

**DRAFT
ORDINANCE NO. 33T
CITY OF SUMNER, WASHINGTON**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER,
WASHINGTON, AMENDING 33T, WHICH AMENDS 33T OF THE SUMNER
MUNICIPAL CODE.**

WHEREAS, the City of Sumner received notice on September 7, 2016 that the Federal Emergency Management Agency (FEMA) requires all cities within the National Flood Insurance Program (NFIP) to adopt updated Flood Insurance Rate Maps (FIRM) by March 7, 2017; and

WHEREAS, in order for property owners, businesses, and residents to be eligible for flood insurance through the NFIP it is required that the City adopt updated FIRM maps by March 7, 2017; and

WHEREAS, Draft FIRM maps have been developed over the last 10 years and the City of Sumner has had opportunity to comment through the update process; and

WHEREAS, in addition to the City's regulation of special flood hazard areas through the City's Flood Damage Prevention Ordinance (Sumner Municipal Code Chapter 15.52), special flood hazard areas are also regulated as critical areas known as "frequently flooded areas" under updates to the City's critical areas regulations as it relates to frequently flooded areas is necessary to be consistent with the Flood Damage Prevention Ordinance (Sumner Municipal Code Chapter 15.52) and the Growth Management Act (RCW 36.70A); and

WHEREAS, the Washington State Growth Management Act RCW 36.70A.060 requires that cities adopt and update critical area regulations which includes frequently flooded areas; and

WHEREAS, on September 22, 2008 the National Marine Fisheries Service (NMFS) issued a biological opinion under the Endangered Species Act that found that FEMA's implementation of the NFIP in the Puget Sound region may jeopardize the continued existence of certain ESA listed development of the floodplain under the National Flood Insurance Program will not result in take of endangered salmonid and fish species and adversely modify their critical habitat; if certain Terms and Conditions are met ("Puget Sound NFIP BiOp"); and

WHEREAS, the Puget Sound NFIP BiOp recommended a series of changes to the way in which FEMA implements the NFIP in the Puget Sound in March 2003 the National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFW) both issued separate biological opinions and Take Statements under the Endangered Species Act on the "SR167 North Interchange" project in Pierce County; and

WHEREAS, in response to the Puget Sound NFIP BiOp, FEMA has advised cities and counties that participate in the NFIP, including Sumner, to require habitat assessments as part of certain applications for development within the flood hazard area to evaluate the effects of such development on ESA listed salmonids and fish species and their designated critical habitat; and

WHEREAS, ~~pursuant to SMC 16.40.210, the City must forward any proposed amendments to Division III, Title 16, Natural Resource Lands and Critical Areas in March 2003 to~~ the National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) ~~both issued separate biological opinions and Take Statements under the Endangered Species Act on the “SR167 North Interchange” project in Pierce County;~~ and

WHEREAS, the text amendment is consistent with the goals and policies of the Comprehensive Plan 33T; and

WHEREAS, the Planning Commission held a public hearing on, 33T, and on 33T approved with a 33T vote a recommendation to the City Council for approval; and

WHEREAS, the City Council held a public hearing on, 33T, following review by the City Council Community Development Committee on, 33T, and a study session on, 33T.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That Sumner Municipal Code section 15.52.070 “Map adopted by reference” is hereby amended to read as follows:

“15.52.070 Map adopted by reference. The areas of special flood hazard are identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for the City of Sumner, Community Number 530147,” dated ~~June 18, 1987~~ March 7, 2017, which, with accompanying flood insurance maps, is adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at the city of Sumner, 1104 Maple Street, Sumner, Washington 98390.”

Section 2. That Sumner Municipal Code section 15.52.150 “Standards in areas of special flood hazards” is hereby amended to read as follows:

“**15.52.150 Standards in areas of special flood hazards.** In all areas of special flood hazards, the standards set out in SMC 15.52.160 through 15.52.200 are required. Special flood hazard areas are also critical areas known as “frequently flooded areas” and are subject to the applicable provisions set forth in Chapter 16.40 SMC and Chapter 16.56 SMC.”

Section 3. That Sumner Municipal Code section 15.52.255 “Encroachments” is hereby amended to read as follows:

“**15.52.255 Encroachments.** The applicant shall demonstrate through a technical analysis that the ~~cumulative~~ effect of any proposed development, ~~where combined with all other existing and anticipated development,~~ shall not increase the water surface elevation of the base flood at any point.”

Section 4. That Sumner Municipal Code section 16.40.140 “Clustering” is hereby amended to read as follows:

...

“B. For residentially zoned areas subject to chapter ~~16.48~~ 15.52 SMC, Flood Hazard Areas, the area of land within the flood fringe ~~or within areas classified as deep and/or fast flowing water are~~ is equal to the “transferable buffer area” (TBA), provided any area within 200 feet of the shoreline pursuant to the shoreline master program shall not be included in the TBA. Properties with such flood hazard designations are eligible to modify lot size requirements to achieve clustering.

D. For industrial and commercial zoned areas subject to chapter ~~16.48~~ 15.52 SMC, Flood Hazard Areas, the area of land established in the flood fringe ~~and areas of deep and/or fast flowing water are~~ is equal to the “transferable buffer area” (TBA) provided any area within 200 feet of the shoreline pursuant to the shoreline master program shall not be included in the TBA. Properties with such flood hazard designations are eligible to modify lot size requirements to achieve clustering.”

...

Section 5. That Sumner Municipal Code section 16.56.050 “Applicability” is hereby amended to read as follows:

“16.56.050 Applicability.

Fish and wildlife habitat areas are those areas identified as being of critical importance to sustain 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:

A. Areas with which federally or state-listed endangered, threatened, or sensitive species of fish, wildlife, or plants have a primary association;

B. Areas with habitats and species of local importance, including the following:

1. Areas with which state-listed monitor or candidate species or federally listed candidate species have a primary association , and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term;
2. Special habitat areas which may provide specific habitats which certain animals and plants require such as breeding habitat, winter range, and movement corridors;

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

D. The portion of the special flood hazard area within 200 feet of the OHWM of any lake, river or stream;

E. Waters of the state, including all water bodies classified by the Washington State Department of Natural Resources water typing classification system as detailed in WAC 222-16-030;

~~F.~~ Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

~~GF.~~ State natural area preserves and natural resource conservation areas and state wildlife areas as designated by either the Washington State Department of Natural Resources or the Washington State Department of Fish and Wildlife.

Section 6. That Sumner Municipal Code section 16.56.060 “Mapping and documentation” is hereby amended to read as follows:

“16.56.060 Mapping and documentation.

Fish and wildlife habitat areas shall be identified in the following documents:

- A. The Washington Department of Natural Resources Water typing maps;
- B. The Washington Department of Wildlife Priority Habitats and Species (PHS) Program;
- C. The Washington Department of Natural Resources Natural Heritage Program and Aquatic Resources Program;~~and~~
- D. The effective Flood Insurance Rate Map (FIRM); and
- E. Other appropriate documents prepared by state or federal agencies, which include but are not limited to U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife, or Washington Department of Natural Resources,~~or Puget Sound Partnership (salmonids),~~ or documents prepared by qualified professional consultants for the city.”

Section 7. That Sumner Municipal Code section 16.56.070 “Habitat assessments” is hereby amended to read as follows:

“16.56.070 Habitat assessments.

A habitat assessment, prepared by a professional fisheries or wildlife biologist, shall be submitted for all nonexempt activities proposed on a site which contains or is within: (A) 300 feet of documented habitat for threatened, endangered, or sensitive fish or wildlife species as identified by documents listed under SMC 16.56.060; (B) a wetland, wetland buffer, stream, or stream buffer; or (C) the portion of the mapped special flood hazard area within 200 feet of the OHWM of any lake, river or stream flood hazard areas. Sites subject to a habitat assessment are hereinafter referred to as “Potential Habitat Sites.” Prior to application for a permit the applicant may elect to waive the habitat assessment and submit a habitat management plan if potential habitat is known to exist.

The habitat assessment shall include a discussion and inventory of species or habitats known or expected to be located on ~~or near~~ a Potential Habitat Site. The director or designee may modify the assessment area based on the species-specific recommendations from a state or federal agency with expertise regarding the particular of the relevant agency on the largest buffer required for habitat or species applicable to the Potential Habitat Site.”

Section 8. That Sumner Municipal Code section 16.56.080 “Habitat management plans” is hereby amended to read as follows:

Comment [VNF1]: Ryan, we seem to have lost some of the redlining here – e.g., the change in (A) from 1000 feet to 300 feet is not shown in redline. Please go back and compare to the original text and capture all proposed changes in redline. Thanks.

“16.56.080 Habitat management plans.

A. If the habitat assessment demonstrates to the satisfaction of the director that fish and wildlife habitat areas are not present within the Potential Habitat Site, the development can proceed without further requirements for special fisheries or wildlife studies pursuant to this chapter. Otherwise, a habitat management plan shall be submitted. The purpose of the habitat management plan is to provide for the implementation, monitoring, and maintenance of permanent mitigation and restoration measures for fish and wildlife habitat. Habitat management plans shall be prepared by a professional wildlife biologist or fisheries biologist as determined appropriate by the director. At the discretion of the director, habitat assessments and management plans prepared for federal permits or approvals may be used to fulfill the requirements of this section. ~~Prior to application for a permit the applicant may elect to waive the habitat assessment and submit a habitat management plan if potential habitat is known to exist.~~

B. The habitat management plan for sites within 300 feet of documented habitat for threatened, endangered, or sensitive fish or wildlife species (SMC 16.56.070(A)), or sites containing a wetland, wetland buffer, stream, or stream buffer (SMC 16.56.070(B)) shall contain at a minimum:

1. Site description and project description;
2. An inventory of fish and wildlife habitat on and adjacent to the site and discussion of the project's effects on fish and wildlife habitat;
3. A discussion of any federal, state, or local special management recommendations which have been developed for species or habitats located on and adjacent to the site;
4. A discussion of measures to preserve existing habitats and restore habitats which were degraded prior to the proposed land use activity. Restoration plans shall include at a minimum the following:
 - a. Planting and soil specifications;
 - b. Success standards;
 - c. Contingency plans; and
 - d. Invasive species control plan;
5. A discussion of proposed measures which avoid, minimize, and mitigate the impacts of the project;
6. An evaluation of the effectiveness of the proposed mitigation and restoration measures;
7. A discussion of ongoing management practices which will protect fish and wildlife habitat after the project site has been fully developed, including proposed monitoring and maintenance programs;
8. An assessment of habitat recommendations proposed by resource agencies and their applicability to the proposal;

9. Any additional information necessary to determine the impacts of a proposal and mitigation of the impacts including use of low impact development, minimization of impervious surfaces, etc.;
10. When applicable, field verification of the DNR stream type shall be required that identify flow alterations, locate fish passage barriers, and determine the presence of fish. Field verification of all intermittent or non-fish bearing streams should occur, when practicable, during the wet season months of October to March; and
11. Identification of any applicable data sources.

CB. The habitat management plan for sites within the portion of the mapped special flood hazard area within 200 feet of the OHWM of any lake, river or stream (SMC 16.56.070(C)) shall contain:

Comment [VNF2]: All of this section should be shown in redline because it is all new to the Code.

1. Site description and project description;
2. A description of the habitat functions within the site;
3. A discussion of the effects of the project on:
 - a. water quality and water quantity;
 - b. flood storage capacity;
 - c. channel migration and bank stability;
 - d. riparian vegetation;
 - e. habitat forming processes (such as large wood recruitment) and habitat isolation;
 - f. refuge for fish from higher velocity floodwaters;
 - g. spawning substrate;
4. A discussion of the degree to which the project includes bank armoring and channel straightening, and the effects of those activities on habitat functions;
5. A discussion of proposed measures which avoid, minimize, and mitigate the impacts of the project. Restoration plans shall include at a minimum the following:
 - a. Planting and soil specifications;
 - b. Success standards;
 - c. Contingency plans; and
 - d. Invasive species control plan;
6. An evaluation of the effectiveness of the proposed mitigation and restoration measures;
7. Any additional information necessary to determine the impacts of a proposal and mitigation of the impacts including use of low impact development, minimization of impervious surfaces, etc.; and
8. Identification of any applicable data sources.

D. Habitat management plans shall be forwarded to ~~the appropriate~~ state and/or federal resource agencies with expertise regarding the particular fish or wildlife identified in the HMP for review and comment.

E. Annual monitoring reports shall be provided to the city by the property owner until the mitigation and/or restoration has been in place for at least 10 years and the success standards have been met. The city shall forward the monitoring reports annually to the ~~appropriate federal~~ agencies with expertise regarding the particular fish or wildlife identified in the HMP along with the following:

1. A list and map of the location of development permits issued in the last calendar year;
2. The implementation status of habitat management plans; and
3. The status of the habitat improvements.

Section 9. That Sumner Municipal Code section 16.56.090 “Regulations” is hereby amended to read as follows:

“16.56.090 Regulations.

Based on the habitat assessment, habitat management plan, and comments from other agencies, the director may require mitigating measures to reduce the impacts of the proposal on critical habitat and/or fish or wildlife areas. Mitigating measures may include, but are not limited to, increased buffers, building setbacks, enhanced buffers, reduced project scope, limitations on construction hours, limitations on hours of operation, and relocation of access. Projects may be denied if the proposal ~~is likely to result in adverse effects to a threatened or endangered fish or wildlife species; or~~ will result in extirpation or isolation of other critical fish, wildlife, or plant species or its habitat. The authority of the State Environmental Policy Act shall provide possible mitigation for all areas of fish or wildlife habitat not covered by this chapter.

Section 10. **Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the Code Reviser are authorized to make the necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 11. **Severability – Construction.** If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance. If the provisions of this ordinance are found to be inconsistent with other provisions of the Sumner Municipal Code, the provisions of this ordinance shall control.

Section 12. **Effective Date.** This ordinance shall be in full force and effect five (5) days from and after its passage, approval and publication, as provided by law.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 33T day of ,

Mayor David L. Enslow

ATTEST:

APPROVED AS TO FORM:

City Clerk Terri Berry, MMC

City Attorney Brett C. Vinson

First Reading: 33T (*Postponed*)
Date Adopted: 33T
Date of Publication: 33T
Effective Date: 33T