

**APPENDIX A.7  
EMC 19.37  
CRITICAL AREAS  
AND**

**APPLICABLE DEFINITIONS IN EMC 19.4**

**Chapter 37  
CRITICAL AREAS**

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**37.010 User guide.**

Many areas of Everett have been or may become designated, identified, inventoried, classified or rated as critical areas by the city or other public agencies. This chapter establishes regulations for development within or near all critical areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this chapter. This chapter contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of a critical area or its buffer unless such alteration is in compliance with the requirements of this chapter. Alteration includes the terms “use” and “development” as defined in this title, and includes any modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in Section 37.050.

Maps of known critical areas are maintained by the city. However, the presence, location and boundaries of all critical areas are not known. A site-specific analysis may be required to determine the presence, location and classification of critical areas. (Ord. 2909-06 § 1, 2006)

**37.020 Purpose.**

Erosion, flood, landslide, and seismic hazard areas, streams, wetlands, protective buffers, and wildlife habitat areas constitute critical areas that are of special concern to the city. The purpose of this chapter is to designate, classify and protect the critical areas of the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

- A. Preserving, protecting, and restoring critical areas by regulating development within such areas and their buffers;
- B. Mitigating unavoidable adverse impacts by regulating alterations when protection cannot be required;
- C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;
- D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:
  - 1. Unnecessary maintenance and replacement of public facilities,
  - 2. Publicly funded mitigation of avoidable impacts,
  - 3. Public costs for emergency rescue and relief operations where the causes are avoidable, or
  - 4. Degradation of the natural environment;
- E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;
- F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of critical areas and the respective development limitations of such areas;
- G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals; and
- H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 20.04 of the Everett Municipal Code, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city. (Ord. 2909-06 § 2, 2006)

**37.030 Applicability.**

A. This chapter establishes regulations for the protection of critical areas that are not otherwise regulated by the Shoreline Management Act and city of Everett shoreline master program. The provisions of this chapter apply to all lands, all land uses and development activity, and all structures or facilities outside of shoreline jurisdiction in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government agency, or other entity that owns, leases or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter. No development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.

B. In addition to the requirements of this chapter, the applicant shall obtain all necessary state and federal and other local permits. (Ord. 2909-06 § 3, 2006)

**37.040 Critical area features.**

On all lots containing or adjoining critical areas, the following features and their buffers shall not be altered or developed except as otherwise permitted by this chapter:

- A. Area of flood hazard (if located in a designated floodplain, see Chapter 19.30 of the Everett Municipal Code);
- B. Wetlands;
- C. The following geologically hazardous areas:
  - 1. Erosion hazard areas;
  - 2. Landslide hazard areas;
  - 3. Seismic (liquefaction) hazard areas;
- D. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes and ponds less than twenty acres in size, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas listed in Section 37.140.A.5;
- E. Ground water discharge areas, such as springs and seeps, that are associated with or occur upon any of the critical areas listed in subsections A through D of this section. (Ord. 2909-06 § 4, 2006)

**37.050 Exemptions—Exceptions—Modifications.**

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification as provided in this chapter. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to other requirements of this title of the city code.

All activities or developments which are exempted, excepted, or granted modifications shall use reasonable methods to avoid and minimize potential impacts to critical areas, including use of any applicable best management practices. Such activities or developments which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable.

- A. Exemptions. The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. 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 expense of the property owner.
  - 1. Emergencies that threaten the public health, safety and welfare, as verified by the city. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area and/or its buffer;
  - 2. Legally constructed structures and improvements in existence on the date the ordinance codified in this chapter becomes effective that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, expanded or replaced; provided, that the new construction or related activity does not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code;
  - 3. Existing and ongoing agriculture in agricultural zones in existence as of the date this chapter becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities and a development

activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of the date this chapter becomes effective. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas;

4. Normal and routine maintenance of legally constructed irrigation and drainage ditches; provided, that this exemption shall not apply to any ditches used by salmonids;
5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this chapter becomes effective;
6. Entirely artificial structures or wetlands intentionally constructed by humans from upland areas for purposes of stormwater drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter;
7. Wetland Size Exemptions. The following wetlands are exempt from compliance with the mitigation sequencing provisions in Section 37.120.A of this chapter:
  - a. Category I, II, III, and IV wetlands less than one thousand square feet in area that meet all of the following criteria:
    - i. The wetland is not associated with a riparian corridor;
    - ii. The wetland is not part of a wetland mosaic; and
    - iii. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife.
  - b. Category III and IV wetlands between one thousand square feet and four thousand square feet in area that meet all of the following criteria:
    - i. The wetland is not associated with a riparian corridor;
    - ii. The wetland is not part of a wetland mosaic;
    - iii. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife; and
    - iv. The wetland scores less than twenty points for habitat in the 2004 Western Washington Wetland Rating System.

Mitigation must be provided for any approved impacts per Section 37.120.C through F or payment of a mitigation fee to the city. Payment of a mitigation fee is allowed subject to the city establishing a program to mitigate cumulative impacts of wetland losses by acquiring wetlands, acquiring conservation easements which will protect wetlands, establishing wetland mitigation banks or purchasing mitigation credits in established wetland mitigation banks, or creating wetlands. The program must establish a mitigation fee schedule for exempt wetlands. Mitigation fees shall be paid to the city prior to the issuance of permits authorizing wetland alteration.

8. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets and public park facilities when the activity does not expand or encroach further into the critical area, does not significantly impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:
  - a. Normal, routine, and emergency maintenance or repair of existing utility structures or rights-of-way, including vegetation management.

- b. Installation, construction, or modification in improved street rights-of-way and replacement, operation or alteration of the following facilities:
  - i. Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in EMC Title [15](#), Local Project Review Procedures;
  - ii. Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in EMC Title [15](#), Local Project Review Procedures;
- c. Normal and routine maintenance or repair of public streets, state highways, and public park facilities, including vegetation management. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area, nor does it include construction of a maintenance road or the dumping of maintenance debris;
- 9. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the state Department of Natural Resources.

**B. Reasonable Use Exception.**

- 1. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:
  - a. There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and
  - b. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and
  - c. Any alterations permitted subject to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and
  - d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of the ordinance codified in this chapter; and
  - e. The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.
- 2. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the submittal shall include the following information which will be used to evaluate the criteria for reasonable use exception:
  - a. The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;
  - b. A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;
  - c. An analysis of the minimum development necessary to achieve “reasonable economic use” of the lot, including a narrative which includes a factual basis for this determination;
  - d. An analysis of the impact that the development described in subsection B.2.c of this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;

- e. An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether preproject mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the Department of Ecology's Stormwater Management Manual for Western Washington (2005), including low impact development techniques when feasible;
  - f. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the critical areas;
  - g. An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;
  - h. A description of any modifications needed for the required front, side and rear setbacks, building height, and landscape widths to provide for a reasonable use while providing protection to the critical areas;
  - i. A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible.
  - j. Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.
3. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:
- a. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while providing greater protection to the critical areas than if the standard were met;
  - b. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the critical areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot. Where buffer reduction is permitted, enhancement/restoration of the buffer and/or critical area must be provided so that mitigation results in no net loss of critical area and buffer functions to the maximum extent feasible; or
  - c. If a reasonable economic use of a lot cannot exist by means of either subsection B.3.a or b of this section, then the planning director is authorized, using the review process described in EMC Title [15](#), Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection B.3.a or b of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:
    - i. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:
      - (A) The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property; or

(B) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All dwelling units on such lots shall be single-family dwellings.

ii. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

iii. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

iv. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

4. All other requirements of this chapter shall apply to the subject property, including but not limited to submittal of mitigation plans, monitoring reports, and assurance devices, installation of fencing and signs, and recording of protective covenants.

C. Public Utility and Infrastructure Exception. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage, electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed by the hearing examiner using the review process described in EMC Title [15](#), Local Project Review Procedures.

The hearing examiner may approve, or approve with modifications, such a request only when the following findings are made:

1. The application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements;
2. There is no other reasonable alternative to the proposed development with less impact on the critical area; and
3. The proposal fully mitigates any impacts on the critical areas.

D. Prohibition on Variances—Other Exceptions Permitted by This Chapter. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this chapter. The following sections permit alteration or modification of the requirements of this chapter for protection of critical areas:

1. Section 37.080 for modification of standards for geologically hazardous areas;
2. Section 37.110 for modification of standards for wetlands and their required buffers;
3. Section 37.170 for modification of standards for streams and their required buffers.

E. Alternative Best Available Science Analysis. The planning director may, using the review process described in EMC Title [15](#), Local Project Review Procedures, authorize a modification to the standards in this chapter as follows:

1. An applicant must submit a critical area study by a qualified professional that documents that the proposed development design/standards will result in a net improvement of the functions of the critical area over that which would be obtained by applying the standard prescriptive measures contained in this chapter. The study must address best available science as it relates to the critical area functions.
2. The study must be circulated to appropriate state and federal resource agencies for review and comment opportunity prior to planning director authorization.
3. The development design/standards may include, but are not necessarily limited to, measures prescribed in an approved watershed conservation plan or other similar conservation plan that addresses critical areas protection consistent with this section.
4. The proposed design/standards must not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located. (Ord. 2909-06 § 5, 2006)

**37.060 Permitted uses and activities.**

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations.

B. The following uses/activities are permitted in critical areas and their buffers:

1. Minor utility construction projects. Utility projects which have minor or short-duration impacts to critical areas, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and required buffers, subject to the following criteria:

a. The activity does not significantly impact a Type F stream or category 1 wetland, or a fish and wildlife habitat conservation area; and

b. There is no reasonable alternative to the proposed activity with less impact on the critical area; and

c. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility; and

d. The activity results in disturbing less than one hundred square feet of critical area and buffer.

2. Buffer management when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted subject to written approval from the director:

a. Hazard tree removal with replanting. The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area and buffer functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

i. The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, an assessment and recommendation from a certified arborist, registered landscape architect or professional forester that documents the hazard and provides a replanting schedule for replacement trees.

ii. Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.

- iii. Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan.
  - iv. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified biologist shall be consulted to determine timing and methods of removal that will minimize impacts. The biologist's report shall be circulated to agencies with expertise for review and comment prior to approval by the director.
  - v. If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property.
  - vi. Unless otherwise provided, or as a necessary part of an approved alteration, mitigation, or buffer management plan, removal of any vegetation or woody debris from a wildlife habitat conservation area or wetland, or required stream or wetland buffer, shall be prohibited.
- b. Weed removal. The removal of the following invasive, nonnative and noxious weeds in conjunction with a mitigation plan or buffer management plan approved by the director, including revegetation with native plants. The director may require that only hand tools or light equipment be used for removal.
- i. Invasive and noxious weeds identified in a list adopted by the city or county;
  - ii. English Ivy (*Hedera helix*);
  - iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*) and evergreen blackberry (*Rubus laciniatus*);
  - iv. Scot's broom (*Cytisus scoparius*).
4. Public and private pedestrian paths and trails. Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and subject to approval by the director:
- a. The trail or path is designed to minimize impacts to the critical area and its buffer. The trail is located on the outer edge of the buffer, except for areas which provide for public viewpoints or educational opportunities and which are designed to minimize the footprint of the trail/path within the critical area or its buffer. Trails and paths shall not be permitted when critical area functions will be substantially degraded.
  - b. The trail surface meets all other requirements including all applicable water quality standards. Use of pervious surfaces is encouraged.
  - c. Critical area and buffer widths shall be increased where possible, equal to the width of the trail corridor, including disturbed areas.
  - d. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.
  - e. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.
5. Stormwater facilities are allowed in stream and wetland buffers subject to all of the following criteria:
- a. Stormwater management facilities are permitted only within the outer twenty-five percent of the buffer.
  - b. The subject buffer area has been previously substantially and legally altered and is unvegetated, sparsely vegetated, and/or vegetated with nonnative or invasive species.
  - c. Stormwater facilities shall be integrated into the stream or wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits

with the natural design of the proposed facility and does not interfere with wildlife passage or adversely impact biological functions of the buffer or the adjacent critical area.

- d. The location of a maintenance/access road is limited to the upland side of the facility outside the buffer.
- e. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.
- f. All site development plans should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

For Type Np and Ns streams and category II, III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. A significant increase in wetland function shall be defined as no reduction in any individual function as measured by the Western Washington Wetland Rating System, and at least a five-point overall increase in the combined function score as measured by the Western Washington Wetland Rating System. (Ord. 2909-06 § 6, 2006)

**37.070 Submittal requirement—Supporting information.**

A. Submittal Requirements. Applications for land uses or developments proposed on lots on or adjacent to critical areas shall be filed with the planning department. The city may waive specific submittal requirements determined to be unnecessary for review of a specific application. All developments proposed on lots which may contain or adjoin critical areas and/or buffers shall be evaluated by the applicant to provide the information necessary for the planning department to determine if and to what extent the site contains critical areas.

B. Supporting Information. All land uses and developments proposed on or adjacent to critical areas and their buffers shall include studies which describe the environmental conditions of the site. No activity, including clearing, filling or grading, shall be permitted until the information required by this section is reviewed and approved by the city. Such studies shall be prepared by experts with demonstrated qualifications in the area of concern, who shall prepare the studies in accordance with the requirements of this chapter to the satisfaction of the planning department. The city may retain consultants at the applicant's expense to assist the review of studies and/or conduct site evaluations which are outside the range of staff expertise. The planning director is authorized to develop and maintain a detailed list of required study contents. (Ord. 2909-06 § 7, 2006)

**37.080 Geologically hazardous areas.**

A. Designation. Except for geologically hazardous areas regulated by the shoreline master program, the following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

- 1. Landslide hazard areas:
  - a. Those areas defined as high and very high/severe risk of landslide hazard in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991:
    - i. Very high/severe: slopes greater than fifteen percent in the Qtb, Qw, and Qls geologic units; and slopes greater than fifteen percent with uncontrolled fill.
    - ii. High: slopes greater than forty percent in all other geologic units (not Qtb, Qw, and Qls or uncontrolled fill).
  - b. Those areas defined as medium risk of landslide hazard in the Dames and Moore Methodology for Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, when combined with springs or seeps, immature vegetation, and/or no vegetation:
    - i. Slopes less than fifteen percent for Qtb, Qw, and Qls geologic units and uncontrolled fill.

- ii. Slopes of twenty-five percent to forty percent in all other geologic units.
  - c. Any area with all three of the following characteristics:
    - i. Slopes greater than fifteen percent; and
    - ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
    - iii. Springs, groundwater seepage, or saturated soils.
  - d. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to the present) or which is underlain or covered by mass wastage debris of that epoch.
  - e. Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action.
  - f. Areas of historic failures, including areas of unstable, old and recent landslides or landslide debris within a head scarp, and areas exhibiting geomorphological features indicative of past slope failure, such as hummocky ground, slumps, earthflows, mudflows, etc.
  - g. Any area with a slope of forty percent or steeper and with a vertical relief of fifteen or more feet, except those manmade slopes created under the design and inspection of a geotechnical professional, or slopes composed of consolidated rock.
  - h. Areas that are at risk of landslide due to high seismic hazard.
  - i. Areas that are at risk of landslides or mass movement due to severe erosion hazards.
2. Seismic/liquefaction hazard areas:
- a. Those areas mapped as seismic/liquefaction hazards per the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991.
  - b. Those areas mapped as high and moderate to high liquefaction susceptibility on the Liquefaction Susceptibility Map of Snohomish County, Washington, Washington State Department of Natural Resources, Palmer, Stephen, et al., September, 2004.
3. Erosion hazard areas:
- a. Those areas defined as high and very high/severe risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991:
    - i. High erosion hazard areas include slopes of twenty-five to forty percent in Qva and Qal geologic units; and slopes of greater than forty percent in other (not Qva or Qal) geologic units.
    - ii. Very high/severe erosion hazard areas include slopes of greater than forty percent in Qva and Qal geologic units.
  - b. Those areas defined as medium risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, when they contain debris and mud flows, gullyng or rifling, immature vegetation, or no vegetation:
    - i. Slopes of twenty-five to forty percent in other (not Qva or Qal) geologic units.
4. Other areas which the city has reason to believe are geologically hazardous.

B. Protective Requirements.

1. Geotechnical Assessment Requirements. Development proposals on or within two hundred feet of any area designated as or which, based on site-specific field investigation, the city has reason to believe are geologically hazardous areas shall submit a geological assessment as required by subsection F of this section.

2. The setback buffer requirement shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 18 of the International Building Code (IBC), or as the IBC is updated and amended.

a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

b. The city may require larger setback buffer widths under any of the following circumstances:

i. The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.

ii. The area has a severe risk of slope failure or downslope stormwater drainage impacts.

iii. The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of the geological assessment.

3. Unless otherwise permitted as part of an approved alteration, the setback buffers required by this subsection shall be maintained in native vegetation to provide additional soil stability and erosion control. If the buffer area has been cleared, it shall be replanted with native vegetation in conjunction with any proposed development activity.

4. The city may impose seasonal restrictions on clearing and grading within two hundred feet of any geologically hazardous areas.

C. Permitted Alterations. Unless associated with another critical area, the planning director, using the review process described in EMC Title [15](#), Local Project Review Procedures, may allow alteration of an area identified as a geologically hazardous area or the setback buffers specified in the IBC if an approved geotechnical report demonstrates that:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;

2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;

4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;

5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;

6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;

7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and

8. The improvements are certified as safe as designed and under anticipated conditions by a geologist.
- D. Additional Requirements. As part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by subsection B of this section:
1. The city shall require:
    - a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by Section 37.220 of this chapter;
    - b. Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the city attorney. Such document shall identify any limitations placed on the approved alterations.
  2. The city may require:
    - a. The presence of a geologist on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;
    - b. Vegetation and other soil-stabilizing structures or materials be retained or provided.
    - c. Long-term maintenance of slopes and on-site drainage systems.
- E. Prohibited Alterations. Modification of geologically hazardous areas shall be prohibited under the following circumstances:
1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under Section 37.050 of this chapter. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.
  2. Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on-site or off-site shall be prohibited.
- F. Geological Assessment. A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity.
1. A field investigation and geological assessment shall be completed under the responsible charge of a geologist to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.
    - a. The geological assessment shall be submitted in the form of a geotechnical letter when the geologist finds that no active geological hazard area exists on or within two hundred feet of the site. The geotechnical letter shall meet the minimum required content and shall be in the format established by the director.
    - b. The geological assessment shall be submitted in the form of a geotechnical report when the geologist finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements established by the director pursuant to Section 37.070 of this chapter.
  2. Geological assessments shall be submitted to the department for review and approval as part of the integrated permit review process described in EMC Title [15](#), Local Project Review Procedures. The department shall review the geological assessment and either:

- a. Accept the geological assessment; or
  - b. Reject the geological assessment and require revisions or additional information.
3. When the geological assessment has been accepted, the department shall issue a decision on the land use permit application as provided for in EMC Title [15](#), Local Project Review Procedures.
4. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.
5. A geological assessment shall include a field investigation and may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.
6. A geological assessment shall include the following minimum information and analysis:
- a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in subsection A of this section, Designation.
  - b. An analysis of the potential impacts of the proposed development activity on any geologically hazardous area. The analysis shall include information regarding any potential geological hazard that could result from the proposed development either on-site or off-site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope, whether the slope is part of the subject property or starts off-site.
  - c. Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis. The mitigation plan shall include recommendations regarding any long-term maintenance activities that may be required to mitigate potential hazards.
  - d. The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments, or geotechnical investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.
  - e. The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.
7. Geological assessments shall be prepared under the responsible charge of a geologist, and signed, sealed and dated by the geologist. (Ord. 2909-06 § 8, 2006)

**37.090 Wetland designation, delineation, mapping and rating.**

- A. Wetland Delineation. Wetlands shall be identified and delineated in accordance with the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94) as required by RCW 36.70A.175. All areas within the city meeting the criteria in the wetland definition in the Washington State Wetlands Identification and Delineation Manual, regardless of any formal identification, are hereby designated critical areas and shall be subject to the provisions of this chapter; provided, however, that wetlands in shoreline jurisdiction are regulated by the shoreline master program, rather than this chapter.
- B. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and may be updated as new wetlands are identified. It is the actual presence of wetlands on a property that triggers the requirements of this chapter. The exact location of a wetland boundary shall be determined through field investigation by a qualified

professional applying the Washington State Wetlands Identification and Delineation Manual methods and procedures.

C. Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington, Revised (Ecology Publication No. 04-06-025). Wetlands, as defined by this chapter, shall be classified as category I, category II, category III, or category IV.

1. Category I wetlands are those that: (a) represent a unique or rare wetland type; or (b) are more sensitive to disturbance than most wetlands; or (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a very high level of function. All wetlands that meet one or more of the following criteria shall be considered category I wetlands:

a. Wetlands that are designated as Natural Heritage Wetlands by the Washington State Department of Natural Resources;

b. Bogs;

c. Mature forested wetlands larger than one acre;

d. Wetlands that perform a very high level of function as evidenced by a score of seventy points or more on the Wetland Rating Form—Western Washington.

2. Category II wetlands are ecologically important and provide a high level of function. They are difficult but not impossible to replace. Wetlands that meet the following criteria shall be considered category II wetlands:

a. Wetlands that do not meet the criteria of category I wetlands;

b. A wetland identified by the state Department of Natural Resources as containing “sensitive” plant species;

c. Wetlands with high functions and values as indicated by a score of fifty-one to sixty-nine points on the Wetland Rating System Form—Western Washington.

3. Category III wetlands provide a moderate level of functions. They are typically more disturbed, smaller, and/or more isolated in the landscape than category I or II wetlands. Wetlands that meet the following criteria shall be considered category III wetlands:

a. Wetlands that score thirty to fifty points on the Wetland Rating Form—Western Washington.

4. Category IV wetlands provide the lowest level of function and are often heavily disturbed, but still provide important functions. Category IV wetlands include:

a. All wetlands that score less than thirty points on the Wetland Rating Form—Western Washington. (Ord. 2909-06 § 9, 2006)

**37.100 Wetland critical area report criteria.**

A. Wetland Report Required. If the city determines that wetland or buffer impacts may occur as a result of the proposal, a wetland report as required by Section 37.070 of this chapter and this section must be submitted by the applicant.

B. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland reports, or a professional who demonstrates expertise in wetland science to the satisfaction of the planning director. The qualifications of the professional who prepared the plan shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. The director shall have the authority to

hire an outside consultant at the applicant’s expense to review plans when the city has concerns about the accuracy or completeness of the plan.

C. Minimum Standards for Wetland Reports. The written report (and the accompanying plan sheets) shall contain the following information, at a minimum:

1. 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; and a description of the proposal;
2. Documentation of any fieldwork performed on the site, including delineations, function assessments, baseline hydrologic data, etc.;
3. Identification and characterization of all critical areas, wetlands, and buffers on or adjacent to the proposed project area. For areas off-site of the project site, estimate conditions within three hundred feet of the project boundaries using the best available information;
4. The wetland rating; hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site;
5. A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation;
6. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development;
7. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas pursuant to the mitigation sequencing provisions of this chapter;
8. A description of measures taken to protect and enhance existing habitat connections with other natural areas;
9. Site maps and site plans depicting delineated wetlands and buffers, impacts of the proposal on critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the director. (Ord. 2909-06 § 10, 2006)

**37.110 Standard wetland buffer width requirements.**

A. Standard Buffer Width.

1. Bogs shall have a minimum buffer width of one hundred ninety feet. The following minimum buffers of native vegetation shall apply to all other wetlands based upon the wetland category and score for habitat functions from the Wetland Rating Form—Western Washington. Buffers shall be measured from the wetland boundary delineated as required by Section 37.090.A of this chapter.

a. Category II and III wetlands scoring less than nineteen points for habitat function shall have the following buffers:

	Category II wetlands	Category III wetlands
Buffer Width	75	60

b. Category I, II, and III wetlands that score nineteen or more points for habitat shall have the following buffers:

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Habitat Points	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Buffer Width	75	75	75	90	105	120	135	150	165	180	195	210	225	225	225	225	225	225

c. Category IV wetlands that score nineteen or fewer points for habitat shall have a minimum buffer width of thirty-five feet.

d. Category IV wetlands that score twenty or more points for habitat shall have a minimum buffer width of forty-four feet.

2. Required Mitigation.

a. For wetlands that score moderate or high for habitat (twenty points or more for the habitat functions), the following criteria must be met:

i. When feasible, a relatively undisturbed vegetated corridor at least one hundred feet wide must be protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife (“relatively undisturbed” and “vegetated corridor” are defined in questions H.2.1 and H.2.2 of the Washington State Wetland Rating System for Western Washington, Revised. Priority habitats include:

- (A) Wetlands;
- (B) Riparian zones;
- (C) Marine/estuarine shorelines;
- (D) Urban natural open space.

The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.

ii. Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 37.1, are applied.

b. For wetlands that score less than twenty points for habitat, measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 37.1, must be applied.

Table 37.1: Mitigation Measures

Examples of Disturbance	Activities and Uses That Cause Disturbance	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Warehouses</li> <li>• Manufacturing</li> <li>• Residential areas</li> </ul>	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Manufacturing</li> <li>• Residential areas</li> </ul>	<ul style="list-style-type: none"> <li>• Locate noise-generating activities away from the wetland to the extent feasible</li> </ul>

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Polluted runoff*	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Manufacturing</li> <li>• Residential areas</li> <li>• Application of agricultural pesticides</li> <li>• Landscaping</li> </ul>	<ul style="list-style-type: none"> <li>• Comply with the Department of Ecology’s Stormwater Management Manual for Western Washington (2005)</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Manufacturing</li> <li>• Residential areas</li> <li>• Commercial</li> <li>• Landscaping</li> </ul>	<ul style="list-style-type: none"> <li>• Comply with the Department of Ecology’s Stormwater Management Manual for Western Washington (2005)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Impermeable surfaces</li> <li>• Lawns</li> <li>• Tilling</li> </ul>	<ul style="list-style-type: none"> <li>• Comply with the Department of Ecology’s Stormwater Management Manual for Western Washington (2005)</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Residential areas</li> </ul>	<ul style="list-style-type: none"> <li>• Use fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the Puget Lowland ecoregion; place wetland and its buffer in a separate tract</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Tilled fields</li> </ul>	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
<p>*Additional mitigation to minimize polluted runoff may be necessary if threatened or endangered species are present at the site.</p>		

3. All projects must include and integrate mitigation of land use impacts into the proposed project. Required mitigation measures shall be based upon the site-specific analysis required by this section. An analysis of potential impacts and recommended mitigation measures must be included in the wetland study required by this chapter.

Additionally, at a minimum the analysis shall address the potential land use impacts identified in Table 37.1. Mitigation of land use impacts must include, but not be limited to, reasonable mitigation of impacts identified in Table 37.1. In addition, for wetlands that score twenty or more points for habitat, the study shall include an analysis of existing habitat connections to priority habitats and include measures necessary to maintain those connections as required by subsection A.2 of this section.

4. The buffers required by subsection A.1 of this section assume high impact land uses adjacent to the wetland with mitigation of land use impacts sufficient to reduce buffers down to that required for moderate land use activities. Where a low impact land use is located adjacent to a wetland with a habitat score of nineteen or lower, the buffer width may be reduced by twenty-five percent. High, medium and low impact land uses are defined as follows:

- a. High impact land uses include: commercial, industrial, institutional, retail sales, high-intensity recreation (golf courses, ball fields), and residential uses with a density of more than one dwelling unit per acre.
  - b. Moderate impact land uses include residential uses with a density of one unit per acre or less, moderate-intensity open space (parks), and paved trails.
  - c. Low impact land uses include: low-intensity open space (such as passive recreation and natural resources preservation) and unpaved trails.
5. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be that required for the category of the wetland.
  6. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and groundcover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer vegetation shall be enhanced or restored to the width required by this section. The vegetation shall include native plant communities that are appropriate for the Puget Lowland ecoregion or with a plant community that provides similar functions.
  7. To maintain the integrity of the buffer, buildings and other structures shall be set back a minimum of ten feet from the edges of all wetland buffer boundaries.
  8. Hazard Trees in Buffer. The city may require that a hazard tree assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of Section 37.060.B.3 prior to final approvals for a development proposal.
- B. Increased Standard Wetland Buffer Width.** The minimum buffer width stated in subsection A of this section shall be increased:
1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
    - a. The minimum buffer for that particular wetland; or
    - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;
  2. When the wetland is used by salmonids, plant and/or animal species proposed or listed by the federal government or state as endangered, threatened, rare, candidate, sensitive or monitored; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees, and the increased buffer is necessary to protect such habitat;

When a habitat assessment or habitat management plan is required by Section 37.190 of this chapter and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;
  3. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by Section 37.080 of this chapter;
  4. When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or
  5. When the city finds, based upon a site-specific wetland analysis, that impacts on the wetland from a proposed development can only be mitigated by a greater buffer width.
- C. Standard Buffer Width Reduction for Category IV Wetlands.** Buffer reductions are allowed; provided, that the applicant demonstrates the proposal meets criteria in subsections C.1 through C.3 and either C.4 or C.5 of this section. If the criteria are met, buffers may be reduced by up to twenty-five percent or no less than twenty-six feet.

1. The buffer area has less than fifteen percent slopes, the existing buffer provides minimal vegetative cover and cannot provide the minimum water quality or habitat functions, and enhancement is proposed consistent with the following criteria:
    - a. A mitigation plan consistent with Sections 37.120.D, E and F is approved by the director, including, but not limited to, maintenance, monitoring and provisions for an assurance device;
    - b. The plan shall include plant densities not less than five feet on center for shrubs and ten feet on center for trees;
  2. A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science and special consideration for the conservation or protection measures necessary to preserve or enhance anadromous fisheries consistent with WAC 365-195-900 through 365-195-925; and
  3. Buffer width averaging is not utilized; and either
  4. Structures, public roads, or other substantial improvements separate the subject upland property from the wetland and due to their height or width, prevent or impair the delivery of buffer functions to the wetland, in which cases the reduced buffer width shall reflect the buffer functions that can be delivered to the wetland; or
  5. The wetland scores nineteen points or less for wildlife habitat.
- D. Buffer Width Averaging. The city may allow buffer width averaging; provided, that the total area on the lot contained within the buffer is not less than that required within the standard buffer, and that averaging will not reduce the wetland functions. The city may require buffer width averaging in order to provide protection to a particular portion of a wetland which is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland. The adjusted minimum buffer width shall not be less than seventy-five percent of the standard buffer width.
1. Protection of Significant Trees within the Buffer. If buffer width averaging is utilized and significant trees are identified on the outer edge of the reduced buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:
    - a. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.
    - b. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
    - c. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
    - d. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
    - e. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
    - f. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.
    - g. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.
- E. Required Fencing—Signs.

1. A temporary construction fence shall be placed along the construction setback line to prevent encroachment during construction. Except for utility and road projects, the city shall require any development proposed on a lot which contains or adjoins a wetland to provide a permanent fence or other structural protection at the edge of the wetland buffer to minimize encroachment into and disturbance of the wetland and buffer area after construction. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas.

2. The city may require the applicant to provide informational signs in conspicuous locations on the fence or near the wetland to identify the wetland as a critical area and the importance of maintaining it in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 36 of this title.

F. Where wetland functions have been improved due to voluntary implementation of an approved stewardship, restoration and/or enhancement plan that is not associated with required mitigation or enforcement, the standard wetland buffer width shall be determined based on the previously established wetland category and habitat score as documented in the approved stewardship and enhancement plan. (Ord. 2909-06 § 11, 2006)

**37.120 Avoiding wetland impacts.**

A. Preservation and Protection Goals. It is the short-term goal of this chapter that there be no net loss of the acreage or functions and values of all wetlands regulated by this chapter. The long-term goal is a net gain in functions and values. To realize wetland preservation goals, the city will require the following methods of wetland impact mitigation in order of preference:

1. Avoid impact altogether by not taking a certain action or parts of an action;
2. Minimize impact 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 impact;
3. Rectify the impact by repairing, rehabilitating or restoring the affected critical areas;
4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;
5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;
6. Monitor the impact and take appropriate corrective measures.

Where impacts cannot be avoided, the applicant shall seek to implement other appropriate mitigation actions.

B. Wetland Preservation/Alteration Thresholds.

1. Category I Wetlands. All category I wetlands shall be preserved except as provided in this chapter. The planning director, using the review process as described in EMC Title [15](#), Local Project Review Procedures, may allow alteration of category I wetlands:

- a. Where alteration is allowed pursuant to Section 37.050 of this chapter; or
- b. The alteration is to allow a public park or public recreational use; provided, that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

2. Category II, III, and IV Wetlands. All category II, III, and IV wetlands shall be preserved except as provided in this chapter. The planning director, using the review process described in EMC Title [15](#), Local Project Review Procedures, may allow alteration of category II wetlands:

- a. Where alteration is allowed pursuant to Section 37.050 of this chapter; or

b. Where impacts cannot be avoided, and the applicant demonstrates through a mitigation sequencing analysis that reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer are not feasible and will not accomplish the basic purpose of the project;

3. Category I, II, III, and IV Wetlands in the Silver Lake Watershed. When alteration of wetlands in the Silver Lake Watershed is allowed in subsections B.1 and B.2 of this section, the applicant must also demonstrate to the satisfaction of the planning director and public works director that such activities will result in an enhancement of wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if the water quality functions of the wetland will not be degraded. Any such proposed activities shall be reviewed using the review process described in EMC Title [15](#), Local Project Review Procedures;

4. The director may approve alteration of wetlands and buffers when completed to restore or enhance wetland functions.

C. Compensating for Wetland Impacts. Wetland and buffer alteration allowed by this section shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall wetland or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with subsection D of this section.

4. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, nonnative vegetation, or other material detrimental to the area by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.

5. Wetland Compensation Ratios. In approving alteration or relocation of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section apply to creation, restoration, and enhancement which is in-kind (within the same hydrogeomorphic (HGM) class), on or adjacent to the site, timed prior to or concurrent with alteration, and has a high probability of success. The city may accept or recommend compensation which is off-site and/or out-of-kind, if the applicant can demonstrate that on-site compensation is infeasible due to constraints such as parcel size or wetland type or that a wetland of a different type or location is justified based on regional needs or functions. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.2 shall be used, except as otherwise provided below in this subsection.

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Table 37.2: Standard Wetland Compensation Ratios

Category and Type of Wetland	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation (R/C) and Rehabilitation (RH)	Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
<b>Category I</b>					
Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Bog	Irreplaceable—Avoidance Required	6:1 Rehabilitation of a Bog	R/C not considered possible	R/C not considered possible	Case-by-case
Natural Heritage	Irreplaceable—Avoidance Required	6:1 Rehabilitation of a Natural Heritage Site	R/C not considered possible	R/C not considered possible	Case-by-case
Others	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
<b>Category II</b>					
Forested	4:1	8:1	1:1 R/C and 4:1 RH	1:1 R/C and 6:1 E	16:1
Others	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 2:1 E	8:1
Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
<p>Creation = The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevation that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.</p>					
<p>Reestablishment = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Reestablishment results in a gain in wetland acres. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.</p>					
<p>Rehabilitation = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic function of a degraded wetland. Activities could involve breaching a dike or reconnecting wetland to a floodplain or returning tidal influence to a wetland. Rehabilitation results in a gain in</p>					

wetland function but does not result in a gain in wetland acres.

Enhancement = The manipulation of the physical, chemical or biological characteristics of a wetland site to heighten, intensify or improve functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying the site elevation or the proportion of open water to influence hydroperiods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland function, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.

- a. Increased Mitigation Ratios. The city may increase the ratios under any one of the following circumstances:
    - i. Uncertainty as to the probable success of the proposed restoration or creation;
    - ii. Significant period of time between destruction and replication of wetland functions;
    - iii. The proposed mitigation will result in a lower category wetland or projected losses in functions relative to the wetland being impacted;
    - iv. The relocation is off-site or the replacement is with out-of-kind compensation;
    - v. The wetland has been illegally filled or altered.
  - b. Decreased Mitigation Ratios. The city may decrease these ratios under the following circumstances:
    - i. Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success.
    - ii. Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions will provide significantly greater functions than the wetland being impacted.
    - iii. The mitigation actions are conducted in advance of the impact and have been shown to be successful.
  - c. In no case shall the mitigation acreage be less than that which is altered.
6. When wetland compensation is allowed, the city may require that the wetland compensation be completed and functioning prior to allowing the existing wetland to be filled or altered. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered.
  7. The city may limit certain development activities near a wetland to specific months in order to minimize impacts on wetland functions.
  8. The city may apply additional conditions or restrictions or require specific construction techniques in order to minimize impacts on wetland functions.
  9. Wetland compensation shall not occur in areas having high-quality terrestrial habitat.
  10. When wetland compensation is allowed, mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas.
  11. When wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.

12. Wetland mitigation banks are sites where wetlands 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.

a. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland, a wetland of lesser size or functional value than the wetland being altered, or where the mitigation bank site substantially increases wetland functions in the watershed within which it is located. Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have a higher wetland function rating than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in subsection C.5 of this section as a guide. The amount of credit will be dependent upon the functions of the wetland being altered and the wetland being used for mitigation banking. The city, using the review process described in EMC Title 15, Local Project Review Procedures, may allow wetland mitigation banking under the following circumstances:

- i. When alteration is allowed pursuant to the “reasonable use” exception as provided in Section 37.050.B of this chapter;
- ii. When alteration is allowed for a water-dependent or water-related use;
- iii. When on-site or off-site mitigation in the immediate vicinity of the project is not reasonable;
- iv. When the wetland being altered is of a lower quality and has lesser functions than the wetland which is being used for the mitigation banking.

b. Wetland mitigation banks may be approved under the provisions of Chapter 173-700 WAC (currently a draft). For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- i. The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts.
- ii. The proposed use of credits is consistent with the terms and conditions of the bank’s certification.
- iii. Replacement ratios for projects using bank credits shall be consistent with the terms and conditions of the bank’s certification.
- iv. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank’s certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

D. Wetland and Buffer Mitigation Plans. When wetland or buffer alteration or buffer reduction is permitted by this chapter, a mitigation plan shall be required to describe the methods the applicant will use to minimize impacts to wetland functions. This plan is in addition to the requirements of Section 37.100 of this chapter. A detailed mitigation plan shall be approved by the city prior to any development activity occurring on a lot upon which wetland or wetland buffer alteration, restoration, creation or enhancement is proposed. The mitigation plan shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, or a professional who demonstrates expertise in wetland science to the satisfaction of the planning director. The qualifications of the professional who prepared the plan shall be included in the mitigation plan. The director shall have the authority to hire an outside consultant at the applicant’s expense to review plans when the city has concerns about the accuracy or completeness of the plan. The plan shall use accepted methodologies and include information as required by the planning director’s administrative guidelines, and shall:

1. Include a baseline study that quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation;
  2. Specify how functions will be preserved or replaced;
  3. Specify how impacts will be avoided, minimized or compensated for;
  4. Assess the potential changes in wetland hydroperiod from the proposed project and identify how the project design will mitigate adverse impacts to the wetland hydroperiod;
  5. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;
  6. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
  7. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
  8. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful; and
  9. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occurs on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This guarantee shall not be released until the applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.
- E. Construction Plans. Construction plans necessary to implement requirements of the detailed mitigation plan shall be provided prior to issuance of construction permits. Plans shall include the proposed construction sequencing and timing; surface and subsurface hydrologic conditions, including proposed hydrologic regimes for compensatory mitigation areas; grading and excavation details, erosion and sediment control measures; a planting plan specifying plant species, quantities, location, size, spacing, density, proper placement, fertilization standards, and provisions for temporary irrigation systems.
- F. Protective Covenants and Tracts. Wetlands and their buffers on development sites, including compensatory mitigation areas, shall be placed within a critical area protective covenant or tract as required by Section 37.220 of this chapter. (Ord. 2909-06 § 12, 2006)

**37.130 Areas of special flood hazard.**

Areas of special flood hazard shall be governed by the provisions of Chapter 30 of this title. (Ord. 2909-06 § 13, 2006)

**37.140 Fish and wildlife habitat conservation areas designation and mapping.**

A. "Fish and wildlife habitat conservation areas" means an area of habitat that is necessary and suitable for maintaining individual species, species diversity, or biological diversity. Fish and wildlife habitat conservation areas include:

1. Lakes and ponds less than twenty acres in size;

2. Streams/riparian corridors;
3. Habitats of primary association;
4. Continuous vegetative corridors linking watersheds; and
5. Significant biological areas listed by the city:
  - a. Plant associations of infrequent occurrence;
  - b. Commercial and recreational shellfish areas;
  - c. Kelp and eelgrass beds;
  - d. Herring, sand lance, and smelt spawning areas;
  - e. State natural area preserves and natural resource conservation areas; and
  - f. Significant biological areas of local importance:
    - i. Maulsby Swamp,
    - ii. Kasch Park (Bomarc) Bog,
    - iii. Simpson site, category I wetlands,
    - iv. Narbeck Swamp,
    - v. Jetty Island.

B. Fish and Wildlife Habitat Conservation Areas Designation. All areas meeting the definition of fish and wildlife habitat conservation areas above are designated as fish and wildlife habitat conservation areas, and are subject to the regulations in Sections 37.150 through 37.190 of this chapter, except that developments in shoreline jurisdiction are subject to the requirements in the shoreline master program.

C. Fish and Wildlife Habitat Conservation Areas Mapping. The approximate location and extent of fish and wildlife habitat conservation areas within the city of Everett's planning area are shown on maps compiled and maintained by the city planning and community development department. These maps shall be used as a general guide only for the assistance of property owners, project applicants, and other interested parties; boundaries are generalized. The actual type, extent and boundaries of fish and wildlife habitat conservation areas shall be determined by a qualified scientific professional according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the habitat location or type shown on the city's fish and wildlife habitat conservation areas maps and the criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall control.

D. Other mapping sources include:

1. Washington State Department of Fish and Wildlife priority habitat and species maps.
2. Washington State Department of Natural Resources Natural Heritage Program mapping data.
3. Anadromous and resident salmonid distribution maps contained in the habitat limiting factors reports published by the Washington Conservation Commission.
4. Washington State Department of Natural Resources state natural area preserves and natural resources conservation area maps. (Ord. 2909-06 § 14, 2006)

**37.150 Lakes, ponds, and created ponds.**

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A. Lakes. Lakes which are twenty acres or more shall be protected as required by the shoreline master program. Lakes and ponds which are less than twenty acres in size and are not subject to the shoreline master program shall be subject to the regulations in this section.

B. Buffers. Lakes and ponds have the following buffers of native vegetation:

1. Lakes and ponds used by salmonids: one hundred feet;
2. Lakes and ponds with no salmonid use: fifty feet.

If a wetland or stream occurs along the fringe of the pond or lake, the buffer shall be the greater of that required for the pond or lake or for the wetland or stream.

C. Buffer Reduction. If the required buffer is sparsely vegetated or vegetated with exotic invasive species, the city may allow the buffer to be reduced by up to twenty-five percent when the buffer is enhanced.

D. Access to the Water Through Buffers. Trails may be provided through the buffer to access the water. The width of trails shall be the minimum necessary, and should not exceed four feet. The trails should be one hundred percent porous to the maximum extent feasible.

E. All new development and redevelopment adjacent to lakes and ponds should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

F. Docks.

1. Repair and maintenance of an existing dock is permitted; provided, that:
  - a. There is no expansion in overwater coverage;
  - b. There is no increase in the size and number of pilings;
  - c. There is no use of toxic materials, such as creosote, CCA and other treated wood products;
  - d. There is no new spanning of water between three and thirteen feet deep; and
  - e. There is no new increase in the use of materials creating shade.
2. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions.

G. A critical area report is required for any development that will potentially impact a lake or pond or its buffer. The report shall be prepared by a professional wetland specialist, fisheries biologist, or wildlife biologist, as applicable. The report shall include information as required by the planning director's administrative guidelines, and shall:

1. Include a baseline study that quantifies the existing functions of the lake/pond, functions that will be lost, and the functions after mitigation;
2. Specify how functions will be preserved or replaced;
3. Specify how impacts will be avoided, minimized or compensated for;
4. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

5. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
  6. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful; and
  7. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.
- H. **Construction Plans.** Construction plans necessary to implement requirements of the detailed mitigation plan shall be provided prior to issuance of construction permits. Plans shall include site plans, cross-sections, the proposed construction sequencing and timing; surface and subsurface hydrologic conditions, including proposed hydrologic regimes for compensatory mitigation areas; grading and excavation details, erosion and sediment control measures; and a planting plan specifying plant species, quantities, location, size, spacing, and density.
- I. **Protective Covenants and Tracts.** Lakes/ponds and their buffers on development sites, including compensatory mitigation areas, shall be placed within a critical area protective covenant or tract as required by Section 37.220 of this chapter.
- J. **Created Lakes and Ponds.** Lakes and ponds created to mitigate alteration, restoration, creation, or enhancement activities allowed pursuant to this chapter shall be protected according to the applicable category (with salmonids or without salmonids) being replaced. (Ord. 2909-06 § 15, 2006)

**37.160 Classification of streams.**

- A. Streams shall be classified based upon an amended version of the water classification system established under WAC 222-16-030 as follows:
1. **Type S Stream.** Those streams, within their ordinary high water mark, as inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rules promulgated pursuant thereto, including the periodically inundated areas of their associated wetlands.
  2. **Type F Stream.** Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands that are not Type S streams, and which are demonstrated or provisionally presumed to be used by salmonid fish. Stream segments which have a width of two feet or greater at the ordinary high water mark and have a gradient of sixteen percent or less for basins less than or equal to fifty acres in size, or have a gradient of twenty percent or less for basins greater than fifty acres in size, are provisionally presumed to be used by salmonid fish. A provisional presumption of salmonid fish use may be refuted at the discretion of the community development director where any of the following conditions are met:
    - a. It is demonstrated to the satisfaction of the city that the stream segment in question is upstream of a complete, permanent, natural fish passage barrier, above which no stream section exhibits perennial flow;
    - b. It is demonstrated to the satisfaction of the city that the stream segment in question has confirmed, long-term, naturally occurring water quality parameters incapable of supporting salmonid fish;
    - c. Sufficient information about a geomorphic region is available to support a departure from the characteristics described above for the presumption of salmonid fish use, as determined in consultation with the Washington State Department of Fish and Wildlife, the Department of Ecology, affected tribes, or others;
    - d. The Washington State Department of Fish and Wildlife has issued a hydraulic project approval pursuant to RCW 77.55.100, which includes a determination that the stream segment in question is not used by salmonid fish;
    - e. No salmonid fish are discovered in the stream segment in question during a stream survey conducted according to the protocol provided in the Washington Forest Practices Board Manual, Section 13, Guidelines for Determining

Fish Use for the Purpose of Typing Waters under WAC 222-16-031; provided, that no unnatural fish passage barriers have been present downstream of said stream segment over a period of at least two years;

f. The following stream segments shall not be considered Type F streams:

- i. Merrill and Ring Creek south of Merrill Creek Parkway;
- ii. Edgewater Creek;
- iii. Narbeck Creek;
- iv. Forgotten Creek.

3. Type Np Stream. Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are perennial and are not Type S or Type F streams. However, for the purpose of classification, Type Np streams include intermittent dry portions of the channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

4. Type Ns Stream. Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are not Type S, Type F, or Type Np streams. These include seasonal streams in which surface flow is not present for at least some portion of a year of normal rainfall that are not located downstream from any Type Np stream segment.

B. Definitions. For the purposes of this chapter:

1. “Channel gradient” refers to a measurement over a representative section of at least five hundred linear feet, where available, with at least ten evenly spaced measurement points along the normal stream channel, but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds, and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States Geological Survey topographic maps (see Washington Forest Practices Board Manual, Section 23) or a more detailed survey specific to the project site and/or area.

2. “Intermittent” refers to those stream segments that normally go dry during a portion of a year of normal rainfall or greater.

3. “Normal rainfall” refers to rainfall that is at or above the mean of the accumulated rainfall record, based upon the water year, for the city as recorded at the Seattle-Tacoma International Airport, or other local rainfall recording station recognized by the city.

4. “Perennial stream” refers to those stream segments that do not go dry at any time during a year of normal rainfall.

5. “Riparian corridor” means a perennial, intermittent, ephemeral stream or swale including its channel bottom, lower and upper banks, and area beyond the top of the upper bank which influences the stream through shading and organic matter input, and is influenced by the presence of water, particularly in regard to plant composition. The riparian corridor is the transitional area between aquatic and upland ecosystems and does not necessarily include the entire floodplain of a stream.

6. “Stream” refers to those areas, excluding erosion caused by the inappropriate discharge or rerouting of storm or surface water, where surface waters flow with sufficient volume, velocity, duration, and/or frequency to scour away leaf litter and other vegetative matter and/or scour away or prevent the growth of vegetation such that clear evidence of the passage of flow is present on the land and remains even in the absence of such flow. Sod-lined or other heavily vegetated swales and wetted areas, which remain lined with leaf litter or other vegetative matter, do not meet the criteria of a stream. Excavated or other artificial watercourses, including swales, roadside ditches, and irrigation

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canals, are not considered streams unless they are used to convey water which flowed in a naturally defined channel prior to the creation of the artificial watercourse or are used by salmonid fish.

C. Periodically inundated wetlands that fall within the stream classifications are also subject to the wetland regulations of this chapter. (Ord. 2909-06 § 16, 2006)

**37.170 Standard stream buffer requirements.**

A. Standard Buffer Width. It is the goal of this chapter to preserve streams and their buffers in a natural condition to the maximum extent possible.

1. Buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high water mark shall be determined so as to include the entire stream feature.
2. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and groundcover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer width shall be increased as required by this section.
3. Except as otherwise provided by Section 37.050 of this chapter, the following minimum buffers of native vegetation shall apply to streams based upon stream classification:

Stream Classification (Type)	Standard Buffer: Intact Native Vegetation	Standard Buffer: Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species
Type S	Buffer determined by requirements of city of Everett shoreline master program (SMP)	Buffer determined by requirements of city of Everett shoreline master program (SMP)
Type F	100 feet	150 feet
Type Np	50 feet	75 feet
Type Ns	50 feet	75 feet

4. To maintain the integrity of the buffer, buildings and other structures shall be set back a minimum of ten feet from the edges of all stream buffer boundaries.

B. Standard Buffer Width Increase. The city shall require increased buffer widths as necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts and the increased buffer width is necessary to protect the critical areas described in this subsection. Circumstances which may require buffers beyond minimum requirements include, but are not limited to, the following:

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:
  - a. The minimum buffer for that particular stream; or
  - b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;
2. The stream reach affected by the development proposal serves as critical fish habitat for spawning or rearing as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and native tribes;

3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting or lookout trees;

4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;

5. Increased buffer width is necessary to effectively include the riparian corridor of the stream.

C. Standard Stream Buffer Width Reduction with Enhancement. The planning director may, using the review process as described in EMC Title 15, Local Project Review Procedures, reduce the standard stream buffer width only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots resulting in the existing buffer being unvegetated, sparsely vegetated, or vegetated with nonnative invasive species and when buffer enhancement is provided per the following criteria. Where buffer reduction with enhancement is permitted by this chapter, it shall be limited to portions of buffers that have minimal functions due to prior legal alteration.

1. The planning director shall only allow a buffer width reduction when the proposal includes a stream and buffer enhancement plan that improves the functions of the buffer and the stream. An enhanced buffer shall not result in more than a fifty percent reduction in the standard buffer width for buffers that are unvegetated, sparsely vegetated, or vegetated with invasive species; and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

2. A mitigation/enhancement plan shall be prepared per Section 37.180.E of this chapter. The plan shall include a comparative analysis of buffer functions prior to and after enhancement, and demonstrate, as part of a critical area report, that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the buffer and stream functions when compared with the function of the standard buffer. At a minimum, the report shall address soils, slopes, existing and proposed vegetation, temporary irrigation, maintenance, monitoring and contingency.

3. If a limited portion of the buffer has been previously legally altered and meets the criteria in this section, a buffer width reduction may be approved for that portion of the required buffer only.

4. The following criteria shall be used to determine when a required buffer is degraded and substantial legal alterations are present:

a. The required buffer area has been graded or substantially altered and has not been substantially revegetated (i.e., the buffer is covered with gravel, impervious surface, mowed lawn, or is vegetated with primarily invasive species such as reed canary grass, Himalayan blackberry, purple loosestrife, or other nonnative invasive species covering more than seventy-five percent of the buffer area).

b. Substantial clearing of the buffer was authorized and substantial revegetation with native species has not occurred.

c. A buffer that has been logged in the past but that has been revegetated with an overstory of willow, cottonwood, alder, evergreen, or mixed evergreen/deciduous overstory, and an understory shrub layer of noninvasive species does not constitute substantial alteration.

D. Riparian Wetland. Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply.

E. Standard Buffer Width Averaging. The city may allow buffer width averaging; provided, that the total area on the lot contained within the averaged buffer is not less than that required within the standard buffer. The city may require buffer width averaging in order to provide protection to a particular portion of a stream which is especially sensitive or to incorporate existing significant vegetative or habitat features into the buffer. Averaging shall not

adversely impact the functions of the stream system. In either case, the adjusted minimum buffer width shall not be less than seventy-five percent of the standard buffer width.

F. Protection of Significant Trees When Using Buffer Width Reduction or Averaging. If buffer width averaging or reduction is utilized and significant trees are identified on the outer edge of the reduced buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.
2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.
7. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

G. Buffers for Restored Stream Channels. When a culverted portion of a stream is proposed to be restored to an open channel, the buffer width shall be determined by the director following review of a critical area study. The study must include an analysis of the buffer width necessary to protect water quality and habitat functions of the stream.

H. Hazard Trees in Buffer. The city may require that a hazard tree assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of Section 37.060.B.3 of this chapter prior to final approvals for a development proposal.

I. Riparian Corridors. When a development is proposed on a lot with a disturbed riparian corridor, the city shall require that the habitat be enhanced by creating more diversity and eliminating any source of degradation, including, but not limited to:

1. Vegetative plantings of native or preferred wildlife food species;
2. Construction of nesting islands or installation of nesting boxes;
3. Removal of pollutant sources or fish movement blockages; or
4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat. (Ord. 2909-06 § 17, 2006)

**37.180 Avoiding stream impacts.**

A. Stream Preservation/Alteration Goal and Priorities. It is the short-term goal of this section that there be no net loss of the functions of all streams in the city, and the long-term goal is to improve the quality and functions of the

stream systems in Everett. To realize stream preservation and protection goals, the city will use the following methods of stream impact mitigation in order of preference:

1. Avoid impact altogether by not taking a certain action or parts of an action;
2. Minimize impact 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 impact;
3. Rectify the impact by repairing, rehabilitating or restoring the affected sensitive areas;
4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;
5. Compensate for the impact by replacing, enhancing, or providing substitute streams and environments;
6. Monitor the impact and take appropriate corrective measures to achieve performance objectives.

**B. Stream Preservation/Alteration Thresholds.**

1. Type S Streams. All Type S streams shall be regulated by the city of Everett shoreline master program.
2. Type F Streams. All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:
  - a. Where alteration is allowed pursuant to Section 37.050 of this chapter;
  - b. Stream Crossings. Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by Section 37.050 of this chapter or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;
  - c. When the proposal results in significant restoration of functions to the stream segment and the alteration is approved by the Washington State Department of Fish and Wildlife.
3. Type Np and Type Ns Streams.
  - a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by Section 37.050 of this chapter; or
  - b. The planning director may, using the review process described in EMC Title [15](#), Local Project Review Procedures, allow alteration or relocation of Type Np and Ns streams under the following conditions:
    - i. Stream and buffer functions in the relocated/altered stream section must be equal to or greater than the functions provided by the stream and buffer prior to relocation/alteration;
    - ii. The equivalent base flood storage volume shall be maintained;
    - iii. There shall be no impact to local ground water;
    - iv. There shall be no increase in water velocity;
    - v. There is no interbasin transfer of water;
    - vi. The relocation shall occur on-site and shall not result in additional encumbrances on neighboring properties unless necessary easements and waivers are obtained from affected property owners;

vii. The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. Stream Crossings. Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by Section 37.050 of this chapter or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. Watershed Management Plans. The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow for stream alteration or relocation, except when allowed by Section 37.050 of this chapter, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

C. Compensating for Stream Impacts. Stream system and buffer alteration, when allowed by this chapter, shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.
2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.
3. A mitigation plan shall be prepared in accordance with subsection D of this section.
4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.
5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.
6. When stream system relocation or compensation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.
7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.
8. The city may apply additional conditions or restrictions, or require specific construction techniques in order to minimize impacts to stream systems and their buffers.
9. Stream compensation shall not occur in areas having high-quality terrestrial habitat.

D. Voluntary daylighting of streams in pipes and culverts.

1. To encourage daylighting of streams in pipes and culverts, the planning director may modify development standards as set out in subsection D.2 of this section when the applicant submits a plan for daylighting that meets the following criteria:

- a. The plan is prepared by a qualified professional;
- b. The ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor is compatible with and protects the ecological functions of the existing riparian corridor upstream and downstream and

does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and

c. If the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection D.1.b of this section are provided as effectively as they would be without the relocation.

2. If the director finds the conditions in subsection D.1 of this section are met, the director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection D.1 of this section and shall be in the following order of priority:

a. Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.

b. The stream and adjacent buffer area may count toward required landscaping.

c. The stream and adjacent buffer area may count toward open space requirements for all multiple-family and M-1 zone requirements.

d. Building heights may be increased.

E. Stream and Buffer Impact Mitigation Plans.

1. When development is proposed within two hundred feet of a Type F stream, a habitat assessment or habitat management plan shall be prepared subject to the provisions of Section 37.190 of this chapter.

2. When stream or buffer alteration or buffer reduction or averaging is permitted, a mitigation plan shall be prepared. Mitigation shall be required for the loss of stream system and buffer functions. All required mitigation shall be specified in a detailed mitigation plan, which shall be approved by the city prior to any development activity occurring on a site upon which stream system alteration is proposed. The mitigation plan shall be prepared by a qualified professional using accepted methodologies and include information as required by the planning director's administrative guidelines. Mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating and fragmenting effects of development on habitat areas. Mitigation plans shall:

a. Include a baseline study that quantifies the existing functions of the system, functions that will be lost, and the stream and buffer functions after mitigation;

b. Specify how functions will be replaced;

c. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

d. Include provisions for maintaining and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

e. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

f. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

F. All new development and redevelopment adjacent to streams and riparian areas should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

G. Protective Covenants and Tracts. Streams and their buffers on development sites shall be placed within a critical area protective covenant or tract as required by Section 37.220 of this chapter.

H. Fencing and Other Protection Mechanisms. Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a stream provide a fence or other structural protection along the upland side of the stream and its buffer to minimize encroachment into and disturbance of the stream and buffer area. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas. (Ord. 2909-06 § 18, 2006)

**37.190 Additional fish and wildlife habitat conservation areas requirements.**

A. Definitions.

1. "Habitats of primary association" means a critical component(s) of the habitats of federally or state-listed endangered, threatened, candidate, sensitive, and priority wildlife or plant species which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of primary association include, but are not limited to: winter ranges, migration ranges, breeding sites, nesting sites, regular large concentrations, communal roosts, roosting sites, staging areas, and "priority habitats" listed by the Washington State Department of Fish and Wildlife.

2. "Continuous vegetative corridors linking watersheds" means areas that link larger habitat blocks. The corridors can provide wildlife habitat and allow for relatively free movement of animals among larger habitat blocks that would otherwise be isolated. This allows use of habitat patches that are not themselves large enough to support sustainable breeding populations. The corridors also allow wildlife to move from a habitat area used for one activity, such as feeding, to a habitat area used for another activity, such as nesting.

3. "Significant biological areas" means the following areas of the city:

- a. Plant associations of infrequent occurrence;
- b. Commercial and recreational shellfish areas;
- c. Kelp and eelgrass beds;
- d. Herring, sand lance, and smelt spawning areas;
- e. State natural area preserves and natural resource conservation areas; and
- f. Significant biological areas of local importance:
  - i. Maulsby Swamp,
  - ii. Bomarc Bog,
  - iii. Simpson site, category I wetlands,
  - iv. Narbeck Swamp,
  - v. Jetty Island.

B. Goals and Additional Requirements. It is the goal of the city to preserve, protect and enhance fish and wildlife habitat conservation areas through sound habitat management practices. Fish and wildlife habitat conservation areas in shoreline jurisdiction are regulated by the shoreline master program. All other fish and wildlife habitat conservation areas are regulated by this chapter.

1. All new development and redevelopment adjacent to fish and wildlife habitat conservation areas should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

2. If a development is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this section, the applicant shall provide a habitat assessment. If the habitat assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP), prepared by a qualified expert for evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

a. Distance for Habitats of Primary Association.

i. Salmonids. When development is proposed on or within two hundred feet of a Type F stream, a habitat assessment shall be required.

ii. Bald Eagles. When a development is proposed within eight hundred feet of an eagle nest, or within one-half mile of a nest if also within two hundred fifty feet of the shoreline, or within one-quarter mile of a communal roost, a habitat assessment meeting the requirements of this chapter shall be required. In addition to the requirements of this chapter, the habitat assessment shall address the criteria contained in WAC 232-12-292, the Washington State Bald Eagle Protection Rules. The director is authorized to promulgate an administrative rule identifying the required content for an integrated habitat assessment consistent with these requirements.

iii. Other Species. If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or habitat management plan.

b. Continuous Vegetative Corridors Linking Watersheds. If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds, a habitat assessment is required.

c. Significant Biological Areas. If a development is proposed within three hundred feet of a significant biological area, a habitat assessment is required.

C. Habitat Assessment.

1. A habitat assessment is a site investigation process to evaluate the potential presence or absence of a regulated fish or wildlife species or habitat potentially affected by a development proposal, and an assessment of the potential impacts of the proposal on any regulated species or habitat subject to these regulations.

2. A habitat assessment may be integrated into another critical area study or provided as a separate report, provided the requirements of this subsection are met.

3. The habitat assessment shall be completed by a qualified professional with expertise and experience in preparing fish and wildlife critical area reports or biological assessments.

4. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in subsection A of this section and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could potentially adversely impact the regulated fish or wildlife habitat area and affected species.

5. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in subsection A of this section or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.
6. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in subsection A of this section or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, a habitat management plan shall be prepared. The habitat management plan must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.
7. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of a habitat management plan.
8. All habitat assessments submitted under the requirements of this chapter shall, at a minimum, include the following:
  - a. The parcel number(s) of the subject property.
  - b. A map showing the location of the site and the site address of the subject property, if one has been assigned by the city.
  - c. The date and time when the site evaluation for the habitat assessment was conducted and the date when the habitat assessment was prepared.
  - d. The credentials of the professional fish or wildlife biologist who prepared the habitat assessment.
  - e. The mailing address and phone number of the property owner and the fish or wildlife biologist that prepared the habitat assessment.
  - f. A detailed description of the project.
  - g. A detailed description of the vegetation on and adjacent to the site.
  - h. Identification and a detailed description of any critical fish or wildlife species or habitats, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.
  - i. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.
  - j. An assessment of the project's direct and indirect potential impacts and cumulative impacts on the subject habitat, including water quality impacts.
  - k. A discussion of potential mitigation measures that would avoid or minimize temporary and permanent impacts, proposed mitigation measures, contingency measures, and monitoring plans.
  - l. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.
9. The department shall review the habitat assessment and either:

a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or

b. Require preparation of a habitat management plan if the habitat assessment indicates potential unmitigated adverse impacts to the critical fish and wildlife habitat conservation areas or affected species.

D. Habitat Management Plan. "Habitat management plan" means an activity proposed by a public agency or private entity, and approved by the planning director, within an area which may impact a fish and wildlife habitat conservation area to preserve, protect or enhance the fish and wildlife habitat conservation area.

1. The habitat management plan shall be prepared by a qualified professional who understands the habitat requirements for the affected species. The consultant must demonstrate such expertise to the satisfaction of the director, who may require resumes, work examples or other information demonstrating professional expertise on relevant habitat and/or fisheries issues. The city will meet with the consultant and direct preparation of the habitat management plan. The city must review and accept the habitat management plan as complete before issuing any approvals for the proposed development. In the event of a dispute regarding appropriate content in the habitat management plan, the city may require additional studies or additional supporting information as provided for in Section 37.070 of this chapter.

2. Content of Habitat Management Plan. The director may require that all or a portion of the following be included in a habitat management plan:

a. A map drawn to scale or survey showing the following information:

i. All lakes, ponds, streams, wetlands and tidal waters on or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream or wetland category consistent with the requirements of this chapter;

ii. The location and description of the fish and wildlife habitat conservation area on the subject property, as well as any potential fish and wildlife habitat conservation area within a distance of the subject property that may impact an affected species or habitat; and

iii. The location of any observed evidence of use by a species regulated by the provisions of the fish and wildlife habitat sections of this chapter.

b. An analysis of how the proposed development activities will affect the fish and wildlife habitat conservation area and any affected species including the potential direct, indirect, and cumulative effects of the proposed action on the regulated species and its habitat within the project area.

c. Provisions to reduce or eliminate the impacts of the proposed development activities on any fish and wildlife habitat conservation area and affected species. The HMP should describe components of the project that may benefit or promote the recovery of listed species and are included as an integral part of the proposed project. These conservation (or mitigation) measures serve to minimize or compensate for project effects on the species under review. The following items should be addressed:

i. Provide specific recommendations, as appropriate, to reduce or eliminate the adverse effects of the proposed activity. Potential measures include: timing restrictions for all or some of the activities; clearing limitations; avoidance of specific areas; special construction techniques; HMP conditions; replanting with native vegetation; potential of habitat enhancement (i.e., fish passage barrier removal); best management practices, etc.;

ii. Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness.

d. The HMP shall identify the specific habitat objectives. The HMP is designed to achieve and include recommendations regarding all actions taken to be necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term, and/or actions to maintain or enhance the significant features present.

- e. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.
3. The HMP shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.
4. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the HMP. At a minimum, all requirements and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.
5. Fish and wildlife habitat conservation areas and their buffers shall be placed in a critical area protective covenant or tract as required by Section 37.220 of this chapter. (Ord. 2909-06 § 19, 2006)

**37.200 Ground water discharge areas.**

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, streams, fish, plant and wildlife habitat areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this chapter related to geological hazards, streams, wetlands, fish, plant, and wildlife habitat areas, as applicable. (Ord. 2909-06 § 20, 2006)

**37.210 Lot area—Lot coverage—Permitted number of dwelling units in multiple-family developments.**

A. Lot Area. The calculation of minimum lot area for lots which contain areas classified as critical areas shall be determined as provided in this section. Lots that include land which is submerged beneath the mean high water mark of lakes and ponds, or Type F streams, shall not be permitted to include the submerged portion of the lot in the calculation of lot area.

1. Single-Family Residential Developments. This subsection applies to new lots created through the subdivision, short subdivision, or cluster development process, where the land to be subdivided contains critical areas and/or buffers. This subsection is not to be used with the lot area averaging provisions in Section 39.130 of this title, or in easement access short subdivisions.
  - a. For any new residential lot created, one hundred percent of the area of those portions of the lot classified as critical areas and buffer may be credited toward the calculation of lot area. All such lots shall contain not less than four thousand square feet, exclusive of critical area or buffer. Land placed within a critical area protective tract may be included in the calculation of lot area as provided in this chapter. Where a protective tract is provided, all lots shall contain a net area, excluding the tract, of not less than four thousand square feet.
2. Multiple-Family Developments. In multiple-family residential developments, all of the area which is classified as critical area may be included in the calculation of minimum lot area; however, the permitted number of dwelling units shall be calculated in accordance with the requirements of subsection C of this section.
3. Commercial and Industrial Zones.
  - a. If the minimum lot area requirement is twelve thousand square feet or less, none of those portions of the lot which are classified as critical area may be used in the calculation of minimum lot area. Land placed within a critical area protective tract may be included in the calculation of minimum lot area provided in this chapter.
  - b. If the minimum lot area requirement is between twelve thousand square feet and one acre, up to twenty-five percent of the area of those portions of the lot classified as critical area may be included in the calculation of minimum lot area. Land placed within a critical area protective tract may be included in the calculation of minimum lot area provided in this chapter.

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c. If the minimum lot area requirement is greater than one acre, up to fifty percent of those portions of the lot classified as critical area may be included in the calculation of minimum lot area. Land placed within a critical area protective tract may be included in the calculation of minimum lot area provided in this chapter.

B. Lot Coverage. For any zone in which lot coverage requirements apply, only the area defined as buildable shall be used in the calculation of lot coverage.

C. Permitted Number of Dwelling Units in Multiple-Family Developments. For zones in which multiple-family developments are permitted, the number of dwelling units allowed for lots which contain areas classified as critical area shall be determined using the formula specified in this subsection. Lots that include land which is submerged beneath lakes, ponds, Port Gardner Bay, or category F streams shall not be permitted to include the submerged portion of the lot in the calculation of lot area.

$[(D.U./Ac.) (Buildable Area)] + [(D.U./Ac.) (Undevelopable Area)] \times (Development Factor) = \text{Permitted Number of Dwelling Units.}$

(D.U./Ac. is derived by dividing 43,560 square feet by the density standard in the applicable zone, as listed in the use standards table.)

The development factor is determined by the following table:

Percent of Lot in Buildable Area*	Development Factor
91—99	0.45
81—90	0.40
71—80	0.35
61—70	0.30
51—60	0.25
41—50	0.20
31—40	0.15
21—30	0.10
11—20	0.05
0—10	0.03

\*Percentages of more than two digits shall be rounded down to two digits.

(Ord. 2909-06 § 21, 2006)

**37.220 Covenants—Tracts—Notice on title.**

A. Critical Area Covenants. Except as provided for below, the city shall require that all features classified as critical areas by this chapter and their buffers be placed in critical area protective covenants. Covenants shall not be required for:

1. Utility and road projects in public rights-of-way.

2. Utility and road projects on private easements where the proponent does not own the land.

B. Critical Area Tracts. The city may require that any area classified as a critical area and its buffer be placed in a separate tract, rather than included in the protective covenant. A tract shall be required when the proposal includes a short subdivision, subdivision, or binding site plan. Such a tract shall remain in the same ownership as the parcel it was segregated from; placed into undivided common ownership of all lots within a proposed subdivision, short subdivision, or binding site plan; or dedicated to a public agency which is willing to accept the tract for long-term management of the protected resource.

C. Notice on Title. The owner of any property on which a development proposal is submitted shall file with the Snohomish County auditor a notice approved by the planning department, which shall provide notice in the public record of the presence of the critical area covenant or tract, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city may approve any development proposal on the site. The notice shall run with the land, and failure to provide such notice to any purchaser prior to transferring any interest in the property is a violation of this chapter. (Ord. 2909-06 § 22, 2006)

**37.230 Appeals.**

Any decision made by the city pursuant to this chapter shall be subject to the appeals provisions as set forth in EMC Title [15](#), Local Project Review Procedures. (Ord. 2909-06 § 23, 2006)

**37.240 Assurance devices.**

The city shall require performance or maintenance assurance devices in accordance with Chapter 40 of this title to ensure compliance with this chapter and adequate protection and maintenance of critical areas. (Ord. 2909-06 § 24, 2006)

**37.250 Previously altered critical areas.**

It is the goal of this chapter to restore and enhance the condition of critical areas which have been previously altered. Properties containing critical areas which have been previously altered may be developed in accordance with all requirements of this chapter and this title of the code.

A. Legal Alterations. Critical areas regulated by this chapter which previously have been legally altered in accordance with all local, state and federal regulations in effect at the time of alteration may be developed in accordance with the requirements of this chapter. Any prior alteration which was legally commenced that resulted in a critical area which is regulated by this chapter being reclassified as buildable shall be evaluated using the review process described in EMC Title [15](#), Local Project Review Procedures. The planning director may approve any development proposal which meets all other requirements of this title, or modify such proposal based upon the impacts that the proposal would have on any remaining area classified by this chapter as a critical area. The planning director shall use all authority granted by this chapter, SEPA, or other legal mechanism to require enhancement of the previously altered critical area to the condition which would be required by this chapter for new development, to the maximum extent feasible.

B. Unauthorized Alterations.

1. Critical areas regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all critical areas which were illegally altered shall be considered critical areas and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains a critical area that has been illegally altered shall be reviewed by the planning director using the review process described in EMC Title [15](#), Local Project Review Procedures.

2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered critical area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that

which has been altered if the alternative location will result in a net improvement in functions or a higher quality critical area than possible in the area which has been previously altered.

3. Any illegal alteration of a critical area that occurred prior to the effective date of the ordinance codified in this chapter which is not proposed for development as allowed by this chapter shall be restored as provided by this section. (Ord. 2909-06 § 25, 2006)

**37.260 Enforcement—Violation—Penalties.**

Notwithstanding the enforcement, violation and penalties provision found in Chapter 41 of this title, the provisions set forth in this section shall apply to all violations of this chapter. Penalty and enforcement provided in this section shall not be deemed exclusive, and the city may pursue any remedy or relief it deems appropriate.

A. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of Chapter 1.20.

B. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars. It shall be a separate offense for each and every day or portion thereof during which any violation of any provisions of this chapter is committed.

C. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter is liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation occurring. If an equivalent condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the critical area, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture.

D. Restoration shall include, but not be limited to, the replacement of all improperly removed ground cover with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced, improper fill removed and slope stabilized. Studies by the qualified experts shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

E. Restoration shall also include installation and maintenance of interim and emergency erosion controls measures until such time as the restored ground cover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.

F. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this chapter until the property is fully restored in compliance with this chapter and all penalties are paid.

G. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

H. The city is authorized to apply to any court of competent jurisdiction and any such court, upon hearing and for cause shown, may grant a preliminary, temporary or permanent injunction restraining any person, firm, and/or corporation from violating any of the provisions of this chapter and compelling compliance with the provisions thereof. The violator shall comply with the injunction and pay all costs incurred by the city in seeking the injunction. (Ord. 2909-06 § 26, 2006)

EMC 19.4  
ZONING CODE DEFINITIONS

**Sections:**

[4.010](#) Zoning Code definitions, general.

[4.020](#) Zoning Code definitions, specific.

**4.010 Zoning Code definitions, general.**

Except where specifically defined in this section or other sections of this title, all words used in this title shall have the meaning commonly or logically associated therewith. When not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular. The word “person” may be taken for persons, association, firm, partnership or corporation as well as the individual. The masculine includes the feminine. The word “occupied” includes premises designed or intended to be occupied; the word “used” includes designed or intended to be used. The word “shall” is always mandatory; the word “may” denotes a use of discretion in making a decision. (Ord. 1847-92 § 2, 1992.)

**4.020 Zoning Code definitions, specific.**

This section defines specific terms used within this title in a context which may have a different meaning or connotation than ordinarily associated with such terms.

“Abandoned sign” means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity, or for which no legal owner can be found, and which has no historical significance.

“Above ground utility and communications facility, major” means a structure or improvement built or installed above ground for the purpose of providing utility services or communications services to more than one lot. Included in this definition for purposes of this title are electrical substations; water storage reservoirs or tanks or pumping stations; telephone exchanges; manmade regional drainage detention or retention facilities; natural gas regulating facilities greater than four feet in height; sewer lift stations; wireless communications facilities including personal wireless service facilities; television or radio transmission or reception towers, antennas; and other ancillary or similar facilities or structures housing utility or communications equipment or improvements as determined by the planning director. This term shall not apply to equipment and vehicle storage yards, offices and buildings used to support the operations of utility or communication service providers.

“Above ground utility and communications facility, minor” means fire hydrants; amateur radio antennas or towers and television reception dishes or antennas for private residential use regulated by Section 39.040 of this title; utility poles carrying electrical transmission lines with fifty-five thousand volts or less of electrical power; pad-mounted switches and transformers; telephone or television cables; utility structures less than four feet in height above grade, minor above ground equipment associated with underground utility facilities, or other such similar facilities as determined by the planning director. This term shall not apply to equipment and vehicle storage yards, offices and buildings used to support the operations of utility or communication service providers.

“Accessory building” means a building which is subordinate and incidental to the permitted principal building, located on the same lot with such principal building, and erected or established only after or in conjunction with the establishment of the principal building. An accessory building includes, but is not limited to, garages, carports, storage buildings, and other similar buildings.

“Accessory dwelling unit,” see “dwelling unit, accessory.”

“Accessory use, activity or structure” means a use, activity, structure or part of a structure which is customarily subordinate and incidental to the permitted principal use or building, located on the same lot with such principal use or building, and erected or established only after or in conjunction with the establishment of the principal use or building.

“Adult cabaret” means any commercial premises, including any cabaret premises, to which the public, patrons, or members are invited or admitted, and where an entertainer provides adult-oriented entertainment, not constituting

“adult entertainment, live,” as defined in this section, to any member of the public, patrons, or a member. An adult cabaret is a “nightclub” in Table 5.2 of this title.

“Adult entertainment establishment, live” means any building or portion of a building which contains any exhibition or dance wherein any employee or entertainer is unclothed or in such attire, costume or clothing so as to expose to view any portion of the female breast below the areola, or male or female genitals, vulva, anus and/or buttocks, or any portion of the pubic hair and which exhibition or dance is for the benefit of a member or members of the adult public, or advertised for the use or benefit of a member of the adult public, held, conducted, operated or maintained for profit, direct or indirect.

“Adult family home” means a home in which twenty-four-hours-per-day residential care is provided for up to four adults by an owner or tenant of the home in which care is provided plus the family of the provider. Under certain circumstances, up to six adults may be accommodated, in accordance with the regulations of the Washington State Department of Social and Health Services.

“Adult mini theater” means an enclosed building with a capacity of less than fifty persons, a portion of an enclosed building with a capacity of less than fifty persons, or outdoor theater with a capacity of less than fifty persons used for presenting motion picture films, video cassettes, cable television or any other such visual media, distinguished or characterized by emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as defined herein for observation by patrons therein.

“Adult motion picture theater” means an enclosed building with a capacity of fifty or more persons, a portion of an enclosed building with a capacity of fifty or more persons, or outdoor theater with a capacity of fifty or more persons used for presenting motion picture films, video cassettes, cable television or any other such visual media, distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as defined herein for observation by patrons therein.

“Adult-oriented entertainment” means:

1. Any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to the following sexual activities:
  - a. Human genitals in a state of sexual stimulation or arousal;
  - b. Acts of human masturbation, sexual intercourse or sodomy; or
  - c. Fondling or other erotic touching of human genitals, public region, buttocks or female breast; or
2. Any exhibition, performance or dance which is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the premises’ activity. This includes, but is not limited to, any such exhibition, performance or dance performed for, arranged with or engaged in with fewer than all members of the public on the premises at the time, with separate consideration paid, either directly or indirectly, for such performance, exhibition or dance and which is commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

“Adult-oriented merchandise” means any goods, products, commodities, or other ware, including, but not limited to, videos, CD ROMs, DVDs, computer disks or other storage devices, magazines, books, pamphlets, posters, cards, periodicals or non-clothing novelties which depict, describe or simulate specified anatomical areas, or specified sexual activities, as defined in this chapter.

“Adult panoram establishment” means any building or portion of a building which contains device(s) which for payment of a fee, membership fee or other charge, is used to exhibit or display a picture, view or other graphic display distinguished or characterized by emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as defined herein for observation by patrons therein.

“Adult retail” means an enclosed building or any portion thereof which, for money or any other form of consideration, devotes a significant or substantial portion of stock in trade to the sale, exchange, rental, loan, trade, transfer or viewing of “adult-oriented merchandise.” For purposes of this definition, a retail establishment devotes a significant or substantial portion of its stock in trade to adult-oriented merchandise if the sale, exchange, rental, loan, trade, transfer or viewing of such adult-oriented merchandise is clearly material to the economic viability of the business. It is presumed that such adult-oriented merchandise accounts for any one or more of the following:

1. Thirty percent or more of the retail dollar value of gross sales over any quarterly period;
2. Thirty percent or more of the floor area of the store open to the public;
3. Thirty percent or more of the retail dollar value of all merchandise displayed in the store;
4. Thirty percent or more of the store’s inventory (whether measured by retail dollar value or number of items); or
5. Thirty percent or more of the store’s stock in trade.

In no event shall a retailer whose transactions only incidentally or marginally relate to adult-oriented merchandise be considered an adult retail use establishment.

“Adult use business” means any live adult entertainment establishment, adult panoram establishment, adult motion picture and adult mini theater, or any establishment which provides one or more of the activities listed herein even if only a portion of the establishment is dedicated to one or more of the activities listed herein.

“Aggregates extraction and related manufacturing” means the mining and processing of sand and gravel resources and closely related manufacturing such as concrete or asphalt batch plants, manufacturing of products using concrete or aggregate materials, storage and transport of mined or excavated materials, and other closely related uses accessory to aggregate extraction activities.

“Agricultural activities” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation drainage ditches, changes between agricultural activities and normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

“Agricultural industries” means industrial processing of agricultural products, excluding breweries or wineries.

“Aircraft assembly” means the assembly of aircraft components into finished aircraft or the repair, service or maintenance of aircraft, including engine testing, test flights, and major overhaul or rebuilding.

“Aircraft landing facilities” means airports, landing fields, helipads, or seaplane landing facilities and terminals for the accommodation of passengers and/or cargo carried by means of air transport.

“Alley” means a public or private way permanently reserved as a means of access to abutting property.

“Alteration” means any human-induced action which impacts the existing condition of a critical area. Alterations include but are not limited to grading; filling; dredging; draining; channelizing; cutting, pruning, limbing or topping, clearing, relocating or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants; grazing domestic animals; paving, construction, application of gravel; modifying for surface water management purposes; or any other human activity that impacts the existing vegetation, hydrology, wildlife or wildlife habitat. Alteration does not include walking, passive recreation, fishing or other similar activities.

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## EVERETT SHORELINE MASTER PROGRAM

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“Antenna” means any exterior apparatus or apparatuses designed for telephonic, radio, data, internet, or other communications through the sending and/or receiving of electromagnetic waves or radio frequency signals, including without limitation equipment attached to a tower or building for the purpose of providing personal wireless services.

“Applicant” means a person who applies for any permit or approval to do anything governed by this chapter and who has legal standing to apply for a permit or approval on the specific property.

“Architectural barrier” means a fence, berm, wall or combination of earth, plant and structural materials designed and constructed to reduce visual or noise impacts between properties or uses.

“Artist studio” means a space primarily used as a work room for at least one artist that may be open to the public for demonstrations, classes, and retail sales. Artists’ studios are generally for the purpose of painting, pottery (ceramics), sculpture, photography, cinematography, animation, or the making of music.

“Assisted living facility” means a residential facility for elderly persons (age fifty-five or older) who require moderate to extensive assistance with daily tasks such as cooking, eating, bathing, housekeeping, dispensing of medicines, shopping, appointments and other tasks.

“Assurance device” means a financial mechanism by which the city assures compliance with the requirements of this chapter or other development or use entitlement.

“Attached housing,” see “dwelling, single-family attached.”

“Automated teller machine” means an electronic machine which is customarily located at banks, shopping centers or other commercial locations which automatically disburses cash to persons with card identification.

“Awning sign” means the use of an awning attached to a building for advertisement, identification or promotional purposes. Only that portion of the awning which bears graphics, symbols and/or written copy shall be construed as being a sign.

“Base elevation” means the average elevation of the approved topography of a parcel at the midpoint on each of the four sides of the smallest rectangle which will enclose the proposed structure, excluding all eaves and decks. The approved topography of a parcel is the natural topography of a parcel or the topographic conditions approved by the city prior to January 1, 1988, or as approved by a subdivision, short subdivision, binding site plan, shoreline substantial development permit, filling and grading permit, or SEPA environmental review issued after January 1, 1988. On any lot exhibiting evidence of an unapproved fill, a soils analysis may be required to determine the approved topography. An approved bench mark will establish the relative elevation of the four points used to establish the base elevation.

“Bed and breakfast house” means an owner-occupied dwelling which is used to provide overnight guest lodging in not more than five guest rooms and which usually provides a morning meal as part of the room rate structure.

“Below ground utilities” means equipment or infrastructure installed underground for the transmission or provision of public or private utilities or communications services.

“Benchmark” means a fixed reference point or object, more or less permanent in character, the elevation of which is known, or to which a nominal elevation can be assigned.

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

“Billboard” means an outdoor advertising sign or poster panel which advertises products, businesses, and/or services not connected with the site on which the sign is located, and which sign is a substantial permanent structure with display services of a type which are customarily leased for commercial purposes.

“Biologist” means a person who has earned a degree in biological sciences from a college or university, with practical experience that includes at least two years expertise in matters involving wetlands biology or stream ecology in the Pacific Northwest.

“Board of adjustment” means the board of adjustment for the city.

“Boarding” means the provision of a room for lodging purposes and meals in return for payment of rent.

“Boardinghouse” means a principal building other than a hotel where lodging which complies with the city Housing Code, with one or more daily meals, is provided for compensation on other than a day-to-day basis and which is not open to transient guests.

“Bog” means wetlands with extensive living sphagnum moss or sphagnum peat and a distinctive flora that results from the acidic substrate.

“Bottling plant” means a plant in which soft drinks are made and bottled for wholesale distribution.

“Brewery, distillery or winery” means a plant in which beer, wine or other alcoholic beverages are produced and bottled for wholesale distribution.

“Brewery, micro-” means a small-scale beer brewing plant located within a restaurant or tavern building in which a portion of the building is used for the production of beer for wholesale distribution and for on-site retail sale to restaurant or tavern patrons.

“Buffer” means an area which provides the margin of safety through protection of slope stability, attenuation of surface water flows and erosion controls necessary to minimize risk to the public from loss of life or well-being or property damage resulting from natural disasters, or an area which is an integral part of the natural system and which provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland boundaries, habitat for wildlife and protection from harmful intrusion necessary to protect the public from losses suffered when the functions and values of important aquatic resources are degraded.

“Buffer management” means an activity proposed by a public agency, public utility, or private entity, and approved by the planning director, within a buffer required by this title, that is proposed to:

1. Reduce or eliminate a verified public safety hazard;
2. Maintain or enhance wildlife habitat diversity; or
3. Maintain or enhance the fishery or other functions of stream, wetland, or terrestrial ecosystems.

“Buildable area” means the lot area minus undevelopable areas.

“Building” means any structure built for the support, shelter or enclosure of persons, animals, vehicles, mechanical devices or property of any kind. When separated by common walls located on property lines, each portion of such structure shall be deemed a separate building.

“Building appurtenance” means chimneys, steeples, television and radio antennas, ham radio antennas, television dish antennas, flagpoles, and vent pipes in any zone, and mechanical systems in zones other than single-family zones, and other similar features, excluding signs, which are customarily located on or above the roof of a building.

“Building footprint” means the perimeter of a building at the outer edge of the outside walls of the building, including cantilevered portions of a building.

“Building official” means the building official for the city or his/her designee.

“Bulk fuel storage” means an installation for the storage, handling and selling of flammable fuels and from which fuels are sold at wholesale or distributed to retail stations or for private use.

“Business license” means a license issued by the city for the purpose of collecting business tax revenues.

“Business or vocational school” means a public or private post-secondary school other than a community college or four-year college providing occupational or job skills training for specific occupations.

“Business park” means more than one commercial and/or light industrial uses located within a building or buildings on one or more lots built as a unified development with common access, landscaping, parking areas and other site improvements.

“Carport” means a covered shelter for an automobile, open on two or more sides.

“Casino, mini” means a business which provides gambling and gaming as a primary source of its revenue, which may include food and beverage sales for consumption on the premises as a secondary part of its business activity.

“Cease(d)” means, for purposes of Chapter 38 of this title, to come to an end; to not use; to vacate. For purposes of Chapter 19.38, no showing of intent to cease is required.

“Certificate of occupancy” means a permit to occupy a building.

“City attorney” means the city attorney for the city or his/her designee.

“City council” means the city council of the city.

“City engineer” means the public works director for the city or his/her designee.

“Clearance of a sign” means the smallest vertical distance between grade and lowest point of any sign, including framework and embellishments, extending over that grade.

“Clearing” means the act of removing or destroying vegetation or other organic plant materials by physical, mechanical, or chemical means.

“Clinic” means a building or portion of a building containing an office or offices of medical doctors, dentists, psychiatrists, chiropractors, physical therapists and other members of the medical profession which provide facilities and services for outpatient care, diagnosis, treatment, and observation of individuals suffering from illness,

injury or other conditions requiring medical, surgical or therapeutic services. This definition does not include facilities providing patient beds for overnight care, or opiate substitution treatment facilities. See also “medical-related activities.”

“Code” means the city Zoning Code, also known as Title 19 of the Everett Municipal Code.

“Code compliance officer” means the code compliance officer for the city.

“College, university” means a public or private institution for post-secondary education and uses normally incidental thereto, including but not limited to classrooms, administrative offices, cafeteria, athletic facilities, dormitories, and off-street parking areas.

“Combination sign” means a sign which is partially or wholly supported by a pole or similar structural support attached to the ground, which is also attached to, and which may be supported by, the wall or roof of a building.

“Commercial parking” means a parking lot or parking garage that is built as a facility to provide parking for rent or lease to the general public, as opposed to a parking lot or garage which is constructed as required or accessory parking for another building.

“Commuter parking” means a parking lot parking structure that is built to provide parking for persons commuting to another location, such as a park-and-ride lot, as opposed to a commercial parking facility or parking which is which is required or accessory parking for another building or use.

“Compensation” means the replacement, enhancement, or creation of an undevelopable critical area equivalent in functions, values and size to those being altered or lost to development.

“Compensation, in-kind” means the replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

“Compensation, off-site” means the replacement of wetlands away from the lot on which a regulated wetland has been impacted.

“Compensation, on-site” means the replacement of wetlands on or adjacent to the lot on which a wetland has been impacted by a regulated activity.

“Compensation, out-of-kind” means the replacement of wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

“Composting” means a land use where biodegradable yard waste plant materials are collected and processed through composting for future use as plant mulch, soil amendment or other similar horticultural application.

“Comprehensive design plan” means the integration of the building, landscaping and signs into one architectural design.

“Comprehensive plan” means the city of Everett comprehensive plan adopted pursuant to Chapter 36.70A RCW.

“Congregate care facility” means a residential facility for the elderly. The minimum age limit for the elderly is fifty-five years for the residents, with younger spouses permitted. The facility must have a central lobby, common dining area, hobby and/or recreational rooms. The fee structure shall include at least one meal per day in the common dining area. Accessory support uses for the tenants, such as pharmacies, banking service, etc., may be included.

“Consumer services” means a business or occupation which is performed primarily off-site and can include services such as pest control, chimney sweep, carpet cleaners, contractors, janitorial, and landscaping. Only those support activities, such as office work, and storage of equipment, is conducted at the business location.

“Correctional facilities” means public or private facilities providing for the confinement of juvenile offenders, for the incarceration, confinement or detention of individuals arrested for or convicted of a crime, or for the punishment, correction and/or rehabilitation of individuals convicted of crimes whose freedom is restricted. The term “jails and correctional facilities” includes those group-care homes, Class II (as defined in this section, including subclassifications II-A II-B, and II-C) which are exempt from the provisions of the Federal Fair Housing Act Amendments of 1988 and the Washington Housing Policy Act (RCW 35.63.220).

“Courtyard” means any portion of the interior of a lot which is fully or partially enclosed by the walls of a building or buildings on the same development site, which is not within a required setback area and is unobstructed from the ground upward.

“Critical area” means geologically hazardous areas, wetlands, lakes, ponds, streams, frequently flooded (flood hazard) areas, and fish and wildlife habitat conservation areas, as defined in Chapter 36.70A RCW and this chapter.

“Critical area protective covenant” means a covenant granted for the protection of a critical area and its buffer through the maintenance of the natural environment. The covenant prohibits alteration of the area and must be duly recorded on appropriate documents of title and filed with the Snohomish County auditor.

“Critical area tract” means a legally created, nonbuilding lot containing a critical area which is subject to a critical area protective covenant and which shall be duly recorded on the appropriate documents of title and filed with the Snohomish County auditor.

“Culvert” means a short section of pipe placed in a stream and filled over in order to provide a stream crossing.

“Day care center, commercial” means a day care facility for more than twelve children or adults.

“Day care, family home” means day care provided in the home as an incidental use to the principal residential use of the property, for up to twelve children full time, or six adults full time, or as otherwise provided by the state of Washington.

“Day, working” means any day on which the city administrative offices are open for normal business.

“Density” means a ratio of dwelling units to lot area, usually expressed in terms of dwellings per acre or square feet of land area per dwelling unit.

“Detoxification center, drug rehabilitation” means a state-licensed facility where alcohol and drug abusers can be placed in lieu of incarceration for detoxification from the effects of alcohol and drugs.

“Development” means all structures, uses or other alterations or modifications of the natural landscape occurring above or below ground or water on a particular lot.

“Development permit” means any permit issued by the city to use or develop property that must be issued before initiating the use or development.

“Directional sign” means a single- or double-faced sign not exceeding six square feet in surface area per side, designed to guide or direct pedestrian or vehicular traffic to an area, place or convenience. Advertising on said signs shall be limited to incidental graphics such as trade names and trademarks.

“Directory sign, on-premises” means a sign located on a lot or within a business or office complex which is used to direct persons who are already on the premises to a particular business or office within the business or office complex.

“Disabled person” means a person who is defined as handicapped under the provisions of the federal Fair Housing Act Amendments of 1988.

“Dish antenna” means a parabolic-shaped antenna which is designed to receive television broadcasts or other electronic communication signals. The antenna is considered as an accessory structure unless it is attached to the principal building, in which case it is considered a building appurtenance.

“Drainage facility” means the system of collecting, conveying and storing surface and stormwater runoff. Drainage facilities shall include but not be limited to all surface and stormwater runoff conveyance and containment facilities, including streams, pipelines, channels, ditches, wetlands, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and manmade.

“Drive-in window or station” means a window or station used for providing service to customers who remain seated in their vehicles to conduct a business transaction, such as are commonly found at restaurants, financial institutions, or other similar businesses.

“Driveway” means an area of property designed to provide access between a street and a building or parking area.

“Duplex” means a detached building containing two dwelling units, each with a kitchen, designed for and occupied by two families living independently of each other in separate dwelling units.

“Dwelling” means one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating, and sanitation, which meets the minimum requirements of the Everett Housing Code, and in which all habitable rooms are internally accessible from within the dwelling.

“Dwelling, cottage housing” means small, detached dwelling units clustered around a central common open space.

“Dwelling, multiple-family” means a building or portion of a building arranged or designed to be occupied by three or more families living independently of each other, including triplexes, fourplexes, apartment buildings, and stacked dwelling units.

“Dwelling, rear yard infill” means one or more dwelling units constructed on the rear portion of a lot containing one or more residential dwellings on the front portion of the lot.

“Dwelling, single-family attached” means a building containing more than one dwelling attached only by a common wall or walls, but not stacked in a manner that individual dwelling units are located above or below other dwelling units.

“Dwelling, single-family detached” means a detached building designed for and occupied by one family only, sharing no common walls with other dwelling units.

Dwelling, Two-Family. See “Duplex.”

“Dwelling unit, accessory” means an additional room or set of rooms located within an owner-occupied single-family dwelling and designed, arranged, occupied or intended to be occupied by not more than one family as living accommodations independent from the accommodations for the owner’s family and subject to the limitations of Section 39.020(D) of this title.

“Electrical sign” means a sign or sign structure in which electrical wiring, connections or fixtures are used.

“Electronic changing message sign” means an electrically activated sign whose message content, either in whole or in part, may be changed by means of electronic programming. These signs shall include those displaying time, temperature, and messages of a public or commercial nature.

“Enhancement” means an action which increases the functions and values of a stream or wetland or terrestrial ecosystem.

“Erosion” means the process whereby the landform is worn away by the action of water, wind, rain, or ice activity.

“Erosion hazard areas” means those areas of the city with slopes of twenty-five percent and greater in Qva and Qal geologic units; exposed slopes of greater than twenty-five percent in other geologic units; and drainage areas which receive stormwater discharge.

“Espresso stand” means a business contained in a structure which can serve customers who remain in their vehicles, by means of a drive-up window. Mobile espresso vehicles and espresso retail uses not able to serve customers who remain seated in their vehicles are not included in this term.

“Everett comprehensive plan,” see “comprehensive plan.”

“Exotic” means any species of plant or animal that is non-native to the subject lot or area.

“Facade” means the entire building exterior wall face, including grade to the top of the parapet or eaves, and the entire width of the building elevation. For buildings with more than one occupant, the facade for each occupant shall be that portion of the exterior wall face between the points where interior walls between tenants intersect with the exterior wall.

“Family” means any number of persons related by blood, marriage or legal adoption and including foster children and exchange students living together as a single housekeeping unit. “Family” also means the following when living together as a single, not-for-profit housekeeping unit:

1. A group of not more than four related and unrelated adults and their related minor children, but not to exceed a total of eight related and unrelated persons; or
2. Not more than eight disabled persons, whether adults or minors, living together in a consensual residential living arrangement, but not to exceed a total of eight persons.

For the purposes of this definition, an adult is a person eighteen years of age or older, and a minor child is a person under the age of eighteen years old.

“Farmer’s market” means an open-air, temporary grouping of vendors in a common location, usually selling produce, freshly prepared foods, handmade crafts, or other unique goods.

“Fence” means a manmade barrier erected to enclose, screen or separate areas of land.

“Financial institution” means a business or entity which provides financial services which may include, but are not limited to, loans, savings, checking, money management and other similar services and includes, but is not limited to banks, savings and loan associations, credit unions, finance companies, and mortgage companies.

“Fish and wildlife habitat conservation areas” means an area of habitat that is necessary and suitable for maintaining individual species, species diversity, or biological diversity. Fish and wildlife habitat conservation areas include:

1. Habitats of primary association;
2. Streams/riparian corridors;
3. Continuous vegetative corridors linking watersheds;
4. Significant biological areas listed by the city; and
5. Lakes and ponds less than twenty acres.

“Flashing sign” means a sign or a portion thereof which changes light intensity or switches on and off in a constant pattern, or contains motion or the optical illusion of motion by use of electrical energy.

“Floor area ratio” means a measure of development intensity which is the gross building area (square footage of the total floor area except parking areas) divided by the lot area.

“Fraternal organization”: See “private club or lodge.”

“Freestanding sign” means a permanent pole, ground or monument sign attached to the ground and supported by uprights or braces attached to a foundation in the ground and not attached to any building.

“Functions and values,” or “functional values” 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, recreation, educational opportunities, aesthetics, and slope and soil stabilization.

“Garage” means an accessory building constructed of at least three walls, designed or used for the shelter or storage of vehicles owned or operated by the occupants of the principal building.

“Garage, private attached” means a portion of the principal building which is attached by a common wall or substantial roof structure to the principal dwelling designed or used for the storage or shelter of vehicles owned or operated by the occupants of the principal building.

“Geologically hazardous areas” means areas susceptible to erosion, landslide, seismically induced soil failure, or other geological events.

“Geologist” means a person who is licensed in the state of Washington under the provisions of Chapter 18.220 RCW and Chapter 308-15 WAC, and who has at least one year of practical experience in the Pacific Northwest.

“Government administrative offices” means offices for federal, state, county, city or other governmental, public utility, school district, or quasi-public agencies where staff of such agencies are employed in the administration of government or public services. This term does not include correctional facilities, utility facilities, equipment storage or parking, schools, fire stations, community centers, parks, or other public or quasi-public service uses specifically listed in this title.

“Grade” means the elevation of a lot prior to development.

“Grade, finished” means the elevation of a lot after completion of development.

“Grading” means any excavating, filling, or clearing of land or any combination thereof.

“Green roof” means an engineered roofing system that allows for the propagation of rooftop vegetation while maintaining the integrity of the underlying roof structure and membrane.

“Gross floor area” means the sum of the gross horizontal areas of the floors of a building or buildings, measured from exterior faces of exterior walls, and from the centerline of common walls.

1. Gross floor area includes: basement space, elevator shafts and stairwell at each floor, mechanical equipment rooms or attic spaces with headroom of seven feet, six inches or more, penthouse floors, interior balconies and mezzanines, and enclosed porches.
2. Gross floor area shall not include: accessory water tanks and cooling towers, mechanical equipment rooms or attic spaces with headroom of less than seven feet, six inches, exterior steps or stairs, terraces, breezeways, and open spaces.

“Ground sign” means a freestanding sign that is five feet or less in height.

Group Home:

1. Group-Care Homes, Class I. State-licensed foster homes for children (not including nursing homes), homes for handicapped and the mentally ill, and homes for those with developmental disabilities. Group-care homes, class I, are subclassified as follows:
  - a. Group-Care Homes, Class I-A. A maximum of six residents and two resident staff;
  - b. Group-Care Homes, Class I-B. A maximum of twelve residents and resident staff; and
  - c. Group-Care Homes, Class I-C. A maximum of twenty residents and four resident staff.
2. Group-Care Homes, Class II. State-licensed group-care homes for juvenile delinquents, halfway houses providing residence in lieu of institutional sentencing, halfway houses providing residence to those needing correctional institutionalization, and residential rehabilitation centers for current abusers of alcohol and drugs. Group care homes, class II, are subclassified as follows:
  - a. Group-Care Homes, Class II-A. A maximum of six residents and two resident staff;
  - b. Group-Care Homes, Class II-B. A maximum of ten residents and two resident staff; and
  - c. Group-Care Homes, Class II-C. A maximum of twenty residents and four resident staff.

“Habitat management plan” means an activity proposed by a public agency or private entity, and approved by the planning director, within an area which may impact a fish and wildlife habitat conservation area to preserve, protect or enhance the fish and wildlife habitat conservation area.

“Habitats of primary association” means a critical component(s) of the habitats of federally or state-listed endangered, threatened, candidate, sensitive, and priority wildlife or plant species which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of primary association include, but are not limited to, winter ranges, migration ranges, breeding sites, nesting sites, regular large concentrations, communal roosts, roosting sites, staging areas, and “priority habitats” listed by the Washington State Department of Fish and Wildlife.

“Hazardous waste” means all dangerous and extremely hazardous waste as defined in RCW 70.105.010(15), except for moderate risk waste as set forth in RCW 70.105.010(17).

“Hazardous waste storage” means the holding of hazardous waste for a temporary period, as regulated by the state dangerous waste regulations, Chapter 173-303 WAC.

“Hazardous waste treatment” means the physical, chemical or biological processing of hazardous waste for the purpose of rendering these wastes for material resource recovery, amenable for storage, or reduced in volume, as regulated by the state dangerous waste regulations, Chapter 173-303 WAC.

“Hazardous waste treatment and storage facility, off-site” means treatment and storage facilities which treat and store hazardous wastes generated on properties other than those on which the off-site facilities are located.

“Hazardous waste treatment and storage facility, on-site” means treatment and storage facilities which treat and store hazardous wastes generated on the same property.

“Hazard tree” means any tree that poses a threat to public safety, or poses an imminent risk of damage to private property. Hazard tree includes any tree that, under normal environmental conditions or in windstorms common to the Pacific Northwest, is likely to cause damage to a structure with frequent human use, including residential structures, a place of employment or public assembly, and other similar places, or damage to an approved public road or utility facility.

“Health club” or “athletic facility” means a building which is used for sports, health and recreational uses by the general public or by members not restricted to living within a specified area (as in a homeowner’s association or multiple-family development), which normally operates for a profit. Such facilities include, but are not limited to, tennis or racquetball courts, swimming pools, weight training, exercise classes, health spas and other similar uses. Where such uses are also permitted outdoors in specific zones, the following uses are included: Tennis courts, golf-driving range, miniature golf courses, running tracks, and swimming pools.

“Hearing examiner” means the land use hearing examiner for the city.

“Height, building” means the vertical distance from the base elevation of a building to the highest point of the roof, exclusive of building appurtenances. In the B-3 and R-5 zones, building height is measured as the height above the highest point of any public sidewalk immediately contiguous to the lot upon which the building is located, or height above the base elevation, whichever is greater.

“Height of building appurtenance” means the vertical distance from the base elevation of a building to the highest point of the building appurtenance.

“Hillsides” means geological features on the landscape having slopes of fifteen percent or greater.

“Historical commission” means the historical commission for the city.

“Home occupation” means an occupation which is incidental and subordinate to a residential use, which is carried on by a member of the family residing in the dwelling.

“Homeless” means a person who lacks a fixed, regular, and adequate nighttime residence, and who has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
2. An institution that provides a temporary residence for mentally ill individuals intended to be institutionalized; or
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

“Homeless encampment” means a group of homeless persons temporarily residing out of doors on a site with services such as shelter, food and sanitation, provided by a sponsor and supervised by a managing agency.

“Hospital” means an institution that provides twenty-four-hour-per-day care for the diagnosis, treatment, care and curing of individuals suffering from illness, injury or any condition requiring medical, obstetric, surgical, or psychiatric care; and other related uses customarily incidental thereto.

“Hotel” means a facility offering transient lodging accommodations on a daily rate to the general public which may also provide incidental services such as restaurants, meeting rooms or recreational facilities.

“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 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

“Impound, storage, tow yards” means a lot used for the temporary storage of vehicles which have been towed by a towing company or for impounded vehicles, but which does not include permanent vehicle storage or dismantling of vehicles.

“Incidental sign” means a small sign, emblem or decal informing the public of goods, facilities or services available on the premises, e.g., a credit card sign or a sign indicating hours of business, which does not exceed two square feet in size.

“Indirect lighting” means lighting displayed or reflected on the surface or face of a sign which is not inside the sign and not a part of the sign proper.

“Jail,” see “correctional facility.”

“Kennel, commercial” means an establishment that houses, cares for, breeds, or raises dogs, cats or other small domestic animals for profit.

“Lake” means a natural or artificially created permanent body of water with an average depth of six feet or greater and an area larger than twenty acres, as measured at the ordinary high water mark.

“Landscaping” means the planting, removal and maintenance of vegetation along with the movement and displacement of earth, topsoil, rock, bark and similar substances done in conjunction with the planting, removal and maintenance of vegetation.

“Landslide” means episodic downslope movement of a mass of soil or rock that includes but is not limited to rock falls, slumps, mudflows, earth flows, and avalanches.

“Landslide hazard areas” means those areas of the city subject to a risk of landslide based on a combination of geologic, topographic, and hydrologic factors.

“Line of sight” with respect to the siting of secure community transition facilities means the maximum unobstructed distance at which it is possible to reasonably visually distinguish and recognize individuals. For the siting of secure community transition facilities, this distance is six hundred feet. However, a distance less than six hundred feet may be considered if the applicant demonstrates that visual barriers exist or can be created that would reduce the line of sight to a distance less than six hundred feet.

“Lot” means an area of land established by plat, subdivision or as otherwise permitted by law to be used, developed or built upon in accordance with the provisions of the Zoning Code.

“Lot area” means the total area within the lot lines of a lot, excluding any primary access easements or panhandles, and excluding any area dedicated for public right-of-way purposes.

“Lot, corner” means a lot located at the junction of and fronting on two or more intersecting streets.

“Lot coverage by building” means the amount or percent of the ground area of a lot on which buildings are located. This amount/percent includes all areas which are partially or totally enclosed and covered by a weather tight roof, including any garages, carports, and cantilevered portions of a building which are not above the ground floor of a

building, and storage areas covered by a watertight roof even if not fully enclosed. Building coverage does not include eaves, decks, and uncovered porches. Minor portions of panhandle lots and primary access easements shall not be included in the lot area for purposes of calculating building coverage.

“Lot depth” means the mean distance between the front lot line and rear lot line.

“Lot frontage” means the length of the front lot line measured at the street right-of-way.

“Lot, interior” means any lot which is not a corner lot.

“Lot line” means a line of record that divides one lot from another lot or from a public or private street or alley.

“Lot line, front” means the lot line dividing a lot from the street. On a corner lot, only the shorter lot frontage shall be considered as the front lot line (see Section 39.075 for corner sites with more than one lot). On a panhandle lot, the front lot line and setbacks shall be determined during the subdivision approval process, or, if not determined during subdivision review, shall be determined by the planning director.

“Lot line, rear” means the lot line opposite and most distant from the front lot line. In the case of triangular or other irregularly shaped lots, an imaginary line ten feet in length located entirely within the lot, parallel to and at a maximum distance from the front lot line.

“Lot line, side” means any lot line which is not a front or rear lot line.

“Lot, panhandle” means a lot with access provided to the bulk of the lot by means of a narrow strip of land which does not meet the full frontage or width requirements of this title.

“Lot width” means the horizontal distance between side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines.

“Lumber and building materials sales” means a business that sells building materials and/or lumber in large quantities, and includes a significant portion of its product storage outdoors or in warehouse portions of the building.

“Maintenance, service (heavy)” means a business which services, maintains or repairs automobiles and small trucks including vehicle body work and painting, but which does not sell motor fuel to the public.

“Maintenance, service (light)” means a business which services, maintains or repairs automobiles and small trucks, excluding vehicle body work and painting, and also excluding sale of motor fuel to the public.

“Managing agency” means an organization that has the capacity to organize and manage a homeless encampment. A “managing agency” may be the same entity as the sponsor.

“Manufactured home” means a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

1. Is comprised of at least two fully enclosed parallel sections, each of which is not less than twelve feet wide by thirty-six feet long;
2. Was originally constructed with and now has composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and
3. Has exterior siding similar in appearance to siding materials commonly used on conventional site-built Uniform Building Code single-family residences.

“Manufacturing” means the process of transforming materials or substances into new products using chemical or mechanical processes.

“Manufacturing, heavy” means manufacturing uses not otherwise defined in this title that employ processes that generate potentially noxious or objectionable impacts such as noise, smoke, dust, vibration, odor, or concussion, the use or outdoor storage of heavy equipment, or outdoor storage of large quantities of bulk materials.

“Manufacturing, light” means processing or fabrication of materials involving methods or manufacturing processes which do not generate noxious or objectionable impacts such as noise, smoke, dust, vibration, odor, or concussion; does not require the use of heavy equipment; and does not involve outdoor storage of large quantities of bulk materials or heavy equipment.

“Marquee” means a permanent roof-like structure or canopy of rigid material supported by and extending from the facade of a building.

“Marsh” means an area permanently inundated by water less than six feet deep and occupied predominantly by an emergent wetland vegetation community.

“Medical-related activities” means uses that are closely related to clinic and hospital uses, including but not limited to, pharmacies, retail sales of durable medical goods, medical or dental laboratories and emergency ambulance services.

“Mitigation” means avoiding, minimizing, or compensating for adverse impacts and includes the use of any or all of the following actions:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;
5. Compensating for the impact by replacing or enhancing substitute critical areas;
6. Monitoring the required mitigation area and taking remedial action when necessary.

“Mobilehome park” means any real property which is rented or held out for rent to others for the placement of two or more mobilehomes or manufactured homes for the primary purpose of production of income.

“Monitoring” means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural systems and features, and including gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic and geologic elements of such systems, and assessing the performance of required mitigation measures.

“Monument sign” means a freestanding sign higher than five feet above grade which is attached to the ground by means of a wide base.

“Motel” means a building providing transient lodging with parking conveniently located to each unit, which may also include incidental uses such as meeting rooms, restaurants, etc.

“Multiple-family dwelling”: See “dwelling, multiple-family.”

“Municipal Code” means the various laws of the city contained within the Everett Municipal Code.

“Native vegetation” means vegetation on a site or plant species which are indigenous to the area in question; or if the site has been cleared, species of a size and type that were on the site on the effective date of this title or reasonably could have been expected to have been found on the site at the time it was cleared.

“Natural topography” means the elevation of a parcel of land prior to any human modification of the topography.

“Nightclub” means a commercial establishment which sells beverages for consumption on the premises and which includes entertainment and/or dancing.

“Nonconforming building” means a legally established structure or building, the size, dimensions, or setbacks of which met the applicable Zoning Code requirements in effect at the time the building was constructed, but which fails by reason of adoption, revision or amendment of the Zoning Code to conform to the present requirements of the zone in which it is located.

“Nonconforming landscaping” means on-site landscaping, the dimensions, area or location of which met the applicable Zoning Code requirements in effect at the time the use or building was established, but which fails by reason of adoption, revision or amendment of the Zoning Code to conform to the present requirements of the zone in which it is located.

“Nonconforming lot” means a legally established lot, the area, dimensions or location of which met the applicable Zoning Code requirements in effect at the time the lot was created, but which fails by reason of such adoption, revision or amendment of the Zoning Code, to conform to the present requirements of the zone in which it is located.

“Nonconforming parking” means legally established off-street parking for a particular use, the quantity, design, location or construction of which met the applicable Zoning Code requirements in effect at the time the use was established, but which fails by reason of adoption, revision or amendment of the Zoning Code to conform to the present requirements of the zone in which it is located.

“Nonconforming use” means a legally established use which met the applicable Zoning Code requirements at the time it was established but which fails by reason of adoption, revision or amendment of the Zoning Code to conform to the present requirements of the zone in which it is located.

“Normal rainfall” means that rainfall that is at or above the mean of the accumulated rainfall record, based upon the water year, for the city as recorded at the Seattle Tacoma International Airport, or other local rainfall recording station recognized by the city.

“Nursery” means an establishment where trees, shrubs and other plant materials are grown, propagated and/or stored for the purpose of sale.

“Nursing or convalescent home” means a facility or institution for the care of the aged or infirm, or a place of rest for those suffering bodily disorders. This term does not include hospitals or facilities for the primary treatment of sickness or injuries, or for surgical care, or congregate care facilities.

“Off-premises sign” means an outdoor advertising, informational, directional or identification sign other than a billboard, which relates to products, businesses, services or premises not located on or otherwise directly associated with the site on which the sign is erected.

“Off-street parking area” means an area designed and/or used for parking vehicles which is not located in a street or alley right-of-way.

“Office” means a building or portion thereof which is used for general business purposes not involving manufacturing, sale of inventory or provision of services involving manual skills or mechanical processes. Not included in the category of office are those businesses and occupations defined by this title as clinics, medical-related activities, personal services, financial institutions, service businesses, government administrative offices or uses such as private clubs or fraternal organizations.

“Open-air market” means an outdoor market held on a regular basis, and at which groups of individual vendors sell new or used goods, produce, freshly prepared foods, handmade crafts, or other unique goods. Live entertainment may be provided. Open-air market shall not include outdoor display or sales associated with retail establishments that are principally located in indoor facilities, or motor vehicle dealerships.

“Open space” means land area not covered by buildings, roads, driveway and parking areas, or outdoor storage areas, including, but not limited to, landscape areas, gardens, woodlands, walkways, courtyards or lawns, and outdoor recreation areas. Except as otherwise provided by this title, open space includes setback areas that meet the requirements defined in this chapter.

“Open space, common” means private open space provided within a development which is provided for, and which is permanently accessible to, all residents/tenants of the development.

“Open space, private” means a small parcel of land or outside area (deck, lanai, patio) immediately adjacent to an individual dwelling unit maintained by and for its residents and reserved exclusively for their use.

“Open space, public” means an area dedicated in fee to the city and operated and maintained by it. Public open space in a planned residential development is designed primarily for the use of residents of the particular development, but cannot be reserved for this exclusive use due to the public ownership.

“Open water component” means water in dispersed patches covering forty to sixty percent of the wetland which have not less than six inches and not more than six feet of standing water for at least ten months of the year.

“Opiate substitution treatment facility” means an organization that administers or dispenses an approved drug as specified in 212 CFR Part 291 for treatment of detoxification of opiate substitution. The agency is:

1. Approved by the Federal Food and Drug Administration;
2. Registered with the Federal Drug Enforcement Administration;
3. Registered with the State Board of Pharmacy;
4. Licensed by the county in which it operates; and
5. Certified as an opiate substitution treatment agency by the State Department of Social and Health Services.

“Ordinary high water mark” means the mark that will be found by examining the channel bed and banks of a stream, lake or pond and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all years of normal rainfall as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

“Outdoor recreation, commercial” means an outdoor recreational use operated as a private commercial enterprise not otherwise defined in this title including but not limited to golf course, golf driving range, archery range, campground or other similar use. This term does not include recreational vehicle parks or trailer parks.

“Overlay zone” means a zone which is used in conjunction with, and which cannot be established without, another zone. The overlay zone adds additional regulations, allows development to occur which would not otherwise be possible and/or which modifies standards in the underlying zone.

“Owner” means the holder of fee title, a mortgagee, or contract purchaser.

“Parking space” means a portion of an off-street parking area, meeting the city’s design and construction standards, having access to a public street or alley.

“Passenger terminal” means a facility for passengers of a public or private transportation carrier to purchase tickets and board such means of transport, baggage handling, and related uses providing services to passengers of a small scale and nature, including but not limited to retail uses, restaurants, lockers, personal services, barber or beauty salon, and other similar activities.

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## EVERETT SHORELINE MASTER PROGRAM

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“Personal service use” means a business or occupation which provides services involving personal grooming or the care of a person’s apparel, including, but not limited to, laundry (not including self-service laundromat) services, manicurists, tailors, shoe repair shops, tanning salons.

“Planned residential development (PRD)” means a residential development which is comprehensively planned as an entity and which is permitted greater flexibility in building siting, lot size, setbacks, mixture of housing types, usable open space and preservation of significant natural features than otherwise allowed or required in the underlying zone, and which is established through a public hearing process through the use of a PRD overlay zone.

“Planning commission” means the planning commission for the city.

“Planning department” means the planning department for the city.

“Planning director” means the planning director for the city or his/her authorized representative.

“Plant associations of infrequent occurrence” means one or more plant species on a landform type which, because of the rarity of the habitat or the species involved or both, or for other botanical or environmental reasons, do not occur frequently in Everett or Snohomish County.

“Plat, formal” means the division or redivision of land into ten or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

“Plat, short” means the division or redivision of land into nine or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

“Pole sign” means any freestanding sign more than five feet in height that does not meet the definition of monument, ground or portable sign. These signs are composed of the sign cabinet or base and the sign pole or pylon by which it connects to the ground.

“Political sign” means any sign intended to express political beliefs, or to promote an individual or an issue on an election ballot.

“Pond” means an area permanently inundated by water in excess of six feet deep and less than twenty acres and larger than two thousand five hundred square feet in area as measured at the ordinary high water mark.

“Portable sign” means any sign which is capable of being moved easily and is not permanently affixed to the ground or a structure or building, including readerboards (see Section 36.140).

“Practicable” means possible or capable of being done.

“Principal building” means the primary or predominant building on a lot.

“Principal use” means the primary or predominant use of any lot or building.

“Private club or lodge” means an association of persons organized for some common purpose, including fraternal organizations but not including groups organized primarily to render a service which is customarily carried on as a business.

“Projecting sign” means any sign, other than a flat wall sign, which is attached to and projects more than twelve inches from a building wall or other structure not specifically designed to support the sign.

“Public agency” means any agency, political subdivision, or unit of local government of this state including but not limited to municipal corporations, special purpose districts, and local service districts; any agency of the state, the United States, or any Indian tribe recognized as such by the federal government.

“Public service use, building” means a use or building supporting the services provided by a public agency. This term includes fire stations, police precinct or substations, community centers, and other public service uses, but does

not include government administrative offices; schools; equipment storage yards, buildings or parking; correctional facilities; parks; public or publicly subsidized housing; social service agencies; or utility facilities.

“Public works director” means the public works department director for the city or his/her authorized representative.

“Readerboard” means a sign or a part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

“Real estate sign” means a sign erected by the owner or his/her agent advertising the real estate upon which the sign is located for rent, lease or sale, or directing interested parties to the property.

“Real estate directional sign” means an off-premises sign which directs persons to a property for sale, lease or rent.

“Reasonable 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 impacts to regulated critical areas. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

“Reasonable use” or “reasonable economic use” means a legal concept that has been articulated by federal and state courts in regulatory takings cases.

“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 undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and alter a regulated critical area are not included in this definition.

“Research, testing laboratory” means a facility in which scientific or developmental research is performed, but which does not include mass production or mass manufacturing of goods and commodities.

“Restaurant” means an establishment open to the public selling food and drink which may be consumed on or off of the premises.

“Restoration” means the return of a stream or wetland, or terrestrial ecosystem to a state in which its functions and values significantly approach its unaltered state.

“Retail use” means an establishment engaged in the sale of goods or merchandise to the general public.

“Retail use, indoors” means a business which is not otherwise defined in this title providing products for retail sale to the general public or to group members, located primarily within a building, but which may include outdoor display on walkways within shopping centers, or on public sidewalks as permitted by the city engineer.

“Retail use, outdoors” means a business not otherwise defined in this title which sells products to the general public from display areas located outside of enclosure by buildings.

“Retention/detention facility” means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground; or to hold runoff for a short period of time and then release it to the surface and storm water management system.

“Review authority” means the individual or the board, council or commission with authority to review, make recommendations concerning, or approve development permits.

“Review process” means the procedure listed in Title 15, Local Project Review Procedures, by which a specific use shall be evaluated before a determination is made concerning the issuance of an approval, a license or permit.

“Right-of-way” means the actual property which is publicly dedicated or reserved for street and alley access and for other public purposes such as public utilities, bicycle paths, and pedestrian walkways.

“Riparian corridor” means a perennial, intermittent, ephemeral stream or swale including its channel bottom; lower and upper banks, and area beyond the top of the upper bank which influences the stream through shading and organic matter input, and is influenced by the presence of water, particularly in regard to plant composition. The riparian corridor is the transitional area between aquatic and upland ecosystems and does not necessarily include the entire floodplain of a stream.

“Roof sign” means any sign erected over or on the roof of a building, or attached to the wall of a building and extending above the roofline.

“Rooming” means the provision of a room for lodging purposes, without meals, in return for payment of rent.

“Roominghouse” means a principal building other than a hotel where lodging which complies with the city Housing Code is provided, without meals, for compensation on other than a day-to-day basis, and which is not open to transient guests.

“Salmonid” means a member of the fish family Salmonidae. In the city these include chinook, coho, chum, sockeye and pink salmon; cutthroat, brook, brown, rainbow and steelhead trout; and Dolly Varden, kokanee and char.

“Secure community transition facility” means a facility, as defined in RCW 71.09.020, for the housing of sexually violent predators.

“Seismic hazard areas” means those areas of the city subject to severe risk of earthquake damage as a result of seismically induced ground shaking, settlement, or soil liquefaction. These conditions occur in areas underlain by cohesionless soils of low density sometimes in association with a shallow groundwater table.

“Self-serve storage facility” means a building or buildings containing separate storage spaces of a limited size leased or rented on an individual basis, which does not include warehouses or loading docks.

“Senior citizen housing” means a housing development in which all dwelling units are to be occupied by a person or persons age fifty-five or older; provided, however, that younger spouses shall be permitted.

“Sensitive land uses” means those land uses which are particularly sensitive to the secondary effects of adult use businesses. Sensitive land uses include the following:

1. Single-family and multiple-family residential zones;
2. Churches, or other religious facilities or institutions;
3. Public and private schools, training facilities and technical schools which have twenty-five percent or more of their students under the age of eighteen;
4. Public parks and playgrounds;
5. Community development block grant designated neighborhoods.

“SEPA” means the current edition of the State Environmental Policy Act and the city ordinance implementing the State Act.

“Service (gasoline) station” means a retail establishment selling motor fuels to the public and may also include retail sale of motor oil, auto accessories and travel aids, automobile servicing, repairs and maintenance, excluding vehicle body work and painting.

“Setback” means the required minimum distance between any lot line and any structure, building or use.

Setback, Front. “Front setback” means the required minimum distance between the front lot line and any structure, building or use.

Setback, Rear. "Rear setback" means the required minimum distance between the rear lot line and any structure, building or use.

Setback, Side (Interior). "Side (interior) setback" means the required minimum distance between the side lot line which does not abut a street and any structure, building or use.

Setback, Side (Street). "Side (street) setback" means the required minimum distance between the side lot line abutting the street on a corner lot and any structure, building or use.

"Shipping, trucking terminal" means a business that provides transport of goods, has parking on site for large trucks, and may include outdoor container storage, rail-to-truck transfer facilities, warehouse storage and vehicle maintenance facilities.

"Shopping center" means a grouping of retail business and service uses on a single development site with common parking facilities.

"Shoreline management master program" means the city of Everett-adopted shoreline management master program.

"Should" means encouraged but not required.

"Sign" means any device, structure, fixture, placard, painted surface, awning, banner or balloon using graphics, lights, symbols and/or written copy designed, used or displayed for the purpose of advertising, identifying, attracting attention to, or promoting the interest of any person, institution, business, event, product, goods or services; provided, that the same is visible from a street, way, sidewalk, or parking area open to the public.

"Sign area" means the entire area of a sign on which copy is to be placed. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy shall not be included. Sign area shall be calculated by measuring the perimeter enclosing the extreme limits of the module or background containing the advertising or identifying message; provided, that individual letters using a wall as the background, without added decoration or change in wall color, shall have a sign area calculated by measuring the smallest rectangle enclosing each letter and totaling the square footage thereof. For double-faced signs, total sign area shall be calculated by measuring only one face.

"Sign height" means the vertical distance from grade to the highest point of a freestanding sign or any vertical projection thereof, including its supporting columns. Grade shall be determined by taking the average elevation at finished grade for the midpoints of the four sides of the smallest rectangle that will enclose all area which is within a five-foot horizontal radius of the sign and its supporting structure.

"Significant biological areas" means the following areas of the city:

1. Plant associations of infrequent occurrence;
2. Commercial and recreational shellfish areas;
3. Kelp and eelgrass beds;
4. Herring, sand lance, and smelt spawning areas;
5. State natural area preserves and natural resource conservation areas; and
6. Those areas listed in the 1981 SEPA Resource Inventory as significant biological areas, which are:
  - a. Maulsby Swamp,
  - b. Kasch Park (Bomarc) Bog,
  - c. Simpson Lee site Category I wetlands,

- d. Narbeck Swamp,
- e. Jetty Island.

“Significant surface water connection” means a surface water flow that is continuous for thirty days or more during years of normal rainfall.

“Social service facility” means a facility housing a public or nonprofit agency that provides counseling, therapy or other social or human services to persons needing such services due to physical, mental, emotional or other disabilities. This definition does not include schools, hospitals, clinics, daycare, or residential uses.

“Solid waste transfer station” means a solid waste handling facility where nonhazardous solid waste is delivered by public agencies, businesses or individuals and transferred and/or sorted into other containers to be transported to another location for ultimate disposal. A solid waste transfer station may include provisions for extraction of recyclable or reusable materials, as well as collection facilities for recyclable materials.

“Specified anatomical areas” means:

1. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

“Special property use” means a use of property which is permitted only if approved by the city following public notification and/or public hearing, as provided in Chapter 41 of this title.

“Specified sexual activities” means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

“Sponsor” means a local faith-based or other local community-based organization that has an agreement with the managing agency to provide basic services and support for the residents of a homeless encampment, such as shelter, food and sanitation, and liaison with the surrounding community and joins with the managing agency in an application for a temporary use permit. A “sponsor” may be the same entity as the managing agency.

“Steep slopes” means any ground that rises ten or more for every twenty-five feet of horizontal distance, thus having a grade of forty percent or steeper. A slope is delineated by establishing its toe and top:

1. “Toe” of a steep slope is the lower most limit of the area where the ground surface rises ten feet or more vertically within a horizontal distance of twenty-five feet.
2. “Top” of a steep slope is a distinct, sharp break in slope which separates slopes inclined at less than forty percent from slopes equal to or greater than forty percent. Where no distinct break in slope exists, the top of the steep slope shall be the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

“Stream” means a year-round or intermittent water course or route, formed by nature or modified by human activities and generally consisting of a defined channel with a bed, banks or sides for a substantial portion of its length, along which surface waters naturally and normally flow from higher to lower lands. Streams include natural swales. Wetlands and entirely artificial watercourses such as irrigation and drainage ditches, grass-lined swales, canals and stormwater runoff devices shall not be considered to be streams, except where they exist in a natural watercourse that has been altered by humans. Streams which have been channelized or culverted shall continue to be considered streams for the purpose of this title.

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“Stream channel bottom” means the submerged portion of the stream cross-section which is totally an aquatic environment. The channel bottom may be seasonally dry.

“Street” means a public or private thoroughfare which provides the principal means of access to abutting properties.

“Structure” means a combination of materials constructed or erected on or under the ground, or attached to something having a permanent location on or under the ground.

“Swale” means a shallow drainage conveyance with relatively gentle side slopes, generally with flow depths less than one foot.

“Swamp” means an area permanently saturated or inundated by water, and occupied predominantly by either a scrub-shrub or forested wetland vegetation community.

“Tavern” means an establishment selling beer and/or wine for consumption on the premises.

“Temporary or special event sign” means a nonpermanent sign intended for use for a short period of time, including banners, pennants or advertising displays constructed of canvas, fabric, wood, plastic, cardboard or wallboard, with or without frame. Signs in this category include signs painted on window surfaces which are readily removed by washing, and signs referred to in Section 36.150.

“Temporary shelter home” means a facility providing temporary housing for victims of domestic violence, the homeless, or other persons in need of temporary housing. Temporary shelter homes may also provide support services to assist residents become self sufficient or make the transition to their own housing. This term does not include Class I or Class II group homes.

“Tower” means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term encompasses personal wireless service facilities towers, microwave towers, common-carrier towers, cellular telephone towers, personal communications services tower, alternative tower structures, and other similar structures, and its attendant base station.

“Traffic engineer” means the traffic engineer for the city.

“Transfer of development rights” means the amount of development allowed to be transferred from a lot containing a critical area to another lot, as permitted in Chapter 37 of this title.

“Transit station” means a dedicated transit facility where several transit routes converge, designed to accommodate several buses at once to permit transfer between transit routes. A transit center may provide transit passenger shelters and waiting areas, but does not include off-street parking for transit passenger vehicles.

“Transportation facilities of statewide significance” means the interstate highway system; interregional state principal arterials including ferry connections that serve statewide travel; regional transit systems as defined in RCW 81.104.015; high capacity transportation systems serving regions as defined in RCW 81.104.015; intercity passenger rail services; intercity high-speed ground transportation; rail fixed guideway system, as defined in RCW 81.104.015, excluding yards and service and maintenance facilities; the freight and passenger railroad system as regulated by the Federal Railroad Administration, excluding yards and service and maintenance facilities; and in shoreline zones, and in adjacent zones where all or any portion of a development is within a shoreline designated area or zone, marine port and barge facilities and services that are related to marine activities affecting international and interstate trade, excluding centralized, high density concentrations of port, deep water port, and marine shipping facilities and services.

“Unavoidable and necessary impacts” means impacts to regulated critical areas after the applicant proposing to alter a regulated critical area has demonstrated that no reasonable alternative exists for the proposed project.

“Undevelopable area” means:

1. Regulated wetlands;
2. Geologically hazardous areas which are determined by supporting studies to be unsuitable for development;
3. Streams;
4. Habitats of primary association;
5. Plant associations of infrequent occurrence.

“Unstable soils” means soils which by their physical nature are not suitable to support buildings, roads, utilities or other manmade development related improvements, or which have the potential for slope failure, erosion, or subsidence. Unstable soils include, but are not limited to, those areas defined as landslide hazard areas, erosion hazard areas, and seismic hazard areas, or other soils which have been determined by the public works director or the building official to be unsuitable for building foundations or structural support.

“Upper bank” means that portion of the topographic cross-section of a stream which extends from the break in the general slope of the surrounding land to the ordinary high water mark.

“Use” means the activity or function carried out on an area of land, or in a building located thereon.

“Use table” means the charts used to display uses, and applicable review process in each use zone.

“Use zone” means those zones contained within this title as designated by Section 1.030.

“Vacate” means to move out; to make vacant or empty; to leave.

“Video board” means an electronically activated sign that creates the effect of motion or animation, except as allowed by this chapter for changing electronic message signs which are in compliance with the 2-1-2 provision, and the prohibition of RGB technology.

“Wall sign” means a sign attached, painted onto or erected parallel to and extended not more than one foot from the facade or face of any building to which it is attached and supported throughout its entire length, with the exposed face of the sign parallel to the plane of said wall or facade.

“Warehouse” means a building used to store merchandise, materials or commodities.

“Wastewater treatment plant” means a utility facility for the collection and treatment of sanitary sewage and storm water through mechanical, chemical and biological processes for the purpose of improving the quality of wastewater.

“Water-dependent” means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

“Water-dependent use” means a use which is dependent upon a location on or adjacent to the shoreline to be successful, and without such location cannot exist, including but not limited to deepwater shipping terminals, marinas and accessory uses, boat launches, fishing piers, commercial fishing terminals, marine construction businesses, barge loading terminals, and similar industrial, commercial or recreational uses.

“Water-related uses” means uses that are not water-dependent but are enhanced by a location on or adjacent to the shoreline, including but not limited to recreational trails, restaurants, marine-related retail or service businesses, resort hotels, boat sales and service, fish markets, public parks, and similar industrial, commercial or recreational uses.

“Wetlands,” for the purpose of inventory mapping, means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must have one or more of the following three attributes:

1. At least periodically, the soil supports predominantly hydrophytes;
2. The substrate is predominantly undrained hydric soil;
3. The substrate is non soil and saturated with water at some time during the growing season of each year.

Wetlands include all areas waterward from the wetland edge. Where the vegetation has been removed, or substantially altered, a wetland shall be determined by the presence or evidence of hydric or organic soils.

“Wetland boundary” means, for the purposes of the calculation of the area of the wetland, the total extent of the wetland, both on-site and off-site.

“Wetland class” means a description of vegetation habitat based on the predominant life forms that occupy a particular layer of vegetation and possess an aerial coverage of thirty percent or greater of the entire wetland. The basis for these descriptive classes is derived from the Wetlands Taxonomic Classification System of the United States Fish and Wildlife Service (Cowardin et al., 1979).

“Wetland, contiguous” means wetland systems connected by hydric soils or a significant surface water connection. For purposes of this title, wetlands will not be considered contiguous if the only hydrologic connection is a category I, II or III stream, or if the wetlands had historically been connected but are now separated by a legal fill or culvert which is one hundred feet or more in length.

“Wetland edge” means the line delineating the outer edge of a wetland established by using the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94, 1997).

“Wetlands, emergent” means a regulated wetland that does not qualify as a forested wetland or a scrub-shrub wetland with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

“Wetlands, forested” means a regulated wetland with at least thirty percent of the surface area covered by woody vegetation greater than twenty feet in height.

“Wetlands, isolated” means those wetlands which:

1. Are outside of and not contiguous to any one hundred year floodplain or riparian corridor of a lake, river, or stream; and
2. Have no contiguous hydric soil or surface water connection between the wetland and another surface water body.

“Wetlands, regulated” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, ponds, bogs and similar areas. Regulated 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 created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. For identifying and delineating regulated wetlands, the city shall use the Washington State Wetland Identification and Delineation Manual.

“Wetlands, riparian” means those wetlands that generally occur within a riparian corridor that is contiguous to or have a surface hydrologic connection with a stream. Wetlands formed by hillside seeps that are not hydrologically affected by water in a nearby stream are not riparian wetlands. However, wetlands on a hillside may be riparian wetlands if adjacent to a stream that flows down the hillside.

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“Wetlands, scrub-shrub” means a regulated wetland that does not qualify as a forested wetland with at least thirty percent of its surface area covered by woody vegetation less than twenty feet in height as the uppermost strata.

“Window sign” means a sign located inside and affixed to windows of a building, whether temporary or permanent, lighted or unlighted, which may be viewed from the exterior of the building. The term does not include merchandise located within a building.

“Zone” means a specifically delineated area within the city, which is indicated on the zoning map, within which regulations and requirements uniformly govern the use, location and size of buildings and land.

“Zoning map” means the map adopted by the city showing the geographic location of zones within the municipal boundaries. (Ord. 3078-08 § 3, 2008; Ord. 3072-08 §§ 1, 2, 2008; Ord. 3002-07 § 1, 2007; Ord. 2994-07 § 1, 2007; Ord. 2990-07 § 1, 2007; Ord. 2973-07 § 1, 2007; Ord. 2909-06 §§ 27—62, 2006; Ord. 2836-05 § 3, 2005; Ord. 2711-03 § 2, 2003; Ord. 2708-03 §§ 2, 3, 2003; Ord. 2706-03 § 8, 2003; Ord. 2657-02 §§ 1—7, 2002; Ord. 2639-02 § 1, 2002; Ord. 2616-02 §§ 1, 2, 2002; Ord. 2556-01 § 1, 2001; Ord. 2538-01 §§ 1, 72, 2001; Ord. 2397-99 §§ 12—34, 1999; Ord. 2290-98 § 1, 1998; Ord. 2111-95 § 2(A), 1995; Ord. 2106-95 § 1(A), 1995; Ord. 2076-95 § 1, 1995; Ord. 1978-93 §§ 1, 2, 1993; Ord. 1864-92 § 1, 1992; Ord. 1847-92 § 3 (part), 1992.)