

# Appendix A

## Shoreline Management Program

### CRITICAL AND ENVIRONMENTALLY SENSITIVE AREAS PROTECTION

Sections:

- [18.80.010](#) Purpose.
- [18.80.030](#) Definitions.
- [18.80.040](#) Applicability.
- [18.80.045](#) Critical area review.
- [18.80.050](#) Permitted uses and development restrictions.
- [18.80.055](#) Exempt activities.
- [18.80.060](#) Submittal requirements and support information required.
- [18.80.070](#) Development standards.
- [18.80.075](#) Buffer and setback on sites with existing primary structure(s).
- [18.80.080](#) Development exceptions.
- [18.80.090](#) Notice to title and protective tracts.
- [18.80.100](#) Critical aquifer recharge areas.
- [18.80.110](#) Securities and enforcement.

**18.80.010 Purpose.**

Wetlands, streams, flood hazards, geologic hazards (erosion, landslide, seismic), steep slopes, fish and wildlife habitat areas, locally unique features (ravines, marine bluffs, beaches) and protective buffers, and critical aquifer recharge areas constitute critical areas that are of special concern to the city. The purpose of this chapter is to protect critical areas as required by the Growth Management Act and as provided in the guidelines promulgated by the Washington Department of Commerce. Accordingly, the intent of this chapter is to use a performance-based approach and establish minimum standards for development of properties that contain or adjoin critical areas and to protect the public health, safety and welfare in regard to critical areas by:

- A. Mitigating unavoidable impacts by regulating alterations;
- B. Protecting from impacts of development by regulating alterations;
- C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events or soil subsidence;
- D. Protecting against publicly financed expenditures in the event critical areas are misused, which causes:
  - 1. Unnecessary maintenance and replacement of public facilities,

2. Publicly funded mitigation of avoidable impacts,
3. Cost for public emergency rescue and relief operations where the causes are avoidable, or
4. Degradation of the natural environment;

E. Protecting the public trust in navigable waters and as to aquatic resources;

F. Preventing adverse impacts to water availability, water quality and streams;

G. Protecting unique, fragile and valuable elements of the environment, including wildlife and its habitat;

H. Alerting appraisers, assessors, owners, potential buyers or lessees to the development limitations of critical areas;

I. Providing city officials with sufficient information to adequately protect critical areas when approving, conditioning or denying public or private development proposals; and

J. Implementing the policies of the State Environmental Policy Act, Chapter 43.21C RCW; the city comprehensive plan; this chapter; and all updates and amendments, functional plans, and other land use policies formally adopted or accepted by the city. (Ord. 2012-001 § 2 (Exh. A); Ord. 631 § 1, 1992)

#### **18.80.030 Definitions.**

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

“Anadromous” means fish that live part or the majority of their lives in saltwater, but return to freshwater to spawn.

“Beaches and associated coastal-drift process areas” means the areas that encompass marine shorelines that contain important sites of material supply, transport and deposition that define the present landforms and natural character of the Sequim shoreline.

“Best management practices” means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical and biological characteristics of wetlands.

“Category I wetlands” means wetlands that (1) represent a unique or rare wetland type; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

This category includes: relatively undisturbed estuarine wetlands of one or more acres; national heritage wetlands; bogs; mature forested wetlands of one or more acres; wetlands in coastal lagoons; and high-functioning wetlands that score 70 or more points on a scale of one to 100 based on the Department of Ecology's Wetland Rating System for Western Washington, publication 04-06-025, or as revised and approved by the Department of Ecology.

"Category II wetlands" means wetlands that may have some level of disturbance, but still retain high function in some areas. This category includes, but is not limited to: estuarine wetlands less than one acre or those that have been disturbed and are greater than one acre; interdunal wetlands greater than one acre; and wetlands that score 51 to 69 points on a scale of one to 100 based on the Department of Ecology's Wetland Rating System for Western Washington, publication 04-06-025, or as revised and approved by the Department of Ecology.

"Category III wetlands" means wetlands that score 30 to 50 points on a scale of one to 100 based on the Department of Ecology's Wetland Rating System for Western Washington, publication 04-06-025, or as revised and approved by the Department of Ecology.

"Category IV wetlands" means wetlands that have low functions and score less than 30 points on a scale of one to 100 based on the Department of Ecology's Wetland Rating System for Western Washington, publication 04-06-025, or as revised and approved by the Department of Ecology.

"Closed stream segments" are those segments of streams, regardless of their type, that are fully enclosed in an underground pipe or culvert.

"Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. "Creation," meaning actions performed to establish wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
2. "Restoration," meaning actions performed to reestablish or rehabilitate wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
3. "Enhancement," meaning actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

"Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

“Critical areas” and “environmentally sensitive areas” mean and include any of the following areas and ecosystems:

1. Wetlands;
2. Streams or stream corridors;
3. Frequently flooded areas;
4. Geologically hazardous areas:
  - a. Erosion hazard areas,
  - b. Landslide hazard areas,
  - c. Seismic hazard areas;
5. Fish and wildlife habitat conservation areas;
6. Locally unique features:
  - a. Ravines,
  - b. Marine bluffs,
  - c. Beaches and associated coastal-drift processes;
7. Critical aquifer recharge areas; and
8. Buffers as established under SMC [18.80.070](#).

“Erosion hazard areas” means those areas containing soils which, according to the United States Department of Agriculture Soil Conservation Service Soil Classification System, may experience severe to very severe erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Locally important habitats are also included.

“Frequently flooded areas” means lands in the floodplain subject to a one-percent or greater chance of flooding in any given year (the 100-year storm flood). These areas include but are not limited to the floodplains of streams, rivers, lakes, coastal areas, wetlands, and the like.

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological event, are not normally suited to siting commercial, residential or industrial development consistent with public health or safety concerns.

“Land use permit” means a permit or action required to be approved by the city to allow the development of one or more parcels of property.

“Landslide hazard areas” means areas potentially subject to risk of mass movement due to a combination of geologic, topographic and hydrologic factors. The following areas are considered to be subject to landslide hazards:

1. Areas of historic failures or potentially unstable slopes, such as areas mapped within Soil Conservation Service Slide Hazard Area Studies; as unstable, unstable old slides, or unstable recent slides designated by the Department of Ecology Coastal Zone Atlas; and as quaternary slumps, earthflows, mudflows, lahars or landslides on maps published by the United States Geological Survey or Department of Natural Resources, Division of Geology and Earth Resources;
2. Any area with a combination of:
  - a. Slopes 15 percent or steeper, and
  - b. Impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominantly sand and gravel), and
  - c. Springs or ground water seepage;
3. Any slope of 40 percent and with a vertical relief of 10 or more feet except areas composed of consolidated rock;
4. Any slope greater than 80 percent subject to rockfall during seismic events;
5. Any area which has shown movement during the past 10,000 years or which is underlain by mass wastage debris from that period of time;
6. Any area potentially unstable as a result of rapid stream incision, stream bank erosion (e.g., ravines) or undercutting by wave action (e.g., marine bluffs);
7. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.

“Locally unique feature zones” means variable width planning areas defined as setbacks from the top of ravines or bluffs, or corresponding to the shoreline management zone for beaches and associated coastal-drift processes.

“Locally unique features” means landforms and features that are important to the character of the city. These features or landforms usually contain more than one “critical area.” Locally unique features in the region include ravines, marine bluffs, and beaches and associated coastal-drift processes.

“Marine bluffs” means coastal features resulting from wave erosion undercutting uplands located adjacent to the shoreline creating vertical cliffs greater than 20 feet in height that are an important source of sediment for coastal-drift processes and the landforms created by these processes.

“Practicable alternative” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology and logistics in light of overall project purposes, and having less impact to regulated wetlands. 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 purposes of the proposed activity.

“Priority habitats” means areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat, seasonal ranges, or movement corridors; limited availability; and/or high vulnerability.

“Qualified professional” means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least five years of related work experience.

1. A qualified professional for wetlands must be a professional wetland scientist or ecologist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.
2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.
3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

5. A qualified professional arborist must be an ISA (International Society of Arboriculture) Certified Arborist.

“Ravines” means narrow gorges normally containing steep slopes, having little or no defined floodplain, and deeper than 10 vertical feet as measured from the centerline of the ravine to the top of the slope. Ravines may also contain flowing water or streams.

“Regulated wetlands” means areas that meet the definition of “wetlands” and that are not exempt from regulation.

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

“Seismic hazard areas” means areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density usually in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking.

“Stream buffers” means variable width planning areas defined as setbacks from the ordinary high water elevation of the stream or watercourse, or from the top of the bank or dike. Zones include both year-round and seasonal waterways, but vary in width depending on the rating of the stream.

“Stream types” include categories established as follows:

1. “Type 1” means those streams inventoried as “shorelines of the state” in the city’s adopted shoreline master program.
2. “Type 2” means perennial or intermittent streams used by anadromous fish during any stage of life.
3. “Type 3” means perennial or intermittent streams with the potential for anadromous fish use, but which do not currently support anadromous fish because of fish barriers or any other condition that substantially interferes with stream use by anadromous fish.
4. “Type 4” means intermittent or perennial streams that are not Type 1, 2 or 3 that may contain fish other than anadromous fish.
5. “Type 5” means intermittent or perennial streams that are not Type 1, 2, 3, or 4.

“Unavoidable and necessary impacts” are impacts that remain after a person proposing to alter critical areas has demonstrated that no practicable alternative exists for the proposed project.

“Wetland buffer” or “wetland buffer zone” means an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.

“Wetland categories,” “classes of wetlands” or “wetland types” means descriptive classes of the wetlands taxonomic classification system of the current version of the Washington State Department of Ecology Wetlands Rating System for Western Washington.

“Wetland edge” means the line delineating the outer edge of a wetland. Wetlands will be delineated in accordance with the procedure outlined in WAC 173-22-035.

“Wetland functions” means the beneficial roles served by wetlands, including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; historical, archaeological and aesthetic value protection; and recreation. These beneficial roles are not listed in order of priority.

“Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands also include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. (Ord. 2012-001 § 2 (Exh. A); Ord. 631 § 1, 1992)

#### **18.80.040 Applicability.**

This chapter establishes regulations for the designation and protection of properties with critical areas and critical area buffers as indicated under subsection D of this section. Properties listed, identified, classified or rated as critical areas are those which are or may become designated critical areas by the city’s comprehensive plan, development regulations, or by separate studies which indicate that all or portions of a particular area or specific site are critical areas. A site-specific analysis which indicates that any element regulated by this chapter is present will result in that portion of the property being classified as a critical area.

A. All development proposals on sites which are identified as critical areas shall comply with the requirements and provisions of this chapter. Responsibility for administration and enforcement of the provisions of this chapter shall rest with the department of community development director or the director’s designee.

B. For the purposes of this chapter, development proposals include proposals which require land use approvals required by city ordinances, as amended, or the Revised Code of Washington.

C. When any other city provision conflicts with this chapter, that provision which provides the greatest protection to critical areas shall apply.

D. This chapter applies to all lots or parcels that contain or are adjacent to critical areas. Critical areas shall be defined and designated to assure that the properties subject to review under this chapter encompass all areas necessary to maintain the natural hydraulic and habitat functions of the critical area. The approximate distribution and extent of critical areas in the city and its urban growth area are displayed on maps on file with the city department of community development.

1. Critical areas composite maps shall be prepared and revised on an ongoing basis. The Clallam County Critical Areas Map may also be used as a guide in determining critical areas. Wetlands identified on the U.S. Fish and Wildlife Service National Wetlands Inventory, and hydric soils and “wet spots” identified by the USDA Soils Conservation Service Natural Resource Conservation Service Soil Survey of Clallam County Area, Washington, may also be used.

2. These maps are to be used as a guide to the general location and extent of critical areas and to alert the public and city officials of the potential presence of critical areas on-site or off-site of a development proposal. Given the generalized nature of these maps and recognizing that critical areas are a dynamic environmental process, the actual presence and location of critical areas, as determined by qualified professionals, shall be established and protected in accordance with all the provisions of this chapter, which shall govern the treatment of proposed development sites.

3. In the event that any of the critical areas shown on the maps conflict with the criteria set forth in this chapter, the criteria shall control.

E. The department of community development director, as assisted by other city officials, has final responsibility for the accuracy of the submitted information. Once classification and location information have been verified for a particular lot or parcel, the director shall require that the owner/applicant:

1. File a notice on title with the Clallam County auditor pursuant to SMC [18.80.090](#); and

2. Place a “critical areas easement” on the face of a final subdivision, minor subdivision binding site plan, or boundary line adjustment. (Ord. 2012-001 § 2 (Exh. A); Ord. 2011-017 §§ 1, 2; Ord. 2002-027 § 4; Ord. 631 § 1, 1992)

**18.80.045 Critical area review.**

A. The city shall perform a critical area review for a development proposal permit application or other request to proceed with an alteration on a site that includes a critical area or is within an identified critical

area buffer or building setback area. Any required studies shall be conducted in conformance with SMC [18.80.060\(C\)](#).

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

1. Determine whether any critical area exists on the property and confirm its nature and type;
2. Determine whether a critical area special study is required;
3. Evaluate the critical area special study, if one is required;
4. Determine whether the proposal is consistent with this chapter;
5. Determine whether any proposed alteration to the critical area is necessary; and
6. Determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives, and requirements of this chapter. (Ord. 2012-001 § 2 (Exh. A))

**18.80.050 Permitted uses and development restrictions.**

A. Permitted Uses. Uses permitted on properties classified as critical areas shall be the same as those permitted in the underlying zone. Each use shall be evaluated in accordance with the review process required for the proposed use in the underlying zone in conjunction with the requirements of this chapter and state and federal regulations.

B. Development Restrictions.

1. The following critical areas and their buffers shall remain undisturbed pursuant to SMC [18.80.070](#), except as otherwise provided in SMC [18.80.080](#):
  - a. Wetlands;
  - b. Surface streams;
  - c. Ravines and marine bluffs;
  - d. Beaches and associated coastal-drift processes;
  - e. Fish and wildlife habitat conservation areas.
2. All other critical areas identified in SMC [18.80.030](#) are developable pursuant to the provisions of SMC [18.80.070](#). The applicant shall provide supporting documentation that the proposal incorporates measures pursuant to this chapter that adequately protect the public health, safety and welfare.

### 3. Special Conditions.

- a. As a condition of any land use permit, building permit, grading permit, clearing permit and subdivision or short plat issued pursuant to the Sequim Municipal Code, the property owner and/or applicant shall be required to create a separate critical area tract or tracts containing the areas determined to be critical area and/or critical area buffer.
- b. The common boundary between a separate critical area tract and the adjacent land shall be permanently identified. This identification shall include permanent wood or metal signs on treated wood or metal posts indicating that property owners, homeowner's associations, or other party is responsible for the care and maintenance of the critical area tract(s).
- c. Sign locations and size specifications shall be approved by the department of community development director or authorized designee.
- d. The department of community development director or authorized designee shall require permanent fencing of the critical areas when there is a substantial likelihood of the presence or introduction of domestic grazing animals within the development proposal.
- e. The department of community development director or authorized designee may attach such additional conditions to the approval of any permit or application as deemed necessary to assure the preservation and protection of affected critical areas and to assure compliance with the purposes and requirements of this chapter.
- f. This subsection shall not apply to any single-family lot that is a lot of record or any single-family lot within any subdivision or short plat that has received preliminary approval prior to the adoption of this subsection. This subsection shall not abrogate any requirements for critical area tracts already required for preliminary subdivisions or short plats approved prior to the adoption of this subsection. (Ord. 2012-001 § 2 (Exh. A); Ord. 2011-017 § 2; Ord. 631 § 1, 1992)

#### **18.80.055 Exempt activities.**

The following uses shall be exempt if they are not prohibited by any other ordinance or law and are conducted using best management practices:

- A. Normal repair and routine maintenance and operation of residences, landscaping, utilities, roads, trails, irrigation and drainage ditches, and fish ponds which were lawfully constructed, approved, or established prior to the effective date of this chapter if no expansion results.
- B. Operation and maintenance of all electric facilities, lines, equipment or appurtenances; water and sewer lines; natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances, except for power, water, and sewer substations and pump sites or new utilities within designated frequently flooded areas. For the purposes of this chapter, operation and maintenance shall

include those usual acts necessary for the continued use of existing services in their established locations. Replacement, expansion, relocation or placement of new utility service lines shall be subject to the standards of this chapter, as applicable.

C. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife that does not involve changing the structure or functions of the existing wetland.

D. Low intensity outdoor recreational activities having minimal adverse impacts, including but not limited to wildlife watching and nonpermanent blinds, hiking, boating, swimming, canoeing, bicycling, pervious trails less than five feet in width, and sport fishing or hunting.

E. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and that does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions or water sources.

F. Existing and ongoing agricultural activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. 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 was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations.

G. Education, scientific research and activities, and use of nature trails.

H. Navigation aids and boundary markers.

I. Boat-mooring buoys.

J. Site investigative work necessary for land use application submittals, such as surveys, soil logs and other related activities. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

K. Enhancement of a critical area or buffer by removing nonnative, invasive plant species. Only hand removal shall be allowed under this exemption unless the necessary permits have been obtained from the regulatory agencies specifically allowing biological or chemical treatments. All removed plant material shall be taken from the site and disposed of appropriately. Plants that appear on the State Noxious Weed Board list of noxious species must be handled according to a control plan appropriate for that plant species. Revegetation with native species is allowed at natural densities if performed in conjunction with removal of invasive species. (Ord. 2012-001 § 2 (Exh. A))

**18.80.060 Submittal requirements and support information required.**

A. Submittal Requirements. Applications for land uses or developments proposed within critical areas shall be filed with all the information requested on the application forms available from the department of

community development. All developments proposed on lots or parcels which may contain or adjoin critical areas, as determined by the city, shall be evaluated by the applicant to provide the information necessary for the department of community development to determine if and to what extent the site contains critical area characteristics. The department of community development director shall make the determination to classify a site or portion of a site as critical area pursuant to the procedures set forth in SMC [18.80.045](#). For applications which are subject to review pursuant to SEPA, the appeal of a determination that a site is a critical area shall be made pursuant to the SEPA appeals procedures as set forth in SMC Title [16](#).

**B. Supporting Information Required.**

1. All land uses and developments proposed on or adjacent to lots or parcels listed, identified, inventoried, classified or rated as critical areas shall include supporting studies, prepared to describe the environmental limitations of the site. No construction activity, including clearing or grading, shall be permitted until the information required by this chapter is reviewed and approved by the city as adequate. Special environmental studies shall include a comprehensive site inventory and analysis, a discussion of the potential impacts of the proposed development, and specific measures designed to mitigate any potential adverse environmental impacts of the applicant's proposal, both on-site and off-site, as follows:

a. A description of how the proposed development will or will not impact each of the following on the subject property and adjoining properties:

- i. Erosion and landslide hazard,
- ii. Seismic hazards,
- iii. Drainage, surface and subsurface hydrology and water quality,
- iv. Flood-prone areas,
- v. Existing vegetation as it relates to steep slopes, soil stability and natural habitat,
- vi. Locally unique landforms: ravines, marine bluffs, beaches and associated coastal-drift processes,
- vii. Slopes greater than 40 percent,
- viii. Wetlands, and
- ix. Critical aquifer recharge areas pursuant to SMC [18.80.100](#);

b. Recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent properties;

c. Any additional information determined to be relevant by the city or by the professional consultant who prepared the study.

2. Such studies shall be prepared by qualified professionals.

C. City Review.

1. An applicant for a development proposal that includes or is within an identified critical area or critical area buffer shall enter into a three-party agreement, as approved by the city. The applicant shall pay the costs for the city to hire the appropriate consultant(s) to provide a critical area special study to adequately evaluate the proposal and all probable impacts, unless studies have already been prepared by the applicant's consultant. If the applicant has already prepared studies, the applicant shall pay for the costs of a peer review of all studies submitted. The applicant shall pay for any additional studies that may be required in the peer review. The selection of the consultant(s) hired for the study or peer review by the city shall be at the sole discretion of the city.

2. All critical area studies shall be prepared under the direction of the city. The department of community development director will make the final determination on the adequacy of these studies.

3. Project proposals with impacts to critical areas must be submitted to the appropriate agencies for review and comment.

4. The city's review of critical area permit applications shall not be construed to take the place of any other additional local, state, or federal permits or permit requirements. (Ord. 2012-001 § 2 (Exh. A); Ord. 2011-017 §§ 1, 2; Ord. 631 § 1, 1992)

**18.80.070 Development standards.**

A. Streams and Stream Buffers. Any development or construction adjacent to streams shall preserve an undisturbed buffer which is wide enough to maintain the natural hydraulic and habitat functions of that stream as it relates to an urban environment. The dimensions of stream buffers are listed in subsection (A)(1) of this section. If streams are located within ravines, as defined in SMC [18.80.030](#), buffers will be established according to the criteria set forth in subsection B of this section.

1. Stream Buffers.

a. The following buffers of undisturbed native vegetation shall be provided for different classes of streams and their tributaries. Dimensions are measured from the ordinary high-water elevation of the stream or watercourse, or from the top of the bank or dike:

Type 1                      150 feet;

Type 2                      100 feet;

Type 3	75 feet;
Type 4	50 feet;
Type 5	25 feet.

b. Closed stream segments shall have no buffers.

c. Where the FEMA floodplain is wider than these buffers, the width of the floodplain shall be considered to be the buffer width.

2. Stream buffers shall be increased to include streamside wetlands that provide overflow storage for stormwaters, feed water back to the stream during low flows or provide shelter and food for fish.

3. Additional Buffers. The department of community development director may require additional native vegetation or increased buffer sizes when environmental information indicates the necessity for additional vegetation or greater buffers in order to achieve the purposes of this chapter. In cases where additional buffers are not feasible, the department of community development director may require the applicant to undertake alternative on-site or off-site mitigation measures, including but not limited to a financial contribution to projects or programs which seek to improve environmental quality within the same or adjacent watershed.

4. Stream relocation shall be allowed only when the relocation:

- a. Is part of an approved mitigation or rehabilitation plan;
- b. Will result in equal or better habitat and water quality;
- c. Will not diminish the flow capacity of the stream; and
- d. Will result in equal or better hydrologic continuity.

Any relocation must obtain prior approval from the Washington Department of Fish and Wildlife. Relocation of Type 1 streams is prohibited.

B. Ravines, Marine Bluffs and Beaches and Associated Coastal-Drift Processes. All properties falling within the buffer zones identified in the following subsection are subject to the requirements of this chapter.

1. Buffers. The following buffers of undisturbed vegetation shall be established from the top of ravines and the top and toe of marine bluffs and ravine bluffs:

- a. Ravines, 50 feet;

- b. Marine bluffs; 50 feet;
- c. Beaches and associated coastal-drift processes; 25 feet.

2. Buffer Reduction. Undisturbed zones adjoining both marine bluffs and beaches shall be sufficient to assure that natural coastal-drift processes will remain unimpaired.

- a. Buffers for “feeder” or eroding bluffs shall not be reduced.
- b. The buffer for noneroding bluffs may be reduced when expert verification and environmental information demonstrate that the proposed construction method will:
  - i. Not adversely impact the stability of ravine sidewalls and bluffs;
  - ii. Not increase erosion and mass-movement potential of ravine sidewalls and bluffs;
  - iii. Use construction techniques which minimize disruption of the existing topography and vegetation; and
  - iv. Include measures to overcome any geological, soils and hydrological constraints of the site.
- c. Buffers shall not be reduced to less than 25 feet from the top of a ravine, or the top or toe of a noneroding bluff.

3. Additional Buffers. The department of community development director may require increased buffers if environmental studies indicate such increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare.

4. Viewshed Enhancement. In ravine and marine bluff buffers, tree removal for viewshed enhancement is allowed so long as tree removal does not exceed 50 percent and:

- a. Will not increase geological hazards such as erosion potential, landslide potential or seismic hazard potential; or
- b. Will not adversely affect significant wildlife habitat areas; and
- c. Is based upon a review and recommendation by a certified arborist.

C. Geological Hazard (Erosion, Landslide, Seismic) Areas. Areas containing or adjacent to geological hazard areas shall be altered only when the department of community development director concludes, based on environmental information, the following:

- 1. Landslide Hazard Areas.

- a. There will be no increase in surface water discharge or sedimentation to adjacent properties;
- b. There will be no decrease in slope stability on adjacent properties; and
- c. Either:
  - i. There is no hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a quantitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties,
  - ii. The landslide hazard area can be modified or the development proposal can be designed so that the landslide hazard is eliminated or mitigated so that the site is as safe as a site without a landslide hazard, or
  - iii. The alteration is so minor as not to pose a threat;

## 2. Erosion Hazard Areas.

- a. Areas containing erosion hazard areas shall have land clearing, grading or filling limited to the period between April 1st and October 1st,
- b. Vegetation shall be preserved or replaced;

## 3. Seismic Hazard Areas.

- a. Areas containing or adjacent to seismic hazard areas shall be altered only when the department of community development director concludes, based on environmental information, the following:
  - i. There is no actual hazard based on a lack of seismic activity in the past in the area of the development proposal, and a quantitative analysis of potential for seismic activity indicates no significant risk to the development proposal; or
  - ii. The development proposal can be designed so that it will minimize any risk of harm from seismic activity to public health, safety or welfare on or off the site.
- b. Construction on fills allowed through a development permit shall be certified by a qualified professional to be safe. This requirement may be waived by the public works director for actions involving minor changes, alterations, or additions to developed properties; provided, that such activities do not jeopardize public health, safety or welfare on or off the site;

4. Geological Hazard Area Buffers. If it is determined that a geological hazard area, particularly landslide hazard and erosion hazard areas or steep slopes, cannot be safely developed and must remain as permanent open space, the geological hazard area shall have a buffer of 50 feet from the top and toe of the designated area. This buffer may be reduced (to not less than 25 feet) or enlarged based on geotechnical review, which assures any such variation provides or is necessary to provide adequate protection of any structures on site.

D. Fish and Wildlife Habitat Conservation Areas. To protect the habitat of animal species which are considered to be endangered or threatened species and thereby maintain and increase their populations, fish and wildlife habitat conservation areas shall be subject to the following:

1. When a development proposal contains a priority habitat for endangered or threatened species, the applicant shall submit a habitat management plan. The need for a habitat management plan should be determined during State Environmental Policy Act (SEPA) review of the proposal. The habitat management plan should identify how the impacts from the proposed project will be mitigated. Possible mitigation measures should include, but are not limited to:

- a. Establishment of buffer zones,
- b. Preservation of critically important plants and trees within the buffer,
- c. Limitation of access to habitat area,
- d. Scheduling construction activities to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities,
- e. Using best available technology to avoid or reduce impacts,
- f. Using drainage and erosion control measures to prevent siltation of aquatic areas, and
- g. Possibly reducing the size, scope, configuration or density of the project;

2. Buffer. To retain adequate natural habitat for endangered or threatened species, buffers shall be established on a case-by-case basis as described in a habitat management plan;

3. Uses and activities allowed within a significant wildlife habitat area as identified by a habitat management plan shall be limited to low-intensity land uses which will not adversely affect or degrade the habitat and which will not be a threat to the critical ecological processes such as feeding, breeding, nesting and resting;

4. Bald eagle habitat shall be protected pursuant to the Washington State bald eagle protection rules (WAC 232-12-292). Whenever activities are proposed within 800 feet of a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. The director shall verify the location of eagle management areas for each proposed

activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington Department of Fish and Wildlife.

E. Frequently Flooded Areas. Development in frequently flooded areas which are not subject to the standards of other critical areas will be directed by Chapter [8.36](#) SMC, Flood Damage Prevention.

F. Wetlands.

1. The following wetlands are exempt from regulation:

- a. All isolated wetlands less than 1,000 square feet that are not part of a wetland mosaic;
- b. Category III wetlands less than 2,500 square feet;
- c. Category IV wetlands less than 4,356 square feet;
- d. Category IV wetlands greater than 4,356 square feet and less than 10,000 square feet with mitigation; and
- e. Wetlands created directly as a result of poorly maintained storm drainage systems that would not have been created if the drainage system had been properly maintained.
- f. The city reserves the right to require mitigation, after public notice, for small wetland impacts, consistent with ratios established in the table in subsection (F)(7) of this section should a mitigation bank or in-lieu fee program become available in the appropriate watershed.

2. Determination of Regulatory Wetland Boundary.

- a. The exact location of the wetland boundary shall be determined through the performance of a field investigation applying the wetland definition provided in this chapter. Qualified professionals shall perform wetland delineations, which shall be delineated in accordance with the procedure outlined in WAC 173-22-035 pursuant to RCW 36.70A.175 and 90.58.380. An applicant for a wetland permit is required to show the location of the wetland boundary on a scaled drawing as a part of the permit application.
- b. The city retains the right to obtain its own delineations through a qualified professional pursuant to SMC [18.80.060](#). If the city's delineation differs from the applicant's delineation, the city's delineation shall control and shall be considered a final decision.

3. Wetland rating categories shall be applied to the regulated wetland:

- a. As it exists on the date of adoption of the rating system by the city;

- b. As the regulated wetland may naturally change thereafter; or
- c. As the regulated wetland may change in accordance with permitted activities.
- d. Wetland rating categories shall not be altered to recognize illegal modifications made by the applicant or with the applicant's knowledge.

4. Regulated Activities. A permit shall be obtained from the city prior to undertaking the following activities in a regulated wetland or its buffer:

- a. The removal, clearing, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind;
- b. Dumping, discharging or filling with any material;
- c. Draining, flooding or disturbing of the water level or water table;
- d. Pile driving;
- e. The placing of obstructions;
- f. The construction, reconstruction, demolition, or expansion of any structure;
- g. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning or planting of vegetation that would alter the character of a regulated wetland; provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules, unless those activities are Class IV activities regulated by the city;
- h. Stormwater management facilities in Category III or IV wetlands having no other reasonable alternative on-site location if the facilities are located in the outer 25 percent of the buffer; or
- i. Development in Category III or IV wetlands having no feasible alternative location if mitigation sequencing is applied; or
- j. Activities that result in the introduction of pollutants or a significant change of water temperature, physical or chemical characteristics of wetlands water sources, or in the quantity, timing, or duration of the water entering the wetland.

When such permit applications are submitted, the city shall submit applications to the Department of Ecology for comment, pursuant to SMC [18.80.060\(C\)\(3\)](#). Ecology should submit its comments or should request an extension of the review period within 30 days of submittal. Extensions may be up to 30 days in length. When submitted, no permit shall be issued under

this subsection prior to receipt of such comments or the expiration of the time period or any extensions and receipt of any other necessary permits.

5. Buffers. Wetland buffers shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer zone shall be determined according to wetland category, habitat score, and the intensity of the proposed land use. For the purposes of this section, “low impact land use” means land uses with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, passive recreation, open space, educational field trips, small gardens, or low impact stormwater retention facilities. A maximum net density of four dwelling units per acre is defined as low intensity. “Net density” means the density calculation after the land set aside for roads and wetlands (but not their buffers) has been removed from the total land associated with the proposed development. “High impact land use” means land uses associated with moderate or high levels of human or structural disturbance including but not limited to R-II conditional or special uses, R-III zoning and above, multifamily residential, active recreation, commercial and industrial land uses.

<b>Wetland Rating</b>	<b>Land Use Impact</b>	<b>Buffer</b>
Cat I – Habitat score 20 or more, or estuarine or coastal lagoon	Low	150 ft.
	High	200 ft.
Cat I – Habitat score 19 or less	Low	125 ft.
	High	200 ft.
Cat II – Habitat score 20 or more, or estuarine or coastal lagoon	Low	100 ft.
	High	150 ft.
Cat II – Habitat score 19 or less	Low	65 ft.
	High	100 ft.
Cat III – Habitat score 20 or more	Low	75 ft.
	High	125 ft.
Cat III – Habitat score 19 or less	Low	40 ft.
	High	75 ft.
Cat IV	All	25 ft.

The following measures are required, as applicable, to receive the buffer widths listed above.

<ul style="list-style-type: none"> <li>Outdoor lighting from the development shall be designed and installed to prevent direct casting of light into adjacent wetland areas. Final design shall be reviewed and approved by the department of community development prior to permit issuance.</li> </ul>
<ul style="list-style-type: none"> <li>Activity that generates noise shall be located away from wetlands. If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.</li> </ul>
<ul style="list-style-type: none"> <li>The applicant shall prepare a restrictive covenant, to be placed upon the deed for the property, that prohibits use of pesticides within 150 feet of the delineated on-site wetland area. Proof of the recorded covenant shall be provided to the city prior to permit issuance.</li> </ul>
<ul style="list-style-type: none"> <li>Surface water management shall be consistent with low impact development (LID) practices as set forth in the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington" and the 2005 Puget Sound Action Team and Washington State University Pierce City Extension document entitled "Low Impact Development: Technical Guidance Manual for Puget Sound." Final design shall be reviewed and approved by the public works department prior to permit issuance.</li> </ul>
<ul style="list-style-type: none"> <li>Permanent signage on the boundary of a wetland buffer to protect its functions and values. Fencing may be required if requested by the wetland biologist to protect its functions and values. Fencing design shall not interfere with fish and wildlife migration and shall minimize impacts to the wetland and its associated habitat.</li> </ul>
<ul style="list-style-type: none"> <li>The applicant shall utilize dust control best management practices (BMP) during development activities. Such practices shall be consistent with "BMP C140" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington."</li> </ul>
<ul style="list-style-type: none"> <li>Surface water from areas adjacent to on-site delineated wetland areas shall be channelized and treated prior to discharge into wetland buffer areas. Surface water treatment shall be consistent with "BMP T511" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the city public works department prior to permit issuance.</li> </ul>
<ul style="list-style-type: none"> <li>All treated surface water proposed for discharge into any on-site delineated wetland area shall be conveyed in a manner consistent with those practices set forth in "Guide Sheet 2: Wetland Protection Guidelines" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the city public works department prior to permit issuance.</li> </ul>
<ul style="list-style-type: none"> <li>Existing on-site drainage system facilities shall be reviewed by a Washington State-licensed engineer to determine their ability to accommodate the increased volume of surface water created by the new development. The facilities shall be modified as necessary with facility design consistent with the direction provided in "Volume III" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the city public works department prior to permit issuance.</li> </ul>
<ul style="list-style-type: none"> <li>Surface water from impervious surfaces and lawns located adjacent to on-site delineated wetland areas shall be channelized and treated prior to discharge into wetland buffer areas. Surface water treatment shall be</li> </ul>

consistent with those practices contained in “Volume V” of the 2005 State Department of Ecology document entitled “Stormwater Management Manual for Western Washington.” Final design shall be reviewed and approved by the city public works department prior to permit issuance.

- Apply integrated pest management.
- The delineated on-site wetland area shall be placed in a separate tract as prescribed in SMC [18.80.090](#).

6. A building setback line of 15 feet is required from the edge of any wetland buffer. Minor structural intrusions into the area of the building setback may be allowed if the department of community development director or authorized designee determines, supported by objective written evidence, that such intrusions will not negatively impact the wetland. If the wetland buffer is already heavily impacted, building setbacks may be reduced in exchange for buffer enhancement – see SMC [18.80.080](#).

7. Wetlands Restoration and Creation.

a. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.

b. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.

c. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self-sustaining, and projected success. Wetland functions and values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.

d. Acreage Replacement Ratio. The following ratios apply to wetland creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered. Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment.

<b>Category and Type of Wetland</b>	<b>Creation or Reestablishment</b>	<b>Rehabilitation</b>	<b>Enhancement</b>	<b>Preservation</b>
Category I: Coastal Lagoon, Natural Heritage site	Not considered possible	6:1	Case by case	10:1
Category I:	6:1	12:1	24:1	24:1

<b>Category and Type of Wetland</b>	<b>Creation or Reestablishment</b>	<b>Rehabilitation</b>	<b>Enhancement</b>	<b>Preservation</b>
Mature Forested				
Category I: Estuarine	Case by case	6:1 of estuarine wetland	Case by case	Case by case
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

G. Standard Buffer Width Averaging. Buffers may be modified by averaging buffer widths. This section shall not apply to geohazard areas. Averaging shall not be allowed in conjunction with any other buffer reduction provisions. Averaging to improve critical area protection may be permitted when all of the following conditions are met:

1. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;
2. The buffer is increased adjacent to the higher-functioning or more sensitive areas and decreased adjacent to the lower-functioning or less sensitive portion;
3. The total area of the buffer after averaging is equal to the area required without averaging;  
and
4. The buffer at its narrowest point is never less than three-quarters of the required width.

H. Density Credit or Floor Area On-Site Transfer Calculation. The calculation of potential dwelling units in residential development proposals and allowable floor area in nonresidential development proposals shall be determined by the ratio of developable area to undisturbable critical areas and buffers of the development site. Density credits and floor area calculations are designed to provide compensation for the preservation of critical areas and their buffers, flexibility in design, and consistent treatment of different types of development proposals. Density credit or floor area shall be allowed for landslide and erosion hazard areas, and required buffers for any critical area.

<b>Percentage of Site as Critical Area</b>	<b>Floor Area Added to Remaining</b>	
	<b>Developable Site</b>	<b>Density Credit</b>
1 – 10	.30	100%
11 – 20	.27	90%

Percentage of Site as Critical Area	Floor Area Added to Remaining Developable Site	Density Credit
21 – 30	.24	80%
31 – 40	.21	70%
41 – 50	.18	60%
51 – 60	.15	50%
61 – 70	.12	40%
71 – 80	.09	30%
81 – 90	.06	20%
91 – 99	.03	10%

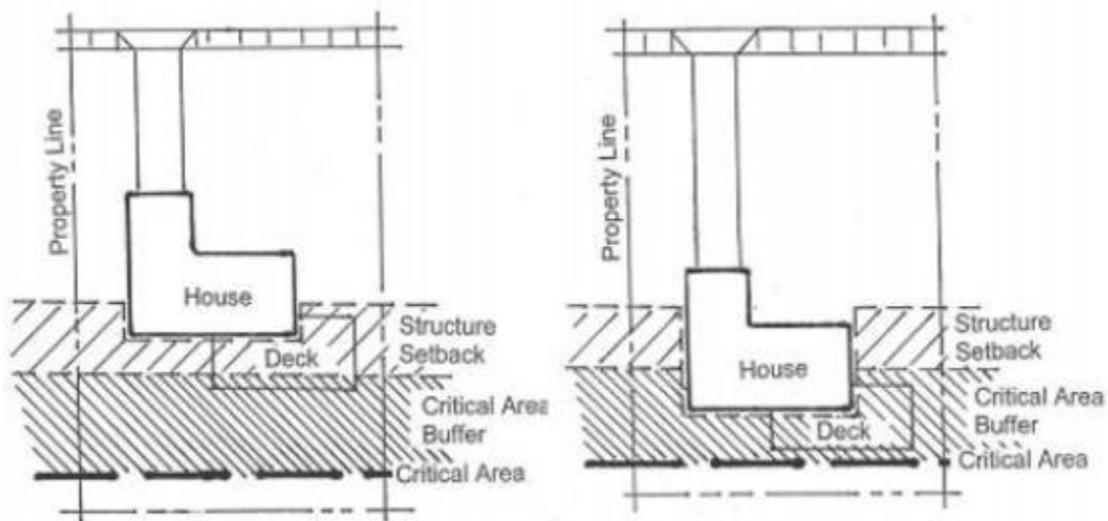
Full density credit shall be allowed for erosion, seismic, and flood hazard areas. For landslide, erosion, and seismic hazards, the most restrictive regulations shall apply. The resulting density determination is rounded down to the nearest whole number.

For example: A 4.5-acre site in the R-II zone would have a potential gross density of 22 units (based on five units per acre). If the developable area of the site is reduced to 2.25 acres (a 50 percent reduction based on landslide hazard areas and critical area buffers), the net density is 11 units for the site. Applying the density credit of 60 percent from the above table allows 17 units on the site ( $11 \times 160\% = 17.6$  or 17 units). (Ord. 2012-001 § 2 (Exh. A); Ord. 2011-017 § 2; Ord. 631 § 1, 1992)

**18.80.075 Buffer and setback on sites with existing primary structure(s).**

Where a primary structure legally established on a site prior to June 1, 2012, encroaches into the critical area buffer or structure setback established in this chapter, the critical area buffer and/or structure setback shall be modified to exclude the footprint of the existing primary structure. Expansion of any existing structure into the critical area buffer or critical area structure setback shall be allowed only

pursuant to the provisions of SMC [18.80.080](#).



(Ord. 2012-001 § 2 (Exh. A))

**18.80.080 Development exceptions.**

A. Reasonable Use Exceptions. Nothing in this chapter is intended to preclude reasonable use of property. An applicant for a city permit to develop or use real property located in a critical area may apply for a reasonable use exception as set forth in Chapter [18.72](#) SMC. Applications for modification of critical area development standards shall be processed as Type B permits as set forth in Chapter [20.01](#) SMC.

1. An applicant requesting modification shall provide the director with the following information:
  - a. Technical studies and other data that describe the possible injurious effects of the proposed development on occupiers of the land, on other properties, on public resources, and on the environment. Possible injurious effects must be described even when the injurious effect will become significant only in combination with similar effects from other developments; and
  - b. An explanation with supporting evidence of how and why compliance with the unmodified critical areas development standards would not permit reasonable use of the property.
2. The reasonable use exception shall be approved and critical areas development standards may be modified only when all of the following findings can be made:
  - a. The application of this chapter would deny all reasonable use of the property;
  - b. No other reasonable use of the property has less impact on the critical area;

- c. The proposed impact to the critical area is the minimum necessary to allow for reasonable use of the property;
- d. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor;
- e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- f. To the extent feasible while still allowing for reasonable use of the property, the proposal has been mitigated to avoid, reduce, or compensate for loss of critical area functions and values consistent with the best available science; and
- g. The proposal is consistent with other applicable regulations and standards.

3. A critical areas development standard may be reduced, waived or otherwise modified only to the extent necessary to make the standard reasonable in light of all the facts and circumstances of a particular case. In modifying a development standard, the director may impose reasonable conditions that prevent or mitigate the same harm that the modified regulation was intended to prevent or mitigate.

4. A decision to modify a development standard may be appealed pursuant to the provisions of Chapter [20.01](#) SMC. The decision as to whether development pursuant to a modified development standard will cause significant injury shall be affirmed unless found to be clearly erroneous. The decision as to whether strict application of a development standard is reasonable shall be accorded substantial weight, and the burden of proof of justifying the reasonable use exception shall be on the applicant.

**B. Modification of Existing Structures.** Existing structures or improvements that do not meet the requirements of this chapter are considered conforming pursuant to SMC [18.80.075](#) and may be remodeled, reconstructed or replaced; provided, that the new construction does not further disturb or encroach upon a critical area or its buffer.

**C. Previously Altered Critical Areas or Buffers.** If any portion of a critical area or its buffer has been altered from its natural state, the applicant may propose to develop within the altered area pursuant to the following decision criteria:

- 1. The critical area or buffer was lawfully altered in accordance with the provisions of the city ordinances and any state and federal laws at the time the alteration occurred;
- 2. The alteration has significantly disrupted the natural functions of the critical area or its buffer as determined by a qualified professional;

3. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least adverse impact on the critical area and its buffer as determined by a qualified professional;
4. The proposal incorporates the development standards of SMC [18.80.070](#);
5. The new development will not further degrade the critical area or its buffer as determined by a qualified professional;
6. The proposal is consistent with the purpose and intent of this chapter; and
7. The applicant shall mitigate and enhance the remaining critical area or buffer. An enhancement plan shall be submitted in accordance with the requirements of SMC [18.80.060](#).

D. Emergencies. The department of community development director may approve improvements that are necessary to respond to emergencies that threaten the public health and safety, or public development proposals, when it determines that no reasonable alternative exists and the benefit outweighs the loss.

1. Emergencies shall be verified by a licensed engineer and notice of their existence shall be posted in a paper of general circulation within the city.
2. Within 30 days, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions shall apply.
3. After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner.

E. Drainage Facilities. Category III or IV wetlands and their buffers, and stream buffers, may be altered for use as a public drainage facility; provided, that all requirements of the city stormwater management plan and all other local, state and federal laws are satisfied, and so long as increased and multiple natural resource functions are achievable and the benefits outweigh any lost resource. The department of community development director may approve public drainage facilities in a buffer only when he/she determines that long-term impacts are minimal or when there are no practicable or reasonable alternatives and mitigation is provided. Drainage facilities shall be limited to the outer 25 percent of a buffer.

F. Trails and Trail-Related Facilities. Public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, and viewing platforms, shall be allowed, but use of impervious surface shall be minimized. Trails and trail-related facilities shall be avoided within streams. The department of community development director may approve such trails and facilities only when he/she determines that there is no practicable or reasonable upland alternative. Trail planning construction and maintenance shall adhere to the following additional criteria:

1. Trails and related facilities shall, to the extent feasible, be placed on existing levies, road grades, utility corridors or any other previously disturbed areas;
2. Trails and related facilities shall be planned, aligned, and constructed to minimize removal of trees, shrubs, snags and important wildlife habitat and disturbance to critical area functions;
3. Trails and related facilities shall provide water quality protection measures to assure that runoff from them does not directly discharge to wetlands or streams; and
4. Private trail widths shall be limited to five feet; public trail widths shall be limited to five feet or the minimum necessary to achieve American Disabilities Act (ADA) compliance;
5. Public trails shall be constructed and located in a manner that will achieve ADA compliance;
6. Trails and related facilities shall not exceed five percent impervious surface based on the total size of the critical area and its buffer.

G. Utilities. Every attempt shall be made to avoid locating new utilities within streams and stream buffers. The department of community development director may approve new utilities in streams and stream buffers only when he/she determines that there is no practicable or reasonable upland alternative.

H. Stream Crossings. Stream crossings, whether for access or utility purposes, shall be avoided to the extent possible; but when necessary due to the lack of feasible alternatives, crossing of streams shall follow all applicable local, state and federal laws and the following criteria:

1. Bridges are required for streams that support anadromous fish, unless otherwise allowed by the Washington State Department of Fisheries;
2. All crossings using culverts shall use superspan, oversize, box or bottomless culverts;
3. All crossings shall be constructed and installed during summer low flow between June 15th and September 15th;
4. Crossings shall not occur in anadromous fish spawning areas unless no other feasible crossing site exists;

5. Bridge piers or abutments shall not be placed in either the floodway or between the ordinary high-water marks unless no other feasible alternative placement exists;
6. Crossings shall not diminish flood-carrying capacity;
7. Crossings shall provide for maintenance of culverts, bridges and utilities; and
8. Crossings shall serve multiple properties whenever possible.

I. Time Limitation. A development exception automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit within one year of the effective date of the development exception, unless either:

1. The applicant has received an extension for the development exception pursuant to subsection J of this section;
2. The development exception approval provides for a greater time period.

J. Time Extension. The department of community development director may extend the development exception, not to exceed one year, if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception;
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to critical areas.

K. Mitigation. For any allowable development exception provided under this section, the associated adverse impacts must be considered unavoidable but mitigable. The applicant must first demonstrate that they have taken the following mitigation sequencing actions:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- 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;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

- Monitoring the impact and taking appropriate corrective measures.

Mitigation shall not be implemented until after city approval of the critical area report and mitigation plan prepared in accordance with subsection (K)(4) of this section.

1. General Requirements. The applicant shall develop a mitigation plan that provides for construction, maintenance, monitoring and contingencies of the critical areas compensatory mitigation as required by conditions of approval and consistent with the requirements of this chapter. The mitigation plan must be consistent with subsection (K)(4) of this section. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter. Where feasible, mitigation projects shall be completed prior to activities that will disturb critical areas. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and vegetation. For mitigation projects that involve creating new wetlands or relocating streams, the director of community development shall have the authority to modify the buffer requirements on a case-by-case basis to avoid unduly encumbering neighboring properties.

2. On properties where mitigation is required, prior to issuance of any construction, grading, or building permits, or preliminary approval of a major plat, short plat, or binding site plan, a "critical areas performance bond" or other suitable financial guarantee as approved by the city attorney shall be submitted to the department of community development. The amount of the bond or other financial guarantee shall be equal to 150 percent of the estimated cost of the mitigation. Such bond or other suitable financial guarantee shall not be released until all required mitigation is installed.

3. Monitoring. All mitigation projects shall be monitored for a period of five years. Monitoring reports shall be submitted annually for the first three years following construction and at least upon the completion of the fifth year to document milestones, successes, problems, and contingency actions of the mitigation. The applicant shall deposit an amount equal to 125 percent of the full cost of monitoring with the city before monitoring begins. The city shall use such funds to pay for monitoring costs associated with the mitigation project. Once the monitoring has been completed, the city shall refund any remaining funds to the applicant within 60 days of receiving the final monitoring report. The director shall have the authority to extend the monitoring period and require additional monitoring reports beyond the initial five-year monitoring period for any project that does not meet the performance standards identified in the mitigation plan, does not provide adequate replacement for the functions and values of the impacted critical area, or otherwise warrants additional monitoring (such as when forested wetlands are restored or created).

4. Mitigation Plans. All restoration and compensation projects shall follow a mitigation plan prepared by qualified professionals containing, at a minimum, the following components:

a. Baseline Information. Quantitative data shall be collected and synthesized for both the impacted critical area and the proposed mitigation site, if different from the impacted critical area, following procedures approved by the department of community development;

b. Environmental Goals and Objectives. Goals and objectives describing the purposes of the mitigation measures shall be provided, including a description of site selection criteria, identification of target evaluation species and resource functions;

c. Performance Standards. Specific criteria for fulfilling environmental goals and objectives and for beginning remedial action or contingency measures shall be provided, including water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria;

d. Detailed Construction Plan. Written specifications and descriptions of mitigation techniques shall be provided, including the proposed construction sequence, accompanied by detailed site diagrams and blueprints that are an integral requirement of any development proposal;

e. Monitoring Program. A program outlining the approach for assessing a completed project shall be provided including descriptions or proposed experimental and control site survey or sampling techniques. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the mitigation project. A report shall be submitted at least twice yearly documenting milestones, successes, problems and contingency action of the restoration or compensation project. The department of community development director shall require that the applicant monitor the project consistent with subsection (K)(3) of this section;

f. Contingency Plan. A plan shall be provided fully identifying potential courses of action and any corrective measures to be taken when monitoring or evaluation indicates project standards are not being met;

g. Performance and Maintenance Securities. Securities ensuring fulfillment of the mitigation project, monitoring program and any contingency measures shall be posted pursuant to SMC [18.80.110](#).

#### 5. Restoring Closed Stream Segments.

a. The city allows the voluntary opening of previously channelized/culverted streams and the rehabilitation and restoration of streams, especially on public property or when a property owner is a proponent in conjunction with new development.

b. When closed stream segments are restored, a protective buffer shall be required of the stream section. The buffer distance shall be 25 feet, regardless of stream classification, to

allow for restoration and maintenance. The stream and buffer area shall include habitat improvements and measures to prevent erosion, landslide and water quality impacts.

c. Removal of pipes conveying streams shall only occur when the city determines that the proposal will result in a new improvement of water quality and ecological functions and will not significantly increase the threat of erosion, flooding, slope stability or other hazards.

6. Other mitigation alternatives, such as banking, in-lieu fees, off-site mitigation, and/or advance mitigation, may be used if the city has established procedures.

a. In-Lieu Fee. To aid in the implementation of off-site mitigation, the city may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process. The program should address:

i. The identification of sites within the city that are suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion; and

ii. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.

b. Wetland Mitigation Banks. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

i. The bank is certified under state rules;

ii. The administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification. 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, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

7. Final Approval. The department of community development director shall grant final approval of a completed restoration or compensation project if the final report of the project mitigation plan satisfactorily documents that the area has achieved all requirements of this section. (Ord. 2012-001 § 2 (Exh. A); Ord. 631 § 1, 1992)

**18.80.090 Notice to title and protective tracts.**

A. To inform subsequent purchasers of real property of the existence of critical areas, when development is permitted in an identified critical area or its associated buffer, a notice to title applicable to the property shall be filed with the Clallam County auditor. The notice shall state that critical areas or buffers have been identified on the property and that limits on actions in or affecting the critical area or buffer may exist. The notice shall run with the land. This notice shall not be required for development by a public agency or public or private utility when within a recorded easement or right-of-way, or on the site of a permanent public facility. The applicant shall submit proof that the notice has been filed for public record before the city approves any development permit for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

B. Separate critical area tracts shall be required for subdivisions, development agreements, binding site plans, or any other project that requires a site permit, to protect critical areas that are to remain undisturbed pursuant to this chapter. The department of community development director or responsible designee shall require that the owner/applicant of parcels with critical area features and delineations convey this information on parcel/plat legal documents filed with the city and the county. The plan shall clearly depict the critical areas tract, which must include the critical area and any required buffers. Other lands may be included within the critical areas tract at the developer's discretion. Development restrictions within the tract shall be clearly noted on the site plan. Responsibility for maintaining critical area tracts shall be held by a homeowners' association, adjacent lot owners, the permit applicant or designee, or other appropriate entity as approved by the department of community development director or authorized designee and shall also be indicated on the plat or plan. (Ord. 2012-001 § 2 (Exh. A); Ord. 2011-017 § 2; Ord. 2002-027 § 4; Ord. 631 § 1, 1992)

**18.80.100 Critical aquifer recharge areas.**

A. Intent. The intent of this section is to identify, classify and protect vulnerable aquifer recharge areas within the city and to protect vulnerable aquifer recharge areas from pollution by pre-land use activities.

B. Applicability. This section applies to all development proposals within designated areas with a critical recharging effect on aquifers used for potable water.

C. Permitted Uses. Development permitted on lands or shorelands designated as having critical recharging effect on aquifers used for potable water shall be the same as those permitted in the underlying zoning classification subject to the restrictions and standards of this chapter.

D. Classification and Designation.

1. Classification. All city lands shall be classified as having either a high, moderate or low aquifer recharge potential. At a minimum, classification shall be based on soil permeability as described within the Soil Survey of Clallam County. Where adequate information is available, aquifer recharge potential shall be further classified based on the recharge potential of surficial geologic materials, depth to ground water, and topography (i.e., slopes). Lands classified as having a

high, moderate or low aquifer recharge potential shall also be classified as having a high, moderate or low susceptibility to contamination of an underlying aquifer, respectively. Based on these criteria, the potential for recharging aquifers or transmitting contaminants to the underlying aquifer is greatest where the aquifer is close to the ground surface, where ground surface slopes are minimal, and where the recharge potential of the soils and/or surficial geologic material is greatest.

2. Designation. All lands classified as high or moderate aquifer recharge potential and aquifer susceptibility are designated as areas with a critical recharging effect on aquifers used for potable water. Critical aquifer recharge areas shall be rated as high or moderate susceptibility areas as follows:

- a. High susceptibility aquifer recharge areas are all wellhead protection areas within the five-year travel time boundary;
- b. Moderate susceptibility aquifer recharge areas are all wellhead protection areas within the 10-year travel time boundary; and
- c. Low susceptibility includes all areas within the city that do not meet the criteria for a high or moderate susceptibility rating.

These areas shall be identified on maps available at the department of community development.

3. Declassification. Applicants may request that the city declassify a specific area included in the map. The application must be supported by a hydrogeologic assessment demonstrating that the designation is not warranted based on the physical character of the aquifer. The application to declassify an area shall be reviewed by the city and a determination made to amend the map as appropriate.

E. Definitions Referral. The use of terms within this section shall include those listed below and the definitions used in SMC [18.80.030](#).

1. "Aquifer" means a saturated geologic formation which will yield a sufficient quantity and quality of water to serve a private or public system or well. "Sufficient" means a possible minimum draw of three gallons per minute.
2. "Aquifer recharge" or "aquifer recharge area" means the process by which water is added to an aquifer. It may occur naturally by the percolation (infiltration) of surface water, precipitation or snowmelt from the ground surface to a depth where the earth materials are saturated with water. Aquifer recharge can be augmented by "artificial" means through the addition of surface water (e.g., land application of wastewater or stormwater) or by the injection of water into the underground environment (e.g., drainfields and drywells). Aquifer recharge areas are those

areas overlying the aquifer(s) where natural or artificial sources of water can move downward to an aquifer(s). Most areas are aquifer recharge areas.

3. "Aquifer susceptibility" means the ability of the natural system to transmit contaminants to and through the ground water system.

4. "Critical aquifer recharge areas" means those land areas which contain hydrogeologic conditions which facilitate aquifer recharge and/or transmitting contaminants to an underlying aquifer.

5. "Ground water" means all water found beneath the ground surface, including a saturated body of rock, sand, gravel or other geologic material.

F. Performance Standards. The following protection standards shall apply to the regulated uses outlined below and in areas designated as high or moderate susceptibility. The city shall impose development conditions when necessary to prevent degradation of ground water. Conditions shall be based on known, available, and reasonable methods of prevention, control, and treatment.

1. Activities that will not degrade ground water quality and adversely affect aquifer recharging may be permitted in a critical aquifer recharge area if they comply with the city stormwater management regulations and other applicable local, state and federal regulations. These activities typically include commercial and industrial development that does not include storage, processing, or handling of any hazardous substance, or other development that does not substantially divert, alter, or reduce the flow of surface or ground waters.

2. Aboveground Storage Tanks or Vaults. Aboveground storage tanks or vaults for the storage of hazardous substances or dangerous wastes as defined in Chapter 173-303 WAC, or any other substances, solids or liquids in quantities identified by the Clallam County environmental health division, consistent with Chapter 173-303 WAC, as a risk to ground water quality, shall be designed and constructed so as to:

- a. Prevent the release of a hazardous substance to the ground, ground waters or surface waters; and
- b. Have constructed around and under them an impervious containment area enclosing or underlying the tank or part thereof. Impervious containment shall be greater than the volume of the tank to avoid an overflow of the containment area;
- c. Provide for release detection;
- d. Provide written spill response and spill notification procedures to the local fire district.

3. Agricultural Activities. Agricultural activities, including commercial and hobby farms, are encouraged to incorporate best management practices concerning animal keeping, animal waste

disposal, fertilizer use, pesticide use and stream corridor management, and seek the technical assistance of the Clallam County Conservation District and cooperative extension agent.

4. Land Divisions. Subdivisions, short subdivisions and other divisions of land relying on on-site septic systems because city sewer services are not available shall be evaluated for their impact on ground water quality. The following measures may be required as determined by the Clallam County environmental health division:

a. An analysis of the potential nitrate loading to the ground water may be required to assess the impact on ground water quality;

b. Alternative site designs, phased development and/or ground water quality monitoring may be required to reduce contaminant loading where site conditions indicate that the proposed action will measurably degrade ground water quality;

c. Open spaces may be required on development proposals overlying areas highly susceptible for contaminating ground water resources;

d. Community/public water systems and community drainfields are encouraged and may be required where site conditions indicate a high degree of potential contamination to individual wells from on-site or off-site sources;

e. Where wells are required to be abandoned, the applicant shall ensure that they are abandoned according to state guidelines;

f. Remove contaminants from stormwater runoff prior to their point of entry into surface or ground water resources using available and reasonable best management practices in conformance with the Department of Ecology's "Stormwater Management Manual for the Puget Sound Basin."

5. Parks, Schools and Recreation Facilities. Fertilizer, herbicide and pesticide management practices of schools, parks, golf courses and other nonresidential facilities that maintain large landscaped areas shall be evaluated in relation to best management practices as recommended by the cooperative extensions service.

6. Stormwater Standards for Commercial and Industrial Uses. All new commercial and industrial land uses that have greater than 5,000 square feet of impervious area, or handle, store, dispose, transport or generate hazardous substances/wastes defined as dangerous or extremely dangerous wastes under Chapter 173-303 WAC (regardless of quantity), that may come in contact with stormwater runoff, including, but not limited to, gas stations and distributors, carwashes, trucking companies, and paint shops, shall remove contaminants prior to their point of entry into surface or ground water resources using available and reasonable best management practices in conformance with the current version of the Department of Ecology

Stormwater Management Guidelines as adopted by the city. Maintenance of stormwater facilities must be assured as a permit condition.

7. Underground Storage Tanks and Vaults. Underground storage tanks and vaults used for the storage of hazardous substances, solids or liquids in quantities identified by the Clallam County environmental health division, consistent with Chapter 173-303 WAC, as a risk to ground water quality, shall be designed and constructed so as to:

- a. Prevent releases due to corrosion or structural failure for the operational life of the tank or vault;
- b. Be cathodically protected against corrosion, constructed of noncorrosive material, steel-clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance;
- c. Use material in the construction or lining of the tank which is compatible with the substance to be stored;
- d. Provide for release detection method(s); and
- e. Provide written spill response and spill notification procedures to the local fire district.

8. Spreading or Injection of Reclaimed Water or Biosolids. Water reuse or biosolid projects must be in accordance with the city's comprehensive plans and approved by the Departments of Ecology and Health.

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

G. Prohibited Uses. The following activities and uses are prohibited in high and moderate critical aquifer recharge areas:

1. Dry wells on sites used for vehicle repair and servicing shall not be allowed, and any existing dry wells on the site must be abandoned using techniques approved by the Department of Ecology prior to commencement of any new vehicle repair and servicing facility;
2. Landfills including hazardous or dangerous waste, municipal solid waste, special waste, and inert and demolition waste landfills;
3. All classes of underground injection wells, unless approved by state or local authorities as part of an approved remediation action; and

4. Facilities that store, process, or dispose of radioactive substances. (Ord. 2012-001 § 2 (Exh. A); Ord. 2011-017 § 1; Ord. 631 § 1, 1992)

**18.80.110 Securities and enforcement.**

A. Performance Securities. The department of community development director may require the applicant of a development proposal to post a cash performance bond or other acceptable security to guarantee full performance of all mitigation required under this chapter. All securities shall be on a form approved by the city attorney. Until written release of the security, the security may not be terminated or canceled. The department of community development director shall release the security upon determining that all mitigation requirements have been fully performed and upon the applicant depositing the monitoring costs required under SMC [18.80.080\(K\)](#) with the city.

B. Monitoring. Costs associated with monitoring under any mitigation plan required under SMC [18.80.080\(K\)](#) shall be paid in accordance with that section.

C. Renewable Bonds. Any bonds required by this section may be in the form of one-year bonds to be renewed as appropriate.

D. Enforcement. Violations of this chapter shall be subject to the enforcement provisions of this code and shall be punishable as a misdemeanor offense.