

Chapter 21.06 CRITICAL AREAS

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Article I. Purpose and General Provisions

21.06.110 Purpose.

(1) The purpose of this chapter is to designate and classify environmentally critical areas and to protect these areas and their functions and values, while also allowing for economically beneficial or productive use of land on private property. By limiting development and alteration of critical areas, the city seeks to:

- (a) Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides, steep slope failures, erosion, seismic events, volcanic eruptions, or flooding;

(b) Protect citizens and the unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, and other fish and wildlife and their habitats;

(c) Prevent adverse and cumulative environmental impacts to critical areas, direct activities not dependent on critical area resources to less ecologically sensitive sites, and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;

(d) Protect species listed as threatened or endangered under the Federal Endangered Species Act of 1973 ([16 USC 1531](#) through [1534](#)) and their habitats by prohibiting activities that kill, harass, harm, trap, collect, wound, hunt, or pursue such species/habitats. (Ord. 2859 § 1, 2006).

21.06.120 Intent.

(1) The intent of this chapter is to avoid impacts from alteration of critical areas where such avoidance is feasible and reasonable. It is the further intent of this chapter to:

(a) Implement the goals, objectives, and policies of the city's comprehensive plan;

(b) Serve as a basis for exercise of the city's substantive authority under the State Environmental Policy Act (SEPA) and the city's SEPA rules;

(c) Comply with the requirements of the Growth Management Act (Chapter [36.70A](#) RCW) and implement rules and guidelines through the application of best available science, as determined according to WAC [365-195-900](#) through [365-195-925](#), and in consultation with state and federal agencies and other qualified professionals;

(d) Coordinate the city's critical area protection activity and programs with other jurisdictions;

(e) Coordinate environmental review and permitting of proposals to avoid duplication and delay;

(f) Use flexibility, as permitted by this chapter, to establish buffer width and area standards and reasonable use on a case-by-case basis, considering the functions and values of the critical area and particular constraints on a parcel of land that may make compliance with the strictest standards of this chapter difficult and unreasonable; and

(2) The city's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public. (Ord. 2859 § 1, 2006).

21.06.130 Findings.

The city finds that critical areas contain valuable natural resources, provide natural scenic qualities important to the character of the community, perform important ecological functions and processes, and/or present a hazard to life and property. With respect to particular critical areas, the city finds as follows:

(1) Wetlands.

(a) Wetlands perform numerous important ecological functions, including, but not limited to, provision of wildlife and fish habitat, water quality enhancement, flood and erosion control, ground water recharge and discharge, shoreline stabilization, research and education opportunity, and recreation.

(b) To achieve the goal of “no net loss,” as defined in PMC [21.06.210\(87\)](#), of wetland functions and values within the city, the regulations of this chapter are intended to discourage or prohibit:

(i) Activities that block water flows, or damage or destroy flood storage areas or storm barriers, thereby resulting in greater potential flood damages;

(ii) Disposal of wastewater or solid wastes, or creation of unstable fills inappropriate to the function of wetlands, which may result in water pollution;

(iii) Application of pesticides, herbicides and algicides on wetlands unless warranted to protect the ecological functions of the wetland;

(iv) Activities that limit the function of a wetland to control erosion or runoff; provide water storage; or provide wildlife breeding, spawning, nesting, wintering, or feeding grounds; and

(v) Activities that detract from a wetland’s value in providing educational experiences, recreational uses, and/or open space.

(2) Fish and Wildlife Habitat Areas.

(a) Rivers, streams, and other fish and wildlife habitats perform many important biological and physical functions that benefit the fish and wildlife species inhabiting the region. These functions include, but are not limited to: providing cover, breeding/spawning habitat, and food for fish and wildlife species; maintaining water quality; storing and conveying storm and flood water; and recharging ground water.

(b) Habitat areas also serve as a valuable resource for city residents by providing areas for recreation, education, scientific study, and aesthetic appreciation. Protection of these systems is necessary to protect the public health, safety, and general welfare.

(3) Critical Aquifer Recharge Areas. Areas that have a critical recharging effect on ground water are essential for maintaining public water supplies including supplies of potable drinking water. These areas are susceptible to contamination from certain land use activities, and therefore must be protected.

(4) Geologically Hazardous Areas. Geologically hazardous areas pose a risk to public property, welfare, and to the natural systems that make up the environment of the city. Natural processes make these areas susceptible to landslides, erosion, and volcanic and seismic events. Therefore, regulation of these areas to avoid or minimize geologic hazards is necessary to protect the health, safety, and general welfare of Puyallup's citizens.

(5) Frequently Flooded Areas. Areas subject to frequent flooding provide valuable habitat for many fish and wildlife species and also pose a risk to public health and safety. Protection of floodplains and areas subject to frequent flooding is necessary to protect human life and property. Protection and management of frequently flooded areas shall be in accordance with the provisions of Chapter [21.07](#) PMC, Flood Damage Protection. (Ord. 2859 § 1, 2006).

21.06.140 Identification and mapping of critical areas.

(1) The city has identified portions of the Puyallup planning area, based on studies and field investigations, where critical areas, or the conditions under which critical areas typically occur, are believed to exist. The approximate location and extent of critical areas within the city's corporate limits and the urban growth area are shown on the maps on file at development services and as updated from time to time. These maps are intended to be used as a general guide for the assistance of property owners and as information for the public. Critical area locations and boundaries shown on the city's maps are approximate; field investigation and analysis by a qualified professional are required to confirm the existence and parameters of a critical area. In the event of any conflict between the location, designation, or classification of a critical area shown on the city's maps and the criteria or standards of this chapter, the criteria and standards and the determination of any field investigation shall prevail. All areas within the city meeting the definition of one or more critical area, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

(2) Areas adjacent to critical areas shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the functions and values of critical areas. Adjacent shall mean any activity located:

- (a) On a site immediately adjoining a critical area;
- (b) A distance equal to or less than the required critical area buffer width and building setback;
- (c) A distance equal to or less than one-quarter mile (1,320 feet) from a bald eagle nest;
- (d) A distance equal to or less than 300 feet from a stream, wetland, or water body;
- (e) Within the floodway, floodplain, or channel migration zone; or
- (f) A distance equal to or less than 200 feet from a critical aquifer recharge area or geologically hazardous area. (Ord. 2859 § 1, 2006).

21.06.150 Protection of critical areas.



(1) Any action taken pursuant to this chapter, as determined by the best available science, shall result in equivalent or greater functions and values of the affected critical areas. All actions and developments shall be designed and constructed to avoid and minimize all adverse impacts. Applicants are required to demonstrate an inability to avoid or minimize impacts before restoration and compensation of impacts will be allowed.

(2) These critical area regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city, and/or other agencies that may have jurisdiction over an area or activity. In the event of any conflict between these regulations and any other regulations of the city, the regulations that provide greater protection for critical areas shall apply.

(3) These critical area regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted, and any conditions resulting therefrom.

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

(5) Areas characterized by a particular critical area may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. Any individual critical area adjoined by

another type of critical area shall have a buffer and meet the requirements that provide the most protection to the critical areas involved.

(6) The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. The director shall have authority to interpret the meaning of words and sentences set forth in this chapter and the determination of how specific actions and situations are regulated by this chapter. Any appeals of such interpretation or determination shall be in accordance with Chapter [20.87](#) PMC. (Ord. 2859 § 1, 2006).

21.06.160 Limited density transfer from critical area buffers.

(1) Provisions allowing limited density transfer from critical area buffers are contained in the following sections:

- (a) For RS (single-family residential) see PMC [20.20.040](#)(16);
- (b) For RM (multifamily residential) see PMC [20.25.040](#)(18); and
- (c) For PD (planned development) see PMC [20.40.025](#)(13). (Ord. 2859 § 1, 2006).

Article II. Definitions

21.06.210 Definitions.

For purposes of this chapter, the following definitions shall apply:

- (1) “Actively farmed” means land that has a documented history of ongoing agricultural use and that is currently used primarily for the production of crops and/or raising or keeping livestock.
- (2) “Adaptive management” means using scientific methods to evaluate how well regulatory and nonregulatory 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.
- (3) “Advance mitigation” means compensation, in the form of creation, restoration, or enhancement, for an anticipated critical area impact that is completed prior to the impact for which it compensates. The compensation must be in accordance with a city-approved plan.
- (4) “Agricultural land” is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not

subject to the excise tax imposed by RCW [84.33.100](#) through [84.33.140](#), or livestock, or land that has been designated as long-term commercial significance for agricultural production.

(5) “Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the critical area.

(6) “Anadromous fish” means those species that migrate up rivers from salt water to spawn in fresh water.

(7) “Applicant” means the person, party, firm, corporation, or other entity that proposes any activity that could affect an environmentally critical area. An applicant could be the owner of the land on which that proposed activity would occur, a contract purchaser, or the authorized agent of such a person.

(8) “Aquifer” means a geological formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(9) “Aquifer recharge areas” are areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

(10) “Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

(11) “Aquifer vulnerability” is the combined effect of susceptibility to contamination and the presence of potential contaminants.

(12) “Base flood” is a flood event having a one percent chance of being equaled or exceeded in any given year, also referred to as the “100-year flood.”

(13) “Best available science” means information from research, inventory, monitoring, surveys, modeling and assessments that is used to designate, protect, or restore critical areas. As defined by WAC [365-195-900](#) through [365-195-925](#), best available science is derived from a process that includes peer-reviewed literature, standard methods, quantitative analysis and documented references to produce reliable information.

(14) “Best management practices (BMPs)” means conservation practices, or systems of practices and management measures, that:

(a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and/or sediment;

(b) Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands and streams;

(c) Protect trees and other vegetation designated to be retained during and following site construction; and

(d) Provide standards for proper use of chemical herbicides and pesticides within critical areas.

(15) "Buffer" or "buffer area" means the area or zone contiguous to a critical area that protects the integrity or functions and values of a critical area from potential adverse impacts, or areas that are an integral part of an affected resource's ecosystem.

(16) "Case I lahars" means lahars that originate as enormous avalanches of weak, chemically altered rock from a volcano. Case I lahars can occur with or without eruptive activity. The average reoccurrence rate for Case I lahars on Mount Rainier is estimated to be about 500 to 1,000 years.

(17) "Case II lahars" means relatively large lahars, which most commonly are caused by the melting of snow and glacier ice by hot rock fragments during an eruption, but which can also have a noneruptive origin. The average time interval between Case II lahars from Mount Rainier is estimated to be near the lower end of the 100- to 500-year range, making these flows analogous to the 100-year flood.

(18) "City" means the city of Puyallup.

(19) "Channel migration zone (CMZ)" means the area along a river within which the channel can be reasonably predicted to migrate over time as a result of natural or normally occurring processes when considered with the characteristics of the river.

(20) "Clearing" means the removal of timber, brush, grass, ground cover or other vegetative matter from a site, which exposes the earth's surface of the site.

(21) "Compensatory mitigation" means a mitigation project for the purpose of replacing, at an equivalent or greater level, unavoidable critical area and buffer impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not

limited to, wetland creation, restoration, enhancement, and preservation; stream restoration and relocation; and buffer enhancement.

(22) "Conservation easement" means a legal agreement that the property owner enters into to restrict uses of the land. 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.

(23) "Covered assembly" means any structure that has the potential to provide capacity for large numbers of people or assemblies such as but not limited to convention centers, churches, theatres, etc.

(24) "Critical area(s)" means wetlands, fish and wildlife habitat areas, critical aquifer recharge areas, geologically hazardous areas, and frequently flooded areas as defined herein.

(25) "Critical area report" means a report prepared by a qualified professional based on best available science, and the specific methods and standards for technical study required for each applicable critical area. Geotechnical reports and hydrogeological reports are critical area reports specific to geologically hazardous areas and critical aquifer recharge areas, respectively.

(26) "Critical area tract" means land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas.

(27) "Critical aquifer recharge area" means an area designated by WAC [365-190-080\(2\)](#) that is determined to have a critical recharging effect on aquifers used for potable water as defined by WAC [365-190-030\(2\)](#).

(28) "Critical facility" means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, as defined by this chapter, but are not limited to, essential facilities, hazardous facilities, special occupancy structures, and covered assemblies.

(29) "Critical habitat" means habitat areas with which endangered, threatened, sensitive or monitored plant or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC [232-12-011](#) or [232-12-014](#); in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

(30) "Department" means the city of Puyallup development services department.

(31) "Development" means any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the property's existing use. Development also includes approvals issued by the city that bind land to specific patterns of use, including, but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

(a) Interior building improvements;

(b) Exterior structure maintenance activities, including painting and roofing;

(c) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; or

(d) Maintenance of existing septic tanks (routine cleaning), wells, individual utility service connections, or individual cemetery plots in established and approved cemeteries, which does not expand the affected area.

(32) "Director" means the city of Puyallup planning director or his/her designee.

(33) "Disturbance" means alteration of a critical area or associated buffer as defined in PMC [21.06.210\(5\)](#).

(34) "Ditch" means any graded (manmade) channel installed to collect and convey runoff from fields and roadways. Ditches include irrigation ditches, wasteways, drains, outfalls, operational spillways, channels, storm water runoff facilities or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse.

(35) "DRASTIC" is an acronym for a model developed by the National Water Well Association and Environmental Protection Agency to measure aquifer susceptibility and available at the Pierce County health department.

(36) "Enhancement" means actions performed within an existing degraded critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing critical area or buffer. Enhancement actions include, but are not limited to, increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

(37) “Emergency activities” are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter.

(38) “Emergent wetland” means a wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetative stratum.

(39) “Erosion” means a process whereby wind, rain, water and other natural agents mobilize and transport soil particles.

(40) “Erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards. These include, but are not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood gravelly sandy loam, Indianola gravelly loam, Kapowsin gravelly loam, Kitsap silt loam (KpD), and Xerochrepts.

(41) “Essential facilities” means those facilities that are necessary to maintain life, health, welfare and safety functions including, but not limited to: fire and police stations; emergency medical facilities or medical facilities containing surgery or emergency treatment areas; emergency response services or preparedness centers and their associated buildings, shelters, or vehicle storage areas; jails and detention centers; structures and equipment in government communications centers and other facilities required for emergency response; power-generating stations, standby power-generating equipment or other types of public utility facilities that if interrupted would cause disruption to normal living and business operations; wastewater treatment plants; and tanks or other structures containing, housing or supporting water or other fire-suppression material or equipment.

(42) “Excavation” means the mechanical removal of earth material.

(43) “Existing and ongoing agricultural activities” means those activities conducted on lands defined in RCW [84.34.020\(2\)](#), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that result in the filling of an area or bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

(44) "Exotic" means any species of plant or wildlife that is not native to the Puget Sound area.

(45) "Fen" means a type of wetland similar to a bog that is wholly or partly covered with water and dominated by grass-like plants, grasses, and sedges. Fens accumulate peat soil and are alkaline rather than acid.

(46) "Fill material" means a deposit of earth material.

(47) "Filling" means the act of transporting or placing by any manual or mechanical means fill material from, to, or on any soil surface, including temporary stockpiling of fill material.

(48) "Fish and wildlife habitat areas" means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC [365-190-080](#)(5). These areas include:

(a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;

(b) Habitats of local importance, including but not limited to areas designated as priority habitat by the Department of Fish and Wildlife;

(c) Streams and surface waters within the jurisdiction of the state of Washington; and

(d) Land essential for preserving connections between habitats and open spaces.

(49) "Fish habitat" means habitat that is used by fish at any life stage during any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management, and off-channel habitat.

(50) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

(51) "Floodplain" means the total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

(52) "Floodway" means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one foot. Also known as the "zero-rise floodway."

(53) "Forested wetland" means a wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height that is at least partially rooted within the wetland.

(54) "Frequently flooded areas" means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the director in accordance with WAC [365-190-080](#)(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(55) "Function assessment" or "functions and values assessment" means a set of procedures, applied by a qualified consultant, to identify the ecological functions being performed in a wetland or other critical area, usually by determining the presence of certain characteristics, and determining how well the critical area is performing those functions. Function assessments can be qualitative or quantitative and may consider social values potentially provided by the wetland or other critical area. Function assessment methods must be consistent with best available science.

(56) "Function and value" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, noise and visual screening, open space, and recreation. These beneficial roles are not listed in order of priority.

(57) "Geologically hazardous areas" means areas that may not be suited to development consistent with public health, safety or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological processes as designated by WAC [365-190-080](#)(4). Types of geologically hazardous areas include: erosion, landslide, seismic, and volcanic hazards.

(58) "Grading" means any excavating or filling of the earth's surface or combination thereof.

(59) "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

(60) "Ground water management area" means a specific geographic area or subarea designated pursuant to Chapter [173-100](#) WAC for which a ground water management program is required.

(61) “Ground water management program” means a comprehensive program designed to protect ground water quality, to assure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated ground water management area or subarea and developed pursuant to Chapter [173-100](#) WAC.

(62) “Growth Management Act” means Chapters [36.70A](#) and [36.70B](#) RCW as amended.

(63) “Habitat management” means management of land to maintain species in suitable habitats within their natural geographic distribution so that subpopulations are not isolated. This does not imply maintaining all habitat or individuals of all species in all cases.

(64) “Hazardous facilities” means those occupancies or structures housing or supporting toxic or explosive chemicals or substances and any nonbuilding structures housing, supporting or containing quantities of toxic or explosive substances that, if contained within a building, would cause that building to be defined as a hazardous facility in the determination of the city building official.

(65) “Hazardous substance” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC [173-303-090](#) or [173-303-100](#).

(66) “Hydraulic project approval (HPA)” means a permit issued by the state Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter [75.20](#) RCW.

(67) “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the approved federal manual and applicable regional supplements (RCW [36.70A.175](#)).

(68) “Hydrologic soil groups” means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:

(a) Low runoff potential and a high rate of infiltration potential;

(b) Moderate infiltration potential and a moderate rate of runoff potential;

(c) Slow infiltration potential and a moderate to high rate of runoff potential; and

(d) High runoff potential and very slow infiltration and water transmission rates.

(69) “Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(70) “Hyporheic zone” means the saturated zone located beneath and adjacent to streams that contains some portion of surface waters, serves as a filter for nutrients, and maintains water quality.

(71) “Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow compared to natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of storm water. Impervious surfaces do not include surface created through proven low impact development techniques.

(72) “Infiltration” means the downward entry of water into the immediate surface of soil.

(73) “In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

(74) “Intentionally created wetland or surface water systems” means wetlands or surface water systems created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, canals, farm ponds, detention/retention facilities, and landscape/ornamental amenities. Purposeful creation must be demonstrated through documentation, photographs, statements and/or other evidence. Intentionally created wetlands or surface water systems do not include areas or systems created as mitigation.

(75) “Isolated wetland” means a wetland that is hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important functions and are protected by state law (Chapter [90.48](#) RCW) whether or not they are protected by federal law.

(76) “Lake” means a naturally existing or artificially created body of standing water, including reservoirs, which exists on a year-round basis and occurs in a depression of land or expanded part of a stream. A lake must be greater than one acre in size, greater than 6.6 feet in depth at the deepest point, and have less than 30 percent

aerial coverage by trees, shrubs, or persistent emergent vegetation. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake's ordinary high water mark with the stream where the stream enters the lake.

(77) "Lahars" means mudflows and debris flows originating from the slopes of a volcano.

(78) "Lahar inundation zone" means areas that have been inundated by Case I or Case II lahars or other types of debris flows, according to a map showing volcano hazards from Mount Rainier, Washington.

(79) "Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

(80) "Landslide" means downslope movement of a mass of soil or rock.

(81) "Landslide hazard areas" means areas that, due to a combination of site conditions like slope inclination and relative soil permeability, are susceptible to landsliding.

(82) "Mature forested wetland" means a forested wetland where the largest trees are at least 80 years old or have diameters at breast height of at least 21 inches.

(83) "Mitigation" means individual actions that may include a combination of the following measures, listed in order of preference:

- (a) Avoiding an impact altogether by not taking a certain action or parts of actions;
- (b) Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
- (c) Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for an impact by replacing or providing substitute resources or environments;
and
- (f) Monitoring the mitigation and taking remedial action when necessary.

(84) "Monitoring" means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of such systems and/or assessing the performance of

required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

(85) "Native vegetation" means plant species that are indigenous to the Puget Sound area.

(86) "Native growth protection area (NGPA)" means an area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat.

(87) "No net loss" means the maintenance of the aggregate total of the city's critical area, and their associated functions and values, as achieved through a case-by-case review of development proposals. Each project shall be evaluated based on its ability to meet the no net loss goal.

(88) "Nonconformity" means a nonconforming use or nonconforming building as defined in Chapter [20.65](#) PMC.

(89) "Off-site compensation" means to replace critical areas away from the site on which critical area impacts have occurred.

(90) "On-site compensation" means to replace critical areas at or adjacent to the site on which critical area impacts have occurred.

(91) "Ordinary high water mark (OHWM)" means that mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

(92) "Out-of-kind mitigation" means replacement of critical areas or buffers with substitute critical areas or buffers whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

(93) "Permeability" means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

(94) "Pond" means a naturally existing or artificially created body of standing water that exists on a year-round basis and occurs in a depression of land or expanded part of a stream. A pond must be less than or equal to one acre and greater than 10,000 square feet in size, and greater than 6.6 feet in depth at the deepest point.

(95) "Porous soil types" means soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices or other openings which allow the passing of water.

(96) "Potable water" means water that is safe and palatable for human use.

(97) "Potholes" are the series of natural ponds and depressions that collect storm and surface water and have no natural outlets. Water exits these areas via infiltration and/or evaporation.

(98) "Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impact to critical areas.

(99) "Preservation" means actions taken to ensure the permanent protection of existing, ecologically important critical areas and/or buffers that the city has deemed worthy of long-term protection.

(100) "Priority habitat" means areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat; significant wildlife seasonal ranges; significant movement corridors for wildlife; limited availability; and/or high vulnerability. Priority habitats have unique or significant value to one or more species as classified by the Washington Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element (WAC [173-26-020](#)(34)).

(101) "Priority species" means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington Department of Fish and Wildlife.

(102) "Project area" means a proposed development site and the lands within 50 feet of the area proposed to be disturbed, altered, or used by the proposed activity.

(103) "Pruning" means mechanical removal of woody plant parts intended to maintain plant health by removing dead, injured or diseased wood or to control or direct vegetative growth. Pruning, in a hillside and associated buffer area, is an alteration activity subject to the provisions of this chapter.

(104) "Qualified professional" or "qualified consultant" shall mean a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC [365-195-905](#)(4). A qualified professional must have obtained a

B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geomorphology or related field, and two years of related work experience and meet the following criteria:

(a) A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species;

(b) A qualified professional for geologically hazardous areas must be a professional engineer or geologist, licensed in the state of Washington; and

(c) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

(105) "Recharge" means the process involved in the absorption and addition of water to ground water.

(106) "Regulated activity" means activities occurring in or near and/or potentially affecting an environmentally critical area or associated buffer that are subject to the provisions of this chapter. Regulated activities generally include but are not limited to any filling, dredging, dumping or stockpiling, draining, excavation, flooding, construction or reconstruction, driving pilings, obstructing, shading, clearing or harvesting.

(107) "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland, stream or habitat conservation area. Activities could involve breaching a dike to reconnect wetlands to a floodplain, restoring tidal influence to a wetland, or breaking drain tiles and plugging drainage ditches. Rehabilitation results in a gain in critical area function(s) but does not result in a gain in critical area acres.

(108) "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.

(109) "Restoration" means measures taken to intentionally restore an altered or damaged natural feature including:

(a) Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their buffers to the functioning condition that existed prior to an unauthorized alteration;

(b) Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or other events; and

(c) Restoration can include restoration of wetland functions and values on a site where wetlands previously existed, but are no longer present due to lack of water or hydric soils.

(110) "Rills" means steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

(111) "Riparian habitat" means areas adjacent to streams and rivers that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

(112) "Scrub-shrub wetland" means a wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

(113) "Seismic hazard areas" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

(114) "SEPA" means the Washington State Environmental Policy Act, Chapter [43.21C](#) RCW.

(115) "Shorelines" are all of the water areas of the state as defined in RCW [90.58.030](#), including reservoirs and their associated shorelands, together with the lands underlying them except:

(a) Shorelines of statewide significance;

(b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second (cfs) or less and the wetlands associated with such upstream segments; and

(c) Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

(116) "Shorelines of the state" means the total of all "shorelines," as defined in RCW [90.58.030\(2\)\(d\)](#), and "shorelines of statewide significance" within the state, as defined in RCW [90.58.030\(2\)\(e\)](#).

(117) "Shorelines of statewide significance" means those areas defined in RCW [90.58.030\(2\)\(e\)](#).

(118) "Shorelands" or "shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter [90.58](#) RCW.

(119) "Significant habitat" means areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species diversity; important wildlife nesting or breeding areas; wildlife seasonal ranges or refuge areas along migratory routes; important movement corridors for wildlife; and limited availability or high vulnerability. These areas typically contain some feature that is particularly attractive to wildlife which in most instances is water. To be considered a significant habitat, the area must be of sufficient size or functionally linked to another significant habitat or critical habitat to allow continued functioning of the area at the level described in this definition considering existing and proposed developments of noncritical areas in the vicinity.

(120) "Site" means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant's ownership or control where the proposed project impacts a critical area.

(121) "Slope" means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. In these regulations, slopes are generally expressed as a percentage. Percentage of slope refers to a given rise in elevation over a given run or distance. A 40 percent slope, for example, refers to a 40-foot rise in elevation over a horizontal distance of 100 feet.

(122) "Special occupancy structures" means those structures that have the potential to provide capacity for special groups of people including, but not limited to, schools, day care centers, resident incapacitated patients, etc.

(123) "Sphagnum bog" means a type of wetland dominated by mosses that form peat. Sphagnum bogs are very acidic, nutrient-poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.

(124) “Storm water conveyance facilities” means biofiltration swales, dispersal trenches, storm water pipes, and other facilities that carry storm water from a detention or treatment facility to a discharge location.

(125) “Storm water facility” means structures or lands used for the specific purpose of treating or managing storm runoff. Storm water facilities include detention/retention ponds, wet ponds, media filtration facilities, vaults, lagoons, infiltration basins, and other approved facilities constructed in accordance with the city’s storm water management regulations.

(126) “Stream” means those areas where surface waters produce a defined channel or bed. 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. Streams provide biological functions and habitat for aquatic organisms. Streams do not include artificially created irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by anadromous or resident fish populations.

(127) “Structural diversity” means the relative degree of diversity or complexity of vegetation in a habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer and tree canopy); the variety of plant species; and the spacing or pattern of vegetation.

(128) “Sub-drainage basin” or “subbasin” means the drainage area of the highest order stream containing the subject property impact area. Stream order is used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. Sub-drainage basins are the upper watershed streams and have no tributaries of their own.

(129) “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(130) “Surface water systems” means aquatic resources including rivers, streams, lakes, and ponds and associated riparian habitat.

(131) “Unavoidable” means adverse impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented.

(132) "Utility line" means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power with an associated voltage of 55,000 volts or less, natural gas, communications and sanitary sewer.

(133) "Volcanic hazard areas" means geologically hazardous areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

(134) "Water Resources Inventory Area (WRIA)" means one of 62 watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter [173-500 WAC](#) as it existed on January 1, 1997. The city is in WRIA 10.

(135) "Water table" means that surface in an unconfined aquifer at which the pressure is atmospheric. The water table is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

(136) "Well" means a bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

(137) "Wellhead protection area (WHPA)" means the portion of a zone of contribution for a well, wellfield or spring, as defined using criteria established by the state Department of Ecology.

(138) "Wet season" means the period generally between November 1st and March 30th of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

(139) "Wetlands" means areas that are inundated or saturated by surface water 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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts.

(140) “Wetland buffer” means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and structural stability of the wetland.

(141) “Wetland creation” means the producing or forming of a wetland or surface water system through artificial means from a dry upland site.

(142) “Wetland class” means the general appearance of the wetland based on the dominant vegetative life form or the physiography and composition of the substrate. The uppermost layer of vegetation that possesses an aerial coverage of 30 percent or greater of the wetland constitutes a wetland class. Multiple classes can exist in a single wetland. Types of wetland classes include forest, scrub/shrub, emergent, and open water.

(143) “Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.

(144) “Wetland mitigation bank” means a site where wetlands and buffers are restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. (Ord. 3101 § 3, 2015; Ord. 2859 § 1, 2006).

Article III. Applicability/Regulated Activities

21.06.310 Applicability of provisions.

The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter. (Ord. 2859 § 1, 2006).

21.06.320 Regulated activities.

Activities subject to this chapter include, but are not limited to, the following:

- (1) Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;
- (2) Dumping, discharging or filling with any material;

- (3) Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, except where the existing square footage or foundation footprint is not altered and meets the definition of a nonconforming structure subject to the provisions of Chapter [20.65](#) PMC;
- (4) Destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting vegetation where these activities would alter the character of a critical area or buffer;
- (5) Draining, flooding or disturbing the water level, water flow pattern, or water table;
- (6) Activities that result in adverse changes in water temperature, physical or chemical characteristics of water sources to wetlands or streams;
- (7) Conversion of agricultural land to nonagricultural uses; and
- (8) Application of pesticides, fertilizers and/or other chemicals in amounts or at times demonstrated as harmful to wetlands, streams, wildlife habitats, or riparian corridors. (Ord. 2859 § 1, 2006).

21.06.330 Nonconforming uses.

An established use or existing structure lawfully created prior to adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the provisions of Chapter [20.65](#) PMC. (Ord. 2859 § 1, 2006).

Article IV. Exemptions and Exceptions

21.06.410 Exempt activities.

- (1) Certain activities shall be exempt from the provisions of this chapter; provided, that they are conducted using locally adopted best management practices and that they result in the least amount of impact to the critical areas. Exempt activities include the following:
 - (a) Existing and ongoing agricultural activities as defined in this chapter, and established prior to 1992, that after that date do not cause permanent conversion of a critical area through actions such as ditching, draining, clearing, grading, and/or filling; provided, that:
 - (i) The activity is conducted as part of normal agricultural activities. The exemption does not apply to the full or partial conversion of agricultural land to nonagricultural uses;

(ii) The activity does not destroy, kill, harass, or otherwise harm species listed as threatened or endangered under the Federal Endangered Species Act of 1973, or the habitats on which those species depend;

(iii) The property or portion of the property considered for exemption has been actively farmed since 1992, and not been idle for five consecutive years and there are no pending development applications that would result in a conversion to a full or partial nonagricultural use;

(iv) The agricultural activities comply with the flood hazard provisions of the city's flood damage protection Chapter [21.07](#) PMC and other city regulations;

(v) The exemption is limited to specific areas upon which lawfully established agricultural activities are being conducted. A determination that a portion of a site is exempt does not necessarily extend to other portions of the site; and

(vi) The agricultural activities are conducted in accordance with applicable Pierce County conservation district standards and practices.

(b) Activities conducted pursuant to previous critical area review which includes activities subject to previous development permits and approvals and construction approvals if all of the following conditions have been met:

(i) The provisions of this chapter have been previously addressed as part of another approval;

(ii) There have been no material changes in the potential impact to the critical area or buffer since the prior review;

(iii) There is no new critical area information available for the site or adjacent areas and there have been no substantial changes to site conditions since the original study was prepared;

(iv) The permit or approval has not expired or, if no expiration date exists, no more than five years have elapsed since the issuance of that permit or approval; and

(v) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

(c) Public and private pedestrian trails, except in wetlands, fish and wildlife habitat areas, or landslide and erosion hazard areas, subject to the following conditions:

(i) The trail surface meets all other requirements including water quality standards set forth in the city's storm water management regulations; and

(ii) Critical area and/or buffer widths are increased, where possible, equal to the width of the trail corridor, including disturbed areas.

(d) Select vegetation removal activities including the following; provided, that no vegetation shall be removed from a wetland, fish and wildlife habitat area, or erosion/landslide hazard area or their associated buffers without approval:

(i) The removal of invasive weeds, such as Himalayan blackberry with hand labor, light equipment, and/or herbicides;

(ii) All cut vegetation shall be left within the critical area or buffer unless removal is warranted due to the potential for disease transmittal to other healthy vegetation or other hazard; and

(iii) If a tree to be removed provides critical habitat, such as a raptor perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts.

(e) The removal of trees that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, from critical areas and buffers; provided, that:

(i) The applicant submits a report from a certified arborist that documents the hazard and provides a replanting schedule for the replacement trees;

(ii) Tree cutting shall be limited to limbing and crown thinning, unless otherwise justified by a certified arborist;

(iii) The landowner shall replace any trees that are felled with new trees at a ratio of two replacement trees for each tree felled or limbed within one year in accordance with an approved restoration plan. To the extent possible, any felled trees shall be left on site as a habitat feature/snag. The director may reduce the ratio when it can be demonstrated that a lower ratio is adequate to protect critical areas. Tree species that are native to the area shall be used; and

(iv) Hazard trees determined to pose an imminent threat or danger to public health or safety, property, or cause serious environmental degradation may be removed by the landowner prior to receiving written approval from city; provided, that a reasonable attempt is made to contact the city prior to removal and, within 14 days following removal, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter.

(f) The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, and as approved by the director; provided, that their use shall be restricted in accordance with Department of Fish and Wildlife Management Recommendations, the regulations of the Department of Agriculture, and the U.S. Environmental Protection Agency, and other applicable laws.

(g) Operation, maintenance, and/or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter, impact, or encroach upon the critical area or buffer, and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.

(h) Normal maintenance of ground cover or other vegetation intentionally planted in a critical area or buffer area that was disturbed prior to the effective date of the ordinance codified in this chapter; provided, that no further disturbance is created.

(i) Minor site investigative work, such as surveys, soil logs, percolation tests and other related activities, when required by the city, or a state or federal agency, where such activity does not require construction of roads or substantial excavation or grading; provided, that impacts on critical areas are minimized and disturbed areas are restored immediately to the pre-existing level of function and value.

(j) Passive outdoor activities such as recreation, education, and scientific research activities that do not alter or degrade the critical area or buffer, including fishing, hiking, and bird watching.

(k) Activities involving intentionally created wetlands or surface water systems as those terms are defined in this chapter; provided, that wetlands, streams, lakes, or ponds created as mitigation for approved land use activities or that provide critical habitat shall be regulated under the provisions of this chapter.

(l) Emergency actions that impact a critical area or its buffer, provided such actions use reasonable methods to address the emergency and have the least possible impact to the critical area and its buffer. Prior to an emergency action, the director shall provide written determination, on a case-by-case basis, of the emergency action that satisfies the general requirements of this section. In the event a person or agency determines that the need to take emergency action is so urgent that there is insufficient time for review by the director, such emergency action may be taken immediately. Once the immediate threat related to the emergency action has been addressed, any adverse impacts on critical areas shall be minimized and mitigated fully in accordance with applicable sections of this chapter. Emergency actions that must be undertaken immediately or for which there is insufficient time for full compliance with this chapter include actions necessary to:

(i) Prevent an imminent threat to public health or safety;

(ii) Prevent imminent danger to public or private property; or

(iii) Prevent an imminent threat of serious environmental degradation.

(2) The applicant shall obtain written confirmation from the city that the proposed activities meet the requirements for an exemption as defined by this section. Confirmation shall be obtained before the activity is initiated. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense. (Ord. 3101 § 4, 2015; Ord. 2859 § 1, 2006).

21.06.420 Public agency and utility exception.

(1) If the application of this chapter would prohibit a development proposal by a public agency to install or provide streets or utilities, the agency or utility may apply for an exception pursuant to this section.

(2) An application for a public agency and utility exception shall be made to the city and shall include a critical area identification form; a critical area report and mitigation plan, if necessary; and any other related project documents/studies. The director shall issue a determination approving, approving with conditions, or denying the request. This determination shall be based on a review of the submitted information, a site inspection, and the proposal's ability to comply with all of the following criteria:

(a) There is no other practical alternative to the proposed development with less impact on critical areas and all reasonable measures have been taken to minimize impacts to critical areas;

(b) The application of this chapter would unreasonably restrict the ability to provide street or utility services to the public;

(c) The proposal does not pose a significant threat to the public health, safety, or welfare on or off the site; and

(d) The proposal includes measures to compensate for impacts to critical area function and values consistent with the mitigation provisions of Article VI of this chapter and best available science. (Ord. 2859 § 1, 2006).

21.06.430 Reasonable use exception.

(1) If the application of this chapter would deny all reasonable economic use of the subject property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the director:

(a) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to critical areas and associated buffers;

(b) That the proposed activities will result in minimal alteration of existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions with minimal effects on critical area functions;

(c) That the proposed activities will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal government or the state of Washington and will comply with other state and local laws;

(d) That the proposed activities will not cause significant degradation of ground water or surface water quality;

(e) That there will be no damage to nearby property and no threat to the health or safety of people on or off the site; and

(f) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter. (Ord. 2859 § 1, 2006).

21.06.440 Exception for minor new developments in buffers.

(1) Remodels and additions to an existing, legally established structure or impervious area that currently encroaches on a wetland buffer, fish and wildlife habitat, or landslide/erosion hazard area buffer shall be allowed as conditioned by all of the following criteria:

(a) The proposed minor development is consistent with the existing use of the site;

(b) The impacts on critical area functions and values are avoided and minimized to the maximum extent possible consistent with the purpose and intent of this chapter;

(c) The affected area is located at least 25 feet from the critical area boundary;

(d) The minor development does not cause the existing structure/impervious surface to encroach any closer to the critical area;

(e) There are no changes in slope stability, flood conditions, or drainage; and

(f) The minor development does not increase the affected site structural/impervious surface footprint by more than the following:

(i) Twenty-five percent of the minor development proposal relates to a fish and wildlife habitat buffer where a functional analysis by a qualified professional has demonstrated the buffer is not a priority habitat (as defined by WDFW); or the buffer has been determined by

a qualified professional to not provide habitat for a state or federally designated endangered, threatened, and sensitive species; or the buffer relates to a landslide/erosion hazard area; or a wetland buffer when it relates to a wetland which has scored low for habitat value (less than five points on the state wetland rating form);

(ii) Fifteen percent when the buffer relates to a wetland which has scored medium for habitat value (less than five to seven points on the state wetland rating form);

(iii) Ten percent when the buffer relates to a wetland which has scored high for habitat value (more than eight points on the state wetland rating form); or the buffer is protecting a priority habitat or habitat related to a state or federally designated endangered, threatened, and sensitive species.

(2) All other new development on previously developed parcels within a wetland buffer, landslide or erosion hazard area buffer, or stream and associated riparian habitat buffer shall be subject to the provisions of this chapter and shall require submittal of a critical area report, pursuant to PMC [21.06.530](#), and compliance with any mitigation pursuant to PMC [21.06.610](#). To assist in the completion of such reports, the city shall provide information specific to predeveloped parcel situations for use by applicants and qualified consultants. This material shall contain city-suggested mitigation measures (e.g., invasive species removal, new plantings, impervious surface reduction, etc.) that shall be implemented to mitigate impacts unique to previously developed parcel situations. (Ord. 3101 § 5, 2015; Ord. 2859 § 1, 2006).

Article V. Critical Area Reporting Requirements and Permit Process

21.06.510 Preapplication conference.

All applicants are encouraged to meet with the department prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the city's critical area standards and procedures; to review any conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methods; and to identify potential impacts and mitigation measures. (Ord. 2859 § 1, 2006).

21.06.520 Critical area identification form.

(1) Prior to the city's consideration of any proposed activity not found to be exempt under PMC [21.06.410](#), the applicant shall submit to the department a complete critical area identification form provided by the city. This identification form may be submitted in advance or concurrently with a project application. The requirement for a critical area identification form may be waived if the applicant and the director determine during a

preapplication conference that a critical area report will be prepared for the proposal and agree on the scope of such critical area report.

(2) The director shall review the critical area identification form and other information available pertaining to the site and the proposal and make an initial determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be required. The director shall use his/her own observations of the site conditions and any of the following indicators to assist in determining the need for a critical area report:

(a) Indication on the city's critical areas maps of a critical area that may be affected by the proposed activity;

(b) Information and scientific opinions from appropriate agencies, including but not limited to the departments of Fish and Wildlife, Natural Resources, and Ecology;

(c) Documentation, from a scientific or other credible source, of the possible presence of a critical area; or

(d) A finding by a qualified professional or a reasonable belief by the director that a critical area may exist on or adjacent to the site of the proposed activity.

(3) Following the site visit and review of information, the director shall make one of the following determinations:

(a) The project area is not within or adjacent to a critical area or buffer, and that the proposed activity is unlikely to degrade the functions or values of a critical area or buffer. If so, the director shall rule that the critical area review is complete and no further review is required.

(b) There are critical areas within or adjacent to the project area, but that the proposed activity will avoid the critical area or buffer so as not to alter or degrade the functions or values of the critical area or buffer. If so, the director may waive the requirement for a critical area report.

(c) A critical area or buffer may be affected by the proposal. If so, the director shall notify the applicant that a critical area report must be submitted prior to further review of the project, and will endeavor to indicate each of the critical area types that should be addressed in the report. A determination regarding the apparent absence of one or more critical areas by the director is not

an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration by the director and reopening if new information is received.

(4) The city shall notify the public via direct mailing of the initial critical area determination as part of the notice of application issued for the proposal. The notice shall include information as to the specific critical areas that are or are not determined to be affected by the proposed activity. (Ord. 2859 § 1, 2006).

21.06.530 General critical area report requirements.

(1) If a critical area report is required pursuant to PMC [21.06.520](#), it shall contain all of the information listed in this chapter and shall at a minimum include:

- (a) A detailed description of the critical areas and buffers on or adjacent to the project site, including the size, type/classification, condition, disturbance history, and functions and values;
- (b) A site plan for the development proposal showing the proposed development footprint and clearing limits, and all critical areas and buffers;
- (c) A description of the proposed storm water management plan for the development and consideration of impacts to drainage alterations;
- (d) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
- (e) A detailed assessment of the potential impacts to critical areas and buffers resulting from site development;
- (f) An analysis of site development alternatives and measures taken to avoid and minimize critical area impacts; and
- (g) Any additional information for the critical area as required by this chapter.

(2) The applicant may consult with the director prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts.

(3) The report will be used to assist the city in determining the appropriate classification of any critical area present, the functions and values of critical areas, the potential adverse impacts of proposed activities,

appropriate buffering requirements, and any recommended mitigation conditions relating to site planning, development density, and construction or post-construction practices.

(4) Once accepted, the report shall be the basis for determining whether to approve, conditionally approve or deny the application. Future land use applications will require additional critical area reports unless it can be demonstrated, to the satisfaction of the director, that the previously prepared report is adequate for current analysis or that, based upon new information, the study is in error.

(5) To avoid duplication, the reporting requirements of this chapter shall be coordinated for all critical areas located on the site.

(6) Applicants shall provide reports and maps to the city in an electronic format that allows site data to be incorporated into the city's geographic information system database. (Ord. 2859 § 1, 2006).

21.06.540 Consultant qualifications and city review.

A qualified professional shall prepare all reports and studies required of the applicant by this chapter. The city will conduct a peer review of the critical area report, including any mitigation plan, at the applicant's expense, unless the director determines that such peer review is unwarranted because impacts would be minor or the proposal poses no substantial technical issues. (Ord. 2859 § 1, 2006).

21.06.550 Permit process.

(1) To the extent possible, the city shall consolidate and integrate the review and processing of issues and approvals related to critical areas with other land use and environmental considerations and approvals.

(2) Any alteration to a critical area or buffer, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- (a) The proposal minimizes the impact on critical areas and buffers;
- (b) The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;
- (c) The proposal is consistent with the general purposes of this chapter and the public interest;
- (d) Any alterations permitted to the critical area or buffer are mitigated in accordance with PMC [21.06.610](#) and all other application sections; and

(e) The proposal maintains the critical area functions and values consistent with the best available science and other applicable regulations and standards.

(3) The director shall make a determination as to whether the proposed activity and mitigation, if any, are consistent with the provisions of this chapter.

(a) If the director determines that the proposed activity meets the criteria of subsection (2) of this section, the director shall prepare a written notice of determination and identify any required conditions of approval.

(b) If the director determines that a proposed activity does not comply with the criteria of subsection (2) of this section, the director shall prepare written notice of the determination that includes findings of noncompliance. Following notice of determination of noncompliance, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the director may reopen the critical area review, conduct additional peer review, and make a new determination based on the revised report. Except as provided for in this chapter, any project that cannot adequately mitigate its impacts to critical areas shall be denied.

(4) The city's determination regarding critical areas pursuant to this chapter shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved. (Ord. 2859 § 1, 2006).

21.06.560 Appeals of director's determination.



(1) Any decision or determination made by the director in the administration of the provisions of this chapter shall be final and conclusive unless appealed by an aggrieved party within 10 working days from the date of the department's written decision. Upon proper filing of a request for interpretation review, the hearing examiner shall conduct a duly noticed public hearing pursuant to Chapter [20.12](#) PMC. Upon completion of said hearing, the examiner shall render a written decision supported by findings and conclusions agreeing with, modifying, or disagreeing with the director's interpretation or determination in accordance with this chapter, and thereafter such interpretation or determination shall govern unless overturned by appellate examiner review pursuant to Chapter [2.54](#) PMC.

(2) Any decision or determination made by the director pertaining to the classification of an environmentally critical area shall be final unless appealed by an aggrieved party within 10 working days of the director's written

decision. Upon proper filing of a request for interpretation review, the hearing examiner shall conduct a duly noticed public hearing pursuant to Chapter [20.12](#) PMC. Upon completion of said hearing, the examiner shall render a written decision supported by findings and conclusions agreeing with, modifying, or disagreeing with the director's interpretation or determination in accordance with this chapter, and thereafter such interpretation or determination shall govern unless overturned by appellate examiner review pursuant to Chapter [2.54](#) PMC.

(3) For appeals made pursuant to this article, notice of any public hearing shall be in conformance with Chapter [20.12](#) PMC. Any party of record feeling that the decision of the hearing examiner is based on erroneous procedures, errors of law or fact, error in judgment, or which has discovered new evidence which could not be reasonably available at the prior hearing may request review of the interpretation decision pursuant to the procedures established for appellate examiner review of a hearing examiner's decision as per Chapter [2.54](#) PMC. (Ord. 2859 § 1, 2006).

Article VI. Mitigation

21.06.610 General mitigation requirements.



(1) When an alteration to a critical area is proposed, the applicant shall demonstrate that all reasonable efforts have been taken to avoid, minimize, or compensate for impacts in that order and consistent with the mitigation definition contained in PMC [21.06.210](#)(83).

(2) Unless otherwise provided in this chapter, compensatory mitigation shall be provided for all unavoidable alterations of a critical area or buffer in accordance with an approved critical area report and mitigation plan, and consistent with best available science, to ensure no net loss of critical area functions and values. Mitigation shall not be implemented until after city approval of the critical area report and mitigation plan prepared in accordance with PMC [21.06.530](#) and [21.06.620](#).

(3) Mitigation actions shall be conducted within the same sub-drainage basin and on the same site as the alteration except when all of the following apply:

(a) There are no reasonable on-site or in-drainage-basin opportunities or on-site and in-drainage-basin opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

(b) Off-site mitigation has a greater likelihood of providing equal or improved critical areas functions; and

(c) Off-site locations shall be in the same sub-drainage basin unless the action qualifies as innovative mitigation per the provisions of PMC [21.06.640](#).

(4) Where feasible, mitigation projects shall be completed prior to activities that will disturb critical areas. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and vegetation.

(5) All mitigation sites shall have buffers consistent with the buffer requirements of this chapter. For mitigation projects that involve creating new wetlands or relocating streams, the director shall have the authority to modify the buffer requirements on a case-by-case basis to avoid unduly encumbering neighboring properties.

(6) The applicant shall develop a mitigation plan that provides for construction, maintenance, monitoring and contingencies of the wetland compensation as required by conditions of approval and consistent with the requirements of this chapter. The mitigation plan must be consistent with PMC [21.06.620](#) and shall at a minimum contain the information listed in this chapter.

(7) All mitigation areas shall be provided with permanent protection and management to avoid degradation and ensure protection of critical area functions and values into perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with PMC [21.06.820](#). (Ord. 2859 § 1, 2006).

21.06.620 General mitigation plan requirements.

(1) When compensatory mitigation is required, the applicant shall develop a mitigation plan that provides for construction, maintenance, monitoring, and contingencies of the compensation as required by conditions of approval and consistent with the requirements of this chapter.

(2) The plan shall identify and demonstrate sufficient restoration, creation, enhancement, and/or preservation measures to maintain the functions and values of the critical area, and/or to prevent risk from a hazard posed by a critical area.

(3) The mitigation plan shall be prepared by a qualified professional and shall contain all of the information listed in this chapter and shall at a minimum include:

- (a) A description and detailed drawings of the activities proposed to compensate for critical area impacts, including all clearing, grading/excavation, planting, weed management, installation of habitat structures, irrigation, and other site treatments;
- (b) Specific information on construction or the proposed mitigation activity including timing, sequence, equipment needs, and best management practices;
- (c) Documentation that the restoration, creation, enhancement and/or preservation areas shall be of the same or greater quality and endurance as the critical area(s) being replaced;
- (d) A description of the functions and values that the proposed compensation area(s) shall provide;
- (e) The goals, objectives, and performance standards that the proposed compensation action(s) shall achieve;
- (f) A description of how the compensation area(s) will be evaluated to determine if the performance standards are being met;
- (g) A program and schedule for construction and post-construction monitoring of the compensation project;
- (h) Identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met;
- (i) Financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees shall be posted in accordance with accepted surety as defined by PMC [21.06.650](#);
- (j) An assessment of the project's consistency with applicable state and federal regulations, including the need for permits from state and/or federal agencies; and
- (k) Any additional information for the critical area as required by the subsequent sections of this chapter. (Ord. 2859 § 1, 2006).

(1) All compensatory mitigation projects shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years; a longer monitoring timeline should be considered if a forested or scrub-shrub wetland is the intended outcome of the mitigation project.

(2) Monitoring reports shall be submitted annually for the first three years following construction and at least upon the completion of the fifth year to document milestones, successes, problems, and contingency actions of the compensatory mitigation.

(3) The director shall have the authority to extend the monitoring period and require additional monitoring reports beyond the initial five-year monitoring period for any project that does not meet the performance standards identified in the mitigation plan, does not provide adequate replacement for the functions and values of the impacted critical area, or otherwise warrants additional monitoring (such as when forested wetlands are restored or created). (Ord. 3101 § 6, 2015; Ord. 2859 § 1, 2006).

21.06.640 Innovative mitigation.

(1) The city may approve innovative mitigation projects as compensation for impacts, including off-site and/or out-of-kind mitigation projects that allow linkages between natural systems and have the potential to restore ecological processes or provide unique ecological functions.

(2) The director may approve innovative mitigation projects, including mitigation projects occurring outside city boundaries, when all of the following can be clearly demonstrated:

(a) The mitigation occurs in WRIA 10, in the middle Puyallup River basin, and preferably in the same subbasin as the impacts;

(b) The proposed mitigation site will provide greater improvement of critical area functions and values compared to on-site, in-kind mitigation or other sites within city boundaries;

(c) The proposed mitigation plan is approved by the local jurisdiction wherein the site is located, by state resource agencies, and other agencies and tribes that may have jurisdiction over the proposed activity or the affected resources;

(d) The proposed mitigation is consistent with the general purposes of this chapter, is in the best interest of Puyallup's citizens, and accomplishes regionally recognized goals for critical area restoration, such as conservation of threatened salmonids; and

(e) For innovative mitigation projects occurring outside city boundaries, the proponent of the mitigation plan shall provide sufficient documentation to show that there are no more appropriate sites within the city or urban growth area boundaries that provide suitable compensation for the impacts.

(3) Innovative mitigation projects allowed under the provisions of this section include projects wherein one or more applicants, or an organization

with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

(a) The proponents demonstrate the organizational and fiscal capability to act cooperatively;

(b) The proponents demonstrate that long-term management of the habitat area will be provided;

(c) There is a clear potential for success of the proposed mitigation at the identified mitigation site; and

(d) Conducting mitigation as part of a cooperative process results in greater protection and conservation of critical areas than would be achieved using traditional mitigation approaches.

(Ord. 2859 § 1, 2006).

21.06.650 Surety to ensure implementation, maintenance, and monitoring.

(1) If the development proposal is subject to compensatory mitigation, the applicant shall post a mitigation surety to ensure mitigation is fully functional.

(2) The surety shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical areas that are at risk, whichever is greater. The surety shall be based on a detailed itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, and other costs.

(3) The surety shall be in the form of an assignment of funds or other means acceptable to the city attorney.

(4) Surety authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Surety shall generally be held by the city for a period of five years to ensure that the

required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(5) Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

(6) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(7) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.

(8) Any funds recovered pursuant to this section shall be used to complete the required mitigation.

(9) The director may authorize a one-time temporary delay, up to 120 days, in completing mitigation activities when environmental conditions could produce a high probability of failure or substantial construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the city, and include a financial guarantee. (Ord. 2859 § 1, 2006).

Article VII. Enforcement

21.06.710 Unauthorized critical area alterations.



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

(2) All development work shall remain stopped until a restoration plan is prepared and approved by the city. Such a plan shall be prepared by a qualified professional and shall describe how the actions proposed meet the minimum mitigation requirements described in PMC [21.06.610](#) and this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(3) For alterations to critical areas the following minimum performance standards shall be met for the restoration; provided, that if the violator can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:

- (a) The pre-existing structural and functional values shall be restored or replicated at the location of the alteration, including water quality and habitat functions;
- (b) The pre-existing soil types and configuration shall be replicated; and
- (c) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities.

(4) For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

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

(5) The director is authorized to make site inspections and take such actions as are necessary to enforce this chapter. (Ord. 2859 § 1, 2006).

21.06.720 Penalties.

(1) Any person, party, firm, corporation, or other legal entity found in violation of any of the provisions of this chapter shall be fully subject to the civil infraction or civil violation procedures and penalties contained in Chapter [1.02](#) or [1.03](#) PMC. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington.

(2) In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a gross misdemeanor, punishable by a fine of a sum not exceeding \$5,000 or by imprisonment not exceeding 12 months or by both such fine and imprisonment. Each

separate day or portion thereof during which any violation of any adopted code or provision of this code occurs shall constitute a separate violation and upon conviction thereof shall be punished as provided in this section. (Ord. 3012 § 5, 2012; Ord. 2859 § 1, 2006).

Article VIII. Critical Area Protective Measures

21.06.810 Critical area signs and fencing.

The boundary at the outer edge of the critical area or buffer shall be identified with signs or markers to clearly indicate the location of the critical area. The edge of the critical area and buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. Fencing and signs shall be maintained in good condition so as to be visible and unobscured. (Ord. 2859 § 1, 2006).

21.06.820 Notice on title.

(1) The owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the County auditor according to the direction of the city. Properties subject to an aquifer recharge, seismic geologic hazard or volcanic geologic hazard area shall not be required to file said notice. The notice shall state the general presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land.

(2) The applicant shall submit proof that the notice has been filed for public record before the city permits any site development to occur or within a reasonable timeframe after project approval as determined by the director. (Ord. 2859 § 1, 2006).

21.06.830 Critical area tracts.

(1) Critical area tracts shall be used in development proposals for subdivisions, planned developments, and binding site plans to delineate and protect the following contiguous critical areas and buffers comprising 5,000 square feet or more of area:

- (a) All landslide and erosion hazard areas and buffers;
- (b) All wetlands and buffers;
- (c) All fish and wildlife habitat areas and buffers; and
- (d) All other lands to be protected from alterations as conditioned by project approval.

(2) Critical area tracts shall be designated as native growth protection areas and shall be recorded on all documents of title of record for all affected lots.

(3) Critical area tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city attorney. The designation shall include the following restrictions:

(a) An assurance that native vegetation within the growth protection area will be preserved;

(b) The right of the city to enforce the terms of the restriction; and

(c) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust), which assures the ownership, maintenance, and protection of the tract in accordance with PMC [19.12.070\(4\)](#). (Ord. 2859 § 1, 2006).

21.06.840 Building setbacks.

(1) Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical area buffers. The following may be allowed in the building setback area:

(a) Landscaping;

(b) Uncovered decks;

(c) Building overhangs if such overhangs do not extend more than 18 inches into the setback area; and

(d) Impervious ground surfaces less than 2,500 square feet, such as driveways and patios, may be constructed in the setback area; provided, that such improvements are subject to water quality regulations as adopted in the city's storm water management regulations. (Ord. 2859 § 1, 2006).

Article IX. Wetlands

21.06.910 Designation, mapping, and rating.

(1) Wetlands are those areas identified through any and all technical wetland delineation manuals as required by RCW [36.70A.175](#). Wetland delineations will be conducted in accordance with the current manual(s) required to be utilized by the Department of Ecology, including federally approved Army Corps of Engineers manual(s) and regional supplements. All areas within the city meeting the criteria in the approved federal manual and applicable regional supplements, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter. Ponds and other open water bodies shall also be subject to the provisions of this chapter.

(2) The approximate location and extent of previously identified wetlands are shown on the city's adopted critical area maps. These maps are to be used as a guide for the city, project applicants and/or property owners, and shall be updated as new wetlands are identified. The city's maps do not represent to show all possible wetlands within city boundaries. The actual location of a wetland's boundary shall be determined through field investigation by a qualified professional applying the methods and procedures in the approved federal manual and applicable regional supplements.

(3) Wetlands shall be rated and regulated according to the categories defined by the most current Washington Department of Ecology Wetland Rating System for Western Washington. This document contains the methods for determining the wetland category based on the following criteria:

(a) Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than one acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than one acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

(b) Category II. Category II wetlands are: (1) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (2) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

(c) Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between one-tenth and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

(d) Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

(4) All wetlands shall be regulated and subject to the provisions of this chapter regardless of size, except for Category III wetlands less than 2,500 square feet if the wetland is not associated with a riparian corridor or part of a wetland mosaic and Category IV wetlands less than 10,000 square feet. Impacts will be allowed to Category III wetlands between 2,500 square feet and 3,000 square feet, if the following criteria are met as detailed in an approved critical area report demonstrating:

(a) The wetland is not associated with a riparian corridor;

(b) The wetland is not part of a wetland mosaic;

(c) The wetland does not score five points or greater for habitat in the Western Washington Wetland Rating System form;

(d) The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife; and

(e) The impacts are fully mitigated in accordance with any conditions from the state Department of Ecology and/or U.S. Army Corps (USACE). This exemption does not relieve the applicant/property owner from permits required by the state Department of Ecology and/or U.S. Army Corps (USACE). The applicant/property owner shall provide proof of applicable approvals, exemptions and/or permits obtained from the state Department of Ecology and/or U.S. Army Corps (USACE) prior to the city approving any construction permits for the subject fill action. (Ord. 3101 § 7, 2015; Ord. 3076 § 3, 2014; Ord. 2859 § 1, 2006).

21.06.920 Performance standards – Alteration of wetlands.



(1) Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided for in this chapter. All feasible and reasonable measures shall be taken to avoid and minimize impacts. These actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards contained in this chapter. Alteration of wetlands shall be permitted only in accordance with an approved critical area report and mitigation plan. The applicant shall demonstrate that all of the following actions have been considered and implemented in terms of avoidance and mitigation sequencing:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) 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;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- (f) Monitoring the impact and taking appropriate corrective measures.

(2) Adverse impacts to wetland functions and values and to associated buffers shall be avoided. Where impacts cannot be avoided, the applicant shall implement appropriate compensatory mitigation according to the provisions of PMC [21.06.610](#) and [21.06.960](#).

(3) Alteration of Category I wetlands is prohibited.

(4) Alteration of Category II, III, and IV wetlands may be permitted in accordance with an approved critical area report and mitigation plan, and only when the applicant demonstrates that:

- (a) The basic project purpose cannot reasonably be accomplished without the wetland alteration; and

(b) There are no reasonable or practical alternatives to the alteration including on-site design or acquisition of additional area. (Ord. 3101 § 8, 2015; Ord. 2859 § 1, 2006).

21.06.930 Performance standards – Wetland buffer widths. 

(1) Wetland buffer areas shall be established for all development proposals and activities adjacent to wetlands to determine the need for the buffer to protect the integrity, function and value of the wetland. The director shall determine appropriate buffer widths based upon the wetland rating form and critical area report prepared pursuant to PMC [21.06.950](#). Wetland buffers shall be measured perpendicular to the wetland edge as marked in the field. Except as otherwise permitted by this chapter, buffers shall consist of an undisturbed area of native vegetation.

(2) The standard buffer widths required by this chapter are considered to be the minimum required and presume the existence of a dense native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. The standard buffer widths assume that the buffer area contains no more than 20 percent invasive plant coverage in the buffer area. If the vegetation is inadequate, then the buffer width shall be increased and/or the buffer managed (e.g., invasive plant removal and monitoring) and planted to maintain or improve the buffer functions. The following standard buffer width requirements are established:

(a) Wetland buffer widths shall be determined based on the adjacent land use activities as follows:

Level of Impact from Proposed Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none">• Commercial development• Industrial development• Institutional• Retail sales• Residential (more than 4 units/acre)

Level of Impact from Proposed Land Use	Types of Land Use Based on Common Zoning Designations
	<ul style="list-style-type: none"> • Conversion to high intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) • High intensity recreation (golf courses, ball fields, etc.) • Hobby farms
<p>Moderate</p>	<ul style="list-style-type: none"> • Residential (4 units/acre or less) • Moderate intensity open space (parks with biking, jogging, etc.) • Conversion to moderate intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads • Utility corridor or right-of-way shared by several utilities and including access/maintenance road
<p>Low</p>	<ul style="list-style-type: none"> • Forestry (cutting of trees only) • Low intensity open space (hiking, bird-watching, preservation of natural resources, etc.) • Unpaved trails • Utility corridor

(b) Width of buffers needed to protect Category I wetlands (for wetlands scoring 23 points or more for all functions or having the “special characteristics” identified in the rating system):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)
Natural Heritage Wetlands	Low – 125 ft Moderate – 190 ft High – 250 ft
Bogs	Low – 125 ft Moderate – 190 ft High – 250 ft
Forested	Buffer width to be based on score for habitat functions or water quality functions
Estuarine	Low – 100 ft Moderate – 150 ft High – 200 ft
Wetlands in Coastal Lagoons	Low – 100 ft Moderate – 150 ft High – 200 ft

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)
High level of function for habitat (score for habitat 8 – 9 points)	Low – 150 ft Moderate – 225 ft High – 300 ft
Moderate level of function for habitat (score for habitat 5 – 7 points)	Low – 75 ft Moderate – 110 ft High – 150 ft
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 5 points)	Low – 50 ft Moderate – 75 ft High – 100 ft
Not meeting any of the above characteristics	Low – 50 ft Moderate – 75 ft High – 100 ft

(c) Width of buffers needed to protect Category II wetlands (for wetlands scoring 20 to 22 points for all functions or having the “special characteristics” identified in the rating system):

<p>Wetland Characteristics</p>	<p>Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)</p>
<p>High level of function for habitat (score for habitat 8 – 9 points)*</p>	<p>Low – 150 ft Moderate – 225 ft High – 300 ft</p>
<p>Moderate level of function for habitat (score for habitat 5 – 7 points)</p>	<p>Low – 75 ft Moderate – 110 ft High – 150 ft</p>
<p>High level of function for water quality improvement and low for habitat (score for water quality 8 – 9 points; habitat less than 5 points)**</p>	<p>Low – 50 ft Moderate – 75 ft High – 100 ft</p>
<p>Estuarine</p>	<p>Low – 75 ft Moderate – 110 ft</p>

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)
	High – 150 ft
Interdunal	Low – 75 ft Moderate – 110 ft High – 150 ft
Not meeting above characteristics	Low – 50 ft Moderate – 75 ft High – 100 ft

* Maintaining connections to adjacent and continuous habitat or wildlife corridors shall be considered.

** No additional discharge of untreated storm water permitted.

(d) Width of buffers needed to protect Category III wetlands (for wetlands scoring 16 to 19 points for all functions):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use
Moderate level of function for habitat (score for habitat 5 – 7 points)* *If wetland scores 8 – 9 habitat points, use buffers for Category II.	Low – 75 ft Moderate – 110 ft High – 150 ft
Not meeting above characteristic	Low – 40 ft Moderate – 60 ft High – 80 ft

(e) Width of buffers needed to protect Category IV wetlands (wetlands scoring less than 16 points for all functions):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use
Score for all three basic functions is less than 16 points	Low – 25 ft Moderate – 40 ft High – 50 ft

(3) The standard buffer widths of subsection (2) of this section may be decreased through the reduction measures of this section.

(a) The buffer widths recommended for land uses with “high intensity” impacts to wetlands can be reduced to those recommended for “moderate intensity” impacts under the following conditions:

(i) A relatively undisturbed vegetated corridor at least 100 feet in width is established, enhanced and/or protected (if adequate vegetation exists) between the wetland and any other upland priority habitats adjacent to the wetland as defined by the Washington State Department of Fish and Wildlife. The corridor shall be protected by a native growth protection easement or some other legal mechanism providing permanent protection.

(ii) A buffer enhancement plan, consistent with applicable mitigation report and monitoring requirements of this chapter, is submitted and approved in order to improve the functions of the buffer area to the maximum extent possible.

(iii) All applicable measures to minimize the potential impacts of different land uses on wetland habitat functions, as summarized in the following table, are applied to the development:

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities That Cause the Disturbance
Lights	Direct lights away from wetland	Parking lots, warehouses, manufacturing, high density residential
Noise	Place activity that generates noise away from the wetland	Manufacturing, high density residential
Toxic Runoff	Route all new untreated runoff away from wetland Covenants limiting use of pesticides within 150 feet of wetland Integrated pest management programs	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping
Change in Water Regime	Infiltrate or treat, detain and disperse into buffer new runoff from surfaces	Any impermeable surface, lawns, tilling

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities That Cause the Disturbance
Pets and Human Disturbance	Fence around buffer Plant buffer with “impenetrable” natural vegetation appropriate for region	Residential areas
Dust	BMPs for dust	Tilled fields

(b) For all wetlands that score less than 20 points for habitat, the buffer width can be reduced to those required for moderate land use impacts if measures to minimize the impacts of different land uses on wetlands as summarized in the table above are applied.

The director has the authority to “average” buffer widths on a case-by-case basis where a qualified professional demonstrates that all the following criteria are met:

- (a) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
- (b) The buffer averaging does not reduce the functions or values of the wetland;
- (c) The portion of the buffer subject to buffer averaging is less than 20 percent of the total buffer length on a project site; provided, that:
 - (i) The director may waive the 20 percent limitation when there are specific topographic conditions adjacent to the wetland that render portions of the buffer nonessential or ineffective in protecting wetland functions, and
 - (ii) The director finds that the averaging occurs parallel to the existing wetland boundary;
- (d) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;
- (e) The buffer width for Category I and II wetlands is not reduced to less than 25 percent of the standard width; and

(f) The buffer width of a Category III or IV wetland with moderate habitat functions (five to nine points for habitat) may be reduced to no less than 33 percent of the standard buffer width. The buffer width of a Category III or IV wetland with low habitat functions (less than five points for habitat) may be reduced to 35 feet.

(g) In any case where a reduced buffer width is applied consistent with the subsections above, the buffer shall be composed of a dense native plant community; if the buffer area contains over 20 percent coverage by invasive plant species, the applicant shall provide a vegetation management plan to remove those invasive plants, supplement the buffer area with native trees and shrubs and monitor the buffer area for a period of no less than three years to ensure eradication of invasive plants and establishment of new native plants from the buffer area. The enhanced functions must be documented to the satisfaction of the director through a functions and values analysis prepared by a qualified professional.

(4) The director may have the authority to increase the standard buffer width for any category of wetland on a case-by-case basis when such increase is necessary to protect the function and value of the wetland, protect significant habitat, or protect lands adjacent to the wetland from erosion and other hazards. The standard buffer widths assume a dense native plant community is present with less than 20 percent invasive plant coverage in the buffer area. In determining if buffer width increases are warranted, the director shall consult with the Departments of Ecology and/or Fish and Wildlife and shall consider the following information to be provided in a critical area report:

(a) The specific plant and animal composition of the wetland and subject buffer area; the project wetland biologist shall implement wider buffer areas where the buffer is composed of invasive plants that cover more than 20 percent of the buffer area, unless buffer management and enhancement actions are proposed to remove the invasive plants and manage the establishment of new native trees and shrubs over a three-year period through a buffer vegetation enhancement plan;

(b) The sensitivity of the plant and animal species in the wetland to disturbance from existing and proposed land uses;

(c) The extent to which the wetland buffer is relied on to perform water quality functions such as sediment trapping and pollutant removal;

- (d) Whether the wetland supports wetland-dependent wildlife species or wildlife that require large dispersal areas or access to upland habitats for critical life stage needs;
- (e) The risk of altering the existing wetland functions if the standard buffers are used; and
- (f) Other information that the director deems pertinent to the subject wetland.

(5) The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and removal of the markers has been granted by the city.

(6) Impervious surfaces shall not be constructed in wetland buffers within 50 feet of the wetland boundary except as provided for in this chapter. (Ord. 3101 § 9, 2015; Ord. 3076 § 4, 2014; Ord. 2859 § 1, 2006).

21.06.940 Performance standards – Wetland buffer uses.



(1) Wetland buffers shall be retained in an undisturbed condition except that the following uses may be permitted within a wetland buffer when the applicant demonstrates to the satisfaction of the director that no adverse impact to the wetland functions and values will occur:

- (a) Wells and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, when all the following conditions are met:
 - (i) There is no viable alternative to the well site outside of the buffer;
 - (ii) The well is either an individual well serving only one residence or a Class B well serving a maximum of 15 connections and no more than 25 people;
 - (iii) The well is more than 75 feet deep;
 - (iv) For Category I and II wetlands, the minimum distance from the well and appurtenances to the wetland edge is no less than 25 percent of the buffer width required by this chapter; and
 - (v) Access to the well or pump house is provided by existing trail or road, or by an unimproved access for maintenance vehicle(s).

(b) Public and private roadway crossings, including bridge construction and culvert installation in or across Category II, Category III and Category IV wetland buffers, if the director determines that such construction is necessary and cannot be accomplished in another location.

(c) City-approved storm water management facilities, limited to detention/treatment ponds, bio-filtration facilities or infiltration systems, may be allowed within the outer 25 percent of the standard buffer of a wetland; provided, that:

(i) Construction of the storm water facility does not impact a forested buffer community;

(ii) There is no other feasible location for the storm water facility;

(iii) The storm water facility is designed according to city standards and the discharge water meets state water quality standards and will not affect the hydroperiod of the wetland;

(iv) Construction of a storm water management facility in the buffer of a Category I wetland is prohibited;

(v) Storm water conveyance or discharge facilities such as dispersion trenches and outfalls may encroach into the inner 25 percent of a Category II, III or IV wetland buffer on a case-by-case basis when the director and city engineer determine that due to topographic or other physical constraints there are no feasible locations for these facilities in the outer buffer area; and

(vi) Altered areas are mitigated per PMC [21.06.610](#) and [21.06.960](#).

(d) Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(e) Passive recreation facilities that are part of an interpretive trail system or environmental education program and designed in accordance with an approved critical area report and including walkways, wildlife viewing structures, and trails; provided, that they are located in the outer 25 percent of the buffer area and are constructed in such a manner to avoid disturbance of sensitive wildlife, feeding, roosting, breeding, or rearing sites, and meet the requirements of PMC [21.06.410\(1\)\(d\)](#) and those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland,

located only in the outer 25 percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable. (Ord. 3101 § 10, 2015; Ord. 2859 § 1, 2006).

21.06.950 Critical area report requirements for wetlands.

(1) A critical area report for wetlands shall contain site- and proposal-specific information consistent with PMC [21.06.530](#) and shall at a minimum contain the following:

- (a) A written qualitative assessment and accompanying maps of the known or suspected wetlands and buffers within 300 feet of the site and an estimate of the existing acreage for each wetland;
- (b) A detailed description of the effects of the proposed development on wetland and buffer area and function, including a quantification of the area of wetland disturbance;
- (c) Vegetation, soil, hydrologic, and topographic characteristics of all wetlands and buffers on-site. This includes the dominant species; soil type, color and texture; sources of hydrology (surface inflow, hyporheic flows, precipitation, etc.);
- (d) Wetland category and assessment of wetland functions under pre- and postdevelopment conditions.

(2) When appropriate, the director shall have the authority to require the critical area report to include an evaluation by the Department of Ecology. (Ord. 2859 § 1, 2006).

21.06.960 Wetland mitigation – General requirements.

(1) Adverse impacts to wetlands and buffers, as determined by the director, shall be fully mitigated in accordance with the standards set forth in PMC [21.06.620](#) and this section. Mitigation measures to be addressed in the plan include, in order of preference, avoidance, minimization, restoration, rehabilitation, and compensation.

(2) Mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions, and shall provide similar wetland functions as those lost except when:

(a) The lost wetland provides minimal functions, as determined by a site-specific function assessment, and the proposed mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a watershed assessment plan or protocol; or

(b) Out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

(3) Mitigation in the form of wetland creation, restoration or enhancement is required when a wetland is altered permanently as a result of an approved project. Alterations shall not result in a net loss of wetland area except when the following criteria are met:

(a) The lost wetland area provides minimal functions and the mitigation action(s) results in a net gain in wetland functions as determined by a site-specific function assessment;

(b) The lost wetland area provides minimal functions, as determined by a function assessment, and other replacement habitats provide greater benefits to the functioning of the watershed, such as riparian habitat restoration and enhancement.

(4) Mitigation for wetland alterations shall occur in the following order of preference:

(a) Restoring wetlands on upland sites that were formerly wetlands.

(b) Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.

(c) Enhancing significantly degraded wetlands in accordance with PMC [21.06.980](#).

(d) Preserving Category I or II wetlands that are under imminent threat in accordance with PMC [21.06.980](#). (Ord. 2859 § 1, 2006).

21.06.970 Wetland mitigation – Replacement ratios.

(1) When an applicant proposes to alter or eliminate a regulated wetland, the functions and values of the affected wetland and buffer must be replaced through wetland creation or restoration according to the following minimum ratios. The ratios shall apply to wetland creation or restoration that is in-kind, on-site, the same category, timed prior to or concurrent with alteration, and has a high probability of success. Ratios for out-of-kind or off-site mitigation may be greater if the director determines that additional mitigation is warranted to

replace impacts. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases (ratio is given as replacement area to impact area):

- (a) Category I wetlands: No replacement because all alterations are prohibited;
- (b) Category II wetlands: 3 to 1;
- (c) Category III wetlands: 2 to 1; and
- (d) Category IV wetlands: 1.5 to 1.
- (e) All impacts to wetland buffers shall be mitigated at a 1:1 ratio.

(2) Replacement ratios may be decreased by up to 25 percent by the director if the applicant demonstrates, to the satisfaction of the director, that all of the following criteria are met:

- (a) Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high likelihood of success;
- (b) Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being altered; or
- (c) The proposed mitigation actions are conducted in advance of the impact and shown to be successful through post-construction monitoring and function assessment.

(3) The director shall increase the replacement ratios under the following circumstances:

- (a) Uncertainty exists as to the probable success of the proposed restoration or creation; or
- (b) A significant period of time will elapse between impact and replication of wetland functions; or
- (c) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- (d) The impact was an unauthorized impact. (Ord. 3101 § 11, 2015; Ord. 2859 § 1, 2006).

(1) Enhancement and Rehabilitation. Impacts to wetlands may be compensated by enhancement and/or rehabilitation of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must complete and submit a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions. All proposed rehabilitation or enhancement mitigation proposals shall utilize the rehabilitation/enhancement mitigation ratios as established in Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication No. 06-06-011a, March 2006, or most recently revised version).

(2) Preservation. Impacts to wetlands may be mitigated by preservation of wetland areas, in a separate tract or easement in accordance with PMC [21.06.830](#). Preservation is used as a form of mitigation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied. Mitigation ratios for preservation shall range from 10 to 1 to 20 to 1, as determined by the director, depending on the quality of the wetlands being mitigated and the quality of the wetlands being preserved.

(a) Preservation as mitigation is acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1 to 1 acreage replacement is provided by restoration or creation;

(b) Preservation of at-risk, high-quality wetlands may be used as the sole means of mitigation for wetland impacts to Category III or IV wetlands when the impact area is small, and the preservation occurs in the same drainage basin as the wetland impact;

(c) Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation;

(d) Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;

(e) The preservation site has the potential to experience a high rate of undesirable ecological change due to on- or off-site activities; and

(f) The area proposed for preservation is critical for the health of the watershed or basin.

(3) Wetland Mitigation Banks. Credits from an approved wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

(a) The wetland mitigation bank is certified by the director and by state resource agencies with wetland jurisdiction;

(b) The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

(c) The proposed use of credits, including replacement ratios, is consistent with the terms and conditions of the wetland mitigation bank's certification. Certified wetland mitigation bank credits may be used to compensate for impacts located within the service area specified in the certification.

(i) State or federally designated endangered, threatened, and sensitive species;

(ii) State priority habitats and areas associated with state priority species; or

(iii) Habitats and species of local importance including habitat corridors connecting habitat blocks and open spaces. (Ord. 3101 § 12, 2015; Ord. 2859 § 1, 2006).

Article X. Fish and Wildlife Habitat Areas

21.06.1010 Designation, mapping, and rating.



(1) Fish and wildlife habitat areas are those areas identified as being of critical importance to the maintenance of fish, wildlife, or plant species. All areas within the city meeting these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

(2) The approximate location and extent of previously identified fish and wildlife habitat areas are shown on the critical area maps adopted by the city, as most recently updated. These maps are to be used as a guide for the city, project applicants and/or property owners, and may be updated as new fish and wildlife habitat areas are identified. The city's maps may not represent to show all the fish and wildlife habitat areas within the city. The actual location of a fish and wildlife habitat area shall be determined through field investigation by a qualified professional applying the best available science.

(3) For purposes of this chapter, fish and wildlife habitat areas shall include the following:

(a) Streams and their associated riparian habitat areas. Streams shall be designated Type I, Type II, Type III, and Type IV according to the following criteria:

(i) Type I streams are those streams identified and regulated as “Shorelines of the State” pursuant to WAC [173-18-310](#) and the City of Puyallup Shoreline Master Program. Within the city’s

corporate limits and the urban growth area, Type I streams are the Puyallup River and Clarks Creek, below Maplewood Springs;

(ii) Type II streams are those natural streams that are not Type I streams and are either perennial or intermittent, and have known or potential use by anadromous or resident fish species, significant recreational value, or significant wildlife habitat functions. Potential use shall be determined based upon species life cycle requirements, habitat suitability, presence or lack of natural barriers, and a reasoned evaluation of current, historic, and future fish use by a qualified professional. Within the city’s corporate limits and the urban growth area, known Type II streams including but not limited to Deer Creek, Diru Creek, Meeker Ditch, Rody Creek, Silver Creek, Wildwood Creek, Woodland Creek, and Wapato Creek;

(iii) Type III streams are those streams with perennial or intermittent flow and are not used by anadromous fish; and

(iv) Type IV streams are those intermittent or ephemeral streams with channel width less than two feet taken at the ordinary high water mark, that are not used by anadromous fish or resident fish.

(b) Nonriparian habitat areas that support or have a primary association with:

(i) State or federally designated endangered, threatened, and sensitive species;

(ii) State priority habitats and areas associated with state priority species; or

(iii) Habitats and species of local importance including habitat corridors connecting habitat blocks and open spaces. (Ord. 2859 § 1, 2006).

21.06.1020 Performance standards – Alteration of fish and wildlife habitat areas.

 SHARE

(1) Alteration of fish and wildlife habitat areas shall be prohibited, except as provided for in this chapter. All feasible and reasonable measures shall be taken to avoid and minimize impacts. These actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards contained in this chapter. Alteration of fish and wildlife habitat areas shall be permitted only in accordance with an approved critical area report and mitigation plan.

(2) Adverse impacts to fish and wildlife habitat functions and values and their associated buffers shall be mitigated according to the provisions of PMC [21.06.610](#).

(3) Where impacts cannot be avoided, the applicant or property owner shall implement appropriate compensatory mitigation actions in compliance with the intent, standards, and criteria of PMC [21.06.620](#).

(4) No alteration is allowed that will result in a take of a listed threatened or endangered species as defined by the federal Endangered Species Act.

(5) New on-site sewage systems and individual wells may be permitted in a fish and wildlife habitat area or buffer only if it is accessory to an approved residential structure which it is not feasible to connect to a public sanitary sewer system. (Ord. 2859 § 1, 2006).

21.06.1030 Performance standards – Alteration of streams and riparian habitats.

 SHARE

(1) Relocation of Type I streams is not permitted. Relocation of a Type II, III, or IV stream may be permitted only when it will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream.

(2) Bridges are the preferred crossing for fish-bearing streams. Culverts are allowed only in Type II, III, and IV streams; provided, that they are designed according to the Washington Department of Fish and Wildlife criteria for fish passage, are necessary for utility crossings, road crossings, or other limited access situations, and are in accordance with a state Hydraulic Project Approval permit. The applicant or property owner shall keep any culvert free of debris and sediment at all times to allow free passage of water and, if applicable, fish. The city may require that a stream be removed from a culvert as a condition of approval, unless the culvert is not detrimental to fish habitat or water quality, or removal would be detrimental to fish or wildlife habitat or water quality.

(3) Clearing and grading, when permitted as part of an authorized activity or as otherwise allowed in these standards, may be allowed; provided, that the following shall apply:

(a) Grading is allowed only during the designated dry season, which is typically regarded as beginning on April 1st and ending on October 31st of each year; provided, that the city may extend or shorten the designated dry season on a case-by-case basis, determined on actual weather and/or site conditions;

(b) The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the site; and

(c) The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

(4) Stream bank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an applicable Hydraulic Project Approval permit issued by the Washington Department of Fish and Wildlife.

(5) Construction of private trails, roadways, and bridges less than or equal to 30 feet wide may be permitted subject to the following standards:

(a) There is no other feasible alternative route with less impact on the critical area or buffer;

(b) The crossing minimizes interruption of downstream movement of wood and gravel;

(c) Roads shall not run parallel to the water body unless specific mitigation measures are incorporated to prevent impacts to the stream and riparian habitat;

(d) Trails shall be located on the outer 50 percent of the riparian buffer, except for limited viewing platforms and crossings;

(e) Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible; and

(f) Road bridges are designed according to the Department of Fish and Wildlife Fish Passage Design at Road Culverts, March, 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000, as updated.

(6) Utility Facilities. New utility lines and facilities may be permitted to cross streams and riparian habitat areas in accordance with the public agency and utility exception standards in PMC [21.06.420](#), if all of the following criteria are met:

(a) Impacts to fish and wildlife shall be avoided to the maximum extent possible;

(b) Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;

(c) The utilities shall cross at an angle greater than 60 degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;

(d) Crossings shall be contained within the footprint of an existing road or utility crossing where possible;

(e) The utility route shall avoid paralleling the stream or following a down-valley course near the channel where feasible; and

(f) The utility installation shall not increase or decrease the natural rate of channel migration.

(7) Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report and mitigation plan and upon acquisition of any required state or federal permits.

(8) Instream structures. Instream structures, such as, but not limited to, high flow bypasses, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the city and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat areas.

(9) Storm water management facilities, limited to detention/treatment ponds or vaults, media filtration facilities, lagoons or infiltration basins, may be allowed within the outer 50 percent of the standard buffer; provided, that;

- (a) There is no other feasible location for the storm water conveyance with less impact on critical areas or buffer;
- (b) The storm water facility is designed according to city standards and the discharge water meets state water quality standards;
- (c) Appropriate vegetation shall be maintained and, if necessary, added adjacent to storm water conveyance channels to reduce erosion, filter out sediments, provide shade, or otherwise maintain critical area functions; and
- (d) Storm water conveyance or discharge facilities such as dispersion trenches and outfalls may encroach into the inner 50 percent of the buffer on a case-by-case basis when the director and city engineer determine that due to topographic or other physical constraints there are no feasible locations for these facilities in the outer buffer area. (Ord. 2859 § 1, 2006).

21.06.1040 Performance standards – Alteration of nonriparian habitats. 

(1) Alteration of nonriparian habitat areas shall include reasonable measures to maintain vegetation as open space and to consolidate vegetation in contiguous blocks to contribute to a system or corridor that provides connections to adjacent habitat areas.

(2) Development in nonriparian habitat areas shall include, to the extent possible, measures to preserve healthy and native vegetation and plant resources that provide food, shelter, and structure and cover for reproduction and rearing, and are preferably located in consolidated areas. (Ord. 2859 § 1, 2006).

21.06.1050 Performance standards – Stream and riparian buffer widths. 

(1) Stream buffers shall be established landward of the ordinary high water mark adjacent to streams to protect the integrity, functions and values of the resource. Buffers shall consist of an undisturbed area of native vegetation and shall reflect the sensitivity of the stream and the type and intensity of the adjacent human use or activity.

(2) The standard buffer widths required by this chapter are considered to be the minimum required and presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the stream functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer planted to maintain and improve the buffer functions. The following standard buffer width requirements are established:

- (a) Type I: 150 feet;
- (b) Type II: 100 feet;
- (c) Type III: 50 feet; and
- (d) Type IV: 35 feet.

(3) The director has the authority to “average” buffer widths on a case-by-case basis where a qualified professional demonstrates that all the following criteria are met:

- (a) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
- (b) The buffer averaging does not reduce the functions or values of the stream or riparian habitat;
- (c) The portion of the buffer subject to buffer averaging is less than 20 percent of the total buffer length on a project site;
- (d) The site contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;
- (e) The buffer width for Type I and II streams is not reduced to less than 50 percent of the standard width;
- (f) The buffer width of a Type III or IV stream may not be reduced under any circumstance.

(4) The director may increase the minimum size of a riparian buffer width on a case-by-case basis when it can be demonstrated by a critical area report that such increase is necessary to:

- (a) Protect the functions and values of the stream;
- (b) Protect significant habitat;
- (c) Protect lands adjacent to a stream from erosion or channel migration;
- (d) Provide flood protection; or

(e) Provide protection from erosion, landslide, or other geologic hazards.

(5) The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and final approval has been granted by the city.

(6) Structures shall be set back in accordance with PMC [21.06.840](#) such that construction activities and outdoor living areas do not infringe upon the required buffer edge. (Ord. 2859 § 1, 2006).

21.06.1060 Nonriparian habitat area buffer widths.



(1) Buffers shall be established adjacent to nonriparian habitat areas. Buffers shall consist of an area of native vegetation established, preserved and/or enhanced to protect the integrity, functions and values of the affected species or habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of the adjacent human use or activity.

(2) Appropriate widths shall be determined by the director based on information in the critical area report; habitat management and species recommendations of the Washington Department of Fish and Wildlife; the sensitivity and value of the habitat areas; the nature, intensity and design of the proposed use; and the adjacent uses and activities.

(3) The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and final approval has been granted by the city.

(4) Structures shall be set back in accordance with PMC [21.06.840](#) such that construction activities and outdoor living areas do not infringe upon the required buffer edge. (Ord. 2859 § 1, 2006).

21.06.1070 Critical area report requirements for fish and wildlife habitat areas.



(1) A critical area report for a fish and wildlife habitat area shall contain an assessment of habitats in accordance with the requirements of this chapter. The report shall be prepared in accordance with the requirements described in PMC [21.06.530](#) and shall at a minimum describe the following:

(a) All critical areas and buffers within 300 feet of the project area;

(b) Habitat and life cycle requirements for species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area; and

(c) Any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area.

(2) When appropriate due to the type of habitat or species present or the project area conditions, the director may also require the critical area report to contain additional information including, but not limited to, direct observations of species use or detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 2859 § 1, 2006).

21.06.1080 Mitigation standards for fish and wildlife habitat areas.

(1) Adverse impacts to riparian and nonriparian habitats, as determined by the director, shall be fully mitigated in accordance with the standards set forth in PMC [21.06.610](#). All mitigation shall be specified in a mitigation plan consistent with PMC [21.06.620](#) and this section.

(2) Mitigation for alterations to habitat areas shall achieve equivalent or greater biologic functions, and shall provide similar functions as those lost.

(3) Compensation in the form of habitat restoration or enhancement is required when a habitat is altered as a result of an approved project. Alterations shall not result in net loss of habitat area except when, upon the satisfaction of the director, it is determined that the lost habitat area provides minimal functions, as determined by a critical area report, and other replacement habitats provide greater benefits to the functioning of the affected species. (Ord. 2859 § 1, 2006).

Article XI. Critical Aquifer Recharge Areas

21.06.1110 Designation, mapping and rating.

(1) Areas with a critical recharging effect on aquifers used for potable water as defined by WAC [365-190-030](#)(2) are hereby designated critical areas and are subject to the provisions of this chapter. Protection of critical aquifer recharge areas is necessary to prevent ground water degradation or depletion caused by land use activities.

(2) The approximate location and extent of previously identified critical aquifer recharge areas are shown on the city's adopted critical area maps. These maps are to be used as a guide for the city, project applicants and/or property owners, and shall be continuously updated as new critical areas are identified. They are a reference and do not provide a definitive critical area designation.

(3) For purposes of this chapter, critical aquifer recharge areas include the following:

(a) Aquifer recharge areas identified using the DRASTIC (Pierce County health department) model that are susceptible or vulnerable to degradation or depletion because of hydrogeologic characteristics; and

(b) Wellhead protection areas as defined by the boundaries of the one-, five- and 10-year time of ground water travel, or boundaries established using alternate criteria approved by the Pierce County health department in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC [246-290-135](#).

(4) Critical aquifer recharge areas shall be rated as high or low susceptibility areas as follows:

(a) High susceptibility aquifer recharge areas are all areas on the Puyallup valley floor, plus all wellhead protection areas within the five-year travel time boundary; and

(b) Low susceptibility aquifer recharge areas are all areas within the city that do not meet the criteria for a high susceptibility rating. (Ord. 2859 § 1, 2006).

21.06.1120 Performance standards – Alteration of critical aquifer recharge areas.



(1) Activities that do not cause degradation of ground water quality and will not adversely affect the recharging of the aquifer may be permitted in a critical aquifer recharge area and do not require preparation of a critical area report; provided, that they comply with the city storm water management regulations and other applicable local, state and federal regulations. These activities typically include commercial and industrial development

that does not include storage, processing, or handling of any hazardous substance, or other development that does not substantially divert, alter, or reduce the flow of surface or ground waters.

(2) Activities that have the potential to cause degradation of ground water quality or adversely affect the recharging of an aquifer may be permitted in critical aquifer recharge areas pursuant to an approved critical area report in accordance with PMC [21.06.530](#) and [21.06.1150](#). These activities include:

- (a) Activities that substantially divert, alter, or reduce the flow of surface or ground waters, or otherwise adversely affect aquifer recharge;
- (b) The use, processing, storage or handling of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;
- (c) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre; or
- (d) Any other activity determined by the director likely to have an adverse impact on ground water quality or on a recharge of the aquifer. (Ord. 2859 § 1, 2006).

21.06.1130 Performance standards – Specific uses.



(1) The following standards shall apply to uses within critical aquifer recharge areas in accordance with the provisions of this chapter.

(a) Underground Storage Tanks. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed per the requirements of Chapter [173-360](#) WAC, Underground Storage Tank Regulations and the International Fire Code, so as to:

- (i) Prevent releases due to corrosion or structural failure for the operational life of the tank;
- (ii) Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and
- (iii) Use material in the construction or lining of the tank that is compatible with the substance to be stored.

(b) Aboveground Storage Tanks. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed in accordance with Chapter [173-303 WAC](#), Dangerous Waste Regulations, and the International Fire Code, so as to:

(i) Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

(ii) Have a primary containment area enclosing or underlying the tank or part thereof; and

(iii) Include a secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

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

(d) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

(e) Spreading or Injection of Reclaimed Water or Biosolids. Water reuse projects for reclaimed water must be in accordance with the city's comprehensive plans that have been approved by the Departments of Ecology and Health.

21.06.1140 Performance standards – Prohibited uses. 

(1) The following activities and uses are prohibited in critical aquifer recharge areas:

(a) Dry Wells. Dry wells on sites used for vehicle repair and servicing shall not be allowed in critical aquifer recharge areas. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity;

(b) Landfills including hazardous or dangerous waste, municipal solid waste, special waste, and inert and demolition waste landfills;

(c) Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells, unless approved by State or local authorities as part of an approved remediation action;

(d) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances; and

(e) Other uses as determined by the director that:

(i) Would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

(ii) Would significantly reduce the recharge to aquifers that are a source of baseflow to a regulated stream; or

(iii) Would significantly affect the ground water quality.

(2) Sand and gravel mining is prohibited from critical aquifer recharge areas that are determined to be highly susceptible. (Ord. 2859 § 1, 2006).

21.06.1150 Critical area report requirements for critical aquifer recharge areas.



(1) In addition to the general critical area report requirements of PMC [21.06.530](#), a hydrogeologic report for aquifer recharge areas shall include the following site- and proposal-related information at a minimum:

(a) Available information regarding geologic and hydrogeologic characteristics of the site including the lateral extent and depths location of all critical aquifer recharge areas located on-site or immediately adjacent to the site, and the permeability of the unsaturated zone;

(b) Ground water depth, flow direction and gradient based on available information;

(c) Currently available data on wells and springs within 1,300 feet of the project area;

(d) Location of other critical areas, including surface waters, within 1,300 feet of the project area;

(e) Historic ground water and surface water quality data for the area to be affected by the proposed activity compiled for at least the previous five-year period;

- (f) Federal, state, and local regulations and requirements that pertain to the proposed project;
- (g) Best management practices proposed to be used. The type, extent and nature of the proposed BMPs shall be specific to the level of aquifer susceptibility (high or low) where the development is proposed;
- (h) Ground water monitoring plan provisions;
- (i) Discussion of the effects of the proposed project on the ground water quality and quantity, including predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and predictive evaluation of contaminant transport based on potential releases to ground water; and
- (j) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail. (Ord. 2859 § 1, 2006).

Article XII. Geologically Hazardous Areas

21.06.1210 Designation, mapping, and classification.

- (1) Geologically hazardous areas are areas susceptible to erosion, landsliding, earthquake, volcanic activity or other potentially hazardous geological processes. Areas susceptible to these types of hazards are hereby designated as geologically hazardous areas and subject to the provisions of this chapter.
- (2) The approximate location and extent of previously identified geologically hazardous areas are shown in the city's critical area maps. These maps are to be used as a guide for the city, project applicants and/or property owners, and shall be updated as new critical areas are identified. They do not provide a definitive critical area designation.
- (3) Geologically hazardous areas shall be classified as follows:
 - (a) Landslide and erosion hazard areas are areas of potential slope instability. Erosion hazard areas include those identified by the U.S. Department of Agriculture Natural Resources Conservation Service as having a moderate to severe, severe, or very severe erosion hazard because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and

rainfall patterns, or human-induced changes to natural characteristics. Landslide and erosion hazard areas include areas with the following characteristics:

(i) Areas that have shown mass movement during the Holocene epoch (from 10,000 years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

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

(iii) Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;

(iv) Areas potentially unstable because of stream incision or stream bank erosion;

(v) Areas located in a canyon, ravine, or on an active alluvial fan, presently or potentially subject to inundation by debris flows or flooding;

(vi) Any area with a slope of 40 percent or steeper and a vertical relief of 10 or more feet, except areas composed of consolidated rock and properly engineered manmade slopes/retained fill. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief;

(vii) Areas with a severe limitation for building development because of slope conditions, according to the Natural Resource Conservations Service; and

(viii) Areas meeting all three of the following criteria: (A) slopes steeper than 15 percent, except that slopes of less than 15 percent may be considered erosion hazard areas if they have certain unstable soil and drainage characteristics; (B) hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and (C) wet season springs or ground water seepage.

(b) 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. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

(c) Volcanic Hazard Areas. Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity. Volcanic hazard areas shall be classified as Case I or Case II lahars per the definitions in PMC [21.06.210](#). Pyroclastic-flow hazard zones and inundation zones for Case I and II lahars are identified in the report Sedimentology, Behavior, and Hazards of Debris Flows at Mount Rainier, Washington, U.S. Geological Survey Professional Paper 1547, 1995. All volcanic hazard areas regulated under this code are located within lahar time travel zone 3. (Ord. 2859 § 1, 2006).

21.06.1220 General standards – Alteration of geologically hazardous areas. 

(1) Alteration of geologically hazardous areas and buffers shall be prohibited except as allowed in this chapter. The city may approve, condition or deny proposals based on the degree to which risks posed by geologically hazardous areas to public and private property and to public health and safety can be mitigated. In an individual case, conditions may include limitations of proposed uses, density modification, alteration of site layout and other appropriate changes to the proposal. Where potential adverse impacts cannot be effectively mitigated, or where the risk to public health, safety and welfare, property, or important natural resources is substantial notwithstanding mitigation, the proposal shall be denied. The burden of proof shall be upon the applicant. (Ord. 2859 § 1, 2006).

21.06.1230 Performance standards – Alteration of landslide and erosion hazard areas.



(1) Alteration of slopes of 40 percent or greater shall be prohibited.

(2) Development within all other erosion or landslide hazard areas and/or buffers shall be designed to meet the following basic requirements unless it can be demonstrated through a geotechnical study that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. This includes alteration of slopes less than 40 percent, including slopes of 15 percent or less that have unstable soil or drainage characteristics, which may be permitted pursuant to an approved critical area geotechnical report. The following basic development design standards must be met:

(a) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic

conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

(b) The alteration will not increase the threat of the geological hazard to the project site or adjacent properties beyond predevelopment conditions, nor shall it result in a need for increased buffers on neighboring properties;

(c) The development will not increase or concentrate surface water discharge or sedimentation to adjacent sites beyond predevelopment conditions;

(d) Structures and improvements shall be located to minimize alterations to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;

(e) The use of engineered retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes. Engineered retaining walls shall not exceed 15 feet in height and preferably should be less than eight feet in height. Riprap retaining walls should not exceed eight feet in height. Wherever possible, retaining walls should be designed as structural elements of the building foundation; and

(f) Development shall be designed to minimize impervious lot coverage. Use of common access drives and utility corridors is encouraged.

(3) Unless otherwise provided or as part of an approved alteration, removal of vegetation with soil-stabilizing functions from an erosion or landslide hazard area or related buffer shall be prohibited. Limited pruning or selective removal of dead, diseased or damaged branches; limited removal of specified branches that block views; and topping as shown on a landscape plan may be approved by the director if the activity will not adversely affect slope stability. Project design revisions to better accommodate the retention of vegetation with significant soil-stabilizing functions, including re-configuring development envelopes to accommodate mature trees, may be imposed by the director to meet the intent of this chapter. Identification of vegetation to be preserved shall be based upon the tree species, location and condition in addition to size. Disturbed areas of a site not used for buildings, roads and other improvements should be replanted as soon as feasible pursuant to an approved landscape plan.

(4) Seasonal Restriction. Clearing shall be allowed only from April 1st to October 31st of each year; provided, that the city may extend or shorten the designated dry season on a case-by-case basis depending on actual weather conditions.

(5) Utility Lines and Pipes. Utility lines and pipes shall be permitted in landslide and erosion hazard areas pursuant to PMC [21.06.420](#). The line or pipe shall be located aboveground and properly anchored and/or designed so that it will continue to function in the event of a landslide. Aboveground utility lines and pipes shall be located and designed to minimize potential risks associated with tree fall.

(6) Storm water conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

(7) Point Discharges. Point discharges from surface water facilities and roof drains onto or up-slope from an erosion or landslide hazard area shall be prohibited except as follows:

(a) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas downstream from the discharge; or

(b) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed storm water runoff in the predeveloped state; or

(c) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and storm water runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.

(8) Subdivisions. The division of land in landslide and erosion hazard areas and associated buffers is subject to the following:

(a) Land that is located wholly within an erosion or landslide hazard area or its buffer may not be subdivided. Land that is located partially within an erosion or landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the erosion or landslide hazard or its buffer;

(b) Access roads and utilities may be permitted within the erosion or landslide hazard area and associated buffers if the director determines based on an approved critical area report that the road will not increase the risk to adjacent sites and that no other feasible alternative exists.


(9) Erosion control plans shall be required for all regulated activities within landslide and erosion hazard areas. The erosion control plans shall be consistent with the provisions of Chapter [21.14](#) PMC (clearing, filling and

grading) prepared pursuant to a plan approved by the city engineer. A master drainage plan shall be prepared for large projects as required and approved by the city engineer.

(10) Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within landslide and erosion hazard areas and related buffers.

(11) A monitoring program shall be prepared and implemented for construction activities permitted in landslide and erosion hazard areas. (Ord. 2859 § 1, 2006).

21.06.1240 Performance standards – Landslide and erosion hazard area buffers.

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(1) Activities on sites containing erosion or landslide hazards shall meet the following buffer requirements:

(a) A buffer shall be established from the top, toe, and edges of all slopes or erosion or landslide hazard areas with 10 feet or more of vertical elevation change unless a geotechnical report prepared by a qualified professional determines that adequate structural or engineering measures have been taken to fully mitigate the landslide hazard and eliminate risks to downslope or upslope properties and other critical areas. For purposes of this section, the director shall have discretion to measure slope gradient based upon the total average slope for hillsides containing multiple slope categories. The size of the buffer shall be determined by the director to eliminate or minimize the risk of damage to person or property resulting from landslide and erosions caused in whole or part by the development, based upon review of and concurrence with a geotechnical report prepared by a qualified professional; provided, that the following shall apply:

(i) For slopes between 16 and 39 percent, the minimum buffer shall be equal to the height of the slope divided by two. The buffer may be reduced by 25 percent or to a minimum of 25 feet when a qualified professional demonstrates to the director's satisfaction that the reduction will adequately protect the proposed development, adjacent areas, and the subject critical area.

(ii) For slopes equal to or greater than 40 percent, the minimum buffer shall be equal to the height of the slope or 25 feet, whichever is greater. The buffer may be reduced by 25 percent when a qualified professional demonstrates to the director's satisfaction that the reduction will adequately protect the proposed development, adjacent areas,

developments, uses, and the subject critical area, except the buffer shall never be less than 25 feet.

(iii) For slopes with a vertical elevation of more than 10 but less than 25 feet, the minimum buffer shall be equal to the height of the slope divided by two, regardless of the slope percent; provided, that there are no other factors that pose a slope stability risk. In applying this standard, the director shall have discretion to exempt slopes from this requirement which are predominantly less than 10 feet in grade change, even if a limited area (e.g., a short terrace), which is localized and stable, exceeds 10 feet.

(b) The minimum buffer area shall be undisturbed natural vegetation consisting of trees and/or dense woody vegetation and have adequate drainage. To improve the functional attributes of the buffer, the director may require that the buffer be enhanced through planting to achieve a dense covering of woody vegetation such as trees and shrubs.

(c) Based on the findings of the geotechnical report, the director may require that the buffer be increased where a larger buffer is necessary to prevent risk of damage to adjacent areas and proposed and existing development.

(d) The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field marking shall remain until all construction and clearing phases are completed, and the director has granted final approval. The buffer shall be maintained and preserved through a protective easement or other appropriate permanent protective covenant as determined by the director. (Ord. 2859 § 1, 2006).

21.06.1250 Performance standards – Seismic hazard areas.

(1) Activities proposed to be located in seismic hazard areas shall meet the standards of PMC [21.06.1220](#).

(2) Construction of new buildings and additions to existing buildings within a seismic hazard area shall conform to the International Building Code standards for seismic protection. (Ord. 2859 § 1, 2006).

21.06.1260 Performance standards – Volcanic hazard areas.

(1) Construction of new critical facilities as defined in this chapter including essential facilities and hazardous facilities, as well as special occupancy structures/covered assemblies with occupancy of 1,000 persons or more as determined by the building official using the International Building Code, shall be prohibited in volcanic hazard areas, except that sewer collection facilities and other underground utilities not likely to cause harm to people or the environment if inundated by a lahar shall be allowed pursuant to the director's approval.

(2) Exemption. An applicant may make a written request to the emergency management director for an exemption of the construction prohibition as contained in subsection (1) of this section. The emergency management director shall be the individual designated pursuant to PMC [2.31.050](#) and is hereby authorized to receive the request pursuant to this section. The emergency management director shall review such a request and shall make recommendations for either the approval or denial of the request to the development services administrator. The development services administrator shall give substantial deference to the recommendation of the emergency management director. The applicant shall bear the burden of establishing all of the following conditions to the satisfaction of the emergency management director in order for an exemption to be granted:

(a) That the critical facility has a satisfactory critical alert notification system in place which coordinates with local and regional emergency monitoring systems;

(b) That the proposed critical facility has an emergency evacuation plan which adequately demonstrates the ability to evacuate all expected occupants in a lahar situation to an acceptable area outside of the volcanic hazard lahar area, in coordination with city emergency management plans; and

(c) That the critical facility has procedures in place to ensure the emergency evacuation plan is maintained over the life of the critical facility and that occupants of the critical facility are involved in periodic drills and/or other instruction regarding those emergency evacuation procedures.

(3) An aggrieved party can appeal the development services administrator's decision in accordance with Chapter [20.87](#) PMC, however, the hearing examiner, in reviewing and issuing a decision of any appeal pursuant to this section, shall grant the emergency management director's recommendation substantial deference. (Ord. 2859 § 1, 2006).

21.06.1270 Critical area report requirements for geologically hazardous areas.



(1) In addition to the general critical area report requirements of PMC [21.06.530](#), a critical areas report for geologically hazardous areas must meet the geotechnical report requirements of this chapter. A geotechnical report for a geologically hazardous area shall meet all of the following standards:

(a) It shall address the project area of the proposed activity; and all geologically hazardous areas within 200 feet of the project area or that have potential to affect or be affected by the proposal;

(b) It shall contain an assessment of geological hazards including at a minimum all of the following information:

(i) A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report. The report shall also include an assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties; a review of the site history regarding landslides, erosion, and prior grading; and a description of the vulnerability of the site to seismic and other geologic events. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. Methods that were used for characterization and analysis of the site shall be described;

(ii) A recommendation for the minimum buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis;

(iii) When hazard mitigation is required, the report shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.

(2) Where a valid geotechnical report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. Further updated analysis may be required if site-specific conditions

warrant. The applicant shall submit a geotechnical assessment detailing any changed environmental conditions associated with the site.

(3) Additional site- and proposal-related information for specific geologic hazard types as outlined in this chapter. Geotechnical studies for two or more types of hazard areas must meet the report requirements for each relevant type.

(4) Monitoring Surface Waters. If the director determines that there is a credible risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the critical area report shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the director. (Ord. 2859 § 1, 2006).