

Langley Municipal Code

**Title 16**

**Environmental Policy**

**Chapters:**

- 16.04 Environmental Policy**
- 16.08 Shoreline Management**
- 16.12 Violations**
- 16.20 Resource Lands and Environmentally Sensitive(Critical) Areas Management**

**Chapter 16.04**

**Environmental Policy**

**Sections:**

- 16.04.010 SEPA rules adopted.**
- 16.04.020 Additional provisions adopted.**
- 16.04.030 Designation of responsible official.**
- 16.04.040 Lead agency determination and responsibilities.**
- 16.04.050 Transfer of lead agency status to state agency.**
- 16.04.060 Additional consideration in time limits applicable to SEPA process.**
- 16.04.070 Additional timing considerations.**
- 16.04.080 Flexible thresholds for categorical exemptions.**
- 16.04.090 Environmental checklist.**
- 16.04.100 Mitigated DNS.**
- 16.04.110 Additional elements.**
- 16.04.120 Public notice.**
- 16.04.130 Designation of official to perform consulted agency responsibilities.**
- 16.04.140 Substantive authority.**
- 16.04.150 Appeals.**
- 16.04.155 Judicial Appeals**
- 16.04.160 Notice— Statute of limitations.**
- 16.04.170 Environmentally sensitive areas.**
- 16.04.180 Fees.**

**Section 16.04.010 SEPA rules adopted.**

The city adopts the model ordinance, WAC Chapter 173-806, to implement SEPA rules, WAC Chapter 197-11.  
(Ord. 440, 1984)

**Section 16.04.020 Additional provisions adopted.**

The city adopts the optional sections of the model ordinance, as codified in this chapter.  
(Ord. 440, 1984)

**Section 16.04.030 Designation of responsible official.**

For those proposals for which the city is the lead agency, the responsible official shall be the city planning officer. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the

lead agency or responsible official by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020. The city shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17.  
(Ord. 440, 1984)

**Section 16.04.040 Lead agency determination and responsibilities.**

The department within the city receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency. When the city is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise

compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or FIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the mayor. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses?).

(Ord. 440, 1984)

**Section 16.04.050 Transfer of lead agency status to state agency.**

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the city's responsible official

may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city shall be an agency with jurisdiction. To transfer lead agency duties, the city's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

(Ord.440, 1984)

**Section 16.04.060 Additional consideration in time limits applicable to SEPA process.**

The following time limits (expressed in calendar days) shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies:

A. Categorical Exemptions. The city shall identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations.

1. The city should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's adequate application and completed checklist are submitted.

2. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction:

a. The city should request such further information within fifteen days of receiving an adequate application and completed environmental checklist;

b. The city shall wait no longer than thirty days for a consulted agency to respond;

c. The responsible official should complete the threshold determination within fifteen days of receiving the requested information from the applicant or the consulted agency.

3. When the city must initiate further studies, including field investigations to obtain the information to make the threshold determination, the city should complete the studies within thirty days of receiving an adequate application and a completed checklist.

4. The city shall complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within fifteen days of receiving an adequate application and completed checklist.  
(Ord. 440, 1984)

**Section 16.04.070 Additional timing considerations.**

A. For nonexempt proposals, the DNS or final EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory body, such as the planning commission.

B. If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications.  
(Ord. 440, 1984)

**Section 16.04.080 Flexible thresholds for categorical exemptions.**

The city establishes the following exempt levels for minor new construction based on local conditions. The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

1. The construction or location of any residential structures of four dwelling units;

2. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering ten thousand square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This

exemption shall not apply to feed lots;

3. The construction of an office, school, commercial, recreational, service or storage building with four thousand square feet of gross floor area, and with associated parking facilities designed for twenty automobiles;

4. The construction of a parking lot designated for twenty automobiles;

5. Any landfill or excavation of one hundred cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II or III forest practice under RCW 76.09.050 or regulations thereunder.

Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504.  
(Ord. 440, 1984)

**Section 16.04.090 Environmental checklist.**

A completed environmental checklist (or copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making the threshold determination. The city may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal if either of the following occurs:

A. The city has technical information on a question or questions that is unavailable to the private applicant; or

B. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.  
(Ord. 440, 1984)

**Section 16.04.100 Mitigated DNS.**

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

2. Precede the city's actual threshold determination for the proposal.

B. The responsible official should respond to the request for early notice within seven working days. The response shall:

1. Be written;

2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

C. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2).

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS,

the city shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

D. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen day comment period and public notice. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS). The city's written response under subsection (D) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider clarifications or changes in its threshold determination.

(Ord. 440, 1984)

#### **Section 16.04.110 Additional elements.**

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:

- A. Economy;

- B. Social policy analysis;

- C. Cost benefit analysis;
  - D. Financial impacts on community and local government;
  - E. Social consequences of the action.
- (Ord.440, 1984)

**Section 16.04.120 Public notice.**

A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as follows:

- 1. Posting the property, for site-specification proposals;
- 2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- 3. Notifying the news media.

B. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SF15 under WAC 197-11-620, notice of the availability of those documents shall be given by:

- 1. Posting the property, for site-specific proposals;
- 2. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- 3. Notifying the news media.

C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.

D. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.  
(Ord. 440, 1984)

**Section 16.04.130 Designation of official to perform consulted agency responsibilities.**

A. The planning officer shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping and reviewing the DEIS.

B. This person shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.  
(Ord. 440, 1984)

**Section 16.04.140 Substantive authority.**

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city/county.

B. The city may attach conditions to a permit or approval for a proposal so long as:

- 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
- 2. Such conditions are in writing; and
- 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;

4. The city has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

- 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
- 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city designates and adopts by reference the following policies as the basis

for the city's exercise of authority pursuant to this section:

I. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following city codes and plans:

a. Comprehensive plan adopted in November, 1994, as amended;

b. Tide 18 of this code;

c. Tide 16 of this code;

d. The State Growth Management Act and its amendments;

e. Title 17 of this code.

4. The city establishes the following additional policies as contained in Ordinance No.357, adopted November 14, 1981.

E. Except for permits and variances issued pursuant to Chapter 16.08 of this tide, when any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the city council. Review by the city council shall be on the de novo basis.

(Ord. 570, 1990; Ord. 440, 1984)

(Ord. 699, 1995)

#### **Section 16.04.150 Appeals.**

The city establishes the following administrative appeal procedure for appeals of determinations relating to SEPA:

A. Administrative appeals of determinations relating to SEPA shall be taken within the following time limits:

1. Final determination of significance

(DNS): Appeal of the DNS and the substantive determination of the action must be made within ten days of the date the permit or other approval is issued;

2. Determination of significance (DS):

The appeal of a DS must be made within ten days of the date the DS is issued;

3. Final environment impact statement (FEIS): Appeal of the FEIS and the substantive determination on the action must be made within ten days of the date the permit or other approval is issued; and

4. Condition or denial on the basis of SEPA: When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, an appeal of such condition or denial must be made within ten days of the date such decision is made.

B. All appeals made pursuant to this section shall be perfected in the following manner:

1. All appeals shall be in writing;

2. The written notice of appeal must specify the basis for the appeal and the argument made in support of the appeal;

3. The written notice of appeal must be made to the city planning officer, and filed at City Hall;

4. The written notice of appeal, together with the required appeal fee as established by city ordinance, must be filed prior to

four-thirty p.m. on the last day of the applicable time period for appealing; provided, however, that if City Hall is not open on the last day of the applicable appeal time period, then the appeal period shall be extended until four-thirty p.m. on the next day in which City Hall is open; and

5. Filing requires actual delivery to City Hall prior to four-thirty p.m. on the date due, and prior mailing is not sufficient if actual receipt by the city does not occur within the applicable time period.

C. For any appeal made pursuant to this section, a record shall be prepared, which shall consist of findings and conclusions, testimony under oath, and a taped or written transcript.

D. Procedural determinations made by the responsible official shall be entitled to substantial weight in any appeal proceeding.

E. Only one administrative appeal of a threshold determination or of the adequacy of an EIS shall be permitted.

F. Only parties of record shall be permitted to participate at the appeal hearing. The parties of record shall include, and be limited to, the city, the applicant for the proposal that is the subject of the appeal, and whose persons, organizations or agencies which have filed written appeal statements within the specified appeal period. No other persons may testify at the hearing. The hearing shall be limited to consideration of the matters raised in the appeal statements filed within the specified time.

G. The state environmental policy act is not intended to create a cause of action unrelated to a specific governmental action. Consequently, appeals under this chapter shall be of the governmental action, together with its accompanying environmental determination, provided that, the appeal proceeding on a determination of significance may occur before the final decision on a proposed action. There shall not be more than one administrative appeal proceeding per underlying land use action. Further appeals must be to Island County Superior Court per the procedures in Chapter 16.04.155 of this code.

H. Following the public hearing upon such appeal, the hearing board may affirm, remand, modify or reverse the determination of the responsible official, recognizing the weight that is to be accorded the determination of the responsible official per 16.04.150D above. The hearing body's decision shall be in the form of a report setting forth its findings, conclusions and decision. (Ord. 570, 1990; Ord. 440, 1984) (Ord. 714, 1996)

#### **Section 16.04.155 Judicial Appeals**

Appeals from the decision of the city hearing body shall be made to Island County Superior Court within twenty-one (21) days of the date of the hearing body's written decision.

(Ord. 714, 1996)

#### **Section 16.04.160 Notice — Statute of limitations.**

The city applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.2 IC.080.

(Ord. 440, 1984)

#### **Section 16.04.170 Environmentally sensitive areas.**

The map filed under the city's adopted comprehensive plan designates the location of environmentally sensitive areas within the city and are adopted by reference. For each environmentally sensitive area, the exemptions within WAC 197-11-800 that are inapplicable for that area are: none. Unidentified exemptions shall continue to apply within environmentally sensitive areas of the city.

2. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

3. Certain exemptions do not apply on lands covered by water, and this remains



true regardless of whether or not lands covered by water are mapped.  
(Ord. 440, 1984)

**Section 16.04.180 Fees.**

The city shall require the following fees for its activities in accordance with the provisions of this chapter

A. Threshold Determination. For every environmental checklist the city will review when it is lead agency, the city may collect a fee from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee.

B.Environmental Impact Statement.

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

2. The responsible official may determine that the city will contract directly with a consultant for preparation of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals.

3. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subsections B 1 or B2 of this section which remain after incurred costs are paid.

C. The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

D. The city shall not collect a fee for

per-forming its duties as a consulted agency.

E. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.19.  
(Ord. 440, 1984)

**Chapter 16.12**

**Violations**

**Sections:**

**Section 16.12.010 Violation— Penalty.**

Violation of or failure to comply with any of the provisions of this chapter shall be subject to a civil penalty as set forth in Chapter 1.14.

When violations are of a continuing nature, the penalty shall increase each day of the violation as set forth in chapter 1.14.050(5).

(Ord. 340, 1981; Ord. 334, 1981) (Ord. 832, 2003)

**Chapter 16.20**

**Resource Lands and Environmentally Sensitive (Critical) Areas Management**

**Sections:**

- 16.20.010 Purpose**
- 16.20.015 Best available science**
- 16.20.020 Critical area permit process and application requirements.**
- 16.20.025 Designation and regulation of resource lands.**
- 16.20.030 Designation and regulation of environmentally sensitive (critical) areas.**
- 16.20.035 Fish and wildlife habitat areas.**
- 16.20.040 Flood hazard areas.**
- 16.20.045 Geologically hazardous areas.**
- 16.20.050 Wetlands and streams.**
- 16.20.055 Wetlands and streams—purpose, goal and designation criteria.**
- 16.20.060 Wetlands—measures to minimize impacts to wetlands.**
- 16.20.065 Wetlands and streams—required buffers.**
- 16.20.070 Wetlands and streams—Buffer width increases, averaging and reductions.**
- 16.20.075 Wetlands and streams— exemptions.**
- 16.20.080 Wetlands and streams—permitted uses, uses requiring alteration approval (including reasonable use provisions); exceptions.**
- 16.20.085 Wetlands and streams – land use standards.**
- 16.20.090 Wetlands and streams – current use taxation of open space land.**
- 16.20.095 Identification of resource lands and environmentally sensitive (critical) areas.**
- 16.20.100 Bonds for restoration and mitigation activities.**
- 16.20.105 Provisions of title—application to identified and unidentified sensitive lands.**

**Section 16.20.010 Purpose.**

The purpose of this chapter is to:

- A. Best Available Science;
- B.
- C.
- D. Protect members of the public and public resources from injury, loss of life, or property damage due to landslides, steep slope failures, erosions, seismic events, or flooding.

(Ord. 619, 1992) (Ord. 861, 2005)

**Section 16.20.015 Best Available Science**

A. Protection for functions and values and anadromous fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to

conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout, and their habitat.

B. Best available science to be used must be consistent with criteria. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.

C. Characteristics of a valid scientific process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in

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developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the Planning Official shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

1. Peer review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;

2. Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity;

3. Logical conclusions and reasonable inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;

4. Quantitative analysis. The data have been analyzed using appropriate statistical or quantitative methods;

5. Context. The information is placed in proper context. The assumptions, analytical techniques, data and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and

6. References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent

existing information.

D. Non-scientific information. Non-scientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information. Common sources of nonscientific information include the following:

1. Anecdotal information. One or more observations that are not part of an organized scientific effort (for example, “I saw a grizzly bear in that area while I was hiking”);

2. Non-expert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, “I do not believe there are any grizzly bears in the area”); and

3. Heresay. Information repeated from communication with others (for example, “At a lecture last week, Dr. Smith said there were no grizzly bears in that area”).

E. Absence of valid scientific information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area, leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the Planning Official shall:

1. Take a “precautionary or a no-risk approach,” that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and

2. Require an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:

a. Address funding for the research component of the adaptive management program;

b. Change course based on the results and interpretation of new information that resolves uncertainties; and

c. Commit to the appropriate timeframe

and scale necessary to reliably evaluate regulatory and non-regulatory actions affecting protection of critical areas and anadromous fisheries.

(Ord. 820, 2002) (Ord. 861, 2005)

**Section 16.20.020 Critical area permit process and application requirements.**

A. Pre-application conference. All applicants are encouraged to meet with the city prior to submitting an application subject to the critical area provisions of this section. The purpose of this meeting shall be to discuss the requirements, process and procedures; to review the critical areas checklist and any conceptual plans prepared by the applicant; to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the city.

B. Critical area report. If the Planning Official determines that critical area or buffer impacts might occur as a result of the proposal, a critical area delineation and assessment report must be submitted to the city for review as part of the development application; the application will not be deemed complete without the critical area report. The report must be prepared in accordance with city permit application requirements and must incorporate Best Available Science as defined in Section 16.20. The report shall analyze the extent, type, and function of the critical area or areas and buffers on any site where regulated activities are proposed. The report will be used by the city to determine the extent of the critical area and appropriate buffer requirements and to assist the city in determining appropriate mitigation if required. The critical areas report, which shall be available to the public, shall contain the following:

1. The name and contact information of the applicant, a description of the proposal and identification of the requested critical area action;

2. A copy of the site plan for the

development proposal including a map to scale depicting topography; critical areas and their buffers; site features, including existing development; the proposed development; and any areas to be cleared;

3. A description of the proposed storm water management plan for the development and consideration of impacts to drainage alterations;

4. Characterization of all critical areas, water bodies and buffers adjacent to the proposed project area;

5. A discussion of the performance standards applicable to the critical area and the requested critical area activity;

6. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize and mitigate impacts to critical areas;

7. Plans for adequate mitigation as needed to offset any impacts;

8. The dates, names and qualifications of the persons preparing the report and documentation of any field work performed on the site;

9. A statement specifying the accuracy of the report and all assumptions made and relied upon;

10. Financial guarantees, as appropriate, to ensure compliance; and

11. Any additional information deemed necessary by the Planning Official.

It is intended that the level of technical study and analysis in critical area reports be commensurate with the value or sensitivity of the particular critical area in question.

(Ord. 619, 1992) (Ord. 861, 2005)

C. Professional expertise. A wetland specialist, geotechnical engineer, or other qualified professional as mutually agreed upon by the City and the applicant, shall prepare all reports and studies required of the applicant by the City. The City or the applicant may retain a qualified professional to perform a peer review of required reports, studies and plans. All reports and studies (including peer review) required of the applicant shall be prepared at the applicant's expense.

D. Review process. This section is not intended to create a separate critical area

permit process for development proposals. To the extent possible, the city shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations and approvals. (Ord. 861, 2005)

**Section 16.20.025 Designation and regulation of resource lands.**

A. Designation of Forest, Agriculture, and Mineral Resource Lands. The city declares that there is no forest, agricultural or mineral resource lands of long term commercial significance within the city limits of the city of Langley.

B. Regulation of Lands Adjacent to Resource Lands.

1. For permitted or conditional uses adjacent to lands classified agricultural or forest management by Island County or the city or a surface mining operation:

(a) Setback standards for dwellings, structures and buildings, approved after the effective date of this chapter and adjacent to agriculturally zoned property shall be a minimum of fifty feet unless a mutual covenant is established with adjoining landowners and recorded with the requirement may be modified where it is not feasible to accomplish and still allow reasonable use of the property.

(b) stating that the parcel may be subject to noise, dust, smoke, and odors resulting from harvesting, planting, fertilization, and pest control and other activities associated with permitted agricultural, forest management and surface mining practices. The notations shall further state these practices, when performed in accordance with county, state and federal law, shall not be subject to legal action as a public nuisance.

2. For permitted or conditional uses adjacent to lands used for agricultural or forest management purposes or in open space agriculture or forest current use taxation, the notation set forth in subsection (B)(1)(b) of this section may be imposed when found necessary to protect the agriculture or forest management use.

(Ord. 619, 1992) (Ord. 861, 2005)

**Section 16.20.030 Designation and regulation of aquifer recharge areas.**

Through the Island County groundwater management program, all Island County has been designated a critical aquifer recharge area. The city has adopted limitations on the extent of impervious surface allowed with new development. These standards are set forth in Title 18 (Zoning) of the Langley Municipal Code.

(Ord. 619, 1992) (Ord. 861, 2005)

**Section 16.20.035 Designation and regulation of wildlife habitat areas.**

A. Regulations.

1. Management Plan.

a. Where a protected species or protected habitat is located on a site of proposed development, the applicant shall prepare or cause to be prepared, a management plan which will identify:

- i. The location of the habitat;
- ii. The primary buffer,
- iii. If necessary, the secondary buffer
- iv. Conditions to be imposed during development of the property; and
- v. Conditions to be imposed to protect and maintain the species and/or habitat.

2. In preparing the management plan, the applicant shall consult with the Department of Fish and Wildlife, the Department of Natural Resources, the Department of Ecology and the Washington Natural Heritage Program.

3. The management plan shall be prepared at the cost of the applicant and shall be subject to the approval of the city Planning Official, who may approve, reject, or approve the plan with conditions. All development shall be consistent with the approved management plan.

B. Buffers.

1. Known Habitats.

a. Where a protected species is located on a site of proposed development, all permitted or conditional uses shall maintain a primary buffer around the habitat for the identified species, and a secondary buffer if necessary to adequately protect the species.

A n

If the buffer area(s) extends to the adjacent property, the adjacent property owner shall be notified of the potential requirement to provide a buffer area on his/her property.

b. The primary buffer is the most critical area immediately around the habitat. The purpose of the secondary buffer is further to minimize the disturbance and protect the primary buffer.

c. The primary buffer may be modified when necessary to protect or enhance the habitat.

#### 2. Potential Habitat.

a. Suspension of Development. All development activity shall be suspended, pending precise location of a habitat, where:

i. A protected species has been sighted on property proposed for development and the sighting has been confirmed by the city planning official; or

ii. There is evidence of the use of the property as a habitat for a protected species.

b. Location of Habitat. The location of the habitat shall be determined pursuant to subsection (B) (1) of this section. If the habitat is located on the property, it is deemed a known habitat and the applicant shall comply with subsections (B) (1) and (B) (2) (a) of this section.

c. Citizen Reports. The planning official shall investigate all reported sightings or evidence of protected species.

d. Conveyance. Conveyance of a habitat and its buffer(s) identified as part of project review to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organizations, or state or federal agency, is encouraged when such conveyance will ensure the long-term protection of the species and/or habitat.

C. List of Protected Habitat and Species. Please refer to list in Appendix 1. (Ord. 619, 1992) (Ord. 861, 2005)

### **Section 16.20.040 Designation and regulation of flood hazard areas.**

#### A. Definitions.

“Base Flood” means a flood having a one percent chance of being equaled or exceeded in any given year. It is referred to as the “one hundred year flood.”

“Flood hazard areas” means those areas subject to inundation by the “base flood” as identified in the Federal Emergency Management Agency’s flood insurance rate maps (“FIRMs”) prepared for the National Flood Insurance Program. Copies of the City of Langley FIRMs may be reviewed at City Hall. A flood hazard area consists of the following components:

“Floodplain” means the total area subject to inundation by the base flood.

“Flood Fringe” means that portion of the floodplain outside of the floodway which is covered by flood waters during the base flood.

“Floodway” means the channel of the stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flow without any measurable increase in flood heights.

#### B. Protected and Permitted Alterations.

1. Development proposals on sites containing a flood hazard area shall conform to the conditions of this section. In addition, requirements for buffers, critical area tracts, building setback lines, permitted alterations, mitigation, and maintenance for a development proposal site on or adjacent to a flood hazard area shall be established in this chapter for the wetlands, streams, or other areas which form the constituent elements of the floodplain.

2. Development proposals shall not reduce the effective flood storage volume of the floodplain. Grading or other activity which would reduce the effective storage volume must be mitigated by creating compensatory storage on-site or off-site.

3. No development proposal, including permitted new construction or reconstruction, shall cause any increase in the base flood elevation.

4. Construction or placement of new residential or nonresidential structures in the floodway is prohibited.

5. Substantial improvements (value of improvement is fifty percent or greater than existing structure) of an existing structure located in a floodway must meet the requirements set out in WAC 173-158-070 as amended.

6. All elevated construction must be designed and certified by a professional structural engineer registered in the state of Washington and must be approved by the city prior to construction.

7. New residential and nonresidential construction and substantial improvement in the flood fringe outside the floodway shall be elevated to the flood protection level. Portions below the lowest floor area shall provide for openings for floodwaters. Flood-proofing of a nonresidential structure (new or substantial improvement) to the flood protection elevation is allowed, provided that flood-proofing is certified by a professional civil or structural engineer licensed in the state of Washington.

8. Construction of new and substantially reconstructed residential and nonresidential structures shall use materials and methods which are resistant to and minimize flood damage and shall flood-proof or elevate above the flood protection elevation all electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities.

9. Utilities.

a. All new and replacement utilities shall be flood-proofed to or elevated above the flood protection elevation.

b. Critical facilities may be allowed within the flood fringe of the flood plain only when no reasonable alternative is available. Critical facilities are those necessary to protect the public health, safety, and welfare, including but not limited to schools, hospitals, and police and fire stations.

(Ord. 619, 1992) (Ord. 861, 2005)

**Section 16.20.045 Geologically hazardous areas.**

A. Designation of geologically hazardous areas. Geologically hazardous areas susceptible to erosion, sliding, earthquake or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the

hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

1. Erosion hazard;
2. Landslide hazard;
3. Seismic hazard;

4. Other geological events including tsunamis, mass wasting, debris flow, rock falls, and differential settlement.

B. Designation of specific hazard areas.

1. Erosion hazard areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe", "severe", or "very severe" rill and inter-rill erosion hazard.

2. Landslide hazard areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:

a. Areas of historic failures, such as:

i. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

ii. Those areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5); or

iii. Areas designated as quaternary slumps, earth flows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources;

b. Areas with all three of the following characteristics:

Areas that encompass slopes steeper than fifteen percent (15%), with the hillside intersecting geologic contacts with a



relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and springs or ground water seepage.

c. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

d. Slopes that are parallel or sub parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

e. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;

f. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

g. Areas located in a canyon or an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.

3. Seismic hazard areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

a. The magnitude of the earthquake;

b. The distance from the source of an earthquake;

c. The type of thickness of geologic materials at the surface; and

d. The type of subsurface geologic structure.

Settlement and soil liquefaction condition occur in areas underlain by cohesion less, loose, or soft-saturated soils of low density, typically in association with a shallow

ground water table.

4. Tsunami hazard areas. Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as a result of excessive wave action derived from seismic or other geologic events.

5. Other hazard areas. Geologically hazardous areas shall also include areas determined by the Planning Official to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

C. Development Standards.

1. Development proposals on sites containing steep slope areas shall meet the requirements of this section.

a. Buffers.

i. A minimum buffer shall be established at a horizontal distance of fifty feet from the top or toe (as applicable) of the slope and along all sides of slopes fifteen percent or steeper, provided that this requirement shall not apply to the north side of First Street in the downtown commercial area. The width of the required buffer for steep slopes located in areas other than along the marine shoreline and not associated with another critical area may be reduced to twenty-five (25) feet by the Planning Official based on:

(A). A study and recommendation prepared by a professional engineer licensed by the State of Washington with experience in geo-technical engineering, and

(B) The installation of appropriate slope protection measures. Existing native vegetation within the buffer area shall be maintained and the buffer shall be extended beyond these limits as required to mitigate landslide and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare. See also following Subsection e – removal or introduction of revegetation on slopes.

ii. The City Planning Official may reduce the buffer twenty-five percent when an applicant demonstrates that:

(A). The reduction complies with the required findings for variances contained in Section 18.30.020 of Title 18 LMC, and

(B) A study prepared by a professional engineer licensed by the State of Washington with experience in geotechnical engineering, and demonstrating that a lesser buffer width and design and engineering solutions will meet the intent of this chapter and be consistent with general public health, safety and welfare.

b. Critical Area Tracts. Any continuous slope area and its buffers one acre or greater in size shall be placed in separate critical area tracts in development proposals.

c. Building Setback Lines. A building setback line will be established at a distance of fifteen feet from the edge of the buffer. Development allowed in the building setback line is limited to landscaping (native plants) and uncovered decks, as long as the decks do not extend more than ten feet into the building setback area and extend no more than eighteen inches above existing grade, unless the City Planning Official determines that topography or unusual site conditions warrant a variation.

d. Alterations. Alterations to steep slopes shall be allowed only as follows:

i. Surface Water Management. Steep slopes may be used for approved surface water conveyance. Installation techniques shall minimize disturbance to the slope and vegetation.

ii. Trails. Construction of public and private trails may be allowed on steep slopes provided they receive site specific approval by the city, but in no case shall trails be constructed of concrete, asphalt or other impervious surface materials which would contribute to surface water runoff unless such construction is necessary for soil stabilization or soil erosion prevention.

iii. Utilities. Construction of public and private utility corridors may be allowed on steep slopes provided that a special study indicates that such alteration will not subject the area to risk of landslide or erosion.

iv. View Corridors. The city may allow the limited trimming and limbing of vegetation on steep slopes for creation/maintenance of views provided that the soils are not disturbed.

e. Removal or introduction of

Vegetation on Slopes. Unless otherwise specified, the following restrictions apply to vegetation removal or introduction on slope areas and their buffers.

i. There shall be no removal of any vegetation from any steep slope area or buffer except for the limited plant removal necessary for surveying purposes and for

the removal of hazardous trees determined to be unsafe by the city land use coordinator.

ii. On slopes which have been disturbed by human activity or infested by noxious weeds, replacement with native species or other appropriate vegetation may be allowed subject to approval of an enhancement plan by the city planning official.

2. Development proposals on sites containing landslide hazard area shall meet the following requirements:

a. Buffers. A minimum buffer of fifty feet shall be established from all edges of landslide hazard areas. Existing native vegetation within the buffer area shall be maintained, and the buffer shall be extended beyond these limits as required to mitigate steep slope and erosion hazards or as otherwise necessary to protect the public, health, welfare and safety;

b. Critical Area Tracts. Any landslide hazard area and buffer one acre or greater in size shall be placed in separate critical area tracts in the development proposal;

c. Building Setback Lines. Building setback lines of fifteen feet shall be required from the edge of the landslide hazard area buffer.

d. Alterations.

i. A landslide hazard area located on a slope fifteen percent or steeper shall be altered only as allowed under standards for steep slope areas.

ii. Where such alterations are approved, buffers and critical area tracts will not be required.

3. Alteration of a site containing an erosion hazard area shall meet the following requirements:

a. Except for the following, clearing on erosion hazards is allowed only from

April 1st to November 1st:

i. Up to five thousand square feet may be cleared on any lot, subject to any other requirement for vegetation retention;

ii. Timber harvest pursuant to a DNR approved forest practice permit or pursuant to a clearing and grading permit issued by the city may be allowed.

b. Only that clearing necessary to install temporary sedimentation and erosion control measures shall occur prior to clearing for roadways or utilities.

c. Clearing limits for roads, sewer, water and storm water utilities, and temporary erosion control facilities shall be marked in the field and approved by the city engineer prior to any alteration of existing native vegetation.

d. Clearing for roads and utilities shall remain within construction limits which must be marked in the fields prior to commencement of the site work.

e. The authorized clearing for roads and utilities shall be the minimum necessary to accomplish project specific engineering designs and shall remain within approved rights-of-ways.

f. Clearing of trees may occur in conjunction with clearing for roadways and utilities.

g. All trees and understory shall be retained on lots or parcels during clearing for roadways and utilities provided that understory damaged during approved clearing operations may be pruned.

h. Damage to vegetation retained during initial clearing activities shall be minimized by directional felling of trees to avoid critical areas and vegetation to be retained, and preparation and approval of a skidding plan aimed at minimizing damage to soil and understory vegetation.

i. Retained trees, understory, and stumps may subsequently be cleared only if such clearing is a specific element of residential, multifamily, or commercial structure site plan approval.

j. Hydro seeding and/or other erosion control methods as required in temporary erosion control plans shall be required.

k. All development proposals shall

submit an erosion control plan consistent with this section and other adopted requirements prior to receiving approval. (Ord. 619, 1992) (Ord. 733, 1997)(Ord. 788, 2000) (Ord. 820, 2002) (Ord. 861, 2005)

#### **Section 16.20.050 Wetlands and streams.**

##### **A. Definitions.**

"Alterations of a Wetland or Stream." means the placement or erection of any solid material or structure; the discharge or disposal of any dredge material or waste, including filling, grading, channelization, removing, dredging, draining, extraction of any materials; the discharge or disposal of any dredge material or waste, including filling, grading; the removal or harvesting of trees or other vegetation; or the modification for use as a storm water retention/detention facility.

"Anadromous fish" means those species that migrate up rivers from salt water to spawn in fresh water.

"Artificial Wetlands." means a wetland or surface water system that was intentionally created from a non-wetland site through human activity and for a specific purpose. This includes storm water detention ponds, bioswales, irrigation canals, wastewater treatment ponds, landscape amenities, stock ponds, and similar areas. Artificial wetlands or surface water systems do not include wetlands created as compensation for development impacts or wetlands that have inadvertently become established as a result of changing environmental conditions or land use.

"Best management practices" means conservation practices and management measures identified by the Soil Conservation Service, Whidbey Island Conservation District or State Extension Offices that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins and sediment; and (2) minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to chemical, physical, and biological characteristics of wetlands and streams.

"Conservation easement" means a legal agreement a property owner enters into to

restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

“Creation” (or “establishment”) means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydro period, create hydric soils, and support the growth of hydrophytic plant species. Creation results in a gain in wetland areas.

“Enhancement” means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydro periods, or some combination of these. Enhancements results in a change in some wetland functions, and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.

"Habitat for a protected species" means the site where a protected species of flora or fauna lives and grows, including habitats for species subject to the International Migratory Bird Treaty and regionally rare habitats which are irreplaceable or highly sensitive to alteration. As used in this chapter, habitat is limited to areas which are critical to breeding, rearing and nesting. This chapter shall contain a list of protected habitats which shall be revised as new habitats warranting protection are recognized.

"Hydrophytic vegetation" means plant life growing in water or in a substrate that is at least periodically deficient in oxygen as a result of excessive water content. (For one reference source see Wetland Plants of the Pacific Northwest, September 1984, U.S. Corps of Engineers) The presence of hydrophytic vegetation shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

"Mitigation" means steps taken to avoid, minimize or compensate for adverse wetland or stream impacts. Mitigation, in the following order of preference is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments; and
6. Monitoring the impact and the compensation project and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the listed measures.

"Native wetland species" means wetland species which are indigenous to Island County and western Washington. Such species are identified in Flora of the Pacific Northwest (C. Leo Hitchcock and Arthur Cronquist, University of Washington Press).

"Non-native Wetland Species" means wetland species which have been accidentally or purposefully introduced into Island County.

"Non-wetlands" include uplands and lowland areas that are neither deepwater aquatic habitats, wetlands, nor other special aquatic sites. They are seldom or never

inundated, or are infrequently inundated, they have saturated soils for only brief periods during the growing season, and, if vegetated, they normally support a prevalence of vegetation typically adapted for life only in aerobic soil conditions.

"Protected species" means species of flora and fauna recognized by the federal government of the state of Washington as endangered, threatened or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are unique in Island County and worthy of protection. This chapter shall contain a list of protected species, which shall be revised as new species which warrant protection are recognized, or a species which has been listed no longer needs protection.

"Protection/maintenance (preservation)" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland deemed worthy of long-term protection. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as protecting a barrier island. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres, may result in a gain in fractions, and will be used for compensatory mitigation only in exceptional circumstances.

"Reasonable use" means appropriate and fair use of property given the specific physical circumstances.

"Repair or maintenance" means an activity that restores the character, scope, size and design of a serviceable area, structure or land use to its previously authorized and undamaged condition. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

"Restoration" means measures taken to restore an altered or damaged wetland or stream that is subject to the regulations of this chapter including:

1. Rehabilitation - Active steps taken to restore damaged regulated wetlands, streams, protected species habitat or their buffers to the functioning condition which existed prior to an unauthorized alteration; and

2. Re-establishment - Actions performed to reestablish wetland and stream functional characteristics and process which have been lost by alteration, past management activities, or catastrophic events within an area which no longer meets the definition of a wetland or stream.

"Stream" means surface water contained within a defined bed or channel, whether permanent or intermittent. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition does not include ditches, canals, storm water runoff devices or other entirely artificial watercourses unless they are used by salmonids or to convey streams naturally occurring prior to construction of such watercourses. Categories of streams are defined in subsection F of this section.

"Water dependent use" means a use or a portion of a use which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations. Examples of water dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquiculture, float place facilities, and sewer outfalls.

"Wetland edge" means the upland limit of a wetland is designated as the boundary between land with predominantly wetland vegetation cover and land without such cover.

"Wetland functions" means the beneficial roles served by wetlands, including but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation,

groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological value protection, aesthetic value and recreation.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support (and that under normal circumstances do support) a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after March 18, 1992, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands shall include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. Categories of wetlands are defined in subsection F of this section.

"Wetland Vegetation." Hydrophytic vegetation, as defined above.

B. Protected Species and Habitats. Please refer to list in Appendix 1.

C. Wetland and Streams as an Overlay Zone.

1. Wetlands have been initially identified in the City of Langley through site specific analyses conducted by private property owners, a wetlands inventory conducted through funding from Washington State Department of Ecology (1991), and by the city of Langley. This combined information serves to notify both the city and the property owner of the potential existence of a wetland or stream depending on the kind and extent of information available, sufficient to identify and clarify a wetland or stream. Otherwise, the process of identifying and classifying wetlands is fulfilled through a routine wetland determination or by analysis conducted by a professional wetland ecologist.

2. The Planning Official shall make a preliminary determination of the presence of wetlands or streams based on readily available information such as critical areas maps or the soil survey or through a site visit. This determination is final for ordinance implementation or enforcement. The determination may be challenged by the property owner through an inspection and report conducted/prepared by a professional wetlands ecologist at the owner's expense.

3. In making any determination regarding a wetland, the text of this chapter is always controlling. Wetland delineations shall be determined by using the *Washington State Wetlands Identification and Delineation Manual*, March 1997, or as amended hereafter.

4. Wetlands, streams and their buffers shall be regulated in the city of Langley pursuant to the regulations contained in this chapter. An applicant should be aware that Sections 401, 402 and/or 404 of the Federal Clean Water Act and other federal and state statutes may also apply.

5. Wetlands and streams environmentally sensitive areas. Wetlands and streams are declared to be "environmentally sensitive areas" pursuant to WAC 197-11-748 and WAC 197-11-908. (Ord. 619, 1992) (Ord. 714, 1996) (Ord. 861, 2005)

#### **Section 16.20.055 Wetlands and streams – purpose, goal and designation criteria.**

A. The primary purpose of these regulations is to preserve wetlands, streams and their buffers in a natural condition to the maximum extent feasible in order to protect the wetlands, streams and riparian corridors for fish and wildlife habitat, protect property from flooding and erosion, and provide recreational opportunities and aesthetic value. It is also the goal that in the short term, there be no net loss of the acreage or functional values of wetlands and streams in the City and that in the long term, to improve the quality and functional values of wetland and stream systems. To realize these preservation goals, the City will use the following methods of impact mitigation

in order of preference:

- a. Avoiding the impact;
- b. Minimizing the impact;
- c. Compensating for the impact;
- d. Enhancing the impacted wetland

or stream.

B. Wetland designation criteria. Wetlands shall be designated according to the criteria in subsections (A) (1) through (3) of this section and streams shall be designated according to the criteria in subsection B of this section. Wetlands shall be classified as Category I, II, III, or IV using the *Washington State Department of Ecology's Wetland Rating System for Western Washington*, 2004, Ecology Publication #04-06-025, or as revised hereafter. Wetland delineations shall be determined by using the *Washington State Wetlands Identification and Delineation Manual*, March 1997, or as amended hereafter. As used in this section, the term "regulated wetlands" shall refer to Category I, II, III and IV wetlands, generally described as follows:

Category I Highest quality wetlands; wetlands in coastal lagoons;

Category II Wetlands with significant wetland functions such as water quality enhancement, wildlife habitat, groundwater recharge, etc.;

Category III Wetlands with a moderate level of functions;

Category IV Wetlands having the lowest levels of functions and that are often heavily disturbed.

C. *Stream designation criteria.* Streams have been identified in the city and are shown on the Comprehensive Plan map contained in the city's adopted Comprehensive Plan. *As used in this section, the term "regulated streams" shall refer to Type 1, 2, 3, 4, and 5 streams, generally described as follows:*

Type 1. All waters, within their ordinary high-water mark, as inventoried as "Shorelines of the State."

Type 2. All waters not classified as

Type 1, with 20 feet or more between each bank's high water mark and a gradient of less than 4%. Type 2 waters have high use and are important from a water quality standpoint for domestic use, public recreation, and fish and wildlife uses.

Type 3. Waters that have two or more feet between each bank's ordinary high water mark, and which have a moderate to slight use and are moderately important from a water quality standpoint for domestic use, public recreation, and fish and wildlife habitat. Segments of natural waters that are not classified as Type 1 or 2.

Type 4. All segments of natural waters within the width of defined channels that are perennial non-fish habitat streams. Type 4 includes the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

Type 5. All segments of natural waters within the width of the defined channels that are not Type 1, 2, 3, or 4 waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 water. Type 5 waters must be physically connected by an above-ground channel stream to Type 1, 2, 3, or 4 waters.

(Ord. 861, 2005)

### **Section 16.20.060 Wetlands – measures to minimize impacts to wetlands.**

All proposed land uses adjacent to wetlands and their buffers shall comply with the following measures to the maximum extent practicable:

A. Direct lights away from the wetland.

B. Locate activities that generate noise away from the wetland.

C. Route all new untreated runoff away from the wetland while ensuring that the

wetland is not dewatered.

D. Establish covenants limiting the use of pesticides within 150 feet of the wetland and applying integrated pest management to the balance of the site,

limiting pesticide use to treatment of noxious weeds or insect infestations only after use of alternative non-toxic measures has failed.

E. Limit the use of nitrogen fertilizers.

F. Retrofit storm water detention and treatment for roads and existing adjacent development.

G. Prevent channelized flow from lawns that directly enter the buffer.

H. Infiltrate or treat, detain and disperse into the buffer new runoff from impervious

surfaces and new lawns.

I. Plant dense vegetation to delineate the buffer edge and to discourage disturbance, using vegetation appropriate for the region.

J. Use best management practices to control dust.

(Ord. 619, 1992) (Ord. 861, 2005)

### **Section 16.20.065 Wetlands and streams—Buffers.**

A. General Provisions. The following general provisions shall apply to wetland or stream buffers:

1. The buffer width shall be measured perpendicular to the edge of the wetland or stream from the (ordinary high water mark or the delineated wetland boundary;

2. No new lot shall be created that is wholly comprised of a wetland, stream and/or the associated buffers or that cannot be developed without violation or alteration of the wetland, stream and/or buffer unless a conservation easement encompassing the lot is established and recorded;

3. In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall comply with the buffer requirements unless there is a showing that there is no feasible option to alteration of the buffer

4. The wetland or stream edge within the boundaries of the applicant's property shall be shown on all plats, short plats, site plans or PUDs, together with any conservation easement(s) and appropriate covenants. The

applicant shall be responsible for such delineation. Such delineation may be based on findings by the planning official or if the applicant disagrees with such findings, on the results of a study by a biologist, plant ecologist or similarly qualified professional;

5. Development within the buffer shall be limited to passive recreation such as trails, or scientific uses and fences or other barriers necessary to protect habitat and designed to minimize impediments to wildlife movement.

6. will ensure the long-term protection of the wetlands or streams;

7. Streams, wetlands and their buffers may be designated as open space and subject to current use taxation, thereby providing a tax incentive to the landowners to ensure the long-term protection of the aquatic system.

B. Wetland Buffer width Requirements. The following undisturbed buffers shall be established adjacent to all wetlands and streams. These buffers are subject to reduction only through the provisions of Section 16.20.070 of this chapter.

1. Wetland Buffer Requirements.

a. Category I Wetlands. Not less than two hundred and fifty (250) feet from the delineated wetland boundary.

b. Category II Wetlands. Not less than one hundred and fifty (150) feet from the delineated wetland boundary.

c. Category III Wetlands. Not less than one hundred ten (110) feet from the delineated wetland boundary.

d. Category IV Wetlands. Not less than fifty (50) feet from the delineated wetland boundary.

2. Stream Buffer Requirements.

a. Type 1 Two hundred and fifty (250) feet on each side of the stream;

b. Type 2 Two hundred and fifty (250) feet on each side of the stream;

c. Type 3 One hundred (100) feet on

d. Type 4 and Type 5 – Fifty (50) feet on each side of the stream. Noble Creek is classified as a Type 4 stream.

Brookhaven Creek is classified as a Type 4 stream from the south edge of the



pavement on 3<sup>rd</sup> Street north to Saratoga Passage. From the south edge of the pavement on 3<sup>rd</sup> Street south to the creek's source, Brookhaven Creek is classified as a Type 3 stream. Saratoga Creek is classified as a Type 3 stream. See Appendix 2.

Measuring buffers. Buffers are measured from the wetland or stream's ordinary high water mark as identified in the field and surveyed or from the edge of the delineated wetland or stream. Buffers shall remain in a natural state except for projects which propose to enhance a buffer or are associated with an approved stream alteration. These buffers are subject to reduction only through the provisions of Section 16.20.075 of this Chapter. (Ord. 861, 2005)

**Section 16.20.070 Wetlands and streams – buffer width increases, averaging and reductions.**

A. Increased Buffer Width. The width of the wetland or stream buffer may be increased over the required minimum upon a determination by the Planning Official that the wetland or stream is especially sensitive to disturbance or when development poses unusual impacts and the increased buffer is necessary to protect environmentally sensitive areas described below. Circumstances which may require wider buffers include but are not limited to:

1. When the wetland or stream (or adjacent riparian corridor) is a critical habitat for threatened, endangered or sensitive species, serves a critical fish habitat or is used for spawning or rearing of fish; or receives a high score for habitat values when evaluated using the Washington State Wetland Rating System for Western Washington – Revised;

2. When a larger buffer is deemed necessary to maintain viable populations of existing species; each side of the stream;

3. When the adjacent land is susceptible to severe erosion, and erosion controls will not effectively prevent adverse impacts;

4. When the adjacent land has minimal vegetation or slopes greater than fifteen percent;

5. When the area acts as a critical recharge site in a special focus area defined by the groundwater management plan where recharge is limited and seawater intrusion is a problem; and

6. When a trail, utility corridor, drainage improvement or water quality facility is proposed within the corridor.

7. When the buffer is used by species sensitive to disturbance; and

8. When the buffer is not vegetated with plants appropriate for the region.

**B. Wetland and**

or their buffers and would be consistent with the land use standards and the purposes of this chapter. The Planning Official may allow buffer width averaging, provided that the total area on the lot contained within the average buffer is not less than that required within the standard buffer.

1. The Planning Official may require buffer width averaging in order to provide protection to a particular portion of a wetland or stream that is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland or stream. The adjusted minimum buffer width shall not at any location within the buffer measure less than one half the standard requirement.

2. Buffer width averaging shall be allowed only where the applicant demonstrates through a report relying on Best Available Science and prepared by a qualified specialist, that:

a. Averaging is necessary to avoid a hardship caused by circumstances to the property;

b. The buffer area contains variations in sensitivity due to existing physical characteristics or the buffer area varies in characteristics such as slope, soils, or vegetation; and it would benefit from a wider area in places and would not be adversely impacted by a narrower area in other places;

c. Lower intensity land uses would be located adjacent to areas where the width of the buffer area is reduced;

d. Buffer width averaging will not adversely impact functions of the riparian habitat;

e. The total area contained within the buffer area after averaging is no less than the required buffer prior to averaging;

f. The buffer will be enhanced consistent with the requirements of C.1.a., below, to improve its over-all quality; and

g. The buffer area will be legally protected in perpetuity.

3. Buffer width averaging within steep slope areas is not allowed.

C. Buffer width reductions. Any use permitted in the underlying zone shall preserve the undisturbed buffer unless the Planning Official determines that the proposed use would not adversely affect the valuable functions of the wetland or stream or their buffers; and would be consistent with the land use standards of this chapter and the purposes of this chapter. Where a legally established, non-conforming use of the buffer exists (such as a road or structure that lies within the width of buffer required for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of non-conformity (i.e., cause any increase in the impacts to the wetland from activities in the buffer.) Buffer reductions may be allowed subject to the following:

1. Outside steep slope areas, the Planning Official may allow wetland or stream buffer width reductions up to a maximum of twenty-five (25) percent of the required buffer subject to the approval of a buffer enhancement plan or one or more of the other actions identified below:

a. Buffer enhancement –Buffer enhancement includes measures to enhance the buffer, including but not limited to planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or re-establishing riparian area adjacent to a stream where one currently does not exist to result in improved function of the riparian habitat. The enhancement plan shall be completed by a biologist, plant ecologist or similarly qualified professional. The study

shall be prepared at the applicant's cost. The enhancement plan shall be similar to a mitigation plan and shall include provisions for mitigation monitoring and contingency plans similar to the requirements of 16.20.085.B.8.

b. Fish barrier removal to restore accessibility to resident or anadromous fish;

c. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;

d. stream and/or retention/detention pond improvements:

i. Creation of a surface channel where a stream was previously culverted or piped, or

ii. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities, or

iii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels.

2. The Planning Official may authorize a modification of up to fifty percent of the buffer width to provide a reasonable buildable area for a single-family residence or accessory building on a lot legally established prior to March 18, 1992 provided that for such legally established single-family residential lots under five thousand square feet in size, wetland and stream buffers outside steep slope areas may be reduced by no more than twenty-five percent. These guidelines will be applied in compliance with the reasonable use provisions of Section 16.20.080.B.1.d. (Ord. 861, 2005)

#### **Section 16.20.075 Wetlands and streams— Exemptions.**

A. The following activities and/or wetlands are exempt from regulation under this chapter and the land use standard section of this code. The burden of proving the existence of an exemption is upon the party claiming the exemption. Prior confirmation of an exemption may be requested from the planning official. . In case of any question as to whether a particular activity is exempt under the provisions of this section, the Planning

Official's determination shall prevail. To be exempt from this Chapter does not give permission to degrade a regulated habitat or ignore risks from natural hazards. Exempt activities shall comply with the intent of these standards, consider on-site alternatives that avoid or minimize potential impacts, and shall use reasonable methods (i.e. Best Management Practices) to avoid potential impacts to riparian and critical wildlife habitat.

A. Drainage and Flood Control facilities. Operation, maintenance and repair of dikes, ditches, reservoirs, settling basins and other structures and facilities which were created or developed as part of normal drainage or flood control activities on or prior to March 18, 1992, except that this exemption does not extend to the permanent alteration of any regulated wetland;

B. Irrigation. Operation, maintenance and repair of ditches, reservoirs, ponds and other structures and facilities which were created or developed as part of normal irrigation activities on or prior to March 18, 1992;

D. "Artificial wetlands". All wetlands wherein wetland vegetation is being maintained only because of man-induced hydrology, and it can be determined that the wetland vegetation would no longer exist if the activity (for example, irrigation or pumping water) were to be terminated.

E. Maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures undertaken pursuant to Public Works Director approved Best Management Practices, provided that activities shall not increase the impervious area and that disturbed areas are restored to their pre-existing condition;

F. Normal maintenance and repair of residential or commercial structures, provided that reconstruction of any structures may not increase the previous floor area, and subject to the requirements of Chapter 18.32, Nonconforming Uses, Buildings, and Lots;

G. Emergency activities that are required due to landslides, floods earthquakes, other acts of nature, or

emergency utility repairs that are necessary to prevent an immediate threat to public health, safety or property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this Chapter. After the emergency, the person or agency undertaking the action shall restore and/or mitigate any impacts to the habitat and buffer resulting from the emergency action in accordance with an approved Habitat Report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of emergency, and completed in a timely manner.

H. Minor activities such as invasive plant management, removal of dead, dying or diseased vegetation, and removal of hazardous trees where adjacent properties are in danger of damage, where such activities are determined by the City to have minimal impact to habitat and/or streams. Any such activities undertaken within a designated Critical Area Easement may require replanting per the requirements of the easement;

I. Construction of new utility facilities or improvements to existing utility facilities that take place within existing improved right-of-way or existing impervious surface that does not increase the amount of impervious surface, or the use of trenchless technology such as boring or tunneling, that would not disturb the habitat;

J. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies and similar tests and investigations, provided that any disturbance of the habitat shall be the minimum necessary to carry out the work or studies and that the disturbed area shall be restored in accordance with an approved Habitat Report and mitigation plan. Restoration and/or mitigation activities shall be initiated within one year of the date of the disturbance, and completed in a timely manner; and

K. Educational activities, scientific research and outdoor recreational activities, including but not limited to interpretive field

trips, bird watching and hiking, that will not have a significant effect on the habitat area. (Ord. 619, 1992) (Ord. 861, 2005)

**Section 16.20.080 Wetlands and streams – permitted uses, uses requiring alteration approval (including reasonable use provisions); exceptions.**

**A. Permitted uses.**

1. All activities and uses shall be prohibited in wetlands and streams and their buffers

except as expressly provided in this chapter (see 2 and 3, below). All feasible and reasonable measures shall be taken to avoid and minimize impacts to wetlands and streams.

2. All wetlands and streams regulated by this chapter may be used in an emergency situation to provide water to meet fire flow requirements without permission from the city of Langley.

1. The following uses are permitted subject to prior review by the Planning Official to determine that all conditions are satisfied prior to commencement of activity:

a. Fences. The construction/placement of fences in a wetland, stream or surrounding buffers, is subject to the following conditions:

i. Fences shall be located only in the buffer; and

ii. No motorized equipment shall be used; and

iii. Only minimal disruption and removal of vegetation shall occur, and

iv. Special fence design features may be required as necessary to protect wildlife habitat or other functions of the wetland and/or surrounding buffers.

v. A fence may be placed on or next to a property line in a wetland or stream buffer provided no building permit is required, no motorized equipment is used, only minimal disruption and removal of vegetation occurs, and wildlife passage is not interrupted or hindered.

b. Low impact uses and activities. Low impact uses and activities which are consistent with wetlands, streams and their

buffers, may be permitted within the buffer depending on the sensitivity of the wetland or stream. Examples of uses and activities which may be allowed include pedestrian trails, viewing platforms, utility easements, and the installation of necessary utilities. Necessary utilities include storm water management facilities assuming said facility does not impact mature forest vegetation, is designed according to City standards and the discharge water meets State water quality standards, and there is no other feasible location for the facility. Uses permitted within the buffer shall be located in the outer portion of the buffer as far as possible from the stream or wetland. All altered areas shall be mitigated per 16.20.085.B.8. Dead and dying trees may be removed only with approval of the Planning Official.

**B. Uses requiring alteration approval.**

1. Uses not specifically permitted pursuant to 16.20.080.A., above, that are permitted or conditionally allowed in the underlying zone may be allowed in a wetland, stream or in surrounding buffers only upon alteration approval by the Planning Official following submittal of a site plan, written description of the proposal, and environmental checklist and after having sought public comment per the procedures established in Section 18.36.020 of the Langley city code. The Planning Official shall apply such conditions to the approval as may be necessary to protect the wetland, stream and surrounding buffers and may require a report by a qualified wetland ecologist.

a. Alteration of Category I wetlands, type I streams or their buffers.

i. Alteration of a Category I wetland is prohibited. Alteration of a Category I buffer may be allowed only upon a determination by the Planning Official that:

(A) Substantial public benefit will occur through the alteration; and

(B) The public benefit accruing substantially outweighs the public loss occurring through the alteration of the wetland buffer; and

(C) There is no feasible onsite

alternative to making the alteration that will have less impact; and

(D) All conditions for modifying a category II wetland can be met.

ii. Alteration of Type 1 streams or their buffers. Category I streams shall be preserved. The Planning Official may allow alteration only under the following circumstances:

(A) The alteration is solely to expand an existing water-dependent use and the alteration does not act to degrade the functions of the stream or the degradation can be fully mitigated; or

(B) When necessary to provide access (by bridge, culvert or other means) to a lot or a substantial portion of a lot where no other feasible means of access exists. Use of common access points shall be required for abutting lots that have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings; or

(C) The alteration is an integral part of an approved fishery enhancement project and is the minimum alteration required by the project; and

(D) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

b. Alteration of Category II and III wetlands and their buffers, Type 2 and 3 streams or their buffers.

i. Alteration of a Category II or III wetland or its buffer may be allowed only by the Planning Official when it is determined that:

(A) The alteration is solely to expand an existing water-dependent use and does not act to degrade the functions of the wetland, or the degradation can be fully mitigated; or

(B) The alteration is necessary for reasonable use of the property per reasonable use exceptions standards outlined below; or

(C) Alteration will preserve, improve or protect the functions; and

(D) Any and all alterations which will not preserve, improve or protect wetland functions will be addressed pursuant to a

mitigation or restoration plan required as a condition to the approval of any alteration; and

(E) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

ii. Alteration of a Type 2 and 3 stream or its buffer. Type 2 and 3 streams shall be preserved. The Planning Official may allow alteration only under the following circumstances:

(A) When the applicant can demonstrate that the alteration enhances the functional value of the stream in terms of water quality, erosion control, and fish and wildlife habitat; or

(B) When necessary to provide access (by bridge, culvert or other means) to a lot or a substantial portion of a lot where no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings; and

(C) No feasible and reasonable development alternative exists which does not alter or culvert the stream.

(D) All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley city code.

c. Alteration of a Category IV wetland and its buffer and a Type 4 and 5 stream and its buffer.

i. The alteration is necessary for reasonable use of the property per reasonable use exceptions standards outlined below; or

ii. Alteration will preserve, improve or protect the functions; and

iii. Any and all alterations which will not preserve, improve or protect wetland functions shall be addressed pursuant to a mitigation or restoration plan required as a condition to the approval of any alteration; and

iv. All alterations shall comply with the land use standards of this chapter and with other pertinent requirements of the Langley

city code.

d. Reasonable use alterations. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this chapter. If an applicant can prove that strict application of the above standard will deny reasonable use, development as conditioned will be permitted if the applicant demonstrates all of the following:

i. There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the wetlands; and

ii. The proposed development does not pose a threat to public health, safety and welfare on or off the subject property; and

iii. Any alterations permitted pursuant to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

iv. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property, adjusting a boundary line or other action thereby creating the undevelopable condition after March 18, 1992; and

v. The proposal mitigates the impacts on the wetland to the maximum extent possible, while still allowing reasonable economic use of the lot.

vi. A report shall accompany a reasonable use exception proposal which provides information on the function and value of the wetland, area proposed for alteration, impact of development on the wetland and buffer, what constitutes a reasonable economic use of the property, steps taken to minimize the impact of the alteration, and other information as deemed necessary.

2. Mitigation may be required as a condition to the approval of any alteration.

C. Public agency and utility exceptions.

1. If the application of the wetland and stream provisions of this chapter would

prohibit a street, road or utility line proposal by a public agency or utility or the

installation of necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to

this section. The public agency, utility or private applicant shall prepare an

application and report justifying the requested exception. Projects affecting Category

I and II wetlands, Type 1 or 2 streams or otherwise requiring review and decision by the Planning Advisory Board shall be decided by that board. Projects affecting

Category III and Category IV wetlands, and Type 3, 4, or 5 streams shall be decided by the Planning Official.

2. Applications for a utility exception shall be reviewed based on the following criteria:

a. There is no other feasible and reasonable alternative to the proposed development with less impact on the wetland and/or stream and the associated buffer. A description of alternatives considered must be included in the exception requests; and

b. The proposal minimizes the impact on the wetland and/or stream and buffer and incorporates all reasonable mitigation measures as identified in 16.20.085.B.8; and

c. Construction techniques shall minimize both long and short-term impacts to the wetland and/or stream and its buffer.

3. Except as provided above, these exceptions do not extend to dredging, to excavation (including peat mining) or to the filling of wetlands or their buffers.

(Ord. 861, 2005)

#### **Section 16.20.085 Wetlands and streams— Land use standards.**

A. The land use standards contained in this section supplement the general land use regulations of this chapter and the specific development standards contained in other chapters of the Langley city code.

B. Wetlands, Streams and Their Surrounding Buffers.

1.

determination that the anticipated alteration

will preserve, improve and/or protect the wildlife habitat, natural drainage and/or other natural functions of the wetland or stream and will be consistent with the purposes of this chapter without strict application of the standards. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. The standards shall also apply to applications for approval to alter a regulated wetland, stream or their buffers.

2. Wetland and stream buffers shall be shown on the development site plans or final plat maps along with the notation requirements.

3. Water Quantity and Quality. Uses permitted adjacent to wetlands and streams shall control storm water runoff and protect the natural movement of water according to the following provisions:

General Provisions.

a. All surface water entering wetlands and streams shall be treated and controlled by a storm water management system incorporating accepted best management practices or similarly effective measures approved by the Langley City Engineer in order to assure water quality and control water volumes;

b. The velocity of storm-water runoff entering a wetland shall be limited to predevelopment levels;

c. Water level fluctuations in wetlands or streams shall be minimized during spring breeding season (February through June) through adequate storm water controls;

d. Category I and category II and Category III wetlands shall not be modified to function as storm-water retention/detention sites;

e. Septic systems adjacent to wetlands or streams must be properly sited and maintained to prevent water quality degradation.

4. Category I or II Wetlands. In wetlands rated category I or II with no natural point of inflow (i.e., stream) any surface water directed towards the wetland as a result of an approved drainage plan

shall filter through the water table or a drainfield to avoid erosion and excess nutrient inflow.

5. Human Access. The following provisions shall apply to controlling human access and encouraging appropriate use in wetlands:

a. No motorized vehicles shall be allowed within a wetland or its buffer, except when specifically approved by the planning official or as provided in this section and/or as the wetland may be traversed by a public or private roadway which existed before March 18, 1992;

b. Any trails within a wetland shall be constructed with minimum disruption to habitat.

6. Corridors. Where possible, wetlands should be connected to streams, to other wetlands or to undeveloped areas such as forested areas of Puget Sound by undisturbed corridors.

7. Alteration of a wetland, a stream or their buffers may be permitted only by approval by the city planning official unless otherwise authorized in this chapter. These standards shall be complied with to minimize wetland impacts if development is permitted. If the Planning Official determines that alteration is not likely to preserve, improve or protect the functions of the wetland, stream or their buffers, mitigation shall be required as a condition of approval.

8. The following conditions shall apply to all mitigation projects:

a. A written ecological assessment and maps of the wetlands to be lost or adversely altered shall be made, at the expense of the applicant, to determine the gross area of loss and the functions, habitat, and types, sizes and quantities of vegetation lost. The assessment shall include the following information: wetland delineation; existing acreage; vegetative flora; hydrophytic characteristics; soils and substrates conditions; topographical elevation;

b. A mitigation plan shall be prepared by a qualified person using Ecology's Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals,

March 1994 (Ecology Publication #94-29) and Guidance on Wetland Mitigation in Washington State, Part 2, Guidelines for Developing Wetland Mitigation Plans and Proposals, April 2004 (Ecology Publication 04-06-013b). The mitigation plan shall be funded by the applicant and approved by the planning official. In the event the construction of a new wetland is included as a part of that plan, the earth-moving, hydrology and vegetation planting requirements of the plan will be completed prior to the commencement of the proposed alteration. The planning official may call on state and other agencies to provide technical support in evaluating the plan. The mitigation plan shall include but not be limited to, the following:

i. Statement of Goals. Such statements shall include a discussion of the functions and values lost and those planned for replacement,

ii. Methods. Information discussing "what, where, when and how," i.e., acreage of mitigation, wetland habitat types to be enhanced, constructed/restored, location, dates for beginning and completing the project, types of vegetation; detailed construction plans (including grading and excavation requirements, planting implementation, and structures and measures to provide water); maintenance requirements; and maintaining schedule to ensure a successful project,

iii. Standards of Success. A qualitative and, to the extent possible, a quantitative description of what will be considered a successful, functioning wetland shall be provided;

c. Compensation Standards. Due to uncertainties in scientific knowledge and the need for expertise and monitoring, compensatory projects shall be as enduring as the wetland it replaces. Projects shall meet the following standards as well:

i. Restored, created or enhanced wetland projects should be created onsite and be of similar type if possible,

ii. Restored or created wetlands shall be equal to or of a higher quality or functional value than the wetland altered,

and

iii. Any proposed compensatory mitigation project shall restore or create equivalent or greater areas of wetland than those altered to compensate for wetland losses. An increase in replacement acreage is required if uncertainties exist in the probable success of the proposed restoration or creation. The ratios as shown in Table 1, Appendix 2 apply to creation or restoration: The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

The Planning Official may modify these ratios (increase or decrease) based on the findings of a wetlands mitigation plan that addresses wetland functional values, probable success rate of the proposed restoration or creation, the anticipated elapsed time between the impact and the establishment of wetland functions at the mitigation site and other factors deemed pertinent by a qualified wetland specialist. In no case shall the replacement acreage be less than that which is altered. Preservation as mitigation and mitigation banking may also be considered by the Planning Official consistent with current State Department of Ecology guidance; and

iv. Monitoring program and contingency plan. A monitoring program shall be included as part of the approved mitigation plan. The mitigation project shall be monitored for a minimum of five years (ten years if the goal is for a forested wetland system), to establish that the performance standards of the approved mitigation plan have been met. A longer monitoring period may be required by the City based on either the initial mitigation plan or a review of subsequent monitoring reports. A plan that complies with the requirements of this chapter may be required by the Planning Official to outline restorative measures to be taken should the mitigation fail or only partially succeed;

v. Bonding. A performance bond or other security in an amount to enable the city to carry out the mitigation plan should the applicant fail to do so shall be required;



vi. The project should be located or designed to avoid habitats including wintering, breeding, rearing, feeding and nesting habitats and migration routes;

vii. Native vegetation shall be planted to replace lost habitat for a particular species;

viii. Artificial resting, hiding and breeding sites to replace losses shall be constructed;

ix. Aquatic substrate may be altered to produce an increase in fish, waterfowl and shorebird organisms to replace losses;

x. Silted gravels shall be cleaned in a manner that protects streamside vegetation and downstream sections of streams;

xi. Dredge and/or fill of a wetland or stream or their buffers shall not be permitted unless:

A. The benefits of the proposed use outweigh the impacts associated with the proposed use or the proposed use is water dependent, and

B. Mitigation areas will be provided which have greater value as a wetland or habitat than the area lost, and

C. The amount dredged or filled is the minimum necessary to accomplish the proposed use, and

D. Dredging is not solely for the purpose of obtaining fill, and

E. Leachate from polluted dredge spoil will be treated and will not enter surface waters, and

F. The project is timed to avoid interference with fish and wildlife migrations, rearing, spawning or nesting;

xii. Habitat replacement should provide an insurance factor to take into account the risk of mitigation and the loss of fish and wildlife until the mitigation site becomes productive;

xiii. Cumulative impacts of the proposed development shall be considered. Thus development shall not be considered a precedent allowing further development, and

xiv. Where possible, development should be located in the buffer rather than the wetland.

(Ord. 619, 1992) (Ord. 861, 2005)

#### **Section 16.20.090 Current use taxation of open space land.**

A. Public benefit rating system. RCW 84.34.037 establishes specific criteria to be used in determining the public benefit of applications for open space current use taxation status; and

B. Island County open space policy. Island County has adopted open space policy and criteria for use in evaluating open space application; and

C. City of Langley open space policy. The city of Langley concurs with the open space policy and criteria adopted by Island County.

(Ord. 619, 1992) (Ord. 861, 2005)

#### **Section 16.20.095 Identification of resource lands and environmentally sensitive (critical) areas.**

The location of known resource lands and environmentally sensitive (critical) areas are shown on a map available at the Langley city hall. This map is for the purpose of identifying areas to which these regulations could apply but may not be totally inclusive of all such areas that might be identified through review and information.

(Ord. 619, 1992)

#### **Section 16.20.100 Bonds for restoration and mitigation activities.**

A. Performance Bonds. Mitigation required pursuant to a development proposal must be completed prior to the city's granting of final approval of the development proposal. If the applicant demonstrates that seasonal requirements or other circumstances beyond its control prevent completion of the mitigation prior to final approval, the applicant may post a performance bond or other security instrument in a form and amount deemed acceptable by the city land use coordinator, which guarantees that all required mitigation measures will be completed no later than the time established by the department in accordance with this chapter.

B. Maintenance/Monitoring Bonds. The city shall require the applicant whose

development proposal is subject to a mitigation plan to post a maintenance/monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by this chapter for a period up to three years. The duration of maintenance/monitoring obligations shall be established by the land use coordinator after consideration of the nature of the proposed mitigation and likelihood and expense of correcting mitigation failures.

C. Bonds or other security instruments shall be in the form and amount approved by the city land use coordinator and shall remain in effect until the land use coordinator determines in writing that performance and maintenance standards have been met.

(Ord. 619, 1992)

the biological habitat values will be replaced to the greatest extent possible. Studies by qualified consultants shall be conducted to determine the conditions which were likely to exist on the lot prior to the alteration. Emergency erosion control measures may be required.

(Ord. 619, 1992)

**Section 16.20.105 Provisions of title—  
Apply to identified and unidentified  
sensitive lands.**

A. Penalty and Enforcement. Knowing or intentional violations of this chapter or any provision in this chapter shall be punishable by a fine of up to one thousand dollars of value or a jail sentence of up to ninety days or both such fine and jail time. Any person, firm, corporation or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to violation. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approval for any activity which violates the provisions of this title until all penalties and restorations are made in full.

B. Restorations. Restorations shall include but not be limited to the replacement of all improperly removed ground cover with species similar to those which were removed or other approved species such as

*Appendix 1: Protected Species and Habitat*

The following species and habitats are protected in the City of Langley:

1. Species.

The following species are highly sensitive to disturbance or habitat alteration and, therefore, are designated as "protected species":

Bald eagle  
Pileated woodpecker  
Common loon  
Great blue heron  
Trumpeter swan  
Vaux's swift  
Snow goose  
Short eared owl  
River otter  
Black crowned night heron  
Brandt  
Virginia rail  
Bittern  
Salmon  
Smelt  
Muskrat  
Beaver  
Brown creeper  
Peregrine falcon  
Northern sea lion  
Osprey  
Marbled murrelet  
Migratory waterfowl (Pintail, brant, mergansers)  
Great homed owl  
Cavity nesting waterfowl (Golden eyes, woodducks, hooded merganser, harlequin duck)  
Shellfish  
Herring  
Native residential fish  
Red fox  
Harbor seals  
Goshawk.

**2. Habitat. The following are considered highly sensitive to alteration and are regionally rare:**

**Eelgrass beds**

**Peat bogs**

**Mature forested wetlands**

**Riparian habitat with native fish populations or significant wildlife usage**

**Kelp beds**

**Estuaries/mud flats/rocky shores**

**Garry oak remnants**

**Freshwater ponds**

**Freshwater marshes**

**Perennial streams.**

**(Ord. 619, 1992) (Ord. 861, 2005)**

**Appendix 2: WETLAND MITIGATION TYPE AND RATIO**

Wetland	Mitigation Type and Ratio			
	Restoration or Creation	Rehabilitation	Restoration or Creation (R/C) and Enhancement (E)	Enhancement Only
Category I	N/A	N/A	N/A	N/A
Category II	3:1	6:1	1:1R/C and 4:1 E	12:1
Category III	2:1	4:1	1:1R/C and 2:1 E	8:1
Category IV	1.5:1	3:1	1:1R/C and 2:1 E	6:1