ORDINANCE #1514

AN ORDINANCE FOR THE CITY OF SOUTH BEND, WASHINGTON REPEALING AND RE-ESTABLISHING CHAPTER 14.15 OF THE CITY OF SOUTH BEND MUNICIPAL CODE

WHEREAS, the City of South Bend adopted ordinance No. 1451 on May 8, 2012 to designate and protect critical areas consistent with the Growth Management Act, Chapter 36.70A of the Revised Code of Washington (RCW) and Chapter 365-190 of the Washington Administrative Code, and

WHEREAS, the City is updating its shoreline management program under Chapter 173-26 of the Washington Administrative Code, and

WHEREAS, certain updates are necessary to Chapter 14.15 to ensure consistency between critical areas protection and shoreline master program, and

WHEREAS, the City wants to add the most current best available science;

WHEREAS, the City of South Bend has consulted with state agencies on the proposed updates to Chapter 14.15;

WHEREAS, the citizens of the City of South Bend, the Planning Commission, and the City Council considered the Minimum Guidelines promulgated under Chapter 365-190 of the Washington Administrative Code to designate and protect said critical areas;

THE CITY COUNCIL OF THE CITY OF SOUTH BEND, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 14.5.010 Definitions

A. This section incorporates all definitions provided under SBMC 15.04.020.

B. "Critical areas" include the following areas and ecosystems as defined in RCW 36.70A.030 and WAC 365-195-200:

1. Wetlands;
2. Geologically hazardous areas;
3. Areas with a critical recharging effect on aquifers used for potable water;
4. Fish and wildlife habitat conservation areas; and
5. Frequently flooded areas.

C. "Aquifer recharge area" means an area with a critical recharging effect on an aquifer that is vulnerable to contamination and is used as a sole source of potable water supply. Aquifer recharge areas are those areas designated pursuant to:

1. The Federal Safe Drinking Water Act;
2. Chapters 90.44, 90.48 and 90.54 ROW; and
3. Chapters 173-100 and 173-200 WAC

D. "Fish and wildlife habitat conservation area" means land managed for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. In some cases, intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state. Fish and wildlife habitat conservation areas include areas with which endangered, threatened, and sensitive species have a primary association; waters of the state; state natural area preserves and natural conservation areas; and streams and rivers planted with game fish by a governmental agency.

E. "Geologically hazardous areas" means areas that, because of the susceptibility to erosion, sliding, earthquake, or other geological events, are not generally suited to locating commercial, residential, or industrial development consistent with public health or safety concerns. Geologically hazardous areas are characterized by slopes greater than 15 percent and known erosion, landslides, settling, rock slide, debris flow and/or seismic hazards as defined by the U.S. Department of Agriculture Soil Conservation Service.

F. Species of Concern. Species of concern in Washington include those species listed as state endangered, state threatened, state sensitive, or state candidate, as well as species listed or proposed for listing by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. See WAC 232-12-297 for further definition.

G. "Type S water" means all waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands.

H. "Type F Water" means segments of natural waters that are not classified as Type S Water, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

1. Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be

considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less

2. Waters, which are diverted for use by federal, state, tribal, or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that

    a. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

    b. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

3. Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;
4. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:
5. The site must be connected to a fish habitat stream and accessible during some period of the year; and
6. The off-channel water must be accessible to fish.

I. "Type Np water" means all segments of natural waters within the bankfull width of defined channels that are perennial non-fish-habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

J. "Type Ns water" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, non-fish-habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters.

K. "Wetland" or "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, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

L. "Qualified professional" means a person who prepares a technical report with expertise appropriate to the relevant critical area. Expertise shall consist of professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. Geologists preparing technical reports shall meet the requirements of a licensed geologist under Chapter 18.220 RCW.

Section 14.15.020 General provisions

A. Title and Purpose

1. This chapter shall be known as the critical area ordinance of the city of South Bend.
2. It is not the intent of this chapter to deny a reasonable use of public or private property, but to assure that land development occurs in a manner that will protect the function and value of critical areas: wetlands, geologically hazardous areas, fish and wildlife habitat conservation areas, and frequently flooded areas.

B. Compliance with Critical Areas Protection. All public and private land uses in the city of South Bend shall comply with the requirements of this chapter as a condition to any project permit application granted under Chapter 15.08 SBMC and when in shoreline jurisdiction under the Shoreline Master Program.

C. Exempt Activities in Critical Areas. The following uses or activities within a critical area or critical area buffer are exempt from the requirements of this chapter to the extent that they are not prohibited by other state or federal laws and do not degrade the critical area:

1. Conservation, enhancement, restoration, or preservation measures or projects;
2. Low intensity, passive recreational uses;
3. Short-term scientific studies and educational uses;

4. Repair and maintenance of existing public roads, bridges and sewer, water, and storm water facilities;
5. Walkways without structures;
6. Site investigation work necessary for land use applications; and
7. Class 1 through 3 Forest Practices governed by Chapter 76.09 RCW.

D. Emergency Work in Critical Areas.

1. The mayor may authorize emergency work in critical areas without a permit if that official determines an imminent threat to public health or safety will occur before completion of normal permit procedures. Emergency work shall be limited to abating the emergency only.
2. After the emergency, the person or the agency undertaking the emergency work shall fully restore and/or mitigate any impacts in accordance to an approved critical area technical report and/or mitigation plan. Restoration and/or mitigation must commence within one year of the date of the emergency and completed in a timely manner.

E. Critical Area Project Review Process and Technical Reports

1. The city supervisor or designated representative shall review each project permit application or threshold decision to determine if the proposed project will alter the functions or values of a critical area.
2. If the review determines there is a critical area, or is within 300 feet of one, the city supervisor or designated representative shall visit the site. Using information from the comprehensive land use plan, information provided by the applicant, and any other suitable information, the city supervisor shall make a determination as to whether or not sufficient information is available to evaluate the proposal. If it is determined that the information presented is not sufficient, the city supervisor shall notify the applicant to provide additional technical reports before the issuance of a determination of completeness as provided under SBMC 15.08.070 or a threshold decision as provided under SBMC 14.05.190.
3. It shall be the responsibility of the applicant to provide the city with appropriate technical reports prepared by a qualified expert, if necessary, to fulfill the requirements of an application for a project permit review or threshold decision under SBMC 15.06.070 and 14.05.190 or any other city, state or federal laws. The applicant shall pay all expenses associated with the preparation of any technical report required by the city. Technical reports shall use the best science available in accordance with RCW 36.70A.172.

F. Critical Area Markers and Signs

1. As a condition of approval for any project permit application, the city supervisor may require that a property owner mark the outer boundary of a critical area or buffer with temporary signs before beginning construction or site alteration. The city supervisor may require a property owner, at his or her expense, to have the critical area boundary marked or verified by a qualified expert.
2. As a condition of approval for any project permit application, the city supervisor may require that the property owner mark the outer edge of a critical area tract or easements with permanent survey stakes or other appropriate methods.

G. Mitigation. Development activities affecting the function and value of a critical area may require mitigation. Before the city may approve such development activity, the applicant shall demonstrate through a technical report the inability to avoid impacts to the critical area and that the action minimizes those impacts to the greatest extent practicable. The technical report shall evaluate the development activity as to whether it is possible to:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
6. Monitor the impact and take appropriate corrective measures.

H. Mitigation Plan Requirements. When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as part of the technical report. The mitigation plan shall include the following elements:

1. Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

    a. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;

b. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and

c. An analysis of the likelihood of success of the compensation project.

2. Performance Standards. The mitigation plan shall include measurable and specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this Title have been met.

3. Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

   a. The proposed construction sequence, timing, and duration;

   b. Grading and excavation details;

   c. Erosion and sediment control features;

   d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

   e. Measures to protect and maintain plants until established.

   These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, and topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated outcome.

4. Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5, and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

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

I. Sureties for Mitigation Improvements

1. The city may require the applicant to submit a surety for the construction, maintenance, and/or monitoring of any mitigation measures required under this chapter for a period not to exceed five years from the date of substantial completion of work. The city may release the surety earlier than assigned if a technical report prepared by a qualified expert affirms that the mitigation measure is functioning in accordance with its design.
2. The value of a construction surety shall be not less than 125 percent of the contract cost for the mitigation improvement as estimated by the city supervisor. The value of a maintenance surety shall be not less than 15 percent of the total value of the mitigation improvement as estimated by the city supervisor. The surety shall meet the approval of the city attorney.

J. Responsibilities for Improvements. The property owner, or his or her successors, shall be responsible for the monitoring and maintenance of any mitigation measure required under this chapter.

K. Monitoring. The city may require annual monitoring reports from the property owner or his/her designated representative pertaining to the performance of any improvements required under this chapter.

L. Reasonable Use Exceptions.

1. The intent of protecting critical areas and its application within the city of South Bend is not to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the board of adjustment that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.
2. Any property owner requesting relief from the provisions of this chapter may make application to the board of adjustment for a reasonable use exception.
3. The applicant requesting relief from the strict application of this chapter shall demonstrate to the board of adjustment that the following five conditions exist:

    a. No reasonable use of the property is possible without some impact to the critical area.

    b. No feasible and reasonable on-site alternative to the proposed activities is possible, including possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts.

    c. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with proposed development.

    d. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.

e. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.

4. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city regulations.

M. Variances. Applications for variances from the strict application of the terms of this chapter to a specific property may be submitted to the city. The board of adjustment shall consider all variance requests pursuant to Chapter 16.75 SBMC. Approval of variances by the board of adjustment from the strict application of the critical area requirements shall be consistent with the following criteria:

1. There are unique physical conditions peculiar and inherent to the affected property that make it difficult or impractical to comply with the provisions of this chapter;
2. The variance is the minimum necessary to accommodate the building footprint and access;
3. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to the public health, safety, and general welfare, or to public or private property;
4. The proposed variance would not adversely affect properties surrounding the subject site;
5. Adverse impacts to critical areas resulting from the proposal are minimal;
6. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner; and
7. The variance shall not constitute a grant of special privilege.

N. Overlapping Buffers. Buffers required under this Chapter may overlap with other required critical area buffers. When one or more buffers overlap, all the performance standards shall apply. If multiple critical areas overlap in an area, the most restrictive conditions shall apply.

Section 14.15.030 Wetlands

A. Wetland Designation and Protection

1. The city shall regulate development activities to protect the function and value of all wetlands, including their ability to:

a. Provide flood and storm water control;

b. Recharge the aquifer;

c. Improve surface and ground water quality by trapping sediments, removing nutrients, and providing chemical detoxification;

d. Stabilize the streambeds; and

e. Provide habitat for species of concern.

2. The city adopts by reference the following maps and best available science resources for designating wetlands in the city of South Bend:

   a. Designating wetlands:

      i. U.S. Fish and Wildlife Service, Wetlands Mapper www.fws.gov/wetlands/Data/Mapper.html

      ii. Field Indicators of Hydric Soils in the United States: A Guide for Identifying and Delineating Hydric Soils, Version 7.0, 2010, USDA National Resources Conservation Service;

      iii. Most current approved U.S. Army Corps of Engineers Wetland Delineation Manual, Wetlands Research Program Technical Report Y-87-1 (online edition), January 1987, and subsequent Regulatory Guidance Letters; and

      iv. U.S. Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0), May 2010, as revised.

   b. Rating wetlands:

      i. Washington State Wetland Rating System for Western Washington, Washington Department of Ecology, 2014, #14-06-029, or as revised and approved by Ecology.

   c. Wetland Buffers and General Guidance.

      i. Wetlands in Washington State. Volumes 1 and 2, 2005, Publication Nos. 05-06-006 and 05-06-008.

      ii. Wetlands and CAO Updates: Guidance for Small Cities, Western Washington Version, June 2016, Publication #16-06-001.

   d. Mitigating Wetlands:

      i. Wetland Mitigation in Washington State, Parts 1 and 2, 2006, Publication Nos. 06-06-011a and 06-06-011b, or as revised.

      ii. Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington, Final Report, March 2012. Washington State Department of Ecology publication #10-06-011, or as revised.

e. If the location, designation, or classification of a wetland shown on any map adopted by reference under the South Bend Municipal Code is in conflict with the determination of any field investigation, the latter shall prevail.

3. The city prohibits non-exempt development activities in wetlands and required buffers unless no reasonable alternative exists for locating the project elsewhere.

B. Regulated Activities in Wetlands and Buffers

1. The following activities are regulated if they occur in a regulated wetland or its buffer:

a. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.

b. The dumping of, discharging of, or filling with any material.

c. The draining, flooding, or disturbing of the water level or water table.

d. Pile driving.

e. The placing of obstructions.

f. The construction, reconstruction, demolition, or expansion of any structure.

g. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

h. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222-12-030, or as thereafter amended

i. Activities that result in:

i. A significant change of water temperature;

ii. A significant change of physical or chemical characteristics of the sources of water to the wetland;

iii. A significant change in the quantity, timing, or duration of the water entering the wetland; and/or

iv. The introduction of pollutants.

j. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following provisions:

i. Land that is located wholly within a wetland or its buffer may not be subdivided.

ii. Land that is located partially within a wetland or its buffer may be subdivided if an accessible and contiguous portion of each new lot located outside of the wetland and its buffer meets the minimum lot size of the zoning district.

C. Wetlands Technical Reports

1. The city may require a project permit applicant to prepare a wetland technical report prepared by a qualified wetland professional whenever proposed development is adjacent to a wetland. The cost for preparing the report shall be the responsibility of the project permit applicant.
2. The minimum standard for a wetland technical report shall contain the following information:

   a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

   b. A statement specifying the accuracy of the report and all assumptions made and relied upon. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.

   c. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.

   d. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.

   e. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

   f. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.

g. An assessment of the probable cumulative impacts to the wetland and buffers resulting from the proposed development.

h. A description of reasonable efforts made to apply mitigation sequencing pursuant to Section 14.15.020.G to avoid, minimize, and mitigate impacts to critical areas.

i. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.

j. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

k. A discussion of the potential impacts to the wetland associated with anticipated hydroperiod alterations from the project.

l. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

m. A copy of the site plan sheet(s) for the project that contains the following items:

   i. Maps to scale depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers, including square footage estimates.

   ii. A depiction of the proposed stormwater management plan for the development, including estimated areas of intrusion into the buffers of any critical areas.

D. Buffers Required.

1. Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland.

2. The total point score from the wetland rating form shall determine the width of required buffers. Buffer widths are measured perpendicularly from the wetland boundary as determined through a field survey. Buffer widths shall not include those areas functionally and effectively disconnected from the wetland, such as by a road or other structures. When a buffer lacks adequate vegetation, the city may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

3. Buffer Dimensions. The city adopts the following dimensions for required wetland buffers shown in Table 1:

Table 1: Wetland Buffer Dimensions

	Buffer width (in feet) based on the following habitat score			
Wetland category	**3-4**	**5**	**6-7**	**8-9**
Category 1: Based on total score	75 feet	105 feet	165 feet	225 feet
Category 1: Bogs & wetlands of high conservation value	190 feet			225 feet
Category 1: Forested wetland	75 feet	105 feet	165 feet	225 feet
Category 1: Estuarine wetland	150 feet (buffer width not based on habitat scores)			
Category 2: Based on total score	75 feet	105 feet	165 feet	225 feet
Category 2: Estuarine wetland	110 feet (buffer width not based on habitat scores)			
Category 3: (All)	60 feet	105 feet	165 feet	225 feet
Category 4: (All)	40 feet			

4. Development adjacent to wetland buffers shall implement the following measures to reduce potential adverse impacts to the buffer area and wetland:

   a. Shield stationary outdoor lighting away from buffer;

   b. Route stormwater runoff away from buffer and wetland if storm drainage conveyance system is available;

   c. Use low impact development techniques to reduce water quality impacts if storm drainage conveyance system is not available;

   d. Fence the buffer edge upland of the wetland to prevent domestic animals from accessing the buffer; and encourage adjacent landowner to use best management actions relating to fertilizers and pesticides.

   e. Maintain or restore connections to offsite areas that are undisturbed.

5. Wetland buffers do not apply to isolated Category 3 and 4 wetlands when the following four criteria are present:

   a. The wetland is less than 1,000 square feet in area;

   b. The wetland is not associated with a riparian area or buffer;

   c. The wetland is not part of a wetland mosaic; and

   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.

6. Required wetland buffers do not extend over the upland side of an existing road or street that bisects a wetland buffer area.

7. New or expanded development shall maintain a minimum building setback of ten feet from the landward edge of a wetland buffer. This setback shall remain an open space that may include architectural features, landscaping, decks, and patios.

E. Wetland Buffer Averaging. The city may allow the averaging of buffer widths if this will improve the protection of wetland functions, or if it is the only way to allow for reasonable use of a parcel. Buffer averaging may occur in the following situations:

1. Averaging to improve wetland protection when all of the following conditions are present:

   a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower rated area;

   b. The buffer is increased adjacent to the higher functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower functioning or less sensitive portion;

   c. The total area of the buffer after averaging is equal to the area required without averaging; and

   d. The buffer at its narrowest point is never less than three-quarters of the required width.

2. Averaging to allow reasonable use of a parcel when all of the following conditions are present:

   a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;

   b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland professional;

   c. The total buffer area after averaging is equal to the area required without averaging; and

   d. The buffer at its narrowest point is never less than three-quarters of the required width.

F. Wetland Mitigation

1. If an application for development activities makes it necessary to alter or eliminate a wetland, the applicant shall prepare a mitigation plan consistent with Section 14.15.020.H.
2. Altered wetlands shall require mitigation to ensure the same level of wetland function and value that existed at the time of the permit application. Table 2 below sets mitigation ratios for the type of action taken.

Table 2: Wetland Mitigation Ratios

	Category 1	Category 1 Forested	Category 1 Estuarine	Category 2	Category 2 Estuarine	Category 3	Category 4
Re-establishment or creation	4:1	6:1	Case-by-case	3:1	Case-by-case	2:1	1.5:1
Rehabilitation only	8:1	12:1	6:1	6:1	4:1	4:1	3:1
Re-establishment or creation (RC) & rehabilitation (RH)	1:1 RC & 6:1 RH	1:1 RC & 10:1 RH	Case-by-case	1:1 RC & 4:1 RH	Case-by-case	1:1 RC & 2:1 RH	1:1 RC & 1:1 RH
Re-establishment (RC)or creation & enhancement (E)	1:1 RC & 12:1 E	1:1 RC & 20:1 E	Case-by-case	1:1 RC & 8:1 E	Case-by-case	1:1 RC & 4:1 E	1:1 RC & 2:1 E
Enhancement only (E)	16:1	24:1	Case-by-case	12:1	Case-by-case	8:1	6:1

Section 14.15.040 Geologically hazardous areas

A. Geologically Hazardous Areas Designation.

1. The city shall regulate development activities in geologically hazardous areas to protect the public's health, safety, and welfare. Development activities in geologically hazardous areas shall:

   a. Minimize erosion and movement of sediment;

   b. Preserve or replace vegetation in erosion hazard areas;

   c. Prevent increased surface water discharge to adjacent properties;

   d. Prevent decreased slope stability on adjacent properties: and

   e. Design or mitigate projects in geologically hazardous areas to eliminate unsafe conditions to on-and off-site property owners.

2. The city adopts by reference the following maps and best available science resources for geologically hazardous areas:

   a. Designating Geologically Hazardous Areas:

      i. Web Soil Survey, Natural Resources Conservation Service, USDA, http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm;

      ii. Washington Department of Natural Resources Geologic Information Portal interactive maps:

         (A) Washington Interactive Geologic Map;

(B) Landslides of Washington State;

(C) Tsunami Evacuation Map; and

(D) Subsurface Geology Information System;

iii. Washington Department of Natural Resources, Tsunami Evacuation Brochure for Raymond and South Bend, July 2007.

b. If the location, designation, or classification of a geologically hazardous area shown on any map adopted by reference under the South Bend Municipal Code is in conflict with the determination of any field investigation, the latter shall prevail.

3. Designated geologically hazardous areas are areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development occurs in areas of significant hazard. Geologically hazardous areas with significant hazard include:

a. Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

i. Erosion hazard;

ii. Landslide hazard;

iii. Seismic hazard; or

iv. Areas subject to other geological events such as coal mine hazards and volcanic hazards including mass wasting, debris flows, rockfalls, and differential settlement.

b. Erosion hazard areas identified by the United States Department of Agriculture Soil Conservation Service as having a "severe" rill and inter-rill erosion hazard.

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

i. Areas of historic failures, such as:

(A) Those areas delineated by the United States Department of Agriculture Soil Conservation Service as having a "severe" limitation for building site development;

(B) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published as the United States Geological Survey or Department of Natural Resources Division of Geology and Earth Resources;

ii. Areas with all three of the following characteristics:

(A) Slopes steeper than 15 percent, and

(B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and

(C) Springs or ground water seepage;

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

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

v. Slopes having gradients steeper than 80 percent subject to rockfall during seismic shaking;

vi. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;

vii. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;

viii. Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

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

i. The magnitude of an earthquake;

ii. The distance from the source of an earthquake;

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

iv. The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table.

B. Geologically Hazardous Areas Technical Reports

1. The city may require a technical report prepared by a qualified professional for any non-exempt development activities proposed in a geologically hazardous area. The report shall:

a. Determine the exact boundaries of all geologically hazardous areas affecting the site and the impact of the proposed development;

b. Assess the geologic characteristics of the soils, sediments, and/or rock on the project site and on potentially affected neighboring properties;

c. Analyze the hazards in relation to the project and potentially affected adjacent properties;

d. Include plans for the proposed development that show:

i. The location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to adjacent properties and its structures;

ii. Areas that will be cleared and retained in natural vegetation; and

e. Recommend mitigation measures or appropriate buffers to protect the public's health, safety, and welfare from the hazard(s).

C. Mitigation in Geologically Hazardous Areas. Engineering, design, or modified construction or mining practices can reduce or mitigate some geological hazards so that risks to health and safety are acceptable. However, when technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is prohibited.

Section 14.50.050 Fish and wildlife habitat conservation areas

A. Fish and Wildlife Habitat Conservation Areas Designation.

1. Designated fish and wildlife habitat conservation areas include:

a. Areas with which endangered, threatened, and sensitive species have a primary association;

b. Habitats and species of local importance;

c. Commercial and recreational shellfish areas;

d. Kelp and eelgrass beds; herring and smelt spawning areas;

e. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

f. Waters of the state and their associated riparian areas; and

g. State natural area preserves and natural resource conservation areas.

2. The city adopts by reference the following maps and best available science resources for fish and wildlife habitat conservation areas:

a. Designation and Protection:

i. Priority Habitats and Species Interactive Mapping, Washington Department of Fish and Wildlife (http://wdfw.wa.gov/mapping/phs/);

ii. Salmon and Steelhead Habitat Limiting Factors in the Willapa Basin, Washington State Conservation Commission (Smith), undated;

iii. SalmonScape Interactive Mapping, Washington Department of Fish and Wildlife (http://apps.wdfw.wa.gov/salmonscape/);

iv. Water typing system, Section 222-16-030 of the Washington Administrative Code;

v. Management Recommendations for Washington's Priority Species, Volumes I through V, Washington Department of Fish and Wildlife;

vi. Pacific County (WRIA 24) Strategic Plan for Salmon Recovery, Pacific County, June 2001; and

vii. Stream Habitat Restoration Guidelines, Washington State Aquatic Habitat Guidelines Program, 2012.

B. Standards for Protection of Fish and Wildlife Habitat Conservation Areas

1. Development activities occurring on lands and waters containing documented habitats for plant and animal species in fish and wildlife habitat conservation areas shall not create a net loss of existing function.

2. Development activities allowed in fish and wildlife habitat conservation areas shall be consistent with the species located there and shall be regulated additionally by

restrictions defined in applicable federal, state and local regulations regarding the species.

3. Because of the limited presence of intact riparian vegetation along many shorelines within the city, shoreline development should ensure no net loss of these areas to the greatest extent possible. Depending on the width and quality of the riparian cover, development should retain riparian vegetation as a buffer to ensure no net loss of water quality, fish and wildlife habitat, estuarine wetlands, and/or bank protection.

C. Buffer requirements for fish and wildlife habitat conservation areas

1. Buffers are necessary to protect the integrity, function, and value of shorelines as fish and wildlife habitat conservation areas. Buffer widths shall reflect a balance between the sensitivity of the species or habitat and the intensity of the adjacent human use or activity.
2. For development along Type S through Ns waters, development shall protect shoreline vegetation by maintaining an undisturbed buffer width as provided for the following water types:

    a. Buffer widths along Type S waters shall be consistent with the shoreline buffer provisions within the City of South Bend Shoreline Master Program;
    b. Type F water greater than 10 feet wide: 150 feet.
    c. Type F water 10 feet or less in width: 100 feet.
    d. Type Np water: 75 feet.
    e. Type Ns water: 50 feet.

3. A habitat management technical report shall determine required buffers necessary for protecting endangered, threatened, and sensitive species not within buffers for Type S through Ns waters.
4. New or expanded development shall maintain a minimum building setback of ten feet from the landward edge of the buffer. This setback shall remain an open space that may include architectural features, landscaping, decks, and patios.

D. Buffer Averaging. The city supervisor may allow the recommended habitat area buffer width to be reduced in accordance with a technical report, the best available science, and the management recommendations issued by the Washington Department of Fish and Wildlife, only if:

1. It will not reduce stream or habitat functions;
2. It will not adversely affect salmonid habitat;
3. It will provide additional natural resource protection, such as buffer enhancement;

4. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
5. The buffer area width is not reduced by more than twenty-five percent (25%).

E. Technical reports for fish and wildlife habitat conservation areas

1. The city may require a technical report prepared by a qualified professional for any non-exempt development activity proposed in or adjacent to a fish and wildlife habitat conservation area.
2. Technical reports shall reflect the guidelines set forth in the Management Recommendations for Washington's Priority Species, Volumes I through V.
3. The format of a technical report shall include:

    a. A detailed description of vegetation on and adjacent to the project area and its associated buffer;

    b. The identification of any species of local importance, priority species, or endangered,

    c. Threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

    d. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

    e. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;

    f. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded before the current proposed land use activity; and

    g. A discussion of ongoing management practices that will protect habitat after a project's completion, including a description for monitoring and maintenance programs.

Section 14.15.60 Frequently flooded areas

A. Frequently Flooded Areas Designation and Protection

1. Frequently flooded areas are those same areas regulated by the floodplain district, Chapter 14.10 SBMC. Protection of frequently flooded areas is as provided in that chapter.

2. The city adopts by reference the following maps and best available science resources for frequently flooded areas:

   a. Flood Insurance Study, City of South Bend, Washington, May 1979, published by the U.S. Department of Housing and Urban Development, Federal Insurance Administration.

   b. Flood Insurance Rate Map, City of South Bend, Washington, Community Panel Number 53049C0245D, effective date May 18, 2015.

INTRODUCED and **PASSED** on the 24th day of October, 2016 by the following vote:

Ayes – 4 **Noes – Ø** **Absent – 1**

Mayor Julie K Struck

Julie K. Struck, Mayor

AUTHENTICATED BY: Dee Roberts

Dee Roberts, Clerk/Treasurer

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