC |
| Hazardous Waste Generator (<i>Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.</i>) | Chapter 173-303 WAC |
| Injection Wells | Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC |
| Junk Yards and Salvage Yards | Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (WDOE 94-146) |
| Oil and Gas Drilling | Chapter 332-12-450 WAC, WAC , Chapter 173-218 WAC |
| On-Site Sewage Systems (Large Scale) | Chapter 173-240 WAC |
| On-Site Sewage Systems (< 14,500 gal/day) | Chapter 246-272 WAC, Local Health Ordinances |
| Pesticide Storage and Use | Chapter 15.54 RCW, Chapter 17.21 RCW |
| Sawmills | Chapter 173-303 WAC, 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53) |
| Solid Waste Handling and Recycling Facilities | Chapter 173-304 WAC |

| Activity | Statute - Regulation - Guidance |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Surface Mining | Chapter 332-18-015 WAC |
| Waste Water Application to Land Surface | Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture |

18.60.260 Wetlands.

A development proposal on a site containing a wetland shall meet the following requirements:

- A. The following minimum buffers shall be established from the wetland edge:
 - 1. A category 1 wetland shall have a 150-foot buffer;
 - 2. A category 2 wetland shall have a 100-foot buffer;
 - 3. A category 3 wetland shall have a 75-foot buffer;
 - 4. A category 4 wetland shall have a 50-foot buffer;
 - 5. Any wetland restored, relocated, replaced or enhanced because of a wetland alteration shall have the minimum buffer required for the highest wetland class involved; and
 - 6. Any wetland within 25 feet of the toe of a slope 30 percent or steeper, but less than 40 percent, shall have:
 - a. The minimum buffer required for the wetland class involved or a 25-foot buffer beyond the top of the slope, whichever is greater, if the horizontal length of the slope including small benches and terraces is within the buffer for that wetland class; or
 - b. A 25-foot buffer beyond the minimum buffer required for the wetland class involved if the horizontal length of the slope including small benches and terraces extends beyond the buffer for that wetland class;

- B. Buffer width averaging may be allowed by the City if it will provide additional protection to wetlands or enhance their functions, as long as the total area contained in the buffer on the development proposal site does not decrease and the minimum buffer width remains at least 75 percent of the full width;

- C. Increased buffer widths and enhancements to buffer vegetation shall be required by the City when necessary to protect wetlands. Provisions for additional buffer widths may be contained in administrative rules promulgated pursuant to this chapter including, but not limited to, provisions pertaining to critical drainage areas, location of hazardous substances, critical fish and wildlife habitat, landslide or erosion hazard areas contiguous to wetlands, groundwater recharge and discharge and the location of trail or utility corridors;

- D. The use of hazardous substances, pesticides and fertilizers in the wetland and its buffer is prohibited;

- E. Wetland buffers may be decreased by 25 feet, subject to City approval, if:
1. The applicant implements all applicable mitigation measures identified in Subsection E. 3.; or
 2. The applicant proposes alternate mitigation to reduce the impacts of the development and the department determines the alternative provides equivalent mitigation.
 3. Buffer reducing measures:
 - a. Lights. Direct lights away from wetland;
 - b. Noise. Place activity that generates noise away from the wetland;
 - c. Toxic runoff. Route all new untreated runoff away from wetland, or covenants limiting use of pesticides within 50 feet of wetland, or implement an approved integrated pest management program;
 - d. Change in water regime. Infiltrate or treat, detain and disperse into buffer runoff from impervious surfaces, or implement recognized low impact development techniques;
 - e. Pets and human disturbances. Install privacy fencing or landscaping to delineate buffer edge and to discourage disturbance of wildlife by humans and pets;
 - f. Dust. Use of 'best management practices (BMPs) for control of dust;
 - g. Degraded buffer condition. Nonnative plants to be removed and replaced with native vegetation per an approved landscaping plan. Habitat features such as bird boxes and large woody debris (LWD) placed into buffer areas in manner to improve habitat functions;

F. A wetland buffer may be reduced if the wetland is protected by a corridor at least 100 feet wide, exclusive of the actual wetland area, that is protected by some type of legal protection such as a conservation easement or preservation tract and impacts of land uses are minimized (refer to WSDOE publication "*Wetlands in Washington State Volume 2 – Protecting and Managing Wetlands, Appendix 8-C*" publication # 05 06 008 and WSDFW publication "*Washington State Wetland Rating System for Western Washington – Revised 2004*", sections H 2.1 and H 2.2);

G. Alternate Wetland Buffer Method. Alternate buffer widths may be determined by performing specific wetland study and analysis based upon the Alternative Method 3 system described in The Washington State Department of Ecology (WSDOE) publication "*Wetlands in Washington State Volume 2 – Protecting and Managing Wetlands, Appendix 8-C*" (publication # 05 06 008) or successor documents. This method evaluates the wetlands rating, intensity of impacts and functions or sensitivity of the wetland and through a point scoring system determines water quality, hydrological and habitat functions and ultimately arrives at appropriate buffer widths for protection of the wetland. A qualified professional with knowledge and experience in this WSDOE method must perform this type of evaluation and study and subject to approval by the City;

18.60.270 Wetlands – Permitted alterations.

Alterations to wetlands and buffers may be allowed pursuant to the exception and modification provisions of MVMC [18.60.080](#) and [18.60.090](#) or as follows:

A. Alterations may be permitted if the City determines, based upon its review of special studies completed by qualified professionals, that:

1. The wetland does not serve any of the valuable functions of wetlands identified in the definition of “wetland” found in MVMC [18.60.030](#) including, but not limited to, biologic and hydrologic functions; or

2. The proposed development will:

a. Protect, restore or enhance the wildlife habitat, natural drainage or other valuable functions of the wetland resulting in a net improvement to the functions of the wetland system;

b. Develop a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist;

c. Perform the restoration or enhancement under the direction of a qualified biologist; and

d. Will otherwise be consistent with the purposes of this chapter;

3. Where legally established non-conforming use of the buffer exists, such as a road or structure that lies within the width of the required buffer, proposed actions may be permitted as long as they do not increase the nonconformity. Meaning as long as they do not further impact the wetland reducing its functions and values.

B. To establish whether the conditions in subsection (A) of this section are met, detailed studies may be required as part of the special study on habitat value, hydrology, erosion and deposition and/or water quality. Such detailed studies shall include specific recommendations for mitigation which may be required as a condition of any development proposal approval. The recommendations may include, but are not limited to, construction techniques or design, drainage or density specifications;

C. If a wetland is in a flood hazard area, the applicant shall notify affected communities and native tribes of proposed alterations prior to any alteration and submit evidence of such notification to the Federal Insurance Administration;

D. There shall be no introduction of any plant or wildlife which is not indigenous to the City into any wetland or buffer unless authorized by a State or federal permit or approval;

E. Utilities may be allowed in wetland buffers if:

1. The City determines that no practical alternative location is available; and

2. The utility corridor meets any additional requirements set forth in administrative rules including, but not limited to, requirements for installation, replacement of vegetation and maintenance;

13. The applicant demonstrates that sewer lines are necessary for gravity flow;
4. The corridor is not located in a wetland or buffer used by species listed as endangered or threatened by the State or federal government or containing critical or outstanding actual habitat for those species or heron rookeries or raptor nesting trees;
5. The corridor alignment including, but not limited to, any allowed maintenance roads follows a path beyond a distance equal to 75 percent of the buffer width from the wetland edge;
6. Corridor construction and maintenance protects the wetland and buffer and is aligned to avoid cutting trees greater than 12 inches in diameter at four foot height, when possible, and pesticides, herbicides and other hazardous substances are not used;
7. An additional, contiguous and undisturbed buffer, equal in width to the proposed corridor including any allowed maintenance roads, is provided to protect the wetland;
8. The corridor is revegetated with appropriate vegetation native to the City at preconstruction densities or greater immediately upon completion of construction or as soon thereafter as possible, and the utility ensures that such vegetation survives;

18.60.280 Wetlands – Mitigation requirements.

A. Restoration shall be required when a wetland or its buffer is altered in violation of law or without any specific permission or approval by the City. The following minimum requirements shall be met for the restoration of a wetland:

1. The original wetland configuration shall be replicated including its depth, width, length and gradient at the original location;
2. The original soil type and configuration shall be replicated;
3. The wetland edge and buffer configuration shall be restored to its original condition;
4. The wetland, edge and buffer shall be replanted with vegetation native to the City which replicates the original vegetation in species, sizes and densities; and
5. The original wetland functions shall be restored including, but not limited to, hydrologic and biologic functions.

B. The requirements in subsection (A) of this section may be modified if the applicant demonstrates that greater wetland functions can otherwise be obtained.

C. Replacement shall be required when a buffer is altered pursuant to an approved development proposal or a wetland is used for a regional

retention/detention facility or other approved use. The requirements for the restoration of wetlands shall be met by replacement wetlands.

D. Enhancement may be allowed when a wetland or buffer will be altered pursuant to a development proposal, but the wetland's biologic and hydrologic functions will be improved. Minimum requirements for enhancement shall be established in administrative rules.

E. All alterations of wetlands shall be replaced or enhanced on the site or within the same drainage basin using the following formulas:

1. Class 1 wetlands 6:1;
2. Class 2 wetlands on a 3:1 basis and;
3. Class 3 wetlands on a 2:1 basis;

Replace or enhancement shall result in equivalent or greater biologic functions including, but not limited to, habitat functions and with equivalent hydrologic functions including, but not limited to, storage capacity.

F. Replacement or enhancement off the site may be allowed if the applicant demonstrates to the satisfaction of the City that the off-site location is in the same drainage sub-basin as the original wetland and that greater biologic and hydrologic functions will be achieved. The formulas in subsection (E) of this section shall apply to replacement and enhancement off the site.

G. Surface water management or flood control alterations including, but not limited to, wetponds shall not constitute replacement or enhancement unless other functions are simultaneously improved.

H. Mitigation sites should be located to alleviate wildlife habitat fragmentation. (Ord. O-99-109 § 1).

18.60.290 Wetlands – Mitigation banking.

The City may consider and approve replacement or enhancement of unavoidable adverse impacts to wetlands caused by the development activities through an approved wetland mitigation bank. Compensatory mitigation in advance of authorized impacts must be provided through an approved mitigation bank. Criteria governing the creation and use of a mitigation bank shall be established in administrative rules. A pilot project or projects, complete with evaluation, should be initiated which would test the viability of the mitigation bank concept prior to its full implementation. (Ord. O-99-109 § 1).

18.60.300 Isolated wetlands – Limited exemption.

Isolated wetlands less than 5,000 square feet may be exempted from the provisions of MVMC [18.60.270](#) and [18.60.280](#) and may be altered by filling or dredging if the City determines that the cumulative impacts do not unduly

counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan. (Ord. O-99-109 § 1).

18.60.310 Streams.

A development proposal on a site containing a stream or stream buffer shall meet the following requirements:

A. The following minimum buffers shall be established from the ordinary high water mark or from the top of the bank if the ordinary high water mark cannot be identified:

1. Streams With Fish shall have a 100-foot buffer;
2. Streams Without Fish shall have a 50-foot buffer;
3. Intermittent Streams shall have a 25-foot buffer;
4. Any stream restored, relocated, replaced or enhanced because of a stream alteration shall have the minimum buffer required for the stream class involved;
5. Any stream with an ordinary high water mark within 25 feet of the toe of a slope 30 percent or steeper, but less than 40 percent, shall have:
 - a. The minimum buffer required for the stream class involved or a 25-foot buffer beyond the top of the slope, whichever is greater, if the horizontal length of the slope including small benches and terraces is within the buffer for that stream class; or
 - b. A 25-foot buffer beyond the minimum buffer required for the stream class involved if the horizontal length of the slope including small benches and terraces extends beyond the buffer for that stream class; and
6. Any stream adjoined by a riparian wetland or other contiguous critical area shall have the buffer required for the stream class involved or the buffer which applies to the wetland or other critical area, whichever is greater;

B. Buffer width averaging may be allowed by the City if it will provide additional natural resource protection, as long as the total area contained in the buffer on the development proposal site does not decrease and the minimum buffer width remains at least 75 percent of the full buffer width;

C. Increased buffer widths shall be required by the City when necessary to protect streams. Provisions for additional buffer widths shall be contained in administrative rules promulgated pursuant to this chapter including, but not limited to, critical drainage areas, location of hazardous substances, critical fish and wildlife habitat, landslide or erosion hazard areas contiguous to streams, groundwater recharge and discharge and the location of trail or utility corridors;

D. The use of hazardous substances, pesticides and fertilizers in the stream corridor and its buffer is prohibited; and

E. Alterations to streams and buffers may be allowed pursuant to MVMC [18.60.080](#) and [18.60.090](#) or as follows:

1. Alterations may only be permitted if based upon a special study;
2. The applicant shall notify affected communities and native tribes of proposed alterations prior to any alteration if a stream is in a flood hazard area and shall submit evidence of such notification to the Federal Insurance Administration;
3. There shall be no introduction of any plant or wildlife which is not indigenous to the City into any stream or buffer unless authorized by a State or federal permit or approval;
4. Utilities may be allowed in stream buffers if:
 - a. No practical alternative location is available;
 - b. The utility corridor meets any additional requirements set forth in administrative rules including, but not limited to, requirements for installation, replacement of vegetation and maintenance;
 - c. The requirements for sewer utility corridors in MVMC [18.60.270](#)(E) and (F) shall also apply to streams; and
 - d. Joint use of an approved sewer utility corridor by other utilities may be allowed;

F. The following surface water management activities and facilities may be allowed in stream buffers as follows:

1. Surface water discharge to a stream from a detention facility, presettlement pond or other surface water management activity or facility may be allowed if the discharge is in compliance with the King County Surface Water Design Manual or such other manual as is in use by the City;
2. A class 2 stream or buffer may be used for a regional retention/detention facility if:
 - a. A public agency and utility exception is granted pursuant to MVMC [18.60.080](#);
 - b. All requirements of the King County Surface Water Design Manual or such other manual as is in use by the City are met;
 - c. The use will not alter the rating or the factors used in rating the stream;
 - d. There are no significant adverse impacts to the stream; and
3. A class 3 stream or buffer may be used as a regional retention/detention facility if the alteration will have no lasting adverse impact on any stream and all requirements of the King County Surface Water Design Manual, or such other manual as is in use by the City are met;

G. Except as provided in subsection (I) of this section, public and private trails may be allowed in stream buffers only upon adoption of administrative rules consistent with the following:

1. The trail surface shall not be made of impervious materials; and
2. Buffers shall be expanded, where possible, equal to the width of the trail corridor including disturbed areas;

H. Stream crossings may be allowed and may encroach on the otherwise required stream buffer if:

1. All crossings use bridges or other construction techniques which do not disturb the stream bed or bank, except that bottomless culverts or other appropriate methods demonstrated to provide fisheries protection may be used if the applicant demonstrates that such methods and their implementation will pose no harm to the stream or inhibit migration of fish;

2. All crossings are constructed during the summer low flow and are timed to avoid stream disturbance during periods when use is critical to salmonids;

3. Crossings do not occur over salmonid spawning areas unless the City determines that no other possible crossing site exists;

4. Bridge piers or abutments are not placed within the FEMA floodway or the ordinary high water mark;

5. Crossings do not diminish the flood-carrying capacity of the stream;

6. 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 by the State of Washington. Temporary bore pits to perform such crossings may be permitted within the stream buffer established in subsection (A) of this section. Crossing of class 3 streams when dry may be made with open cuts; and

7. Crossings are minimized and serve multiple purposes and properties whenever possible;

I. Stream relocations may be allowed only for:

1. Class 1 or 2 streams as part of a public road project for which a public agency and utility exception is granted pursuant to MVMC [18.60.080](#); and

2. Class 3 streams for the purpose of enhancing resources in the stream if:

- a. Appropriate floodplain protection measures are used; and

- b. The relocation occurs on the site, except that relocation off the site may be allowed if the applicant demonstrates that any on-site relocation is impracticable, the applicant provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage sub-basin as the original stream;

J. For any relocation allowed by this section, the applicant shall demonstrate, based on information provided by a civil engineer and a qualified biologist, that:

1. The equivalent base flood storage volume and function will be maintained;

2. There will be no adverse impact to local groundwater;

3. There will be no increase in velocity;

4. There will be no interbasin transfer of water;

5. There will be no increase in sediment load;

6. Requirements set out in the mitigation plan are met;

7. The relocation conforms to other applicable laws; and

8. All work will be carried out under the direct supervision of a qualified biologist;

K. A stream channel may be stabilized if:

1. Movement of the stream channel threatens existing residential or commercial structures, public facilities or improvements, unique natural resources or the only existing access to property; and
2. The stabilization is done in compliance with the requirements of any applicable rules or regulations related to flood hazard or flood plain areas;

L. Stream enhancement not associated with any other development proposal may be allowed if accomplished according to a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist and carried out under the direction of a qualified biologist;

M. A minor stream restoration project for fish habitat enhancement may be allowed if:

1. The restoration is sponsored by a public agency with a mandate to do such work;
2. The restoration is unassociated with mitigation of a specific development proposal;
3. The restoration is limited to placement of rock wiers, log controls, spawning gravel and other specific salmonid habitat improvements;
4. The restoration only involves the use of hand labor and light equipment; or the use of helicopters and cranes which deliver supplies to the project site; provided, that they have no contact with critical areas or their buffers; and
5. The restoration is performed under the direction of a qualified biologist;

N. Roadside and agricultural drainage ditches which carry streams with salmonids may be maintained through the use of best management practices developed in consultation with relevant county, State and federal agencies; and

O. Reconstruction, remodeling, or replacement of an existing structure upon another portion of an existing impervious surface which was established pursuant to City codes and regulations may be allowed provided:

1. If within the buffer, the structure is located no closer to the stream than the existing structure;
2. The existing impervious surface within the buffer or stream is not expanded as a result of the reconstruction or replacement. (Ord. O-99-109 § 1).

18.60.320 Restoration and mitigation.

A. Restoration shall be required when a stream or its buffer is altered in violation of law or without any specific permission or approval by the City. A mitigation plan for the restoration shall demonstrate that:

1. The stream has been degraded and will not be further degraded by the restoration activity;

2. The restoration will reliably and demonstrably improve the water quality and fish and wildlife habitat of the stream;
3. The restoration will have no lasting significant adverse impact on any stream functions; and
4. The restoration will assist in stabilizing the stream channel.

B. The following minimum requirements shall be met for the restoration of a stream:

1. All work shall be carried out under the direct supervision of a qualified biologist;
2. Basin analysis shall be performed to determine hydrologic conditions;
3. The natural channel dimensions shall be replicated including its depth, width, length and gradient at the original location, and the original horizontal alignment (meander lengths) shall be replaced;
4. The bottom shall be restored with identical or similar materials;
5. The bank and buffer configuration shall be restored to its original condition;
6. The channel, bank and buffer areas shall be replanted with vegetation native to the City which replicates the original vegetation in species, sizes and densities; and
7. The original biologic functions of the stream shall be recreated.

C. The requirements in subsection (B) of this section may be modified if the applicant demonstrates to the satisfaction of the City that a greater biologic function can otherwise be obtained.

D. Replacement or enhancement shall be required when a stream or buffer is altered pursuant to an approved development proposal. There shall be no net loss of stream functions on a development proposal site and no impact on stream functions above or below the site due to approved alterations. The requirements that apply to the restoration of streams in subsection (B) of this section shall also apply to the relocation of streams, unless the applicant demonstrates to the satisfaction of the City that a greater biologic function can be obtained by modifying these requirements.

E. Replacement or enhancement for approved stream alterations shall be accomplished in streams and on the site unless the applicant demonstrates to the satisfaction of the City that:

1. Enhancement or replacement on the site is not possible;
2. The off-site location is in the same drainage sub-basin as the original stream; and
3. Greater biologic and hydrologic functions will be achieved.

F. Surface water management or flood control alterations shall not be considered enhancement unless other functions are simultaneously improved. (Ord. O-99-109 § 1).

18.60.325 Wildlife Habitat Conservation Areas.

A development proposal on a site containing a wildlife habitat conservation areas or habitat buffer shall meet the following requirements:

A. When appropriate due to the type of habitat or species present or the project area conditions, the Director may require an assessment of habitats including the following site- and proposal-related information at a minimum:

1. Identification of any non-aquatic priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

2. A discussion of any federal, state, or local special 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 the project area;

3. A discussion of any ongoing management practices that will protect habitat after the project site has been developed, including any proposed monitoring, maintenance, and adaptive management programs.

4. When appropriate, due to the type of habitat or species present or the project area conditions, the Director may also require the habitat management plan to include an evaluation by the Washington Department of Fish and Wildlife or other qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate.

B. Where needed to protect Habitat Conservation Areas, the director shall require the establishment of buffers in or adjacent to these areas. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity and functions of the habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Activities may be further restricted and buffers may be increased during the specified season.

C. Development in or adjacent to habitat conservation areas shall meet the following general requirements:

1. A habitat conservation area and associated buffer may be altered only if the proposed alteration of the habitat and associated buffer does not degrade the functions of the habitat and associated buffer.

2. Plant or wildlife species not indigenous to Western Washington shall be excluded from habitat conservation areas and associated buffers unless authorized by a state or federal permit or approval.

3. Mitigation sites should be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area study to minimize the isolating effects of development on habitat areas.

4. The Director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

- a. Establishment of buffer zones;
- b. Preservation of critically important vegetation;
- c. Limitation of public access to the habitat area, including fencing to deter unauthorized access;
- d. Seasonal restriction of activities;
- e. Establishment of a duration and timetable for periodic review of mitigation activities; and
- f. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

18.60.330 Shorelines.

Reserved. (Ord. O-99-109 § 1).

The definition of the Development Regulations for "hazardous substance" is proposed to be revised as follows.

18.20.020 Definitions.

1. "Hazardous substance" means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste, including waste oil and petroleum products, as defined in RCW 70.105.010.