

City of Sultan Draft Revisions to Critical Areas Regulations

This draft includes changes proposed to the critical areas regulations. All revisions are shown in underline/strikeout format. That is, all new information that has been added is underlined and all information that is proposed to be deleted has been ~~crossed-out~~. No changes are proposed to the standard text that is not shown with underline or strikeout.

Chapter 16.150 Definitions

"Erosion hazard area" means an area with soil characteristics that, according to the USDA Soil Conservation Service Soil Classification System, may experience severe to very severe erosion hazard, including slopes greater than 15% with erodible soils that are exposed. Soils that are particularly susceptible to erosion include fill constructed of virtually all soil types, loose sandy native soils such as Vashon recessional outwash (Qvr), Esperance sand (Qe), Vashon Till (weathered Qvt), and the dense fine-grained clay (Qcl). Improper fill methods, especially near flowing water, can produce an erosion hazard in areas not identified as hazard areas.

"Landslide hazard areas" means those areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors. Landslide hazard areas include the following:

1. Areas of historic failures;
2. Areas that have shown movement during the Holocene epoch, from 10,000 years ago to the present, or which is underlain by mass wastage debris from that epoch;
3. Any area with all three of the following characteristics:
 - (a) Slopes steeper than 15 percent; and
 - (b) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
 - (c) Springs or groundwater seepage;
4. Areas with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief;
5. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
6. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking; and

7. Areas potentially unstable because of rapid stream incision or bank erosion;

Landslide hazard areas do not include those areas composed of slopes greater than 40% that were created from a previously non-landslide hazard area through legal grading activity and that are confirmed to be stable by a geotechnical engineer.

Chapter 16.80

STREAMS AND WETLANDS CRITICAL AREAS

16.80.010 Purpose.

It is the purpose of this chapter to promote the public health and general welfare by designating wetlands, ~~and streams, habitat areas, and geologically hazardous areas,~~ ~~by definition~~ and regulating development activity in these areas. Additionally, it is the intent of this chapter to adopt development regulations, required in RCW 36.70A.060, precluding land uses or development that is incompatible with critical areas designated under RCW 36.70A.170. (Ord. 630 § 2[16.10.080(1)], 1995)

16.80.020 Objectives.

The objectives of this chapter are to: A. Protect human life and health; B. Further the public interest in the conservation and wise use of our lands; and C. Assure the long-term conservation of resource lands. (Ord. 630 § 2[16.10.080(2)], 1995)

16.80.030 Applicability.

A. The provisions of this chapter shall apply to all land uses in the City of Sultan, and all persons within the City shall comply with the requirements of this chapter.

B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.

C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

D. When any provision of any other chapter of the Sultan Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision that provides more protection to environmentally critical areas shall apply unless specifically provided otherwise in this chapter or unless such provision conflicts with federal or state laws or regulations.

16.80.040 Appeals.

Any decision to approve, condition, or deny a development proposal based on the requirements of this chapter may be appealed according to and as part of the appeal procedure for the permit or approval involved.

16.80.050 Exemptions.

The following are exempt from the provisions of this chapter:

A. Alterations in response to emergencies that threaten the public health, safety, and welfare or that pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the department immediately. Mitigation may be required following the emergency to protect the health, safety, welfare and environment and to repair any resource damage;

B. Public water, electric, and natural gas distribution, public sewer collection, cable communications, telephone utility, and related activities undertaken pursuant to City-approved best management practices, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency that approves the new location of the facilities;
3. Replacement, operation, repair, modification, installation, or construction in existing developed utility corridors, an improved City street right-of-way or City-authorized private street of all electric facilities, lines, equipment, or appurtenances, not including substations;
4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment, or appurtenances, only when required by a local governmental agency that approves the new location of the facilities;
5. Replacement, operation, repair, modification, installation, or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment, or appurtenances when such facilities are located within an improved public right-of-way or authorized private street;

C. Maintenance, operation, repair, modification, or replacement of publicly improved streets as long as any such alteration does not involve the expansion of streets or related improvements into previously unimproved rights-of-way or portions of rights-of-way;

D. Maintenance, operation, or repair of parks, trails and publicly improved recreation areas as long as any such alteration does not involve the expansion of improvements into previously unimproved areas or new clearing of native vegetation beyond routine pruning and related activities.

16.80.060 Critical area markers, signs and fencing.

The director may require fencing, signs and survey markers as need to delineate and protect critical areas. If found to be necessary, permanent fencing shall be required at the edge of the critical area or buffer. Fencing installed in accordance with this section shall be designed to not interfere with fish and wildlife migration and shall be constructed in a manner that minimizes critical areas impacts.

16.80.070 Notice on title.

The owner of any property containing critical areas or buffers on which a development proposal is submitted or any property on which mitigation is established as a result of development, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the City with the county property records office. The required contents and form of the notice shall be determined by the director. The notice shall inform the public of the presence of critical areas, buffers or mitigation sites on the property, of the application of this chapter to the property and that limitations on actions in or affecting such critical areas or buffers may exist. The notice shall run with the land.

16.80.080 Critical area tracts and designations on site plans.

A. Critical area tracts shall be used to protect those critical areas and buffers listed below in development proposals for subdivisions, short subdivisions, planned unit developments or binding site plans and shall be recorded on all documents of title of record for all affected lots:

1. All landslide hazard areas and buffers that are one acre or greater in size;
2. All wetlands and buffers; and
3. All streams and buffers.

B. Any required critical area tract shall be held in an undivided interest by each owner of a building lot within the development with this ownership interest passing with the ownership of the lot or shall be held by an incorporated homeowner's association or other legal entity which assures the ownership, maintenance, and protection of the tract, or dedicated to the City, at the City's discretion.

16.80.090 Building setbacks.

Unless otherwise provided, building setbacks shall be located a distance of 10 feet from the edges of a required critical area buffer.

16.80.030-100 Classification of streams and wetlands.

A. Stream Classifications. Streams are classified based on the water typing criteria in WAC 222-16-030031, as adopted by the state in June 1993 and summarized in the following table:

Water Type	1	2	3	4	5
Channel Width	N/A	20 ft. or greater between ordinary high water marks (OHWM).	Anadromous Fish: 5 ft. or wider between OHWM. Resident Game Fish: 10 ft. or wider between OHWM.	2 ft. wider between OHWM.	Less than 2 ft. between OHWM.
Gradient	N/A	Less than 4% (Less than 5% for off-channel drainages).	Anadromous Fish: Less than 12%. Not upstream of a falls greater than 10 ft. high. Resident Game Fish: Less than 12%.	N/A	N/A
Flow	N/A	N/A	Anadromous Fish: N/A. Resident Game Fish: Greater than 0.3 CFS at summer low flow.	N/A	N/A
Impoundment	N/A	Water surface area of 1 acre or greater at seasonal low flow.	Anadromous Fish: Surface area less than 1 acre at seasonal low flow.	N/A	N/A
Water Type	1	2	3	4	5
Fisheries	N/A	Used by substantial numbers of anadromous or resident game fish for spawning, rearing, and migration.	Used by significant numbers of anadromous or resident game fish for spawning, rearing, and migration.	Not used by significant numbers of fish.	Not used by significant numbers of fish.
Diversion	N/A	Domestic use for 100 or more residences or campsites, accommodation facility for 100 or more persons – includes upstream reach of 1,500 ft. or until the drainage area is less than or equal to 50%, whichever is less.	Domestic use for 10 or more residences or campsites, accommodation facility for 10 or more persons – includes upstream reach of 1,500 ft. or until the drainage area is less than or equal to 50%, whichever is less.	N/A	N/A
Other	All water within OHWM inventoried as "Shorelines of the State," excluding related wetlands.	Streams flowing through campgrounds available to the public having 30 campsites or more.	Contributes greater than 20% of the flow to a Type 1 or 2 water. Anadromous fish impoundments have outlet to stream with anadromous fish.	All natural waters not classified as Types 1, 2, or 3 and for the purpose of protecting downstream waters.	All natural waters not classified as Types 1, 2, 3, or 4, or seepage areas, ponds and drainage-ways having short runoff periods.

B. Wetlands Categories. All determinations of wetlands rating will be based on the entire extent of the wetlands, unrelated to property lines or ownership patterns.

Wetlands shall be rated according to the *Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, as revised). This document contains the definitions, methods and a rating form for determining the categorization of wetlands described below:

Category 1. Category 1 wetlands include those that receive a score of greater than or

equal to 70 based on functions, or those that are rated Category 1 based on Special Characteristics as defined in the rating form.

Category 2. Category 2 wetlands include those that receive a score of 51 through 69 based on functions, or those that are rated Category 2 based on Special Characteristics as defined in the rating form.

Category 3. Category 3 wetlands include those that receive a score of 30 through 50 based on functions.

Category 4. Category 4 wetlands score less than 30 points based on functions.

Wetlands are classified based on the following systems:

1. ~~Category 1 wetlands are wetlands which satisfy one or more of the following criteria:~~
 - a. ~~Are equal to or greater than 10 acres in size, not hydrologically isolated and contain three or more wetland classes, each covering 10% or more of the wetland, one of which is open water;~~
 - b. ~~Have been documented by the State Department of Fish and Wildlife Priority Habitat Species Program as regionally significant waterfowl or shorebird concentration areas;~~
 - c. ~~Are bog/fen systems one acre or larger;~~
 - d. ~~Are mature forested wetland equal to or greater than 10 acres in size.~~
2. ~~Category 2 wetlands are wetlands which satisfy one or more of the following criteria:~~
 - a. ~~Are equal to or greater than five acres in size and contain three or more wetland classes; or~~
 - b. ~~Are mature forested wetlands less than 10 acres in size;~~
 - c. ~~Are bog/fen systems less than one acre.~~
3. ~~Category 3 wetlands are wetlands which satisfy none of the criteria for Category 1, 2, or 4 wetlands.~~
4. ~~Category 4 wetlands are wetlands less than 1 acre, hydrologically isolated, with one wetland class, and greater than 90 percent areal coverage of any combination of species from the list in the following table:~~

Category 4 Wetlands: Invasive/Exotic Plant Species

[Species list from code not shown]

~~C. Wetlands Subject to Regulation. All riparian wetlands, regardless of size; all Category 1 wetlands; and the following nonriparian wetlands are regulated by this chapter:~~

1. ~~Nonriparian Category 2 and 3 wetlands larger than 5,000 square feet in size; and~~
2. ~~Nonriparian Category 4 wetlands larger than 10,000 square feet in size. (Ord. 630 § 2 [16.10.080(3)], 1995)~~

16.80.110 Regulation of small wetlands.

Small wetlands are those that are less than 4,000 square feet.

A. Wetlands less than 1,000 square feet are exempt where it has been shown by applicants that the wetland is not associated with a riparian corridor, they are not part of a larger wetland

system, and do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

B. Wetlands between 1,000 and 4,000 square feet are to be evaluated using the 2004 Western Washington Wetland Rating System and the below criteria when determining whether or not to exempt these smaller wetlands:

1. Category III and IV wetlands between 1,000 and 4,000 square feet may be exempt if the following requirements are met:

a. The wetland is not associated with a riparian corridor; and

b. The wetland is not part of a wetland system; and

c. The wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System; and

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

2. Impacts allowed under this provision to these wetlands will be fully mitigated as required in the mitigation section.

16.80.120040 Standard buffer width requirements for streams and wetlands.

Buffers shall be required for all streams and wetlands regulated by this chapter. Required stream and wetland buffer widths are as stated in this section.

A. Standard rRequired widths for stream buffers are as follows:

1. For a Type 1 stream: -400-150feet;
2. For a Type 2 stream: 400-150feet;
3. For a Type 3 stream: 100 feet;
4. For a Type 4 stream: 50 feet; and
5. For a Type 5 stream: 25-50 feet.

B. Standard rRequired widths for wetland buffers are as follows:

1. For Category 1 wetlands: 400-150 feet;
2. For Category 2 wetlands: 75-100 feet;
3. For Category 3 wetlands: 50-50 feet; and
4. For Category 4 wetlands: 25-50 feet.

C. Measurement. For streams and wetlands, the buffer shall be measured horizontally in a landward direction from the ordinary high water mark or wetland edge, respectively.

D. Where lands adjacent to a stream or wetland display a continuous slope of 25 percent or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank of the sloping area. (Ord. 630 § 2[16.10.080(4)], 1995)

16.80.050-130 Single-family residence on existing legal lots with streams or wetlands.

The applicant may develop a single-family residence and ordinary residential improvements in a wetland, wetland buffer, or stream buffer on an existing legal lot if all the following requirements are met:

A. There is no alternate location for the single family residence and ordinary residential improvements on the subject property outside the wetland, wetland buffer or stream buffer;

B. All new structures on the subject property are constructed in areas that will minimize disruption to the critical area and buffer;

- C. All areas of the wetland, wetland buffer, or stream buffer disrupted during development are restored to the maximum extent possible;
- D. The construction and use of the single-family residence and ordinary residential improvements are consistent with all other applicable law, including, but not limited to this title; and
- E. All development activities on the subject property are consistent with a site development plan approved by the building and zoning official, which may include requirements to reduce the impact on the critical area and buffer from the construction and use of the single-family residence and ordinary residential improvements. (Ord. 630 § 2 [16.10.080(5)], 1995)

16.80.060-140 Critical area study content requirements for streams or wetlands.

A critical area study is required for any development activity allowed under SMC 16.80.050 or 16.80.080 or 16.80.100. Depending on the characteristics of the site and the information submitted by the applicant, the zoning and building official may require any or all of the following as part of the critical area study:

- A. A map drawn to scale or survey showing the following information:
 - 1. The edge of the wetland based on the Federal State Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989); provided, however, when a permit is required in accordance with Section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.), the Corps of Engineers Wetlands Delineation Manual (January 1987, Technical Report Y-87-1, Department of the Army) may be used;
 - 2. The wetlands characteristics and plant communities based on the U.S. Fish and Wildlife Service Classification of Wetlands and Deep Water Habitats in the U.S.;
 - 3. Stream corridors, name (if named), and stream type based on the State Department of Natural Resources' Official Water Type Maps; and
 - 4. Observed or reported wildlife that make use of the area including, but not limited to, nesting, breeding, and feeding areas.
- B. A description of the streams and wetlands within 400-200 feet of the subject property development, including buffers, drainage systems entering and leaving the site, a list of observed and documented plant and wildlife species, a description of the relative abundance of documented plant and wildlife species, and a description of the method used for flagging the wetlands edge, stream corridor, and buffers.
- C. A description and illustration of proposed development activities allowed under SMC 16.80.080 and 16.80.100 within streams, wetlands, or buffers.
- D. A description of any previous disturbances to the streams, wetlands, or buffers.
- E. A summary of the methodology used to conduct the study.
- F. A proposed classification of the streams and wetlands based on SMC 16.80.030 and an explanation or rationale for the proposed rating.
- G. A mitigation plan which meets the requirements of SMC 16.80.070.

H. A stream relocation plan which meets the requirements of SMC 16.80.080(A)(7), if applicable.

I. A discussion of existing functional values of the stream(s), wetland(s), and buffers.

J. A discussion of the changes to stream, wetland, and buffer functional values resulting from the proposed development activity. The city will assist landowners applying for permits to develop a single-family home in gathering the required information. (Ord. 630 § 2 [16.10.080(6)], 1995)

16.80.070-150 Mitigation plan requirements for streams or wetlands.

A. Unless otherwise provided by this chapter, mitigation shall be required for loss of area or functional value of wetlands, streams, and buffers. When mitigation is required by this chapter, it shall address restoration, rehabilitation, and compensation in accordance with the following requirements:

1. Restoration is required when a wetland, stream, or buffer has been altered prior to project approval, unless the alteration was authorized by law; or when streams, wetlands, and/or buffers are temporarily affected by construction or any other temporary phase of a project;

2. Mitigation is required when a wetland, stream, or buffer is permanently altered as a result of project approval or activity;

3. Wetland acreage shall be replaced at a ratio of ~~1.5 (replacement value) to one (existing value) when mitigation occurs onsite, and a ratio of two to one when mitigation occurs offsite~~ 6:1 for Category 1 wetlands, 3:1 for Category 2 wetlands, 2:1 for Category 3 wetlands, and 1.5:1 for Category 4 wetlands, to compensate for the loss of functional values over time, and the unproven nature of wetland creation/restoration projects;

4. On-site mitigation is preferred so as to assure, to the greatest extent feasible, that the plan results in mitigation for direct impacts resulting from the alteration;

~~5. Off-site mitigation will be used only in those situations where appropriate, adequate, onsite mitigation is not feasible to achieve. When offsite mitigation is allowed, it must occur within the same sub-drainage basin as the project impact; and~~

5. Off-site mitigation within the same drainage basin will be preferred to on-site mitigation when the results can achieve greater benefits or functions than on-site mitigation, or would restore or enhance functions that are limiting or important to the health of the watershed.

6. Mitigation shall be completed prior to the completion and final approval of any development activity for which mitigation measures have been required.

B. The mitigation plan shall include:

1. ~~Include~~ a baseline study that analyzes the existing functional values of the critical area and buffer, functional values that will be lost, and the system's functional values after mitigation;

2. Specific goals and objectives, performance standards, and monitoring and maintenance measures;

23. Specify how lost functional values will be replaced;

~~43.~~ Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;

~~54.~~ Include Contingency provisions if the performance standards are not met by the end of the monitoring period for monitoring the mitigation area on a long-term basis for at least five years for plant installation and ten years for woody vegetation to determine whether the plan was successful;

~~65.~~ ~~Include~~ Provisions for a bond or a series of bonds to assure that work is completed in accordance with the plan, and that restoration or rehabilitation is performed if any portion of the mitigation project fails within three years of implementation; and

~~76.~~ Address the need for and, when appropriate, determine the width of the buffer adjacent to any altered wetland edge.

C. Mitigation plans shall be approved prior to any development activity. (Ord. 630 § 2 [16.10.080(7)], 1995)

~~16.80.080-160~~ Allowed development activities in streams, wetlands, and buffers.

The following development activities may occur in streams, wetlands, and buffers, but will require a critical area study, which meets the requirements of SMC 16.80.060, and mitigation, which meets the requirements of SMC 16.80.070.

A. Allowed development activities in streams:

1. Utility lines, hydroelectric power generating facilities, and other utility facilities;
2. Public and private roadway crossings;
3. Bridge construction and culvert installations;
4. Bank protection and flood protection, including flow control structures for regional retention/detention systems;
5. In-stream fish and/or wildlife habitat enhancement;
6. Activities and mitigation authorized by this chapter including stream restoration, enhancement, and relocation that increases functional value;
7. Stream relocation when a plan is submitted as part of the critical areas study which demonstrates that the following criteria are met:
 - a. The relocation will improve water quality, fish or wildlife habitats, wetland recharge (if hydrologically connected to a wetland);
 - b. The plan must contain and show the following information: a topographic survey showing existing and proposed topography and location of the new stream channel; provisions for filling and revegetating the prior channel, if appropriate;
 - c. Relocation will maintain or improve hydrologic function;
 - d. Natural materials and vegetation normally associated with the stream will be utilized;
 - e. Spawning, rearing, and nesting areas will be created, if applicable;
 - f. Fish populations will be reestablished, if applicable; and
 - g. Water flow characteristics compatible with fish habitat areas will be restored;

8. Development activities allowed by the county shoreline management master program, as adopted by the city of Sultan, in areas subject to the Shoreline Management Act, Chapter 90.58 RCW.

B. Allowed development activities in wetlands:

1. Utility lines and facilities;
2. Public and private roadways, including bridge construction and culvert installation;
3. Wildlife management or viewing structures;
4. Outdoor scientific or interpretive facilities;
5. Other activities and mitigation authorized by this chapter;
6. Enhancement projects where no loss of functional values result; and
7. Filling in Category 3 and 4 wetlands as follows:
 - a. Nonriparian Category 4 wetlands may be filled if the loss of ~~stormwater~~ storm water retention functions is mitigated in accordance with the requirements of Chapter 16.96 SMC; and
 - b. Up to one acre of non-riparian Category 3 wetlands can be filled per site if loss of wetland functions is mitigated ~~at an areal replacement ratio of 1.5:1 for on-site mitigation, or a ratio of 2:1 for off-site mitigation, per 16.80.070 SMC.~~

C. ~~Buffers may be altered only in conjunction with applications submitted under SMC 16.80.100.~~ Buffers may be altered only when the design will result in a net improvement of the functional value of the stream or wetland and their buffer.

1. Averaging Buffer Widths. The width of a buffer may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion, if all of the following requirements are met:

- a. Averaging will not impair or reduce the habitat, water quality purification and enhancement, storm water detention, groundwater recharge, shoreline protection and erosion protection, and other functions of the stream, wetland, or buffer;
- b. The total area of the buffer on the subject property is not less than the buffer which would be required if averaging were not allowed; and
- c. No part of the width of the buffer is less than ~~50~~75 percent of the required width or ~~25~~35 feet, whichever is greater.

2. Buffer Width Reduction. Buffer widths may be reduced if the buffer is enhanced in accordance with the following requirements:

- a. Buffers, or buffers required after buffer averaging will have a minimal functional value due to existing physical characteristics;
- b. The applicant demonstrates that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the functional value of the buffer when compared with the functional value of the standard buffer;
- c. The applicant includes a comparative analysis of buffer values prior to and after enhancement, and demonstrates compliance with this chapter, as part of the critical area study required by SMC 16.80.060;
- d. The buffer width is not reduced below 50 percent of the standard buffer width, or ~~25~~35 feet, whichever is greater, and the total buffer area reduction is not less than 75 percent of the total buffer area before reduction; and
- e. The functional values of the stream or wetland protected by the buffer are not decreased.

D. Allowed Development Activities in Buffers.

1. Pedestrian walkways or trails when ~~constructed with natural permeable materials and designed as part of an overall site development plan;~~

- a. Trails shall be limited to permeable surfaces no more than five feet in width;
- b. Trails should be located in the outer 25% of a wetland buffer, where feasible;
- c. Wetland buffer widths must be increased to compensate for loss due to the width of the trail.

2. Wildlife management and viewing structures;
3. Fishing access areas, where vehicular parking is provided outside the buffer and foot trails are constructed with natural permeable materials;
4. Outdoor interpretive and scientific study facilities;
5. Utility lines and facilities installation, where no reasonably feasible location is available outside the buffer area;
6. Public and private roadways, only if no other reasonably feasible access alternative exists;
7. Development activities allowed by the city's adopted shoreline management master program in areas subject to the Shoreline Management Act, Chapter 90.58 RCW; and 8. Single-family residence and ordinary residential improvements on an existing legal lot in accordance with requirements of SMC 16.80.050. (Ord. 630 § 2[16.10.080(8)], 1995)

16.80.090-170 Review criteria for development activities in streams, wetlands, and buffers.

A. The city shall evaluate each proposed development activity in a stream, wetland, or buffer in accordance with the following hierarchy of goals: avoid impacts; minimize impacts; repair and restore impacts; reduce impacts over time; or mitigate impacts through replacement, restoration, or enhancement of functions.

B. To utilize the provisions set forth in SMC 16.80.080 or 16.80.100, applicants must submit a critical area study. The city will review the critical area study and proposed development activity in accordance with the following criteria:

1. The development activity will not:
 - a. Adversely affect water quality;
 - b. Destroy, damage, or disrupt a fish and wildlife habitat area;
 - c. Adversely affect drainage or storm water detention capabilities; or
 - d. Lead to unstable earth conditions or erosion;
2. The impacts are the minimum necessary to accommodate the development activity and are fully mitigated in accordance with SMC 16.80.070;
3. Any disruption to a critical area will occur in the least sensitive area; and
4. Critical areas or buffers temporarily disrupted during construction will be restored. (Ord. 630 § 2[16.10.080(9)], 1995)

16.80.100 Innovative development design.

~~In conjunction with an application for a development permit, an applicant may request approval of an innovative design which addresses wetland and stream protection and preservation in a creative manner that deviates from the standards set forth in SMC 16.80.040 and 16.80.080.~~

~~A. General. An applicant who requests that a development permit application be considered under the performance and design criteria of this section shall submit the following information:~~

- ~~1. A critical areas study prepared and submitted in accordance with requirements of SMC 16.80.060; and~~
- ~~2. A conceptual site development plan drawn to scale which technically and visually illustrates the development potential achievable for the project site, and demonstrates that the innovative design proposal will achieve a net improvement in the functional values of the streams and wetlands and their buffers over that existing on the subject property and that which is achievable using the provisions of Parts 4, 5, and 8.~~

~~B. Criteria for Approval. An innovative development design approval pursuant to this section shall be granted in conjunction with the decision on the underlying permit(s), if the following criteria are met:~~

- ~~1. The innovative design will result in a net improvement of the functional values of the stream or wetlands and their buffers;~~
- ~~2. The innovative design has been approved by the state resource agencies with jurisdiction;~~
- ~~3. The innovative design is consistent with the purpose and objectives of this chapter;~~
- ~~4. The innovative design is consistent with the standards in SMC 16.80.090;~~
- ~~5. The innovative design will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located.~~

~~C. A decision to grant or deny an innovative design may be appealed in accordance with the provisions of SMC 16.120.100. (Ord. 630 § 2 [16.10.080(10)], 1995)~~

16.80.180 Stream and wetland performance standards

Development on sites with a wetland, stream or buffers shall incorporate the following performance standards in design of the development, as applicable:

- A. Lights shall be directed away from the wetland or stream.
- B. Activity that generates noise such as parking lots, generators, and residential uses, shall be located away from the wetland or stream, or any noise shall be minimized through use of design and insulation techniques.
- C. Toxic runoff from new impervious areas shall be routed away from the wetlands or stream
- D. Treated water may be allowed to enter the wetland or stream buffer
- E. The outer edge of the wetland or stream critical area buffer shall be planted with dense vegetation to limit pet or human use

16.80.190 Erosion hazard areas – Development standards and permitted alterations.

A. Land clearing, grading, filling, and foundation work in an erosion hazard area is allowed only from May 1st to September 30th, except that:

1. Construction outside of this seasonal development limitation may be authorized if the director determines that the hazard area will not be adversely impacted by the proposed construction work or the applicant demonstrates that erosion hazards will be fully mitigated.
2. The director may require geotechnical study of the site, grading, structural improvements, hydrology, soils and storm water retention studies, erosion control measures, restoration plans, and/or an indemnification/release agreement.
3. Timber harvest may be allowed pursuant to an approved forest practice permit issued by the Washington Department of Natural Resources.

B. All development proposals on sites containing erosion hazard areas shall include a temporary erosion control plan consistent with this section and the adopted surface water design manual or as otherwise specified by the department prior to receiving approval.

C. All subdivisions, short subdivisions, planned unit developments or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:

1. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;

2. If any vegetation on the lots is damaged or removed during construction of the site infrastructure, the applicant shall be required to submit a restoration plan to the department for review and approval. Following approval, the applicant shall be required to implement the plan;

3. Clearing of vegetation on lots will only be allowed when the City determines that:

a. Such clearing is a necessary part of a large scale grading plan;

b. It is not a reasonable alternative to perform such grading on an individual lot basis; and

c. Drainage from the graded area will meet water quality standards established by the adopted surface water design manual.

D. Where the City determines that erosion from a development site poses a significant risk of damage to downstream receiving waters, based either on the size of the project, the proximity to the receiving water or the sensitivity of the receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. If the project does not meet adopted water quality standards established by law, the City may suspend further development work on the site until such standards are met.

16.80.200 Landslide hazard areas – Development standards and permitted alterations.

A development proposal containing or within 50 feet of a landslide hazard area shall meet the following requirements:

A. A minimum buffer of 50 feet shall be established from all edges of the landslide hazard area. The buffer shall be extended as required to mitigate a landslide hazard or as otherwise necessary to protect the public health, safety, and welfare.

B. The buffer may be reduced to a minimum of 15 feet if, based on a geotechnical study, the City determines that the reduction will adequately protect the proposed development and other properties, the hazard area and other critical areas.

1. For single-family residential building permits only, the City may waive the geotechnical study requirement if other development in the area has already provided sufficient information or if such information is otherwise readily available.

2. The geotechnical study for a landslide hazard area shall include:

a. A description of the extent and type of vegetative cover;

b. A description of subsurface conditions based on data from site-specific explorations;

c. Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;

d. An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;

e. An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred-year storm event;

f. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.

g. A study of slope stability including an analysis of proposed cuts, fills, and other site grading;

h. Recommendations for building siting limitations; and

i. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;

3. The director may waive or modify the requirement for a study if the applicant shows that critical areas are located off-site and access to applicable off-site property is restricted.

4. If the development proposal will affect only a part of the development proposal site, the director may limit the scope of the required study to include only that area that is affected by the development proposal.

5. If necessary to ensure compliance with this chapter, the director may require additional information from the applicant, separate from the geotechnical study.

6. A development proposal may be allowed to utilize past studies from neighboring properties, if confirmed that the study findings remain accurate and applicable to proposed development.

C. Unless otherwise provided herein or as part of an approved alteration, removal of any vegetation from a landslide hazard area or buffer shall be prohibited, except for limited removal of vegetation necessary for surveying purposes and for the removal of hazard trees determined to be unsafe by the City. The City may require the applicant to submit a report prepared by a certified arborist to confirm hazard tree conditions. Notice to the City shall be provided prior to any vegetation removal permitted by this subsection;

D. Vegetation on slopes within a landslide hazard area or buffer that has been damaged by human activity or infested by noxious weeds may be replaced with native vegetation pursuant to an enhancement plan approved by the City. The use of hazardous substances, pesticides, and fertilizers in landslide hazard areas and their buffers may be prohibited by the City; and

E. Alterations to landslide hazard areas and buffers may be allowed only as follows:

1. A landslide hazard area located on a slope 40 percent or steeper may be altered only if the alteration meets the following standards and limitations:

a. Approved surface water conveyances, as specified in the applicable City-adopted stormwater requirements, may be allowed in a landslide hazard area if they are installed in a manner to minimize disturbance to the slope and vegetation;

b. Public and private trails may be allowed in a landslide hazard area subject to the standards and mitigations contained in this chapter, development standards in Chapter 21A.30 SMC, and requirements elsewhere in the SMC, when locating outside of the hazard area is not feasible;

c. Utility corridors may be allowed in a landslide hazard area if a critical areas study shows that such alteration will not subject the area to the risk of landslide or erosion;

d. Limited trimming and pruning of vegetation may be allowed in a landslide hazard area pursuant to an approved vegetation management plan for the creation and maintenance of views if the soils are not disturbed;

e. Stabilization of sites where erosion or landsliding threaten public or private structures, utilities, roads, driveways or trails, or where erosion and landsliding threatens any lake, stream, wetland, or shoreline. Stabilization work shall be performed in a manner that causes the least possible disturbance to the slope and its vegetative cover; and

f. Reconstruction, remodeling, or replacement of an existing structure upon another portion of an existing impervious surface that was established pursuant to City ordinances and regulations may be allowed provided:

i. If within the buffer, the structure is located no closer to the landslide hazard area than the existing structure; and

ii. The existing impervious surface within the buffer or landslide hazard area is not expanded as a result of the reconstruction or replacement;

2. A landslide hazard area located on a slope less than 40 percent may be altered and no buffers shall be required only if the alteration meets the following requirements:

a. The development proposal will not decrease slope stability on contiguous properties; and

b. Mitigation based on the best available engineering and geological practices is implemented that either eliminates or minimizes the risk of damage, death, or injury resulting from landslides; and

F. Point discharges from surface water facilities in erosion hazard areas and onto or upstream from landslide hazard areas shall be prohibited except as allowed in the adopted surface water design manual.

G. The following are exempt from the provisions of this section:

1. Slopes that are 40 percent or steeper with a vertical elevation change of up to 20 feet if no adverse impact will result from the exemption based on the City's review of and concurrence with a soils report prepared by a geologist or geotechnical engineer; and

2. The approved regrading of any slope that was created through previous legal grading activities.

16.84.03016.80.250 Habitat management plan.

A. A habitat management plan is required when the priority habitats and species maps or natural heritage program maps maintained by the zoning and building official, or other information, indicates the presence of the following on the site:

1. Habitat for any critical species listed as endangered or threatened; or
2. Habitat for any critical species not already protected pursuant to Chapter 16.80 SMC.

B. All habitat management plans shall be prepared in consultation with the State Department of Fish and Wildlife. Habitat management plans for critical species listed as endangered or threatened shall be approved by the Department of Fish and Wildlife.

C. The city may assist applicants seeking to develop a single-family home on an existing legal lot in preparing a habitat management plan to satisfy the requirements of subsection (A)(2) of this section.

D. Habitat Management Plan Content Requirements. Based on the characteristics of the site and information submitted by the applicant, the building and zoning official may require that all or a portion of the following be included in a habitat management plan:

1. A map drawn to scale or survey showing the following information:
 - a. All lakes, ponds, streams, and wetlands and tidal waters on, or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream type or wetland category consistent with SMC [16.80.030](#)(A) and (B);
 - b. The location and description of the fish and wildlife habitat area on the subject property, as well as any potential fish and wildlife habitat within 200 feet of the subject property as shown on maps maintained by the zoning and building official; and
 - c. The location of any observed evidence of use by a critical species;
2. An analysis of how the proposed development activities will affect the fish and wildlife habitat area and any critical species;
3. Provisions to reduce or eliminate the impact of the proposed development activities on any fish and wildlife habitat area and critical species; and

4. The habitat management plan should also address the following issues:
 - a. Prohibition or limitation of development activities within the fish and wildlife habitat area;
 - b. Establishment of a buffer around the fish and wildlife habitat area;
 - c. Retention of certain vegetation or areas of vegetation critically important to the critical species;
 - d. Limitation of access to the fish and wildlife habitat area and buffer;
 - e. Seasonal restrictions on construction activities on the subject property;
 - f. Clustering of development on the subject property; and
 - g. The preservation or creation of a habitat area for the critical species. (Ord. 630 § 2 [16.10.090(3)], 1995)

16.80.440-260 Reasonable use allowance.

A. General. If the application of Chapter 16.80 or 16.88 SMC pertaining to fish and wildlife habitat or stream/wetlands will prevent the applicant from making any economically viable use of the subject property, the applicant may apply for a reasonable use allowance with the building and zoning official.

B. Criteria for Granting. The building and zoning official shall grant a reasonable use allowance only when the following criteria are met:

1. The applicant demonstrates that the application of this chapter will deny all economically viable use of the subject property otherwise allowed by applicable law;
2. The development activities involve the least intrusion into and disruption of the critical area necessary to allow an economically viable use of the subject property;
3. The development activities will not cause or result in damage to properties other than the subject property and will not endanger the public health, safety, or welfare;
4. The ~~applicant~~ applicant's inability to make economically viable use of the subject property has not resulted from any of the following:
 - a. Prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise;
 - b. Prior actions taken in violation of this chapter or any local, state, or federal law, or regulation; and
 - c. Natural constraints on the subject property that would otherwise preclude the proposed development activities.

C. The city may assist applicants in providing the information required in subsection (B) of this section.

D. Appeals. The applicant may appeal a decision of the building and zoning official on a reasonable use allowance application to the hearings examiner pursuant to the provisions of SMC 16.120.100.

E. The development activities authorized by a reasonable use allowance shall not constitute a significant adverse environmental impact under Chapter 17.04 SMC to the critical area(s) for which the allowance is granted. (Ord. 630 § 2[16.10.080 (11)], 1995)

16.80.420-270 Density/floor area calculations and transfer of density/floor area.

A. An owner of a site or property in the low/moderate (LMD), moderate (MD) and high density (HD) zoning districts containing critical areas shall be entitled to transfer the residential density

attributable to the critical area(s), including buffers, on the property to the unconstrained portion of the same property zoning districts subject to compliance subject to the requirements of this code for residential planned unit developments, and cluster subdivisions.

B. An owner of a site or property in the urban center (UC), highway-oriented development (HO), and economic development (ED) zoning districts containing critical areas shall be entitled to transfer the floor area attributable to the critical area(s) including buffers to the unconstrained portion of the same property subject to the requirements of the Table of Dimensional and Density Requirements footnoted as "Buildable Area Calculation – Transfer of Floor Area" in SMC 16.12.040, 16.12.050 and 16.12.060. (Ord. 795-02 § 1)